

The Florida Bar's Response to Historic "Court Reform"

STOP, REFLECT." A prominent Palm Beach law firm uses these words in its tagline for National Public Radio. The objective: to focus the listener.

With this backdrop, I want to comment on the 2011 legislative session. Many have and will express views about the session and the challenges presented to The Florida Bar and our state. The court reform measures considered this year were some of the most extraordinary in Florida's history, and although such measures largely failed, it is important to reflect on the challenges presented and how The Florida Bar responded. Having worked closely with immediate past President Mayanne Downs — who was tireless and courageous the last 12 months — I want to share this perspective.

A Brief Look Backward

Numerous former presidents of The Florida Bar have commented that given the proposed measures to "reform" the courts, this past session was the most intense ever witnessed. The proposed legislation that cascaded from the House in early March was broad and far reaching. By some accounts, the proposals to reform the courts — a co-equal branch of government — were historic in their reach. Legislation was proposed to create a "second" Supreme Court devoted solely to criminal proceedings, later modified to create a "split" Supreme Court with two divisions, one devoted to civil matters, the other to criminal. Additional measures were proposed to eliminate the Bar's role in the Judicial Nominating Commission process, to require Senate confirmation of nominees to



the Supreme Court (in approximate parallel to the federal system), for the limited confidential disclosure of prosecution files handled by the Judicial Qualifications Commission (JQC), and to create a permanent source of funding in the Constitution for the judicial branch.

While it can be debated whether more significant court reform measures have ever arisen at one time, this session was noteworthy for the breadth of the proposed measures and the pace of legislative activity.

In the session's final days, legislation passed that places a proposed amendment to the Florida Constitution on the November 2012 general election ballot. This proposed amendment pertains to Senate confirmation of nominees to the Florida Supreme Court, whether the legislature can overturn a court rule by majority vote and limited disclosure to the House of JQC prosecution files. Sixty percent of the vote cast on the measure is necessary to amend the Constitution.

These developments are historically significant. In American Democracy, few decisions are more important than whether to vote for or against amending the Constitution. Why? Such a vote determines whether to alter the foundational law which underlies the entirety of Florida's government, the Florida Constitution.

The Florida Bar and the Judicial Branch of Florida's Government

In 1950, the Florida Supreme Court created The Florida Bar as a regulatory body. Charged with the responsibility of regulating lawyers, the Bar administers a broad array of programs concerning licensure, lawyer discipline, professionalism, legal education, and related matters. Today, The Florida Bar has the second largest membership of all mandatory bars in the country, over 90,500 members. Membership increases as graduates enter the profession from Florida's 11 law schools and through lawyer migration.

The Florida Bar is a nonpartisan deliberative body managed by a Board of Governors elected by lawyers from across Florida. Importantly, as determined by its Board of Governors, the mission of The Florida Bar delineates its critical responsibility of promoting the efficient administration of justice. Its mission statement succinctly defines this institutional mission: "To inculcate in its members the principles of duty and service to the public, to improve the administration

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of justice, and to advance the science of jurisprudence.”

Given this core value, The Florida Bar annually engages in efforts to encourage legislators to properly fund the third branch of government. The reason: to ensure Florida’s citizens have a judicial system commensurate with the legal challenges facing our state. Absent such support, the court will be unable to fulfill its constitutional and institutional role as a co-equal branch of the tree that represents democracy in Florida. Without such, government falls out of balance — exactly what Jefferson and Madison saw as the danger if one branch became less equal than the other two.

Importantly, this mission is not partisan, but constitutional. Sustaining the judicial branch is a matter of constitutional integrity. For the three branches to work as an integrated whole (in integrity), which is what the framers intended, there must be structural balance. Otherwise, there is a loss of institutional integrity. Without adequately funding the judicial branch, the balance breaks down. Like a revolving top that loses balance, the structure will eventually topple. Imbalance is the reason.

The 2011 Session

During the 2011 Legislative Session, immediate past President Downs engaged in relentless discussions with legislators to “improve the administration of justice” by urging opposition to the broad court reform proposals in the House. Early efforts to meet with legislative leaders started last fall and continued through the winter and spring. At its March meeting, three weeks into the session and after the court reform measures arose in the House, the Board of Governors was nearly unanimous in adopting positions in opposition to such measures. The Board urged Bar leadership to advance these views before the House and Senate and in consultation with the Bar’s legislative team.

President Downs and the Bar’s

Legislative Chair Ed Scales worked closely with a legislative team with extensive input from many Bar leaders and professionals, including retired Justice Charles Wells; former state representative and House Chief of Staff Dudley Goodlette; outside counsel Barry Richard; Steve Metz, Matt Bryan, and Pete Dunbar; and many former Bar presidents, including Hank Coxe, Ben Hill, Marshall Criser, John DeVault, Jesse Diner, and Miles McGrane. This high-level review of ever-changing positions continued unabated through the session.

Beyond meetings and consultations with individual legislators, President Downs testified before a House Committee in early March, such an early appearance being a first in the Bar’s history. Additional appearances before House and Sen-

ate committees followed thereafter. In addition to the countless days in the Capitol, President Downs gave numerous speeches across Florida and met with 12 editorial boards. In connection with these efforts, more than 40 editorials opposing the court reform legislation were published — with many newspapers printing multiple editorials, a rare occurrence.

Though the session was arduous, the court reform measures largely failed. Further, this year’s judiciary budget was not reduced (significant given broad cuts in state expenditures), judicial pensions were not modified, and state agencies were statutorily authorized to fund government attorney Bar dues.

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OATH OF ADMISSION TO THE FLORIDA BAR

The general principles which should ever control the lawyer in the practice of the legal profession are clearly set forth in the following oath of admission to the Bar, which the lawyer is sworn on admission to obey and for the willful violation to which disbarment may be had.

“I do solemnly swear:

“I will support the Constitution of the United States and the Constitution of the State of Florida;

“I will maintain the respect due to courts of justice and judicial officers;

“I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

“I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

“I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

“I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

“I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone’s cause for lucre or malice. So help me God.”



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The 2012 Session

These facts are presented to share perspective on how the Bar approached its responsibilities and how the Bar's legislative team represented Florida's third branch of government.

The 2012 session will soon be upon us, and Bar leadership is working to develop plans in anticipation of what developments may emanate from the legislature. An important feature to the landscape is the effect "redistricting" will have on the normal business of the legislature. Because of redistricting legislation, which under the Constitution must be addressed every 10 years, the 2012 legislative season will begin in January rather than March. The first part of the session is devoted to the legislature's regular business, and the last two months will concern redistricting. The entire 2012 session will, thus, last four months instead of two.

Undoubtedly, the challenges will again be multi-layered, and The Florida Bar will strive to represent its

over 90,000 members to strengthen the third branch of Florida's government consistent with its mission of "improving the administration of justice."

In closing these remarks, I want to acknowledge that many, in and outside of The Florida Bar, worked hard to advance multiple arguments in opposition to "court reform." Many were galvanized by the challenge, and many made extraordinary contributions. In acknowledging this broad effort, it is not a time to celebrate but rather to reflect on how we can work together in the future to advance the institutions of The Florida Bar and the third branch of government, mindful of their institutional roles in this great Florida democracy. I commend all who enlisted in this effort and salute President Downs for her courage, dignity, and passion. □

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