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# **Civil Justice Subcommittee**

**Tuesday, December 4, 2012**

**1:00 PM**

**404 HOB**

**Will Weatherford**  
Speaker

**Larry Metz**  
Chair

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Civil Justice Subcommittee

**Start Date and Time:** Tuesday, December 04, 2012 01:00 pm  
**End Date and Time:** Tuesday, December 04, 2012 02:30 pm  
**Location:** 404 HOB  
**Duration:** 1.50 hrs

Member and Staff Introductions

Presentation by the State Courts System

**NOTICE FINALIZED on 11/27/2012 16:00 by Jones.Missy**





# **CIVIL JUSTICE SUBCOMMITTEE**

**BRIEFING BOOK**

**December 2012**

**Civil Justice Subcommittee  
Briefing Book 2013-2014**

**Staff of the Civil Justice Subcommittee**

The Speaker has assigned the following staff to the Civil Justice Subcommittee:

Nathan Bond is the Policy Chief for the Subcommittee. He graduated from The Florida State University College of Business in 1985 and the College of Law in 1988. After 11 years in private practice, he joined the House staff in 1999.

John Cary is an attorney for the Subcommittee. He graduated from The Florida State University College of Law in 2009 and interned for the Attorney General and the Florida Senate during law school. He has previously worked in private practice and for the City of Ocala. This will be his second session working in the Civil Justice Subcommittee.

Teresa Ward is an attorney for the Subcommittee. She is a 1981 graduate of Stetson University College of Law. She was in the private practice of law until she joined the staff of the House of Representatives in 2010 as Deputy General Counsel.

Missy Jones is the Administrative Assistant for the Subcommittee and for the Judiciary Committee. She has worked for the House for the past 20 years.

## **Civil Justice Subcommittee Jurisdiction and Major Policy Areas**

Historically, the House Civil Justice Subcommittee has had a fairly broad jurisdiction. Most legislative bills could be referred to the Subcommittee, as most legal rights and obligations created by the government can only be enforced through the courts. Traditionally, the Subcommittee has been assigned bills related to civil litigation (including torts, civil rights, contracts and collections), business law (litigation, creation of business entities), family law (including marriage, divorce, child custody and child support), constitutional amendments, real property law (transactions, mortgages, foreclosures, condominiums, homeowners associations), probate, guardianship, trust law, alternative dispute resolution (mediation and arbitration), bills affecting the practice of law, and bills affecting the clerks of court. Under some previous Speakers, the Subcommittee has heard claim bills.

Many bills in these areas overlap with the jurisdiction of other subcommittees. For instance, changes to tort law may have an insurance effect, changes to business law may affect economic affairs, changes to real property law may affect property tax collections or environmental concerns, and real property bills on condominiums may affect business regulation.

In addition to hearing bills, all legislative committees have a governmental oversight role. Historical oversight assignments for the Civil Justice Subcommittee have included the court system in general, including court rulemaking, clerks of court, and court-related entities such as the Justice Administrative Commission, Judicial Qualifications Commission, and the judicial nominating commissions. Additionally, the Subcommittee has been assigned oversight over the Department of Legal Affairs (Attorney General).

As a part of its oversight role, the House Civil Justice Subcommittee has traditionally been the lead committee in those rare instances in which an investigation is initiated that may lead to impeachment of a justice or judge.

## **House Civil Justice Subcommittee Oversight Agencies and Organizations**

### State Courts System

- Supreme Court
- 5 District Courts of Appeal
- 20 Judicial Circuits
- 67 County Courts

### Organizations under the State Courts System, including:

- Dispute Resolution Center
- Court Interpreters Program
- Judicial Education Program
- Florida Bar
- Florida Board of Bar Examiners

### Department of Legal Affairs, including:

- Office of the Attorney General
- Antitrust Division
- Civil Rights Division
- Victim Services
- Criminal Appeals
- Economic Crimes
- Civil Litigation
- Child Support Enforcement
- Medicaid Fraud
- Solicitor General
- Statewide Prosecution
- Lemon Law

### Clerks of Court

### Justice Administrative Commission, including:

- Clerk of Courts Operations Corporation
- Guardian Ad Litem program
- Offices of Criminal Conflict & Civil Regional Counsel
- Payment of court-appointed counsel for indigents
- Payment of due process services for indigents

### Judicial Qualifications Commission

## Judicial Nominating Commissions

Additionally, the Subcommittee assists other subcommittees with oversight over portions of other state agencies that are heavily involved in the judicial system, including:

- Child Protection Services at the Department of Children and Families
- Office of Statewide Public Guardian at the Department of Elderly Affairs
- Child Support Enforcement at the Department of Revenue



## **Civil Justice Subcommittee Contact Names and Phone Numbers**

### **State Courts System**

State Courts Administrator: Lisa Goodner

Telephone: 850-922-5081

Email: [goodnerl@flcourts.org](mailto:goodnerl@flcourts.org)

Director of Community and Intergovernmental Relations: Eric Maclure

E-mail: [macluree@flcourts.org](mailto:macluree@flcourts.org)

Website: <http://www.flcourts.org/>

### **Department of Legal Affairs**

Director of Legislative and Cabinet Affairs: Rob Johnson

Telephone: 850-245-0188

Email: [Rob.Johnson@myfloridalegal.com](mailto:Rob.Johnson@myfloridalegal.com)

Website: <http://myfloridalegal.com/>

### **Clerks of Court**

Fred Baggett, Esquire

Telephone: 850-222-6891

Email: [baggetf@gtlaw.com](mailto:baggetf@gtlaw.com)

Website: <http://www.flclerks.com/>

### **Justice Administrative Commission**

Executive Director: Alton L. "Rip" Colvin, Jr.

