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## MEMORANDUM

TO: Lawrence E. Sellers, Chair  
The Florida Bar Legislation Committee

FROM: Jim Daughton  
Aimee Diaz Lyon

DATE: February 21, 2020

SUBJECT: Legislative Update – Week Six

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There is always a point in the legislative session where the Speaker of the House and the President of the Senate must address each other's priorities. Logically, this spirit of compromise is the only way for the legislature to function effectively, especially a legislature that wishes to conclude on time. Compromise in the legislature is often multi-faceted – budget for policy for appointments for more budget – and is rarely linear. This legislative session is no different as budget allocations are being hammered out prior to the budget conference and committee agendas are designed to address mutual priorities. Perhaps the best example of the compromise point of the legislative session occurred this week as the Senate amended several bills to incorporate the Speaker's health care priorities regarding broadening the scope of practice for nurses and pharmacists. What this action means in the multi-faceted legislative negotiations remains to be seen but is a sure sign of a glide path to an on-time conclusion of the legislative session.

Following is a summary of key information and issues of interest to The Florida Bar.

### **State Courts System Budget**

The House and Senate passed their respective budgets and await the budget conference process to begin. During the conference process, legislative leaders and staff will negotiate a budget conference report which will decide the final budget items and allocations for the

**MEMORANDUM**

February 21, 2020

Page 2

2020-21 Fiscal Year. Below is a chart depicting the current status of appropriations issues important to the judicial branch.

<b>Issues</b>	<b>Senate Criminal &amp; Civil Justice Appropriations Subcommittee</b>	<b>House Justice Appropriations Subcommittee</b>	<b>State Courts System LBR Request</b>
<b>Timely Resolution of Cases Initiatives</b>	\$5,050,069 (64 FTEs)	-0-	\$13,512,798 (157 FTEs)
<b>Court Interpreting Resources &amp; Remote Technology</b>	\$5,005,356 (37 FTEs)	\$1,735,889 (17 FTEs)	\$5,470,209 (40.5 FTEs)
<b>2<sup>nd</sup> District Court of Appeals Courthouse Construction</b>	\$20 million	\$21 million	\$21 million
<b>Problem Solving Court Database</b>	\$308,542 (2 FTEs)	\$581,568 (4 FTEs)	\$581,568 (4 FTEs)
<b>Family Court Operational Support</b>	\$317,446 (2 FTEs)	\$317,446 (2 FTEs)	\$317,446 (2 FTEs)
<b>Certification of Additional Judges</b>	\$2,139,090 (15 FTEs)	\$3,418,513 (21 FTEs)	\$3,496,422 (22 FTEs)
<b>Appellate Judiciary Travel</b>	\$125,000	\$125,000	\$125,000
<b>Appellate Court Security</b>	\$516,139	\$516,139 (6.5 Marshalls)	\$516,139
<b>Judicial Data Management for Florida Courts Statewide Network (CJNet)</b>	\$448,696	\$448,696	\$448,696
<b>Bar Dues Proviso</b>	<i>Each agency, at the discretion of the agency head, may expend funds provided in this act for bar dues and for legal education courses for employees who are required to be a member of the Florida Bar as a condition of employment.</i>	<i>Each agency, at the discretion of the agency head, may expend funds provided in this act for bar dues and for legal education courses for employees who are required to be a member of the Florida Bar as a condition of employment.</i>	

Link to Senate Appropriations Bill, SB 2500:

<http://www.flsenate.gov/Session/Bill/2020/2500>

Link to House Appropriations Bill, HB 5001:

<http://www.flsenate.gov/Session/Bill/2020/5001>

## MEMORANDUM

February 21, 2020

Page 3

### **Circuit & County Court Judges – *Differing House & Senate Budget Conforming Bills Emerge***

**HB 5301** aligns with the Supreme Court’s certification opinion for new judges. The House bill creates 10 new circuit and county judge positions – four new circuit judges in the 1<sup>st</sup> Judicial Circuit, two judges in the Ninth Judicial Circuit, and one judge in the Fourteenth Judicial Circuit. HB 5301 creates 6 new county court judges - four new judges in Hillsborough County, one judge in Lee County, and one judge in Orange County.

