

# The BROWARD BARRISTER

JULY, 1974

Volume 3

Number 7

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Executive Offices, 735 Northeast Third Avenue, 305/764-8040, Fort Lauderdale, Florida 33304

## GENERAL MEETING

Wednesday, July 17, 1974

12 Noon

**THE SHERATON HOTEL**  
303 North Atlantic Boulevard  
Fort Lauderdale, Florida

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Program: "John Marshall and The Constitution,"  
by Judge Charles Fulton

Judge Fulton is the Chief Judge of the United States District Court for the Southern District of Florida. He now sits in West Palm Beach.

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## YOUNG LAWYERS SECTION MEETING

Thursday, July 25, 1974

12:00 Noon

**THE GOVERNORS' CLUB HOTEL**  
236 S.E. 1st Avenue  
Fort Lauderdale, Florida

LUNCH: \$3.50

Program: Proposed Changes in the Florida Rules of Civil Procedure, by Robert C. Scott, Chairman of the Civil Rules Committee of The Florida Bar.

Please send Reservations with check to: Mr. Ed Sciarretta  
3081 E. Commercial Boulevard  
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## Broward County Trial Lawyers Association Meeting

Wednesday, August 7, 1974

6:30 P.M. — Cash Bar

Dinner: 7:00 P.M. — \$9.50

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## FAMILY LAW COMMITTEE REPORTS

By John Hume

The Family Law Committee has concluded its preliminary inquiry into low cost divorce pilot programs that have

been initiated by various other Bar Associations. The primary emphasis has been on the plans adopted by the Detroit Bar Association and by the New Hampshire Bar Association. The Detroit Bar has adopted a pilot program to assist low income persons in simple divorce cases. A "simple" divorce case is one in which there are no contested issues, no children, no real property, and no request for alimony. There must be informed consent by both parties that the divorce be granted or a long absence by one party. To qualify, the husband and wife must have a combined income of under \$8,500.00. If qualified, the applicants are referred to a volunteer panel of attorneys who agree to handle these cases for \$125.00 plus costs.

The Detroit Bar Association is in the process of compiling statistics on the first six months of operation of this program and will submit a report to the Broward County Bar Association as soon as it is compiled.

Under the New Hampshire Plan, New Hampshire Legal Assistance screens the applicants and if qualified refers them to a volunteer panel of attorneys who

will handle the case for \$75.00 plus costs. The standards for aid are the same as the standards for eligibility for the funded legal aid program. Applicants are advised that if a divorce should be contested, that the attorney may bill the applicant accordingly. The obvious difficulty in such a plan is that an attorney may take a case, file his initial pleadings and then prior to final hearing have the matter become contested. In such a case it is doubtful whether the judge in the case would be favorably inclined toward allowing the attorney to withdraw.

The Family Law Committee has been unable to recommend a specific plan to the Broward County Bar Association primarily because in our situation, there exists no organization for the screening of applicants. The committee recommends that when the legal aid program becomes functional that it be used to screen applicants and if possible, handle those cases where the applicant is unable to afford legal counsel. In the alternative, if the funded program is unable to handle the actual dissolution proceedings, the Committee recommends that the applicants be referred to the volunteer legal aid program sponsored by the Bar

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735 N.E. Third Avenue  
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#### OFFICERS

*President* ..... Nicholas J. DeTardo  
*President-Elect* ..... William F. Leonard  
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*Past President* ..... L. Fred Austin  
*Executive Secretary* ..... Norma Howard

Association. No fee would be charged for this service. Further, these referrals would be strictly limited to uncontested dissolutions with no children or property being involved.

Since the Committee's report was drafted, the Legislature has passed Senate Bill 1120, providing for funding of the Broward County Legal Aid Program. The Executive Committee has directed this Committee to continue its investigation of these programs and has resolved to beef up the committee to in-

clude representatives from the Circuit Court.

Bill Leonard, President of the Association, is presently appointing committees for the current year. Any members interested in this committee should contact him through the Bar Association immediately.

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### COURT DECISIONS

*By Henry J. Prominski*

*Herlong Aviation, Inc. Inc. vs. Johnson*, 290 So. 2d 603, decided by the Supreme Court of Florida apparently put a screeching halt of the progress of Florida jurisprudence in non-contact injuries. The 2nd district decision certified the question, "Can a Plaintiff recover for mental pain and anguish in the absence of impact?" "The district court allowed recovery for an airplane passenger frightened by turbulent weather which was alleged could have been avoided.

