



Civil Justice Subcommittee

Wednesday, February 9, 2011

1:00 PM

404 HOB

Action Packet

**Dean Cannon
Speaker**

**Eric Eisnaugle
Chair**

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/9/2011 1:00:00PM

Location: 404 HOB

Summary:

Civil Justice Subcommittee

Wednesday February 09, 2011 01:00 pm

HB 201	Favorable With Committee Substitute	Yeas: 15	Nays: 0
HB 215	Favorable With Committee Substitute	Yeas: 13	Nays: 0
HB 253	Favorable With Committee Substitute	Yeas: 15	Nays: 0
HB 277	Favorable With Committee Substitute	Yeas: 13	Nays: 0
HB 4067	Favorable	Yeas: 13	Nays: 0

Committee meeting was reported out: Wednesday, February 09, 2011 6:41:55PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/9/2011 1:00:00PM

Location: 404 HOB

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Eric Eisnaugle (Chair)	X		
Mack Bernard	X		
Clay Ford	X		
Matt Gaetz	X		
Bill Hager	X		
Shawn Harrison	X		
Martin Kiar	X		
Larry Metz	X		
Kathleen Passidomo	X		
Darren Soto	X		
Cynthia Stafford	X		
Kelli Stargel	X		
Richard Steinberg	X		
W. Gregory Steube	X		
Michael Weinstein	X		
Totals:	15	0	0

Committee meeting was reported out: Wednesday, February 09, 2011 6:41:55PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/9/2011 1:00:00PM

Location: 404 HOB

HB 201 : Negligence

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Mack Bernard	X				
Clay Ford	X				
Matt Gaetz	X				
Bill Hager	X				
Shawn Harrison	X				
Martin Kiar	X				
Larry Metz	X				
Kathleen Passidomo	X				
Darren Soto	X				
Cynthia Stafford	X				
Kelli Stargel	X				
Richard Steinberg	X				
W. Gregory Steube	X				
Michael Weinstein	X				
Eric Eisnaugle (Chair)	X				
Total Yeas: 15		Total Nays: 0			

Appearances:

HB 201

Lampe, Doug (General Public) - Opponent
Ford Motor Company
1 American Rd, Suite 421-A4
Dearborn MI 48126
Phone: 313-594-4111

HB 201

Smith, William (Lobbyist) - Proponent
Florida Police Benevolent Association, Inc
300 E Brevard St
Tallahassee FL 32301
Phone: (850)222-3329

HB 201

McDonald, Frank (Lobbyist) - Opponent
Florida Justice Reform Institute
P O Box 4924
Orlando FL 32802
Phone: 407-246-1800

HB 201

Newsome, Rick (General Public) - Proponent
FJA
Phone: 321-217-9864

Committee meeting was reported out: Wednesday, February 09, 2011 6:41:55PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/9/2011 1:00:00PM

Location: 404 HOB

HB 201

Meros Jr., George (Lobbyist) - Proponent
U.S. Chamber Institute for Legal Reform
1615 H St NW
Washington DC 20062
Phone: (850)577-9090

HB 201

Blumberg, Edward (General Public) - Opponent
100 N Biscayne Blvd, #2802
Miami FL 33132
Phone: 305-358-6329

HB 201

Dickinson , Fred (Lobbyist) - Waive In Support
General Motors Company
300 Renaissance Ctr MC 482-C27-D21
Detroit MI 48265-3000
Phone: (850)681-1980

HB 201

Delegal , Mark (Lobbyist) - Proponent
Florida Chamber of Commerce
136 S Bronough St
Tallahassee FL 32301
Phone: (850)222-3533

HB 201

Carr , Diane (Lobbyist) - Waive In Support
Alliance of Automobile Manufacturers
1401 Eye St NW Ste 900
Washington DC 20005
Phone: (850)222-7500

HB 201

Perdue , Tamela (Lobbyist) - Waive In Support
Associated Industries of Florida
PO Box 784
Tallahassee FL 32302
Phone: (850)224-7173

HB 201

Pitts, Brian (General Public) - Information Only
Justice-2-Jesus
1119 Newton Ave. S.
St. Petersburg FL 33705
Phone: 727-897-9291

