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# **Civil Justice Subcommittee**

**Wednesday, February 23, 2011**

**1:00 PM**

**404 HOB**

**Action Packet**

**Dean Cannon  
Speaker**

**Eric Eisnaugle  
Chair**

# COMMITTEE MEETING REPORT

## Civil Justice Subcommittee

2/23/2011 1:00:00PM

Location: 404 HOB

### Summary:

#### Civil Justice Subcommittee

Wednesday February 23, 2011 01:00 pm

HB 325	Favorable	Yeas: 15	Nays: 0
HB 469	Favorable	Yeas: 15	Nays: 0
PCB CVJS 11-01	Favorable	Yeas: 12	Nays: 3
Amendment 1	Failed to Adopt	Yeas: 5	Nays: 10
PCB CVJS 11-02	Favorable	Yeas: 15	Nays: 0
PCB CVJS 11-03	Favorable	Yeas: 15	Nays: 0

Committee meeting was reported out: Wednesday, February 23, 2011 4:09:15PM

# COMMITTEE MEETING REPORT

## Civil Justice Subcommittee

2/23/2011 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		
<b>Totals:</b>	<b>15</b>	<b>0</b>	<b>0</b>

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# COMMITTEE MEETING REPORT

## Civil Justice Subcommittee

2/23/2011 1:00:00PM

Location: 404 HOB

HB 325 : Estates

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				
<b>Total Yeas: 15</b>		<b>Total Nays: 0</b>			

### Appearances:

HB 325 Estates

Pitts, Brian (General Public) - Waive In Support

Justice-2-Jesus

1119 Newton Ave. S.

St. Petersburg FL 33705

Phone: 727-897-9291

Committee meeting was reported out: Wednesday, February 23, 2011 4:09:15PM

# COMMITTEE MEETING REPORT

## Civil Justice Subcommittee

2/23/2011 1:00:00PM

Location: 404 HOB

### HB 469 : Individual Retirement Accounts

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				
<b>Total Yeas: 15</b>		<b>Total Nays: 0</b>			

### Appearances:

HB 469 Individual Retirement Accounts  
Aubuchon, Joshua (Lobbyist) - Waive In Support  
Real Property, Probate & Trust Law Section  
c/o The Florida Bar 651 E Jefferson St  
Tallahassee FL 32399  
Phone: (850)222-3533

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 23, 2011 4:09:15PM

# COMMITTEE MEETING REPORT

## Civil Justice Subcommittee

2/23/2011 1:00:00PM

Location: 404 HOB

PCB CVJS 11-01 : Court Rulemaking

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				
<b>Total Yeas: 12</b>		<b>Total Nays: 3</b>			

### PCB CVJS 11-01 Amendments

#### Amendment 1

Failed to Adopt

	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			
<b>Total Yays: 5</b>		<b>Total Nays: 10</b>			

Committee meeting was reported out: Wednesday, February 23, 2011 4:09:15PM

# COMMITTEE MEETING REPORT

## Civil Justice Subcommittee

2/23/2011 1:00:00PM

**Location:** 404 HOB

### Appearances:

PCB CVJS 11-01 Court Rulemaking  
Metz, Steve (Lobbyist) - Opponent  
The Florida Bar  
215 S. Monroe St  
Tallahassee FL  
Phone: 850-205-9000

PCB CVJS 11-01 Court Rulemaking  
Richard, Barry (General Public) - Opponent  
The Florida Bar  
101 E College Ave  
Tallahassee FL 32302  
Phone: 850-222-6891

PCB CVJS 11-01 Court Rulemaking  
Babington, Adam (Lobbyist) - Proponent  
Florida Chamber of Commerce  
136 S Bronough St  
Tallahassee FL 32301  
Phone: (850)521-1200

PCB CVJS 11-01 Court Rulemaking  
Snurkowski, Caroline (State Employee) - Proponent  
Associate Deputy Attorney General, Attorney General's Office  
The Capitol  
Tallahassee FL 32303  
Phone: 850-410-3566

PCB CVJS 11-01 Court Rulemaking  
Pitts, Brian - Information Only  
Justice-2-Jesus  
1119 Newton Ave. S.  
St. Petersburg FL 33705  
Phone: 727-897-9291

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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 \_\_\_\_\_

*unfavorable  
2-23-11*

1 Council/Committee hearing PCB: Civil Justice Subcommittee  
2 Representative Steinberg offered the following:

3  
4 **Amendment (with ballot and title amendments)**

5 Remove lines 11-53 and insert:

6 That the following amendment to Section 2 of Article V of  
7 the State Constitution is agreed to and shall be submitted to  
8 the electors of this state for approval or rejection at the next  
9 general election or at an earlier special election specifically  
10 authorized by law for that purpose:

11 ARTICLE V

12 JUDICIARY

13 SECTION 2. Administration; practice and procedure.—

14 (a) The supreme court shall adopt rules for the practice  
15 and procedure in all courts including the time for seeking  
16 appellate review, the administrative supervision of all courts,  
17 the transfer to the court having jurisdiction of any proceeding  
18 when the jurisdiction of another court has been improvidently  
19 invoked, and a requirement that no cause shall be dismissed