Telephone: 850-488-2415 x221

Email: [rip.colvin@justiceadmin.org](mailto:rip.colvin@justiceadmin.org)

Website: <http://www.justiceadmin.org/>

### **Judicial Qualifications Commission**

Executive Director: Brooke Kennerly

Telephone: 850-488-1581

Email: [bkennerly@floridajqc.com](mailto:bkennerly@floridajqc.com)

Website: <http://www.floridajqc.com/>

### **The Florida Bar**

General Counsel: Paul Hill, Esquire

Telephone: 850-561-5661

Email: [phill@flabar.org](mailto:phill@flabar.org)

Website: <http://www.floridabar.org/>

## **Civil Justice Subcommittee Overview of Recently Passed Legislation**

In the past two sessions, significant legislation that passed the Subcommittee and subsequently passed by both chambers includes:

### **Business Law**

Laws on limited liability companies were changed to provide that a charging order is the sole and exclusive remedy by which a judgment creditor may satisfy a judgment unless the debtor is a single-member LLC and distributions under the charging order will not satisfy the judgment. The bill was referred to as the Olmstead fix.<sup>1</sup>

Tax law was changed to provide that the buyer of a business may take possession of the business without incurring carryover tax liability under certain circumstances.<sup>2</sup>

Florida's Uniform Commercial Code was amended to conform to a revision of Article 9 of the Uniform Commercial Code.<sup>3</sup>

The legal-notice requirements that owners of a self-storage facility must provide to a tenant prior to sale of the unit contents were simplified.<sup>4</sup>

### **Civil Law**

The statute of limitations within which a wrongful death action against the state must be brought was shortened to be consistent with the statute of limitations applicable to a lawsuit against private persons.<sup>5</sup>

A revision to the state constitution relating to state courts was proposed, although the proposal failed to receive the necessary vote for adoption into the state constitution.<sup>6</sup>

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<sup>1</sup> 2011 H.B. 253

<sup>2</sup> 2012 H.B. 103

<sup>3</sup> 2012 H.B. 483

<sup>4</sup> 2012 H.B. 715

<sup>5</sup> 2011 H.B. 277

<sup>6</sup> 2011 H.J.R. 7111

An additional exception to the hearsay rule was created to allow for admission of hearsay statements when the unavailability of the witness is caused by the opposing party's wrongful conduct.<sup>7</sup>

Florida's long-arm jurisdiction, choice-of-law and forum-selection statutes were revised to make courts more accessible to nonresidents of the state. However, the bill was vetoed.<sup>8</sup>

### **Family Law**

The law relating to time-sharing between the unmarried parents of a minor child was amended to significantly limit visitation with a parent previously convicted of certain criminal offenses,<sup>9</sup> and to provide that military activation or deployment cannot be the sole factor in the court's decision to grant a modification of permanent time-sharing and parental responsibility.<sup>10</sup>

The most recent Uniform Interstate Family Support Act was adopted.<sup>11</sup>

The parental notification statute was amended to provide factors for the court to consider for minors seeking an abortion without parental consent.<sup>12</sup>

### **Probate & Guardianship Law**

The law relating to estates, wills and trusts was changed to address intestate divestment, will and trust revocation, and confidentiality of communications between a lawyer and a client.<sup>13</sup>

Laws regarding protection from creditor claims were amended to provide that an Inherited Individual Retirement Account (IRA) retains the same protection from creditors that the original IRA enjoyed.<sup>14</sup>

The Uniform Power of Attorney Act was adopted.<sup>15</sup>

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<sup>7</sup> 2012 H.B. 701

<sup>8</sup> 2012 H.B. 917

<sup>9</sup> 2011 H.B. 387

<sup>10</sup> 2011 H.B. 621

<sup>11</sup> 2011 H.B. 1111

<sup>12</sup> 2011 H.B. 1247

<sup>13</sup> 2011 H.B. 325

<sup>14</sup> 2011 H.B. 469

<sup>15</sup> 2011 H.B. 815

Estate law was changed to provide that beneficiary designations that had named the ex-spouse as the beneficiary become void upon dissolution of the marriage, unless such designation is specifically readopted or required to be retained as part of the dissolution.<sup>16</sup>

The definition of a “protected homestead” was revised to create parity between property held as joint tenants with right of survivorship and property held as tenants by the entirety. Inheritance through intestate succession was barred where parental rights had previously been terminated.<sup>17</sup>

### **Real Property Law**

Adverse possession law was modified to require formal notice to the owner of record of the commencement of the adverse possession period.<sup>18</sup>

Regarding construction liens, the filing requirements and the effects of a lease were modified,<sup>19</sup> and the requirements for construction surety bonds and notice requirements for recording a claim against a bond were revised.<sup>20</sup>

The common law implied warranty of fitness and merchantability does not apply to off-site improvements such as roads and drainage areas.<sup>21</sup>

Where a mobile home park owner has given notice of intent to close the mobile home park and where the tenants have formed an organization, the mobile home park owner must offer to sell the park to such tenants association.<sup>22</sup>

Laws relating to community associations, condominiums and homeowners associations were amended.<sup>23</sup>

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<sup>16</sup> 2012 H.B. 401

<sup>17</sup> 2012 H.B. 733

<sup>18</sup> 2011 S.B. 1142

<sup>19</sup> 2011 H.B. 941

<sup>20</sup> 2012 H.B. 897

<sup>21</sup> 2012 H.B. 1013

<sup>22</sup> 2011 H.B. 423

<sup>23</sup> 2011 H.B. 1195

## **Tort Law**

The application of the concept of contributory negligence in products liability cases involving enhanced injuries was modified to require the jury to hear about all facts relating to the injury.<sup>24</sup>