Committee meeting was reported out: Wednesday, February 09, 2011 6:41:55PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 201 (2011)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	_____	

*favourable
2.9.11*

1 Council/Committee hearing bill: Civil Justice Subcommittee
2 Representative(s) Gaetz offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (3) of section 768.81, Florida
7 Statutes, is amended to read:

8 768.81 Comparative fault.—

9 (3) APPORTIONMENT OF DAMAGES.—In cases to which this
10 section applies, the court shall enter judgment against each
11 party liable on the basis of such party's percentage of fault
12 and not on the basis of the doctrine of joint and several
13 liability.

14 (a) In order to allocate any or all fault to a nonparty, a
15 defendant must affirmatively plead the fault of a nonparty and,
16 absent a showing of good cause, identify the nonparty, if known,
17 or describe the nonparty as specifically as practicable, either
18 by motion or in the initial responsive pleading when defenses

Amendment No. 1

19 are first presented, subject to amendment any time before trial
20 in accordance with the Florida Rules of Civil Procedure.

21 (b) In order to allocate any or all fault to a nonparty
22 and include the named or unnamed nonparty on the verdict form
23 for purposes of apportioning damages, a defendant must prove at
24 trial, by a preponderance of the evidence, the fault of the
25 nonparty in causing the plaintiff's injuries.

26 (c) In a products liability action brought by the claimant
27 alleging that because of a defective product the injuries
28 received by the claimant in a motor vehicle accident were
29 greater than the injuries the claimant would have received but
30 for the defective product, the trier of fact shall consider only
31 the fault of the persons responsible for the accident in regard
32 to the injuries directly caused by the accident and shall
33 consider only the fault of the persons responsible for the
34 defective product in regard to the injuries directly caused by
35 the defective product, unless the trier of fact cannot
36 distinguish the injuries directly caused by the defective
37 product, in which case the trier of fact shall consider the
38 fault of all persons who contributed to the accident and the
39 injuries and apportion liability between them.

40 Section 2. This act shall take effect upon becoming a law
41 and shall apply to causes of action accruing on or after said
42 date.

43
44 -----

45 **T I T L E A M E N D M E N T**

46 Remove the entire title and insert:

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 201 (2011)

Amendment No. 1

47 | An act relating to negligence; amending s. 768.81, F.S.;

48 | specifying how the trier of fact is to apportion damages

49 | in products liability actions alleging additional or

50 | enhanced injury resulting from the crash of a motor

51 | vehicle alleged to be defective; providing for

52 | applicability and an effective date.

53

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 201 (2011)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

*favorable
2-9-11*

Council/Committee hearing bill: Civil Justice Subcommittee
Representative(s) Ford offered the following:

Amendment to Amendment (1) by Representative Gaetz (with directory and title amendments)

Between lines 39 and 40, insert:

(4) APPLICABILITY.—

(b) This section does not apply to any action brought by any person to recover actual economic damages resulting from pollution, to any action based upon an intentional tort, to any action brought by a first responder, or to any cause of action as to which application of the doctrine of joint and several liability is specifically provided by chapter 403, chapter 498, chapter 517, chapter 542, or chapter 895. For purposes of this paragraph, the term "first responder" shall mean a law enforcement officer as defined in s. 943.10, a firefighter as defined in s. 633.30, or an emergency medical technician or paramedic as defined in s. 401.23, whether such first responder is employed full-time, employed part-time, or is a volunteer.

Amendment No. 2

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D I R E C T O R Y A M E N D M E N T

Remove lines 6-7 and insert:

Section 1. Subsection (3) of section 768.81, Florida Statutes, and paragraph (b) of subsection (4) of that section, are amended to read:

T I T L E A M E N D M E N T

Remove line 51 and insert:

vehicle alleged to be defective; providing that the doctrine of joint and several liability applies to a tort action brought by a first responder; defining the term first responder; providing for

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 201 (2011)

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	_____	

*Superseded by
Strike-all
2-9-11*

Council/Committee hearing bill: Civil Justice Subcommittee
Representative(s) Ford offered the following:

Amendment (with title amendment)

Remove lines 88-91 and insert:

pollution, to any action based upon an intentional tort, to any
action brought by a first responder, or to any cause of action
as to which application of the doctrine of joint and several
liability is specifically provided by chapter 403, chapter 498,
Chapter 517, Chapter 542, or chapter 895. For purposes of this
paragraph, the term "first responder" shall mean a law
enforcement officer as defined in s. 943.10, a firefighter as
defined in s. 633.30 or an emergency medical technician or
paramedic as defined in s. 401.23, whether such first responder
is employed full-time, employed part-time, or is a volunteer.