*Hollie vs. Radcliff*, 200 So. 2d 616, found an impact where a vehicle passenger had no injury from the accident except an increase in a preexisting Parkinson condition. *Kirksey vs. Jernigan*, 45 So. 2d 188 allowed non-impact recovery when the act complained of was wilful or malicious. The State of California in *Dillion vs. Legg*, 68 California 2d 728 and in *Archibald vs. Braverman*, 79 California Reporter 723 allowed damages for fear of injury to another or shock in witnessing such an injury if such shock should have been reasonably foreseen. The restatement of the Law for Torts in Section 436 would allow recovery for emotional distress resulting from shock from a negligent act in his presence.

The Herlong case followed *Gillian vs. Stuart*, 291 So. 2d 593 which overruled a 4th District decision allowing damages when the Plaintiff had no physical injury but underwent emotional strain as a result of an automobile striking her house. The Supreme Court stated that the impact rule is not inequitable, impracticable or no longer necessary so that it may be judicially altered or abolished. The court did reaffirm emotional damages in circumstances where punitive action lies. There were two long dissents with opinion from this 4 to 3 decision.

Justice Erwin would have adopted Judge Mager's decision expanding a cause of action to this area, and Justice Adkins in an extensive decision tracing the history and legal procedures from other jurisdictions concluded the time has come for Florida to follow the decisions of the majority of the Courts in the United States that have eliminated an impact requirement when a person suffers a substantial physical injury which is a natural result of fright and would follow closely in point of time to the external trauma.

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### Broward County Bar Association General June Meeting

The members of the Broward Bar had the pleasure of listening to Supreme Court Justice Overton at their luncheon meeting Wednesday, June 19th. Justice Overton spoke on new legislation as it

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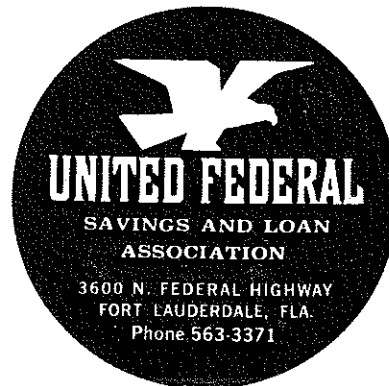
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affects the lawyer and the Judge. The new laws discussed included financial disclosure by elected officials, a revised probate code which will go into effect July 1, 1975 and traffic laws which will, except for severe violations, be considered infractions and no longer crimes. A large turnout included many of the Broward County circuit judges as well as three members of the Fourth District Court of Appeal and Federal District Court Judge Norman Roettger, Jr.

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### Legal Secretaries Association

The Broward County Legal Secretaries Association recently installed the following officers for the coming year:

President \_\_\_\_\_ Carol Moore  
 1st Vice-President \_\_\_\_\_ Dolores Ott  
 2nd Vice-President \_\_\_\_\_ Jean Harris  
 Recording Secretary \_\_\_\_\_ Dorothy Lahan  
 Corresponding Sec'y \_\_\_\_\_ Judy Bell  
 Treasurer \_\_\_\_\_ Sharon Fornes  
 Governor & State Representative \_\_\_\_\_ Carole Brock  
 Parliamentarian \_\_\_\_\_ Helen Meany

Mrs. Meany was also installed as President-Elect of the Florida Association of Legal Secretaries. She is employed by Richard H. Cobourn of Hollywood.

For information regarding membership applications for the Broward County Legal Secretaries Association, please write to:

Dolores Ott  
 c/o Tripp, Niles & O'Neil  
 2000 East Oakland Park Boulevard  
 Fort Lauderdale, Florida 33306

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## NOTICE

### Economics Committee Survey

Each member of the Broward County Bar Association will shortly be receiving a questionnaire, which has been produced by the Committee on Economics of Practice. The questionnaire will cover the areas of income, setting of fees, hourly rate charges and specialization.

A second questionnaire has been prepared and will be mailed to one member of each firm, and asks questions about the firm in general. Areas covered in this second questionnaire include office overhead, employee's salaries and fringe benefits, retirement benefits, firm structure and utilization of machines and equipment.

Using the responses received in the questionnaires, the Committee on Economics of Practice intends to produce a summary of the responses which we believe will be helpful to everyone.

This project can only be successful if each attorney takes approximately 10 minutes to complete the individual questionnaire and returns it promptly. Completion of the office questionnaire, by one member of each firm, will take approximately 30 minutes.

We ask everyone's cooperation and prompt attention to these mailings.