Amendment No. 1

20 because an improper remedy has been sought; however, rules  
21 adopted by the supreme court do not have the force of law and  
22 are not effective unless affirmatively approved by the  
23 legislature or the legislature having met in regular session  
24 subsequent to the adoption of the rule by the supreme court  
25 adjourned sine die without enacting legislation rejecting the  
26 adopted rule. The legislature may by general law enhance public  
27 input in the rulemaking process. The supreme court shall adopt  
28 rules to allow the court and the district courts of appeal to  
29 submit questions relating to military law to the federal Court  
30 of Appeals for the Armed Forces for an advisory opinion. Rules  
31 of court may be repealed by general law enacted by two-thirds  
32 vote of the membership of each house of the legislature.

33 (b) The chief justice of the supreme court shall be chosen  
34 by a majority of the members of the court; shall be the chief  
35 administrative officer of the judicial system; and shall have  
36 the power to assign justices or judges, including consenting  
37 retired justices or judges, to temporary duty in any court for  
38 which the judge is qualified and to delegate to a chief judge of  
39 a judicial circuit the power to assign judges for duty in that  
40 circuit.

41 (c) A chief judge for each district court of appeal shall  
42 be chosen by a majority of the judges thereof or, if there is no  
43 majority, by the chief justice. The chief judge shall be  
44 responsible for the administrative supervision of the court.

45 (d) A chief judge in each circuit shall be chosen from  
46 among the circuit judges as provided by supreme court rule. The  
47 chief judge shall be responsible for the administrative

Amendment No. 1

48 supervision of the circuit courts and county courts in his  
49 circuit.

50

51

52 -----

53

**B A L L O T A M E N D M E N T**

54

Remove lines 57-110 and insert:

55

56

**C O N S T I T U T I O N A L A M E N D M E N T**

57

**A R T I C L E V , S E C T I O N 2**

58

59

RULES OF COURT.—Proposing an amendment to the State  
Constitution to provide that rules of court adopted by the  
Supreme Court do not have the force of law and are not effective  
unless affirmatively approved by the Legislature or unless the  
Legislature meets in regular session after the adoption of the  
rule by the Supreme Court and adjourns without enacting  
legislation rejecting the rule. The amendment also allows the  
Legislature to pass general laws to enhance public input in the  
rulemaking process.

67

68

69

70 -----

71

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

72

Remove the entire title and insert:

73

**H o u s e J o i n t R e s o l u t i o n**

74

A joint resolution proposing an amendment to Section 2 of  
Article V of the State Constitution to provide that rules

75

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB CVJS 11-01 (2011)

Amendment No. 1

76 | adopted by the Supreme Court do not have the force of law  
77 | and are not effective unless affirmatively approved by the  
78 | Legislature or the Legislature having met in regular  
79 | session subsequent to the adoption of the rule by the  
80 | Supreme Court adjourned sine die without enacting  
81 | legislation rejecting the rule; providing that the  
82 | Legislature may by general law enhance public input in the  
83 | rulemaking process.

## WAYS THAT THE LEGISLATURE MAY EXERCISE AUTHORITY OVER THE JUDICIARY WITHIN CONSTITUTIONAL GROUNDS

- **RULE AUTHORITY DOCTRINE**

### **CIVIL RULE, 1.010. SCOPE AND TITLE OF RULES**

These rules apply to all actions of a civil nature and all special statutory proceedings in the circuit courts and county courts except those to which the Florida Probate Rules, the Florida Family Law Rules of Procedure, or the Small Claims Rules apply. **The form, content, procedure, and time for pleading in all special statutory proceedings shall be as prescribed by the statutes governing the proceeding unless these rules specifically provide to the contrary.** These rules shall be construed to secure the just, speedy, and inexpensive determination of every action. These rules shall be known as the Florida Rules of Civil Procedure and abbreviated as Fla.R.Civ.P.

### **CRIMINAL RULE, 3.050. ENLARGEMENT OF TIME**

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for good cause shown may, at any time, in its discretion (1) with or without notice, order the period enlarged if a request therefor is made before the expiration of the period originally prescribed or extended by a previous order or (2) upon motion made and notice after the expiration of the specified period, permit the act to be done when the failure to act was the result of excusable neglect; but it may not, except as provided by statute or elsewhere in these rules, extend the time for making a motion for new trial, for taking an appeal, or for making a motion for a judgment of acquittal.

*See also, In re Commitment of Cartwright, 870 So.2d 152, (Fla.App. 2 Dist., 2004).*

- **CHECKS AND BALANCES DOCTRINE**

**STATE EX REL. YOUNG v. DUVAL COUNTY, 76 Fla. 180, 195, 79 So. 692, 697 (Fla. 1918)** A clear violation of the constitutional provisions dividing the powers of government into departments should be checked and remedied; but where a reasonable doubt exists as to the constitutionality of a statute conferring power, authority, and duties upon officers, the legislative will should be enforced by the courts to secure orderly government, and in deference to the Legislature, whose action is presumed to be within its powers, and whose lawmaking discretion within its powers is not reviewable by the courts.