T I T L E A M E N D M E N T

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 201 (2011)

Amendment No.

20 Remove line 9 and insert:
21 "negligence cases"; providing that the doctrine of joint and
22 several liability applies to tort action brought by a first
23 responders; defining the term first responder; amending s.
24 25.077, F.S.; conforming

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/9/2011 1:00:00PM

Location: 404 HOB

HB 215 : Emergency Management

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Mack Bernard	X				
Clay Ford	X				
Matt Gaetz			X		
Bill Hager			X		
Shawn Harrison	X				
Martin Kiar	X				
Larry Metz	X				
Kathleen Passidomo	X				
Darren Soto	X				
Cynthia Stafford	X				
Kelli Stargel	X				
Richard Steinberg	X				
W. Gregory Steube	X				
Michael Weinstein	X				
Eric Eisnaugle (Chair)	X				
Total Yeas: 13		Total Nays: 0			

Appearances:

Hb 215

Pitts, Brian (General Public) - Information Only

Justice-2-Jesus

1119 Newton Ave. S.

St. Petersburg FL 33705

Phone: 727-897-9291

Committee meeting was reported out: Wednesday, February 09, 2011 6:41:55PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. 215 (2011)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

*favourable
2.9.11*

1 Council/Committee hearing bill: Civil Justice Subcommittee
2 Representative(s) Abruzzo offered the following:

4 **Amendment**

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 252.515, Florida Statutes, is created
7 to read:

8 252.515 Postdisaster Relief Assistance Act; immunity from
9 civil liability.-

10 (1) This act may be cited as the "Postdisaster Relief
11 Assistance Act."

12 (2) Any person who gratuitously and in good faith provides
13 temporary housing, food, water, or electricity to emergency
14 first responders or the immediate family members of emergency
15 first responders in response to an emergency situation related
16 to and arising out of a public health emergency declared
17 pursuant to s. 381.00315 or a state of emergency declared
18 pursuant to s. 252.36, may not be held liable for any civil
19 damages as a result of providing the temporary housing, food,

Amendment No. 1

20 water, or electricity unless the person acts in a manner that
21 demonstrates a reckless disregard for the consequences of
22 another.

23 (3) As used in this section, the term:

24 (a) "Emergency first responder" means

25 1. Physician licensed under chapter 458.

26 2. Osteopathic physician licensed under chapter 459.

27 3. Chiropractic physician licensed under chapter 460.

28 4. Podiatric physician licensed under chapter 461.

29 5. Dentist licensed under chapter 466.

30 6. Advanced registered nurse practitioner certified under
31 s. 464.012.

32 7. Physician assistant licensed under s. 458.347 or s.
33 459.022.

34 8. Worker employed by a public or private hospital in the
35 state.

36 9. Paramedic as defined in s. 401.23(17).

37 10. Emergency medical technician as defined in s.
38 401.23(11).

39 11. Firefighter as defined in s. 633.30.

40 12. Law enforcement officer as defined in s. 943.10.

41 13. Member of the Florida National Guard.

42 14. Other personnel designated as emergency personnel by
43 the Governor pursuant to a declared emergency.

44 (b) "Immediate family member" means any parent, spouse,
45 child, or sibling.

46 (3) The immunity provided by this section does not apply
47 to damages as a result of any act or omission:

Amendment No. 1

48 (a) That occurs more than 6 months after the declaration
49 of an emergency by the Governor, unless the declared state of
50 emergency is extended by the Governor, in which case the
51 immunity provided by this section continues to apply for the
52 duration of the extension and 6 months thereafter; or

53 (b) That is unrelated to the original declared emergency
54 or any extension thereof.