**SB 7050**, the Senate’s conforming bill creates five new circuit judge positions – two new judges in the 9<sup>th</sup> Judicial Circuit, one judge in the 1<sup>st</sup> Judicial Circuit, one judge in the 14<sup>th</sup> Judicial Circuit, and one judge in the 4<sup>th</sup> Judicial Circuit. SB 7050 creates the aforementioned 5 new circuit judge positions and creates one new county court judge in Orange County. The Senate bill also specifies that all of the new judgeships will be appointed by the Governor, rather than elected.

The Senate Appropriations Act, **SB 2500**, also contains proviso language which recommends the five additional circuit court judgeships are contingent upon the passage of SB 7050.

Link to HB 5301: <http://www.flsenate.gov/Session/Bill/2020/5301>

Link to SB 7050: <http://www.flsenate.gov/Session/Bill/2020/7050>

Link to SB 2500: <http://www.flsenate.gov/Session/Bill/2020/2500>

### **Legislation of Interest to The Florida Bar**

#### **Constitution Revision Commission Proposals – *Senate Bill Retained on Calendar***

**SJR 142** by Senator Jeff Brandes (R-St. Petersburg) and **HJR 301** by Rep. Brad Drake (R-Euclidean) would abolish the CRC entirely and remove any statutory references to the Commission. The proposals would require a change to the Florida Constitution approved by the voters. **After passing the full House, HJR 301 resides in the Senate awaiting action.**

**HB 303** filed separately by Rep. Drake would repeal all statutory references to the Constitution Revision Commission once any constitutional amendment abolishing the CRC is passed by voters. **After passing the full House, HB 303 resides in the Senate awaiting action.**

**SJR 176** by Senator Jose Javier Rodriguez (D-Miami) limits any amendment to the Constitution proposed by the Constitution Revision Commission to “one subject and matter connected therewith.” Under current law, each proposal of the Commission may embrace multiple subjects, and the Commission may even propose a singular revision of the entire

## MEMORANDUM

February 21, 2020

Page 4

Constitution. The Senate joint resolution would be voted on by the voters in 2020 and, if approved, would apply to the next CRC which is slated to meet in 2037, in advance of placing measures on the 2038 ballot. **SJR 176 has one committee hearing remaining in the Rules Committee.**

A parallel constitutional ballot initiative is seeking to make it harder to amend Florida's Constitution by having voters approve constitutional amendments twice in two elections, instead of one election, in order for them to officially take effect. After garnering enough petition signatures to warrant the Supreme Court's review of the initiative's ballot language, on February 19<sup>th</sup>, the Supreme Court unanimously approved the ballot measure and rules that it met the necessary legal requirements and met the single subject test. Florida voters will now get a chance to decide in November whether to pass the constitutional amendment. The proposal will appear on the ballot as Amendment 4 and will need support from at least 60 percent of voters to take effect.

Link to SJR 176: <http://www.flsenate.gov/Session/Bill/2020/176>

Link to SB 142: <http://www.flsenate.gov/Session/Bill/2020/142>

Link to HB 301: <http://www.flsenate.gov/Session/Bill/2020/301>

Link to HB 303: <http://www.flsenate.gov/Session/Bill/2020/303>

Link to Amendment 19-08: <https://dos.elections.myflorida.com/initiatives/>

### **Court Jurisdiction – *Both Bills Advance***

As filed, **SB 1510** by Senator Jeff Brandes (R-St. Petersburg) and **HB 7059** by the House Judiciary Committee transfer the jurisdiction of circuit courts to hear appeals of county court civil and criminal cases to the district courts of appeal. The bill is based on the recommendations of a recent report by the Supreme Court's Judicial Management Council's Workgroup on Appellate Review of County Court Decisions.

This week, SB 1510 and HB 7059 were amended to clarify the appellate cases which go to Public Defender Appellate Entities and the Offices of Criminal Conflict and Civil Regional Counsels as a result of the jurisdictional changes in the underlying bill. The legislation provides that it is the duty of the public defender for the judicial circuit designated to handle appeals within an appellate district to handle all circuit court and county court appeals within the state courts and authorized federal courts if requested by any public defender or the office of criminal conflict and civil regional counsel within the appellate district that handled the trial.