Tort law was changed to give lawsuit immunity to a person who provides, gratuitously and in good faith, housing, food or electricity to emergency first responders or their families in an emergency.<sup>25</sup>

The concept of vicarious liability of an employer was changed to provide that an employer is not liable for a negligent or intentional act or omission of a developmentally disabled employee provided that the employer does not have actual notice of the act or omission.<sup>26</sup>

Tort law protections for volunteer athletic team physicians were expanded.<sup>27</sup>

The lawsuit protection for volunteers for nonprofit organizations was amended to provide that the protection applies even if the volunteer receives compensation from an outside source.<sup>28</sup>

Certain teaching hospitals were granted sovereign immunity.<sup>29</sup>

The law limiting the liability of landowners was expanded to provide that a private landowner may be exempt from liability when the landowner enters into a written agreement with the state to allow the state or the public to access the land for certain purposes.<sup>30</sup>

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<sup>24</sup> 2011 H.B. 201

<sup>25</sup> 2011 S.B. 450

<sup>26</sup> 2011 H.B. 405

<sup>27</sup> 2011 H.B. 479

<sup>28</sup> 2011 H.B. 647

<sup>29</sup> 2011 H.B. 1393

<sup>30</sup> 2012 H.B. 313

## **Civil Justice Subcommittee Anticipated Future Policy Issues<sup>31</sup>**

### **Business Law**

The Civil Justice Subcommittee often considers bills related to the laws governing business relationships. Anticipated in the upcoming session are changes to the Revised Uniform Limited Liability Company Act; regulation of benefit corporations; modification of the statutes related to assignments for the benefit of creditors; and consideration of whether or to what extent charitable organizations should be relieved of liability under fraudulent conveyance laws.

### **Civil Law**

The Civil Justice Subcommittee considers bills changing the general civil law. The general civil law includes contract law, employment, civil rights, and general civil litigation matters. Anticipated in the upcoming session are bills related to electronic publication of notices of action; revision of the arbitration code; service of process; local wage ordinances; and the application of foreign law.

### **Clerks of Court**

The Civil Justice Subcommittee is typically referred bills that affect the clerks of the court. Similar to what is seen from executive branch agencies, the clerks annually offer a bill amending various statutes relating to the clerks to address problems that have arisen. It is anticipated that clerks issues in this upcoming session will include collections issues and creation of a better definition of the split between court functions and county functions.

### **Court System**

Similar to executive branch agencies, the state court system annually reviews the statutes governing its operations and recommends changes. It is also anticipated that a bill repealing terms of court may be presented.

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<sup>31</sup> Note that this is not a list of what should pass but simply a listing of issues that may be considered. This list is a compilation of issues that are often discussed before the Subcommittee plus those that interested parties have indicated may be part of filed bills in the upcoming session.

### **Family Law**

It is anticipated that family law bills regarding alimony reform and valuation of assets for purposes of divorce will be filed. Also, there may be a bill resolving the inconsistent methods for termination of parental rights. Bills regarding child support enforcement are commonly filed and heard by the Subcommittee.

### **Probate & Guardianship Law**

Bills amending probate and guardianship laws are commonly filed. Some are filed to clarify the law, others to account for and conform to changes in federal tax laws. Anticipated bills in this area include bills regarding designation of estate beneficiaries; attorney's fees in guardianships; regulation of guardianship examiners; confidentiality of tort settlements of minors in guardianship cases; and changes to laws on accountings.

### **Real Property Law**

Bills amending real property law are also commonly filed. The Subcommittee typically hears one or more bills a year regarding condominiums and homeowners associations. Other anticipated areas of real property law that may be heard before the Subcommittee include bills on: landlord and tenant law; real property titles; limits on hidden liens; and land trust reform.

Florida leads the nation in per capita foreclosure filings. Bills in reaction to the nation's and state's foreclosure crises have been filed in past few years and are anticipated again.

### **State Claims**

In the past few sessions, the Civil Justice Subcommittee has dedicated a meeting each term to hearing bills known as claim bills. Tort claims against state and local governments are capped by law, and require legislative approval for payment above that cap.

### **Tort Law**

The Civil Justice Subcommittee typically hears several bills amending tort law every session. Such bills generally focus on a single issue, comprehensive tort bills were last passed in 1999 (general tort law) and 2003 (medical malpractice). In the upcoming session, it is anticipated that bills will be filed and referred to the Subcommittee on: the

evidentiary standard for admission of expert testimony; restrictions on third party excess liability; admissible evidence for proof of compensatory damages; and modification of medical malpractice laws.





# Overview of Florida's State Courts System

 FLORIDA STATE COURTS

**Lisa Goodner**  
**State Courts Administrator**  
**December 4, 2012**

 FLORIDA STATE COURTS

## **Mission Statement**

**The mission of the Judicial  
Branch is to protect rights and  
liberties, uphold and interpret  
the law, and provide for the  
peaceful resolution of disputes.**

**FLORIDA STATE COURTS**

## Vision Statement

Justice in Florida will be accessible, fair, effective, responsive, and accountable.