55 (4) As used in this section, the term "reckless disregard"
56 means such conduct that a reasonable person knew or should have
57 known, at the time such services were provided, would be likely
58 to result in injury so as to affect the life or health of
59 another, taking into account the extent or serious nature of the
60 prevailing circumstances.

61 (5) A person may register with a county emergency
62 management agency as a provider of housing for emergency first
63 responders if the county provides for such registration. A
64 person who has registered with a county emergency management
65 agency as a provider of temporary housing, food, water, or
66 electricity to emergency first responders or the immediate
67 family members of emergency first responders is presumed to have
68 acted in good faith in providing such housing, food, water, or
69 electricity.

70 Section 2. This act shall take effect July 1, 2011.

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/9/2011 1:00:00PM

Location: 404 HOB

HB 253 : Limited Liability Companies

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Mack Bernard	X				
Clay Ford	X				
Matt Gaetz	X				
Bill Hager	X				
Shawn Harrison	X				
Martin Kiar	X				
Larry Metz	X				
Kathleen Passidomo	X				
Darren Soto	X				
Cynthia Stafford	X				
Kelli Stargel	X				
Richard Steinberg	X				
W. Gregory Steube	X				
Michael Weinstein	X				
Eric Eisnagle (Chair)	X				
Total Yeas: 15		Total Nays: 0			

Appearances:

HB 253

Delegal, Mark (Lobbyist) - Waive In Support
Florida Chamber of Commerce
136 S Bronough St
Tallahassee FL 32301
Phone: (850)222-3533

HB 253

Hale, Russell (Lobbyist) - Information Only
Florida Bankers Association
PO Box 1360
Tallahassee FL 32302-1360
Phone: (407)843-7860

HB 253

Wiley, William (Lobbyist) - Proponent
Florida Bar Business Law Section, The
651 E Jefferson St
Tallahassee FL 32399-2300
Phone: (850)545-9438

HB 253

Pitts, Brian (General Public) - Information Only
Justice-2-Jesus
1119 Newton Ave. S.
St. Petersburg FL 33705
Phone: 727-897-9291

Committee meeting was reported out: Wednesday, February 09, 2011 6:41:55PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/9/2011 1:00:00PM

Location: 404 HOB

HB 253

Adams, Howard "Gene" (Lobbyist) - Proponent

Real Property, Probate and Trust Law Section of the Florida Bar

215 S Monroe St

Tallahassee FL 32301

Phone: 850-222-3533

Committee meeting was reported out: Wednesday, February 09, 2011 6:41:55PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 253 (2011)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

*Favorable
2-9-11*

Council/Committee hearing bill: Civil Justice Subcommittee
Representative(s) Stargel offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 608.433, Florida Statutes, is amended
to read:

608.433 Right of assignee to become member.—

(1) Unless otherwise provided in the articles of
organization or operating agreement, an assignee of a limited
liability company interest may become a member only if all
members other than the member assigning the interest consent.

(2) An assignee who has become a member has, to the extent
assigned, the rights and powers, and is subject to the
restrictions and liabilities, of the assigning member under the
articles of organization, the operating agreement, and this
chapter. An assignee who becomes a member also is liable for the
obligations of the assignee's assignor to make and return
contributions as provided in s. 608.4211 and wrongful

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 253 (2011)

Amendment No. 1

20 distributions as provided in s. 608.428. However, the assignee
21 is not obligated for liabilities which are unknown to the
22 assignee at the time the assignee became a member and which
23 could not be ascertained from the articles of organization or
24 the operating agreement.

25 (3) If an assignee of a limited liability company interest
26 becomes a member, the assignor is not released from liability to
27 the limited liability company under ss. 608.4211, 608.4228, or
28 ~~and~~ 608.426.

29 (4) (a) On application to a court of competent jurisdiction
30 by any judgment creditor of a member or a member's assignee, the
31 court may enter a charging order against the limited liability
32 company interest of the judgment debtor or assignee rights for
33 ~~charge the limited liability company membership interest of the~~
34 ~~member with payment of the unsatisfied amount of the judgment~~
35 plus ~~with~~ interest.