- **INHERENT AUTHORITY DOCTRINE**

**Florida Ass'n of Professional Lobbyists, Inc. v. Division of Legislative Information Services, 7 So.3d 511, 515 (Fla., 2009)** The Florida Constitution does not explicitly prohibit any of the functions set out in the Act. Although the constitution does not give the Legislature the exclusive power to discipline lobbyists, it also does not prevent it from doing so. As this Court has noted, "the state constitution does not exhaustively list each branch's powers." *Fla. House of Representatives v. Crist, 999 So.2d 601, 611 (Fla. 2008)*. Rather,

the powers of the respective branches "are those so defined ... or such as are inherent or so recognized by immemorial governmental usage, and which involve the exercise of primary and independent will, discretion, and judgment, subject not to the control of another department, but only to the limitations imposed by the state and federal Constitutions." [Each branch has] "the inherent right to accomplish all objects naturally within the orbit of that department, not expressly limited by the fact of the existence of a similar power elsewhere or the express limitations in the constitution."

*Id.* at 611 (citation omitted) (quoting *State v. Atlantic Coast Line R.R.*, 47 So. 969, 974 (Fla. 1908); *Sun Ins. Office v. Clay*, 133 So.2d 735, 742 (Fla. 1961)). Therefore, since the regulation, discipline, and licensing of lobbyists is not subject to the control of any branch or office, the Legislature is not prohibited from using its own discretion and judgment to accomplish the task. *See State v. Palmer*, 791 So.2d 1181, 1183 (Fla. 1st DCA 2001) ("[A] branch of government is prohibited from exercising a power only when that power has been constitutionally assigned exclusively to another branch; and the separation of powers doctrine does not contemplate that every governmental activity must be classified as belonging exclusively to a single branch.").

- **JURISDICTIONAL/DIVISIONAL AUTHORITY**

ARTICLE V, FLORIDA CONSTITUTION

SECTION 5. Circuit courts.—

(a) ORGANIZATION.—There shall be a circuit court serving each judicial circuit.

(b) JURISDICTION.—The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

SECTION 6. County courts.—

(a) ORGANIZATION.—There shall be a county court in each county. There shall be one or more judges for each county court as prescribed by general law.

(b) JURISDICTION.—The county courts shall exercise the jurisdiction prescribed by general law. Such jurisdiction shall be uniform throughout the state.

SECTION 7. Specialized divisions.—All courts except the supreme court may sit in divisions as may be established by general law. A circuit or county court may hold civil and criminal trials and hearings in any place within the territorial jurisdiction of the court as designated by the chief judge of the circuit.

- **DECISIONAL REPEALER DOCTRINE**

**Wood v. Fraser, 677 So.2d 15, 18-19 (Fla.App. 2 Dist. 1996).** We conclude, therefore, that the trial court erred in failing to adhere to the unequivocal holding in *Moore* which governed the resolution of the point of law involved in the motion for summary judgment. We also emphasize that until such time as the supreme court overrules *Moore*, or we recede from it en banc, or the Florida legislature clearly expresses its disapproval of *Moore* by a subsequent statutory enactment,<sup>FN5</sup> trial courts in \*19 this district are firmly bound by its holding. E.g., *State v. Sanchez*, 642 So.2d 122 (Fla. 5th DCA 1994); *Carr v. Carr*, 569 So.2d 903 (Fla. 4th DCA 1990); *Bunn v. Bunn*, 311 So.2d 387 (Fla. 4th DCA 1975).<sup>FN6</sup>

<sup>FN5</sup>. See, e.g., *Regan v. ITT Indus. Credit Co.*, 469 So.2d 1387 (Fla. 1st DCA 1984), approved, 487 So.2d 1047 (Fla. 1986); *Shorridge v. State*, Case No. 94-04227, --- So.2d --- (Fla. 2d DCA May 22, 1996).

<sup>FN6</sup>. Trial courts in other districts must also adhere to *Moore*, unless their district court of appeal has ruled to the contrary. *Pardo v. State*, 596 So.2d 665 (Fla. 1992).

# COMMITTEE MEETING REPORT

## Civil Justice Subcommittee

2/23/2011 1:00:00PM

Location: 404 HOB

PCB CVJS 11-02 : Court Rulemaking Process

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
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				
<b>Total Yeas: 15</b>		<b>Total Nays: 0</b>			

### Appearances:

PCB CVJS 11-02 Court Rulemaking Process  
Pitts, Brian (General Public) - Information Only  
Justice-2-Jesus  
1119 Newton Ave. S.  
St. Petersburg FL 33705  
Phone: 727-897-9291

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# COMMITTEE MEETING REPORT

## Civil Justice Subcommittee

2/23/2011 1:00:00PM

Location: 404 HOB

PCB CVJS 11-03 : Terms of Court

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
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				
<b>Total Yeas: 15</b>		<b>Total Nays: 0</b>			

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