Broward County Bar Association  
 Committee on Economics of Practice  
 Rohan Kelley, Chairman

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## Qualifications Of A Good Judge

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Vanderbilt, A.T. The Challenge of Law Reform. Princeton, New Jersey. Princeton University Press, 1955

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### WELCOME NEW MEMBERS

EDWARD N. BOMSEY, a native of Rome, New York, received his undergraduate degree from New York University and his law degree from George Washington University. He practices alone in Fort Lauderdale, Florida.

CHARLES G. BRACKINS, a native of Florida, Alabama, received his undergraduate and law degrees from the University of Florida. He is associated with the firm of Rogers, Morris & Ziegler, in Fort Lauderdale, Florida.

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**GEORGE ANGEN BRESCHER**, a native of Elizabeth, New Jersey, received his undergraduate degree from Stetson University; Monmouth College and his law degree from the University of Miami. He is with the State Attorney's Office, in Fort Lauderdale, Florida.

**JOHN DOWNING**, a native of Savannah, Georgia, received his undergraduate degree from Georgia Tech and his law degree from the University of Florida. He is associated with the firm of Kelley, Tompkins, Frazier & Kelley, in Fort Lauderdale, Florida.

**DOUGLAS W. GAIDRY**, a native of Louisville, Kentucky, received his undergraduate degree from Massachusetts Institute of Technology and his law degree from the University of Miami. He is associated with the firm of Isley and DeDeuil, P.A., in Fort Lauderdale, Florida.

**JAMES A. GRADY**, a native of Williamsport, Pennsylvania, received his undergraduate degree from Miami Dade J.C. and his law degree from the University of Miami. He practices alone in Pompano Beach, Florida.

**MICHAEL F. KEMPNER**, a native of Chicago, Illinois, received his undergraduate degree from the University of Michigan and the University of Florida and his law degree from the University of Florida. He is associated with the firm of Walsh & Dolan, P.A., in Fort Lauderdale, Florida.

**WILLIAM LEFKOWITZ**, a native the Bronx, New York, received his undergraduate and law degrees from Syracuse University College of Law. He is associated with the firm of Ruden, Barnett, McClosky, Schuster & Schmermer, P.A., in Fort Lauderdale, Florida.

**TRACY E. STAFFORD**, a native of Fort Lauderdale, Florida, received his undergraduate and law degrees from the University of Florida. He is associated with Robert W. Crawford, Fort Lauderdale, Florida.

**JEFFREY L. WEITZ**, a native of Brooklyn, New York, received his undergraduate degree from Buffalo University and his law degree from Boston University School of Law. He practices alone in Lauderdale Lakes, Fla.

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## **ABA Ethics Committee Says Disciplinary Rules Apply Also To Non-Practicing Attorneys**

CHICAGO, June 20 — Lawyers are bound by the American Bar Association's Code of Professional Responsibility, even when they are not practicing law, the ABA Standing Committee on Ethics and Professional Responsibility said in a formal opinion released today.

The committee said that, since the "Watergate" episodes, the question had arisen frequently as to whether the disciplinary rules applied to lawyers not engaged in the actual practice of law.

The rules in question read that a lawyer shall not engage in illegal conduct involving moral turpitude nor in conduct involving dishonesty, fraud, deceit or misrepresentation.

"The answer is," the committee said, that "a lawyer must comply at all times with all applicable disciplinary rules of the Code of Professional Responsibility, whether or not he is acting in his professional capacity."

The Code of Professional Responsibility has been adopted with some changes from state to state by almost all of the states and the District of Columbia.

Under the federal system, the states have the power to punish lawyers for

violation, but the opinions of the ABA committee are authoritative interpretations of the code provisions.

"It is recognized generally that lawyers are subject to discipline for improper conduct in connection with business activities as a judicial, governmental or public official," the committee explained.

The committee said the rules provide that "the public should be protected from those who are not qualified to be lawyers by reason of a deficiency in . . . moral standards" and that "it would be utterly incongruous with the entire tenor of the code to find that its provisions regarding lawyers who engage in fraud, deceit, misrepresentation, or illegal conduct involving moral turpitude do not apply them when they are acting as individuals or as public servants."

The ABA committee is chaired by Lyman M. Tondel, Jr., of New York City. Committee members are Betty B. Fletcher, Seattle; Harry Gershenson, St. Louis; Thomas C. MacDonald, Jr., Tampa, Fla.; Harold L. Rock, Omaha, Neb.; John F. Sutton, Jr., Austin, Tex.; Lewis H. Van Dusen, Jr., Philadelphia, and Sherman S. Welpton, Jr., Los Angeles.

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