36 (b) ~~To the extent so charged,~~ A charging order constitutes
37 a lien on the judgment debtor's limited liability company
38 interest or assignee rights. Under a charging order, the
39 judgment creditor has only the rights of an assignee of a
40 limited liability company interest to receive any distribution
41 or distributions to which the judgment debtor would otherwise
42 have been entitled from the limited liability company, to the
43 extent of the judgment, including interest ~~such interest.~~

44 (c) This chapter does not deprive any member or member's
45 assignee of the benefit of any exemption law ~~laws~~ applicable to
46 the member's limited liability company interest or the

Amendment No. 1

47 assignee's rights to distributions from the limited liability
48 company interest.

49 (5) Except as provided in subsections (6) and (7) below, a
50 charging order is the sole and exclusive remedy by which a
51 judgment creditor of a member or member's assignee may satisfy a
52 judgment from the judgment debtor's interest in a limited
53 liability company or rights to distributions from the limited
54 liability company.

55 (6) In the case of a limited liability company having only
56 one member, if a judgment creditor of a member or member's
57 assignee establishes to the satisfaction of a court of competent
58 jurisdiction that distributions under a charging order will not
59 satisfy the judgment within a reasonable time, a charging order
60 is not the sole and exclusive remedy by which the judgment
61 creditor may satisfy the judgment against a judgment debtor who
62 is the sole member of a limited liability company or the
63 assignee of the sole member and, upon such showing, the court
64 may order the sale of that interest in the limited liability
65 company pursuant to a foreclosure sale. A judgment creditor
66 shall be permitted to make a showing to the court that
67 distributions under a charging order will not satisfy the
68 judgment within a reasonable time at any time after the entry of
69 the judgment and may do so at the same time that the judgment
70 creditor applies for the entry of a charging order.

71 (7) In the case of a limited liability company having only
72 one member, if the court orders foreclosure sale of a judgment
73 debtor's interest in the limited liability company or of a

Amendment No. 1

74 charging order lien against the sole member of the limited
75 liability company pursuant to subsection (6), above:

76 (a) The purchaser at the court-ordered foreclosure sale
77 obtains the member's entire limited liability company interest,
78 not merely the member's transferable interest;

79 (b) The purchaser at the sale becomes the member of the
80 limited liability company; and

81 (c) The person whose limited liability company interest is
82 sold pursuant to the foreclosure sale or is the subject of the
83 foreclosed charging order ceases to be a member of the limited
84 liability company.

85 Section 2. The amendment to s. 608.433, Florida Statutes,
86 made by this act is intended by the Legislature to be clarifying
87 and remedial in nature, and shall apply retroactively.

88 Section 3. This act shall take effect upon becoming a law.
89
90
91

92 -----
93 **T I T L E A M E N D M E N T**

94 Remove lines 4-39 and insert:

95 a member's limited liability company interest is the sole and
96 exclusive remedy available to enforce a judgment creditor's
97 unsatisfied judgment against a member or member's assignee;
98 providing an exception for enforcing a judgment creditor's
99 unsatisfied judgment against a judgment debtor or assignee of
100 the judgment debtor of a single-member limited liability company
101 under certain circumstances; providing legislative intent;

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 253 (2011)

Amendment No. 1

102 providing for retroactive application; providing an effective
103 date.

104

105 WHEREAS, on June 24, 2010, the Florida Supreme Court held
106 in *Olmstead v. Federal Trade Commission* (No. SC08-1009),
107 reported at 44 So.3d 76, 2010-1 Trade Cases P 77,079, 35 Fla. L.
108 Weekly S357, that a charging order is not the exclusive remedy
109 available to a creditor holding a judgment against the sole
110 member of a Florida single-member limited liability company
111 (LLC), and

112 WHEREAS, a charging order represents a lien entitling a
113 judgment creditor to receive distributions from the LLC or the
114 partnership that otherwise would be payable to the member or
115 partner who is the judgment debtor, and

116 WHEREAS, the dissenting members of the Court in *Olmstead*
117 expressed a concern that the majority's holding is not limited
118 to a single-member LLC and a desire that the Legislature clarify
119 the law in this area, and

