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SCBA President's Message

Concerning Outlook for Court Funding

It is April Fools, and unfortunately it appears that the joke may be on our state's judicial system and Florida citizens' individual rights after this legislative session. There are already two proposed bills, House Joint Resolution 7025 and House Bill 7027, in an attempt to attack the court system by taking away the Florida Supreme Court's rulemaking authority and giving it to the Legislature. As I write this article, it has also been proposed that the Florida

Supreme Court should be drastically reconfigured due to alleged "inefficiencies".

Our state court system's funding is a meager 0.7% of the total budget. THAT IS RIGHT—ONLY 0.7%. The Governor and the Legislature seem poised to cut that funding even further. It would seem to be a novel approach to properly fund the court system and then critique its inefficiency. A properly funded judiciary would be an appropriate response to the perceived inefficiencies, rather than attacking the very separation of powers espoused by our Founding Fathers. I would urge everyone to begin to contact our legislators and mobilize friends, family, and clients to oppose these measures.

The next rallying cry which has been heard in the Legislature from "pro-business lobbyists" is the mantra of tort reform. Tort reform always seems to be the rallying cry due to the misperception that tort and "frivolous" lawsuits are clogging the court system and causing huge expenses for the insurance industry and businesses. However, the facts and numbers speak differently. In numbers reported by our dedicated Clerk of Court, Karen Rushing, in 2008, 516 tort cases were filed in the Sarasota Circuit Civil Division; in 2009, only 497 cases; and in 2010, 515 cases. The term "tort" case includes medical malpractice and automobile accident cases. To put that in perspective, one only has to look at the foreclosure cases that were filed in Sarasota, based upon figures given to me by our diligent Chief Judge Lee Haworth. In 2008, there were 8,439 cases filed; in 2009, there were 8,576; and in 2010, there were 4,738. I see the foreclosure crisis which screams for further funding for our judiciary, but where is the tort crisis?

These numbers are not confined to Sarasota County. Brevard County's annual numbers for the 18th Judicial Circuit show that tort cases are down 70% since 2001,

and the most recent figures for 2009 show only 51 professional malpractice cases and 771 other negligence cases for a district that has 979,416 residents and 7,324 traffic crashes, as stated in Florida Today. You hear calls to cap damages and the damage of defensive medicine. However, our Florida Statutes already make defensive medicine improper pursuant to F.S. § 766.111, which states it is impermissible to order unnecessary tests. On damages caps, we heard the uproar from the public when it thought BP's responsibility would be capped at \$75 million under the Oil Pollution Act of 1990. We all heard calls for rescission of that Act if the \$75 million cap was instituted. If the public did not want a cap on damages from the oil spill, why would they want caps on damages to their loved ones based upon the negligence of a third party?

The well-known conservative Republican and Former Senator Fred Thompson from Tennessee said it best when discussing tort reform in a recent article for Knoxnews.com. He stated:

Conservatism is individual responsibility and accountability for damages caused, even unintentionally. It's about government closest to the people and equal justice with no special rules for anybody. It's also about respect for the common-law principle of right to trial by jury in civil cases that was incorporated into the Seventh Amendment to the United States Constitution However, never has the legislature [of Tennessee] imposed a dollar limit in cases where damages and negligence have already been proven. I recognize that several other states have imposed such rules. It's understandable. The pressure to do so is very strong. Those groups who benefit from such rules are well defined and are very vocal. Those who would be hurt cannot even be identified today. That does not make it right or sound policy.

The tort reform push is not right and is not sound policy. Unfortunately, if it passes it will be felt by every individual who is hurt due to someone else's negligence.

On another note, I want to thank Chief Judge Lee Haworth on behalf of the Sarasota County Bar Association, and individually, for his tireless and unprecedented efforts advocating court funding and the excellent job he did as our local Chief Judge. I also wish to welcome and congratulate the new Chief Judge Andy Owens who was recently elected.

Finally, a horrible loss occurred to our entire legal community last month with the passing of Richard Garland. All of our thoughts and prayers go out to Richard Garland's family. He was truly a great person, a great lawyer, a true professional, a great friend, and an exemplary bar member. He will be truly missed.