**On February 18<sup>th</sup>, SB 1510 was amended and passed by the Appropriations Subcommittee on Criminal and Civil Justice by a vote of 8 to 0 and the bill is now in the Appropriations Committee. Also, on February 18<sup>th</sup>, HB 7059 passed it only referenced committee, the Appropriations Committee, by a vote of 24 to 2.**

## MEMORANDUM

February 21, 2020

Page 5

Link to PCS for SB 1510:

<http://www.flsenate.gov/Session/Bill/2020/1510/Amendment/836136>

Link to HB 7059: <http://www.flsenate.gov/Session/Bill/2020/7059>

### Legal Notices – *Senate Bill Postponed*

**HB 7** by Rep. Randy Fine (R-Palm Bay) and **SB 1340** by Senator Joe Gruters (R-Sarasota) provide for the website publication of legal notices, provide criteria for such publication, authorize fiscally constrained counties to use publicly accessible websites to publish the legally required advertisements and public notices, and require governmental agencies to provide specified notice to residents concerning the alternative methods of receiving legal notices. The House adopted technical amendments to the bill which clarify that the publication requirement only applies to a governmental entity who uses a website to publish notices, and that the notice of proposals for any public-private partnership still has to be published in the Florida Administrative Register and in the local county in which the project would be located. The House also amended the language dealing with notices for property tax increases.

**HB 7 is now on the calendar of bills ready for consideration by the full House. On February 19<sup>th</sup>, SB 1340 was on the agenda of the Judiciary Committee, but time ran out and the bill was postponed.**

Link to HB 7: <http://www.flsenate.gov/Session/Bill/2020/7>

Link to SB 1340: <http://www.flsenate.gov/Session/Bill/2020/1340>

### Legal Advertising – *No Movement This Week*

The legislature is also considering certain restrictions of legal advertising. While generally in the purview of the Florida Supreme Court, some state legislatures across the country have passed specific restrictions on legal advertising, typically under unfair and deceptive practices statutes. Senator Tom Wright (R-New Smyrna Beach) filed **SB 1288** pertaining to the solicitation of legal services. Specifically, the bill focuses on advertisements featuring “medical alerts” or “consumer alerts” using the names or logos of a regulatory agency.

**HB 7083** by the Civil Justice Subcommittee prohibits legal advertisements from containing information on the use, sale, or transfer of protected health information for purposes of soliciting legal services. Specifically, the committee bill:

- Prohibits a person who submits a legal advertisement for publication, broadcast, or dissemination, or who pays for or otherwise sponsors a legal advertisement from:
  - Failing to clearly and conspicuously disclose the sponsor of the advertisement;
  - Displaying federal or state government agency logos in a manner implying affiliation with a that agency;

## MEMORANDUM

February 21, 2020

Page 6

- Including terminology implying that the product has been recalled when it has not been;
- Requires a legal advertisement to clearly disclose the warning, "Do not stop taking a prescribed medication without first consulting your doctor," if the advertisement solicits clients who may allege injury from a prescription drug; and
- Prohibits a person from using, obtaining, selling, transferring, or disclosing to another person without written authorization protected health information to solicit legal services.

The House committee bill also creates a cause of action for a person who suffers a physical injury as a result of a legal advertisement's violation of these provisions and authorizes compensatory damages, attorney fees, and court costs. Additionally, the Department of Legal Affairs or a state attorney may bring an action to enjoin any person who has violated these provisions, or may bring an action on behalf of one or more consumers or governmental entities for actual damages caused by a violation of these provisions.

**There was no movement on the Senate legislation. HB 7083 by the House Civil Justice Subcommittee has been referred to the Health and Human Services and Judiciary Committees.**

Link to SB 1288: <http://www.flsenate.gov/Session/Bill/2020/1288>

Link to HB 7083: <http://www.flsenate.gov/Session/Bill/2020/7083>

### **Trial Court Security – *House Bill Passes House Chamber/Senate Bill Clears Final Committee***

**HB 131** by Rep. Stan McClain (R-Ocala) and **SB 118** by Senator Joe Gruters (R-Sarasota) require each county sheriff to coordinate with the board of county commissioners and the chief judge of the judicial circuit to develop a comprehensive court security plan for trial court facilities. The sheriff retains authority over the implementation of security, and the chief judge retains decision-making authority to protect due process rights. The legislation also clarifies that sheriffs and their deputies, employees, and contractors are officers of the court when providing security for court facilities. The House bill also clarifies that the chief judge retains broad decision-making authority to ensure the protection of due process rights.