120 WHEREAS, the Legislature finds that the uncertainty of the
121 breadth of the Court's holding in *Olmstead* may persuade
122 businesses and investors located in Florida to organize LLCs
123 under the law in other jurisdictions where a charging order is
124 the exclusive remedy available to a judgment creditor of a
125 member of a multimember LLC, and

126 WHEREAS, the Legislature further finds it necessary to
127 amend s. 608.433, Florida Statutes, to remediate the potential
128 effect of the holding in *Olmstead* and to clarify that the
129 current law does not extend to a member of a multimember LLC

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 253 (2011)

Amendment No. 1

130 organized under Florida law and to provide procedures for
131 application of the holding in *Olmstead* to a member of a single
132 member LLC organized under Florida law, NOW, THEREFORE,

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/9/2011 1:00:00PM

Location: 404 HOB

HB 277 : Statutes of Limitations

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Mack Bernard	X				
Clay Ford	X				
Matt Gaetz			X		
Bill Hager			X		
Shawn Harrison	X				
Martin Kiar	X				
Larry Metz	X				
Kathleen Passidomo	X				
Darren Soto	X				
Cynthia Stafford	X				
Kelli Stargel	X				
Richard Steinberg	X				
W. Gregory Steube	X				
Michael Weinstein	X				
Eric Eisnaugle (Chair)	X				
Total Yeas: 13		Total Nays: 0			

Appearances:

HB 277

Carroll , Sarrah (Lobbyist) - Waive In Support

Florida Association of Counties

PO Box 549

Tallahassee FL 32302

Phone: (850)922-4300

HB 277

Graham, Arthur (General Public) - Waive In Support

Assistant County Attorney, Volusia County

123 W Indiana Ave

Deland FL 32720

Phone: 386-736-5950

HB 277

Conn, Kraig (Lobbyist) - Waive In Support

Florida League of Cities

301 S. Bronough

Tallahassee FL 32301

Phone: 850-222-9684

HB 277

Pitts, Brian (General Public) - Information Only

Justice-2-Jesus

1119 Newton Ave. S.

St. Petersburg FL 33705

Phone: 727-897-9291

Committee meeting was reported out: Wednesday, February 09, 2011 6:41:55PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 277 (2011)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

*favourable
2.9.11*

1 Council/Committee hearing bill: Civil Justice Subcommittee
2 Representative(s) Goodson offered the following:

3

4 **Amendment**

5 Remove line 27 and insert:

6 Section 2. This act shall take effect July 1, 2011, and
7 shall apply to causes of action accruing on or after that date.

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/9/2011 1:00:00PM

Location: 404 HOB

HB 4067 : Residence of Clerk of the Circuit Court

Favorable

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Mack Bernard	X				
Clay Ford	X				
Matt Gaetz			X		
Bill Hager			X		
Shawn Harrison	X				
Martin Kiar	X				
Larry Metz	X				
Kathleen Passidomo	X				
Darren Soto	X				
Cynthia Stafford	X				
Kelli Stargel	X				
Richard Steinberg	X				
W. Gregory Steube	X				
Michael Weinstein	X				
Eric Eisnaugle (Chair)	X				
Total Yeas: 13		Total Nays: 0			

Appearances:

HB 4067

Pitts, Brian (General Public) - Information Only

Justice-2-Jesus

1119 Newton Ave. S.

St. Petersburg FL 33705

Phone: 727-897-9291

Committee meeting was reported out: Wednesday, February 09, 2011 6:41:55PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/9/2011 1:00:00PM

Location: 404 HOB

Other Business Appearance:

Workshop on Court Rulemaking

Richard, Barry (General Public) - Information Only

P O Drawer 1838

Tallahassee FL 32302

Phone: 850-222-6891

Workshop on Court Rulemaking

Snurkowski, Caroline (State Employee) - Information Only

Associate Deputy Attorney General, Attorney General's Office

The Capitol

Tallahassee FL 32303

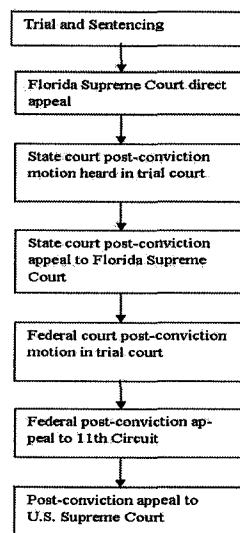
Phone: 850-410-3566

Committee meeting was reported out: Wednesday, February 09, 2011 6:41:55PM

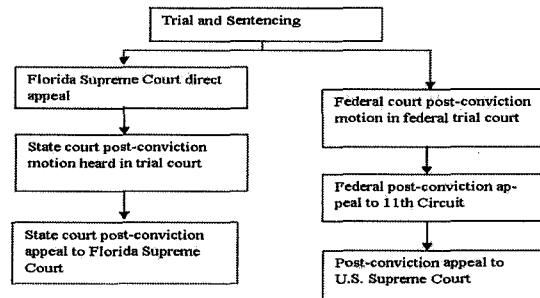
Presentation by Carolyn Snurkowski

February 9, 2011

Process Today and Prior to DPRA



Proposed Under DPRA



DPRA's Short Life

- Former Rules reinstated 24 days after repeal
- 3 opinions
- Final decision in 2001

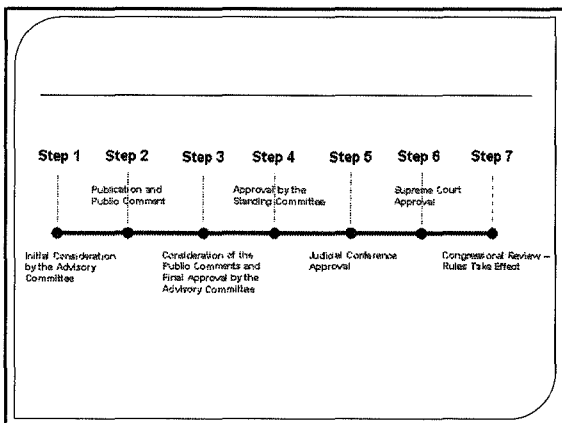
Effect of Court's DPRA Opinion

- DPRA included a 5 year statute of limitation on state claims
- Currently a typical death penalty case takes 14-20 years for resolution

Did not present - ran out of time

2/9/2011

Comparing State and Federal Rulemaking Process



Committee Structure and Appointments

<u>FLORIDA</u>	<u>FEDERAL</u>
<ul style="list-style-type: none">● Subject Matter● Board of Governors	<ul style="list-style-type: none">● Subject Matter● Rules Advisory Committee● Judicial Conference

Subject Matter Committees	
<u>FLORIDA</u>	<u>FEDERAL – KNOWN AS ADVISORY COMMITTEES</u>
<ul style="list-style-type: none">● Appellate Court Rules● Civil Procedure Rules● Code & Rules Of Evidence● Criminal Procedure Rules● Family Law Rules● Florida Probate Rules● Juvenile Court Rules● Rules Of Judicial Administration● Small Claims Rules● Traffic Court Rules	<ul style="list-style-type: none">● Appellate● Bankruptcy● Civil● Criminal● Evidence

Appointment to Subject Matter Committees	
<u>FLORIDA</u>	<u>FEDERAL</u>
<ul style="list-style-type: none">● Appointment by President of the Florida Bar● Serve 3 year terms● Primarily practitioners	<ul style="list-style-type: none">● Appointment by Chief Justice● Serve 3 year terms● Composed of federal judges, practicing lawyers, law professors, state chief justices, and representatives of the Department of Justice

Differences between Subject Matter Committees

FLORIDA	FEDERAL
<ul style="list-style-type: none">● Subject matter chairs chosen by Bar President● No special requirements for committee chair● No reporter● Between 31 and 59 members each	<ul style="list-style-type: none">● Subject matter chairs chosen by Chief Justice● Every chair a federal judge● Every committee has a "reporter", who is a prominent law professor● Between 11 and 14 members each