**FLORIDA STATE COURTS**

## Structure

Level	Number of Judges/Justices
Supreme Court	7 Justices
District Courts of Appeal	61 Judges
Circuit Courts	599 Judges
County Courts	322 Judges
<b>Total Florida Judiciary</b>	<b>989</b>

**FLORIDA STATE COURTS**

### Comparison of General and Limited Jurisdiction Judges Per 100,000 People

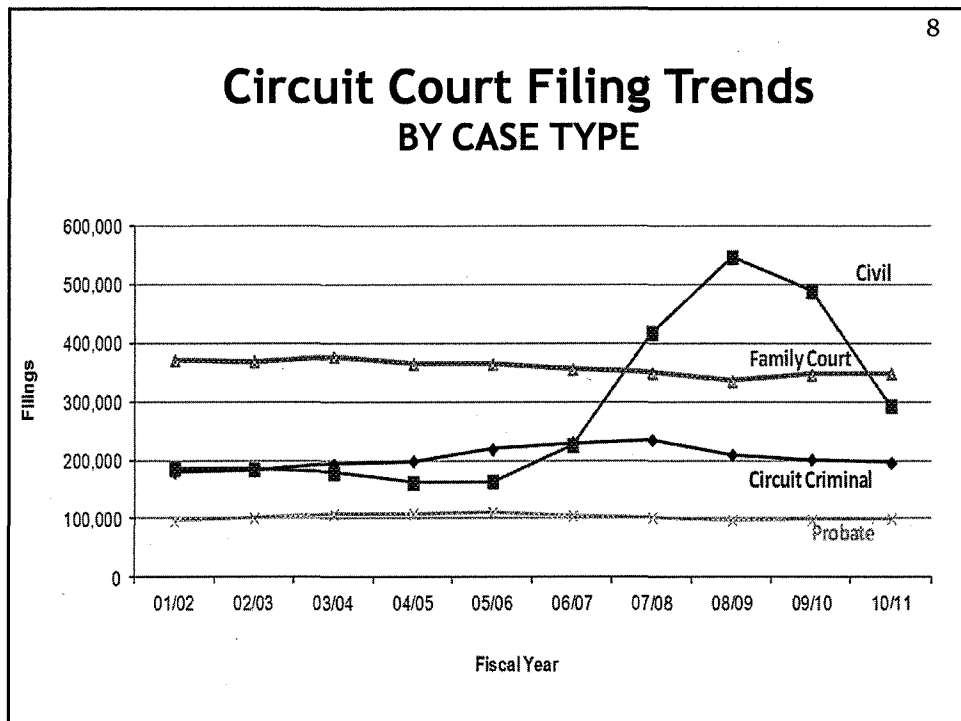
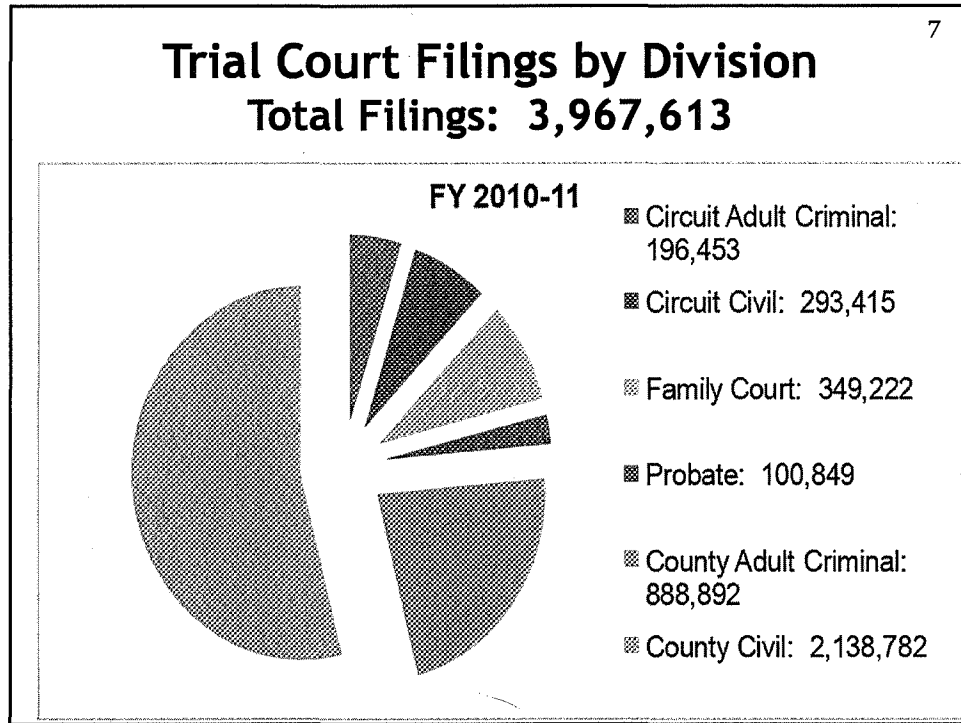
State	Judges Per 100,000 Population
Georgia	10.8 Judges
Texas	9.4 Judges
New Jersey	8.6 Judges
Pennsylvania	8.0 Judges
National Average	7.1 Judges
<b>Florida</b>	<b>4.9 Judges</b>