**On February 20<sup>th</sup>, HB 131 passed the full House by a vote of 118 to 0. Also, on February 20<sup>th</sup>, SB 118 passed the Appropriations Committee by a vote of 18 to 0.**

Link to SB 118: <http://www.flsenate.gov/Session/Bill/2020/118>

Link to HB 131: <http://www.flsenate.gov/Session/Bill/2020/131>

### **Jury Service – *House Bill Ready for Floor Consideration***

## MEMORANDUM

February 21, 2020

Page 7

**SB 738** by Senator Gayle Harrell (R-Stuart) allows students between 18 and 21 years of age who are actively enrolled as a full-time student in high school or at any state university, private postsecondary educational institution, Florida College System institution, or career center to be excused from jury service upon request. The companion bill, **HB 393** by Rep. Charlie Stone (R-Ocala), was amended to change the excusal requirement from “enrolled” to “attending” these same institutions. The legislation does not affect jury service for those students older than 21 years of age and a student is not prohibited from choosing to report for jury service if they are summoned for jury service while a full-time student. A full-time student’s request to be excused only applies to a specific summons for jury service and does not permanently excuse a student between the ages of 18 to 21 from receiving a jury summons.

**SB 738 is now in the Rules Committee, its final committee reference. HB 393 is now on the calendar of bills ready for House floor consideration.**

Link to SB 738: <http://www.flsenate.gov/Session/Bill/2020/738>

Link to HB 393: <http://www.flsenate.gov/Session/Bill/2020/393>

### **Early Childhood Courts – *SB 1324 and HB 1105 Advance This Week***

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. The Department of Children and Families (DCF) administers the state’s child welfare system and works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children involved in the dependency process.

**SB 1324** by Senator Wilton Simpson (R-Trilby) and **HB 1105** by Rep. Josie Tomkow (R-Polk City), make a number of changes to the child welfare laws. This week both bills were substantially amended in an effort to balance placement stability with child safety and permanency. As amended, the legislation makes the following changes:

- Requires certain training for dependency court judges on the benefits of stable placements and related issues.
- Requires judges to consider certain factors related to placement stability when determining whether to change a child’s placement.
- Requires DCF to notify judges of all central abuse hotline reports that are accepted for an investigation involving a child over whom the court has jurisdiction.
- Allows DCF to file a petition to initiate court oversight when a family is receiving services from a community-based care lead agency (CBC) without court involvement, if the parent has been receiving voluntary services for a period of time.
- Prohibits the court from ending jurisdiction if a CBC has to continue to provide an in-home safety plan for a child to live at home.
- Amends current law to require the court and case managers to monitor relationships between foster parents and biological parents at various stages in the

## MEMORANDUM

February 21, 2020

Page 8

dependency process to encourage a productive working relationship that includes meaningful communication and mutual support.

- Relocates language relating to quality parenting from s. 409.145, F.S., to a new section and expands it to apply to caregivers caring for children in out-of-home care. The new section directs DCF and CBCs to develop and support relationships between foster families and biological parents of children in out-of-home care, when it is safe and in the child's best interest.
- Allows circuit courts to create early childhood court programs and requires the Office of State Courts Administrator to contract with one or more university-based centers that have expertise in infant mental health to ensure the quality, accountability, and fidelity of the evidence-based treatment provided by such programs.
- Requires DCF or its subcontractors to complete criminal history checks, preliminary home studies for adoptive minors and licensing home studies for family foster homes within specific timeframes so children can be placed in stable homes faster.
- Creates a process with set timeframes DCF and its subcontractors must comply with when a person is interested in adopting a child from the child welfare system.
- Allows a CBC to demonstrate a justification of need to provide more than 35 percent of direct care services to children and families in its geographic service area.

On February 20<sup>th</sup>, a "strike-all" amendment was adopted to SB 1324 and the bill passed the full Appropriations Committee by a vote of 20 to 0. On February 18<sup>th</sup>, a "strike-all" amendment passed to HB 1105 and it passed its final committee, the Health and Human Services Committee, by a vote of 16 to 0.

### **Judicial Travel Reimbursement – *No Movement This Week***

**SB 1392** by Senator David Simmons (R-Altamonte Springs) and **HB 7057** by the House Judiciary Committee revise the provisions governing the payment of subsistence and travel reimbursement for Supreme Court justices who designate an official headquarters other than the headquarters of the Supreme Court. Most importantly, the bills authorize district court of appeal judges who reside within 50 miles of his or her DCA headquarters and meet certain other criteria to have an appropriate facility in their county of residence designated as their official headquarters. The legislation authorizes the Chief Justice to set policies and parameters for the use of alternative headquarters and travel reimbursement by eligible justices. Additionally, the legislation specifies that its provisions control over any conflicting provision in the travel-reimbursement statute that applies to all state employees and officers. The legislation would have a recurring impact of \$125,000 on the State Courts System. Funding for the legislation is included in both SB 2500 and HB 5001, the proposed General Appropriations Act.