Committee Meetings

FLORIDA	FEDERAL
<ul style="list-style-type: none">● Meetings coincide with other Bar meetings, public notice only in Florida Bar publications distributed to attorneys● Minutes published on internet from 2007 forward● Meetings not recorded	<ul style="list-style-type: none">● Regular meetings with notice in the Federal Register● Detailed minutes kept and published on internet back to 1935● Meetings recorded and a transcript prepared

Committee on Rules

FLORIDA	FEDERAL
<ul style="list-style-type: none">● Florida does not have a general committee on rules.	<ul style="list-style-type: none">● Known as the Standing Committee on Rules of Practice and Procedure● 14 members: 3 private attorneys, 4 federal trial court judges, 3 federal appellate judges, a state court chief justice, a DOJ representative, and 2 law professors

**Committee Prior to Submission
to the Supreme Court**

<u>FLORIDA</u>	<u>FEDERAL</u>
<ul style="list-style-type: none">● Board of Governors of the Florida Bar● 53 total members● 51 practicing attorneys, elected by various constituencies of the Bar● 2 appointed members of the general public● No judges	<ul style="list-style-type: none">● Judicial Conference● 27 members: Chief Justice as chair, 12 chief judges of the circuits, a trial court judge from each of the circuits, the chief judges of the Federal Circuit and the Court of International Trade● No public members or practicing attorneys

**Rules Creation and
Adoption**

**Step 1: Initial Consideration by
Committee**

<u>FLORIDA</u>	<u>FEDERAL</u>
<ul style="list-style-type: none">● Any person may suggest● Court website does not easily refer to rulemaking process● Bar allows submission by email to Bar staff, link on Bar website	<ul style="list-style-type: none">● Any person may suggest● Open invitation for suggestions on court maintained website

Step 2: Publication

FLORIDA

- Subject matter committees do not publish their suggested changes.

FEDERAL

- Advisory committee suggested change is sent to over 10,000 persons and entities, including federal judges and other federal court officers, United States attorneys, other federal government agencies and officials, state chief justices, state attorneys general, legal publications, law schools, bar associations, and interested lawyers, individuals, and organizations
- 6 months comment period

Step 3: Final Approval by Committee

FLORIDA

- Because there is no publication period, committee product is transmitted directly to Board of Governors

FEDERAL

- At the conclusion of the public comment period, the reporter is required to prepare a summary of the written comments received from the public and the testimony presented at the hearings. The advisory committee then takes a fresh look at the proposed rule changes in light of the written comments and testimony.

Step 4: Approval by Standing Committee

FLORIDA

- Florida has no standing committee on rules.

FEDERAL

- The Standing Committee considers the final recommendations of the advisory committee and may accept, reject, or modify them. If the Standing Committee approves a proposed rule change, it will transmit it to the Judicial Conference with a recommendation for approval, accompanied by the advisory committee's reports and the Standing Committee's own report explaining any modifications it made. If the Standing Committee makes a modification that constitutes a substantial change from the recommendation of the advisory committee, the proposal will normally be returned to the advisory committee with appropriate instructions.

Step 5: Conference or Bar Approval

FLORIDA

- Board of Governors of the Florida Bar accepts, rejects or modifies a committee report at any regular meeting

FEDERAL

- Judicial Conference hears rule changes at September meeting

Step 6: Supreme Court Approval

FLORIDA

- Bar report filed with Supreme Court
- No deadline or minimum wait time before the court may act

FEDERAL

- Judicial Conference Report filed with Supreme Court in September.
- Supreme Court must transmit to Congress by following May 1st (approximately 7 months in Supreme Court)

Step 7: Review and Effective Date

FLORIDA

- No further review. Court rule approved by Supreme Court may be effective immediately

FEDERAL

- Rule changes received by Congress no later than May 1st.
- General rule changes not effective until following December 1st (7 month review period). Proposed general rule changes effective unless Congress acts to reject or amend
- Evidence rule change not effective unless Congress affirmatively adopts the change.

Effect of Rules

<u>FLORIDA</u>	<u>FEDERAL</u>
<ul style="list-style-type: none">● Rules often conflict with laws● Courts routinely strike down laws that conflict with rules	<ul style="list-style-type: none">● Rules never conflict with laws● Courts have never stricken a law claiming that it conflicts with a rule