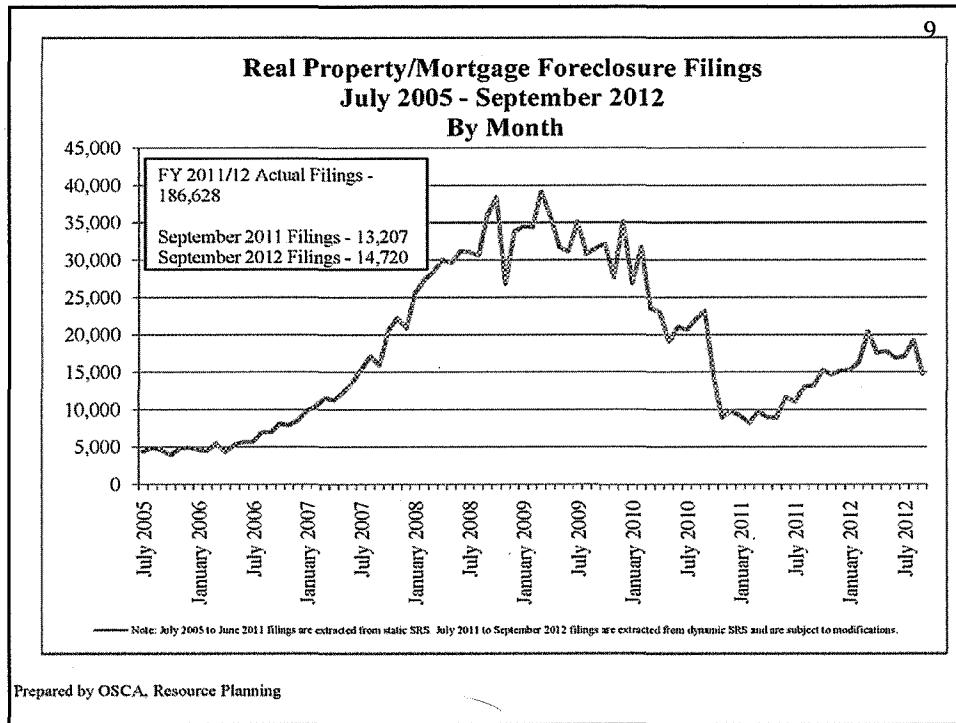
Sources: Court Statistics Project, State Court Caseload Statistics: An Analysis of 2010 State Court Caseloads, National Center for State Courts; and the U.S. Census Bureau, Population Division, Release Date: December 2011.

**FLORIDA STATE COURTS**

### Office of the State Courts Administrator

- Statewide Judicial Operations
- Regulatory Functions
- Statewide Administrative Support
- State Courts System Communications
- Court Education
- Court Committee Staff Support
- Intergovernmental Relations



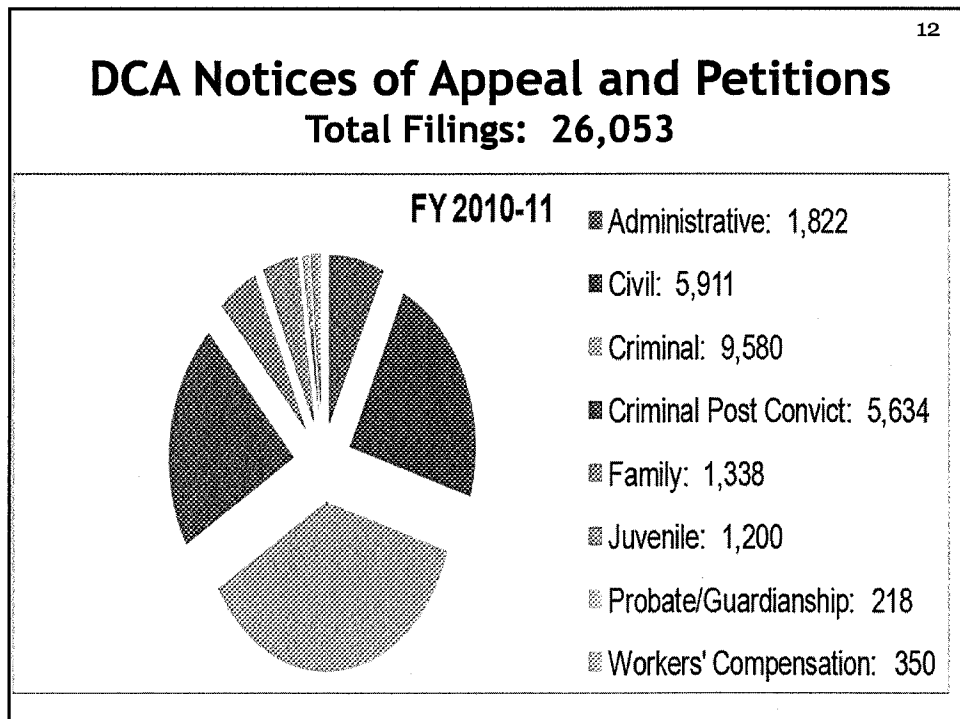
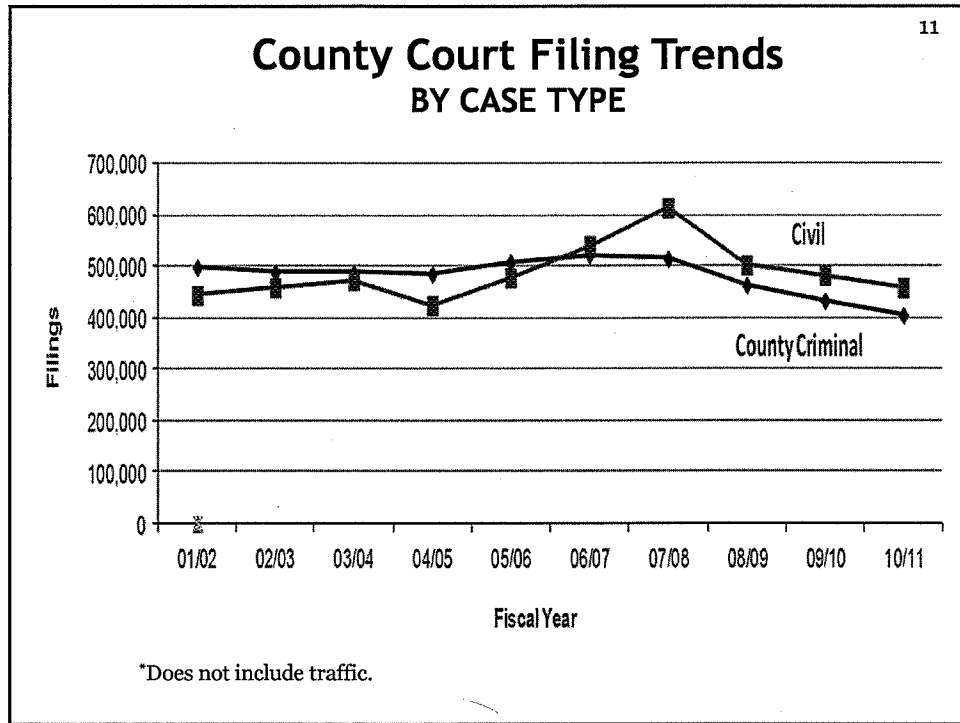