Both bills were amended to authorize the Chief Justice to set policies and parameters for the use of alternative headquarters and travel reimbursement by eligible justices.

## MEMORANDUM

February 21, 2020

Page 9

Additionally, the bills specify that its provisions control over any conflicting provision in the travel-reimbursement statute that applies to all state employees and officers.

**HB 7057 is now on the calendar of bills ready for the House floor. SB 1392 has one committee hearing remaining in the Appropriations Committee.**

Link to SB 1392: <http://www.flsenate.gov/Session/Bill/2020/1392>

Link to HB 7057: <http://www.flsenate.gov/Session/Bill/2020/7057>

### **Judicial Nominating Commissions – *No Action***

**SB 86** by Senator Perry Thurston (D-Fort Lauderdale) and **HB 379** by Rep. Al Jacquet (D-Lantana) reinstate the composition of the judicial nominating commissions as it existed in § 20(5), Fla. Const. and § 43.29, Fla. Stat. (2000). Currently, the governor appoints nine members to each of the 26 JNCs. Three of those members are from a list recommended from The Florida Bar. Under the legislation, the governor would only appoint three members to each nine-member nominating commission. Three other members would be appointed by The Florida Bar, and then the six members of each JNC panel would select the remaining three members.

Link to SB 86: <http://www.flsenate.gov/Session/Bill/2020/86>

Link to HB 379: <http://www.flsenate.gov/Session/Bill/2020/379>

### **Public Records Exemption for County Attorneys & Assistant County Attorneys – *No Movement This Week***

**HB 63** by Rep. Randy Maggard (R-Dade City) and **SB 248** by Senator Ed Hooper (R-Clearwater) provide an exemption from the public records requirements for personal identifying and location information of current and former county attorneys and assistant county attorneys and their spouses & children.

**SB 248 has cleared all of its committees of reference and is on the calendar of bills ready to be scheduled for floor consideration. HB 63 has not been heard by any committees.**

Link to HB 63: <http://www.flsenate.gov/Session/Bill/2020/63>

Link to SB 248: <http://www.flsenate.gov/Session/Bill/2020/248>

### **Statewide Council on Prosecutorial Misconduct – *No Action***

**SB 262** by Senator Randolph Bracy (D-Orlando) creates the Statewide Council on Prosecutorial Misconduct within the Department of Legal Affairs. The council will provide recommendations and findings relating to prosecutorial misconduct to the Department of Lawyer Regulation within The Florida Bar and to the Supreme Court's Chief Justice. The

## MEMORANDUM

February 21, 2020

Page 10

council's membership includes four prosecutors, four public defenders or assistant public defenders, a district court of appeal judge, and two county or circuit court judges. By January 14<sup>th</sup> of each year, the council is required to submit an annual report to the Governor, Legislature, and Chief Justice summarizing the council's recommendations and findings during the previous calendar year.

There has been no action this session on SB 262 and a House companion bill has not been filed to-date.

Link to SB 262: <http://www.flsenate.gov/Session/Bill/2020/262>

### **Public Records Exemption for Judicial Assistants – *No Movement This Week***

**SB 128** by Senator Tom Wright (R-New Smyrna Beach) and **HB 479** by Rep. Elizabeth Fetterhoff (R-DeLand) provide an exemption from the public records requirements for certain identifying and location information of current and former judicial assistants and their spouses and children. The legislation provides for the retroactive application of the exemption.

SB 128 has cleared all of its committees of reference and is on the calendar of bills ready to be scheduled for floor consideration. HB 479 has two committee hearings remaining.

Link to SB 128: <http://www.flsenate.gov/Session/Bill/2020/128>

Link to HB 479: <http://www.flsenate.gov/Session/Bill/2020/479>

### **Legislative Session Communication**

The preceding bills and any other newly-filed bills are tracked each week and are available to monitor on The Florida Bar Legislation Committee's website:

<https://www.floridabar.org/member/legact/legact001/>

Moreover, each week during the legislative session each member of the Board of Governors will receive a brief legislative update which will also be posted to the Legislation Committee's website.