**FLORIDA STATE COURTS**

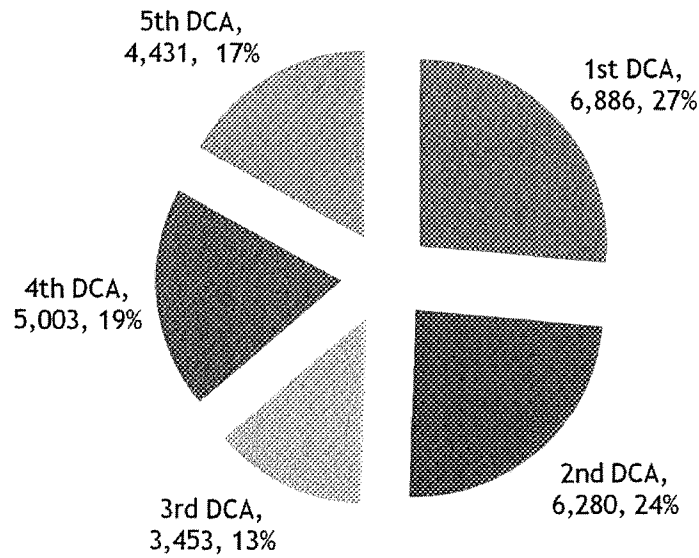
### Estimated Real Property / Mortgage Foreclosure Filings<sup>1</sup> FY 2012/13 through FY 2015/16

Estimated FY 2012/13 Filings	219,961
Estimated FY 2013/14 Filings	238,987
Estimated FY 2014/15 Filings	151,681
Estimated FY 2015/16 Filings	92,905

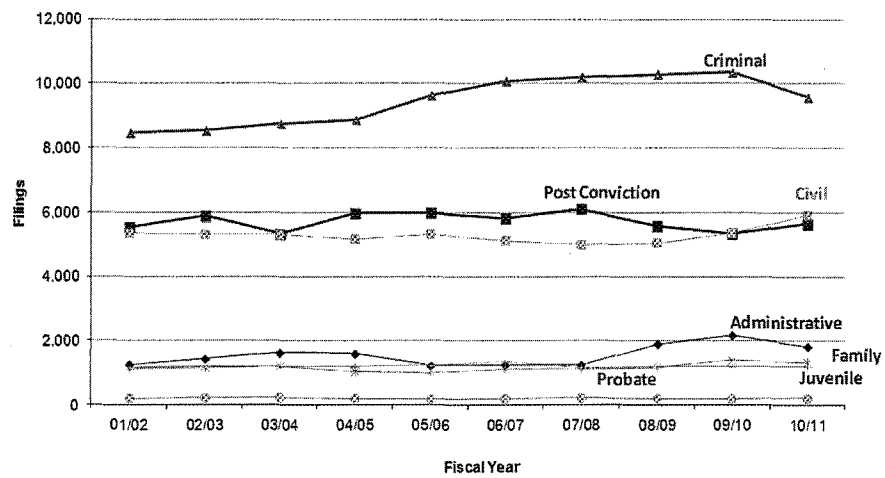
<sup>1</sup> Based on the results of the November 8, 2012, Article V Revenue Estimating Conference.



## DCA Notices of Appeal and Petitions, by District, in FY 2010-11 13

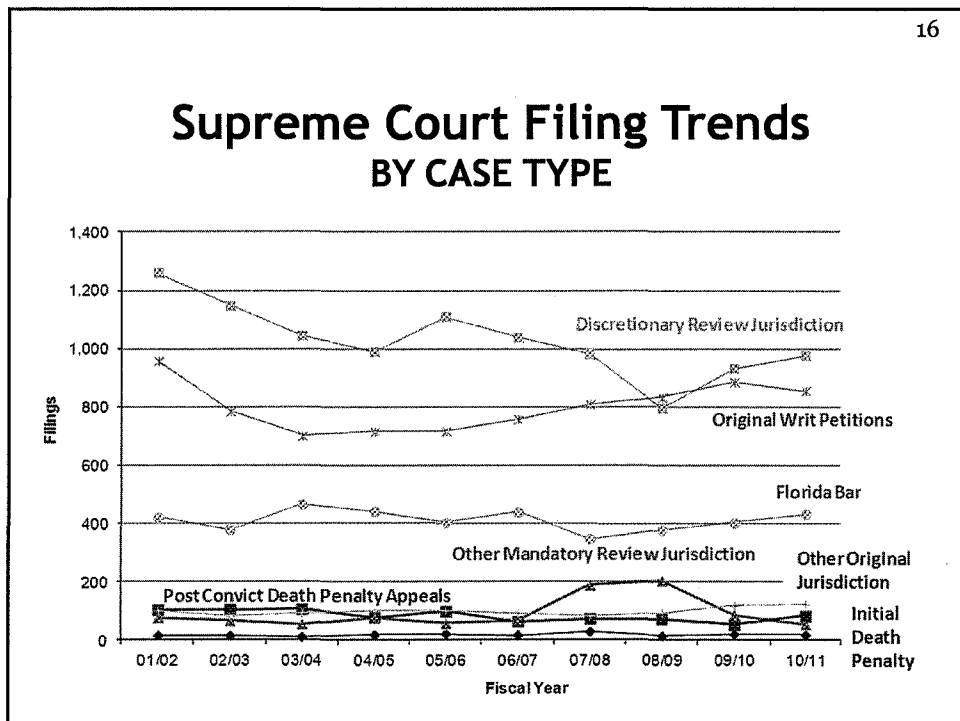
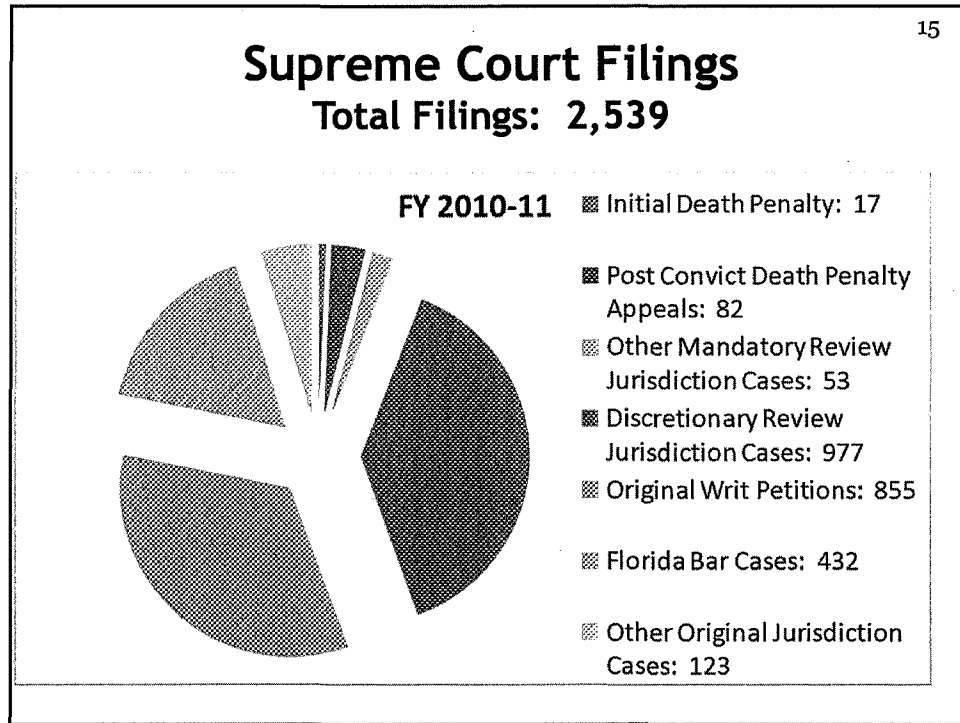


## DCA Filing Trends BY CASE TYPE\* 14



\*From the district court case management system.

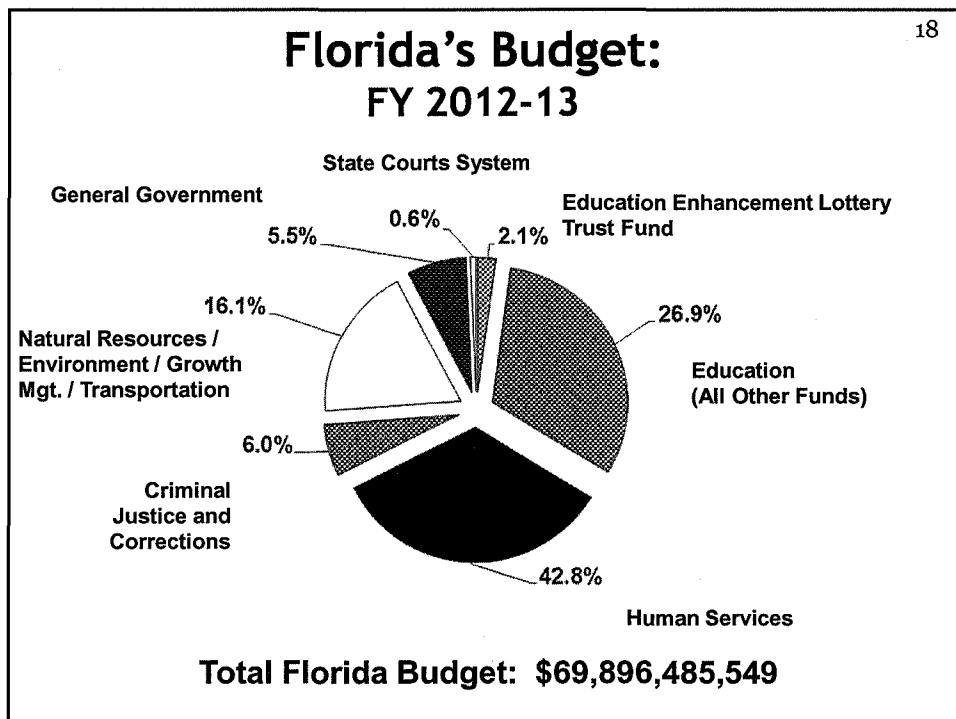


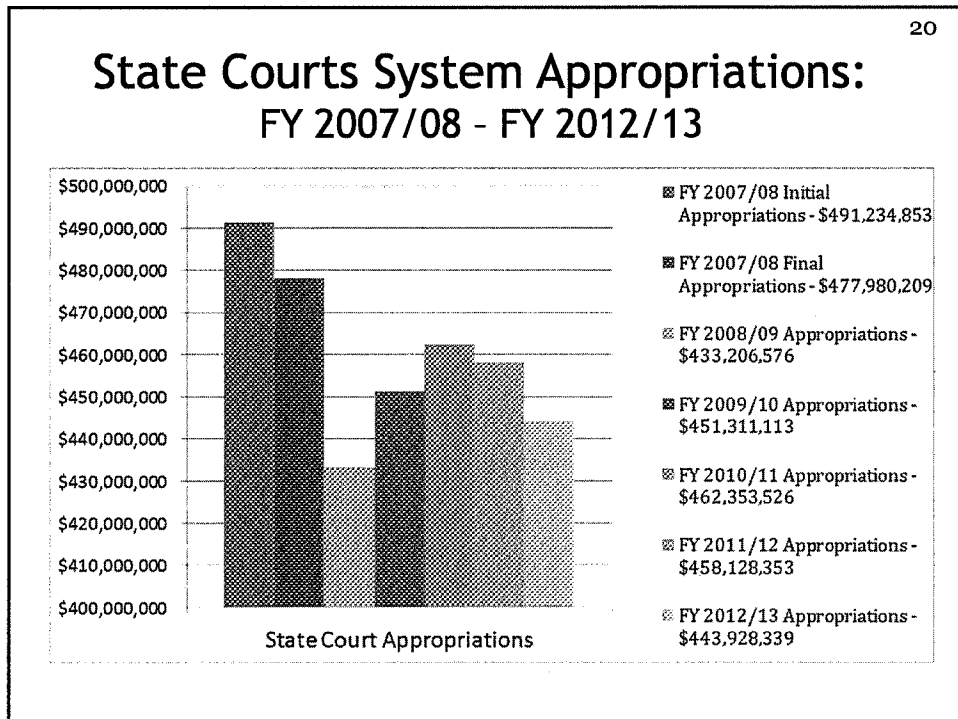
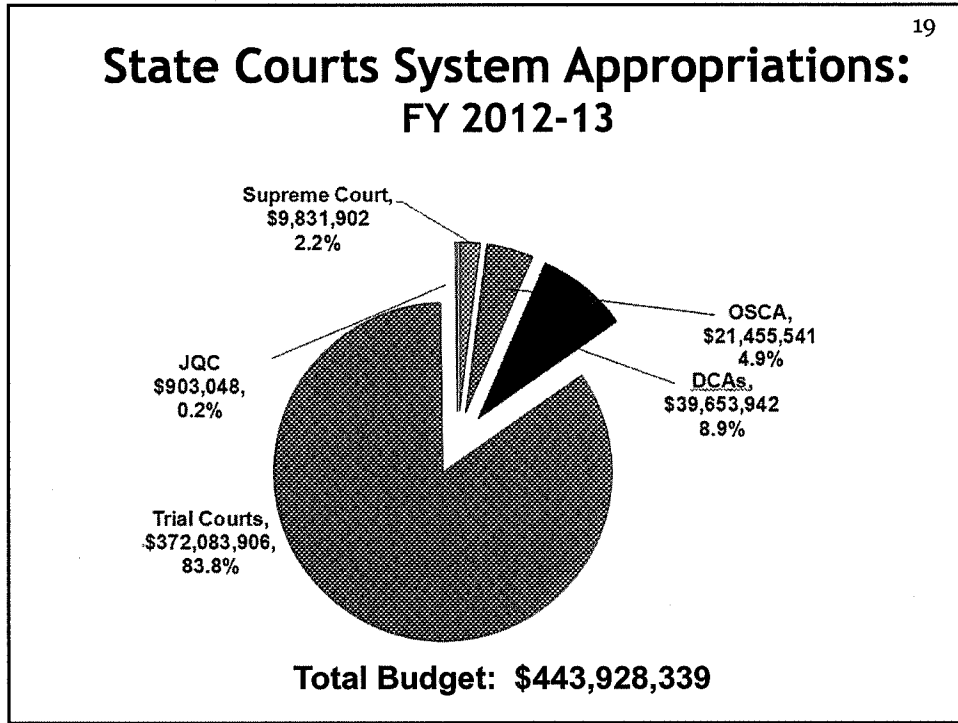



**FLORIDA STATE COURTS**

## Judicial Branch 2013 Legislative Agenda

- FY 2013/14 Legislative Budget Request
- Substantive Issues








**FLORIDA STATE COURTS**

### **Top Court System Budget Priorities for FY 2013-14**


- State Court System Compensation Issue
- Appellate Court Facilities
- Technology Issues
- Conflict Counsel Payments Over the Flat Fee
- Continuation of Foreclosure Backlog Reduction Initiative
- Continuation of Post-Adjudicatory Drug Court Program
- Certification of New Judgeships



**FLORIDA STATE COURTS**

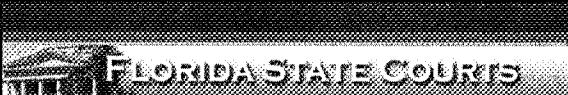
### **Judicial Branch 2013 Legislative Substantive Issues**

- Protecting confidentiality of behavioral and health information in court records
- Supporting community-based substance abuse and mental health treatment for offenders
- Taking judicial notice in family cases when there is imminent danger



**Judicial Branch 2013 Legislative Substantive Issues**

- Ensuring court access to driver license photographs
- Facilitating use of electronic search and arrest warrants
- Recommendations of the Florida Innocence Commission



**Other Key Issue:**

**Automating the Court Record**

