October 2007

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VOLUME 36, ISSUE 10

**Raising the Bar Family Law Seminar**

Friday, October 26, 2007

Annual Family Law Update
Presented by Judges and General Magistrates of the Family Law Section of the 17th Judicial Circuit

Fort Lauderdale Renaissance Hotel
17th Street Causeway
Registration 8:30 a.m.
Seminar 9:00 – 4:00 p.m.
Continuing Legal Education Credits Applied for

RSVP (954) 764-8040

**4th ANNUAL MINORITY MENTORING PICNIC**

Saturday, October 27 at Noon
FREE

Amelia Earhart Park at the Corporate Pavillion
401 East 65 Street
Hialeah, Florida

There will be music, great food, a friendly volleyball tournament and good times.

The Park is accessible for persons with disabilities.

**Judge Tobin Appoints Administrative Judges & Chairpersons**

Judge Tobin was sworn in as Chief Judge of the 17th Judicial Circuit Court on September 4th, 2007. He announced his selections for Administrative Judge and Chairpersons.

- **Judge Dorian Damoorgian**
  Circuit Civil Administrative Judge.

- **Judge Jack Tuter**
  Circuit Unified Family Administrative Judge.

- **Judge Ana I. Gardiner**
  Circuit Criminal Administrative Judge

- **Judge Mel Grossman**
  Circuit Probate Administrative Judge.

- **Judge John A. Frusciante,**
  Chairperson of the Dependency and Delinquency Divisions.

- **Judge Sharon Zeller**
  is County Court Administrative Judge.

- **Judge Robert W. Lee**
  is County Civil Chairperson,

- **Judge Joel T. Lazarus**
  is County Criminal Chairperson.

Also:
General Magistrate Philip Schlissel
General Magistrate/Hearing Officer Chairperson.

(photo not available)
PROFESSIONALISM

There have been Florida Bar presidents having Professionalism as their themes. Past President Victor DeBianchi, Jr. not only embodied Professionalism but always passed out our pamphlets and spoke often on the subject. And I think Professionalism encompasses some other topics, like mentoring, Justice Teaching, and civics in the schools. The outgoing president of the Bar Association presents the Lynn Futch Award for Professionalism each year at the installation dinner. In the Courthouse hallway, I overheard an attorney yelling over the phone to an assistant. I couldn’t believe the language and I was shuddering at the name calling and blame piled on the person on the other line. I thought maybe the lawyer should have done a better job of proofreading. Instead, all fault for the mistakes (and it sounded like a lot) were loudly reviewed for all to hear. Hope that’s not any of you! After college I was a legal secretary for ten years before I went to law school. I took years of typing and shorthand in night school. I really loved it, but I always envied the freedom the lawyers had to leave the office. Because the job of the assistant is to be there—35 to 40 hours a week, holding the fort, taking messages, typing letters and pleadings, booking trips. I am a solo practitioner so I don’t delegate much out. I’m “it.” But if you are a small office or a very big one, we all should keep professionalism as our mantra every day.

HURRICANES AND HALLOWEEN

This month is the end of the hurricane season, thank heaven, and for my mind, the best weather is coming. I do my “spring” cleaning in October. Getting ready for family and friends from up North coming to visit. We have worked hard the past few years at the Bar Association bringing our buildings as close to hurricane protected as possible. We have shutters on both buildings, 3M hurricane-proof film on all of the windows, and a new roof.

Who will you “be” for Halloween this year? I was teased at one of our Bar Association Halloween parties years ago when I came as the blue M&M. Bill and I were corpulent beach tourists another year. I like to be in costume to greet the trick-or-treaters. My dog, Funny, also has a wardrobe of outfits—biker chick, batgirl, rooster, pirate.

CAMPAIGNING

Last year at this time I was flying to Ohio to help my brother, Rick, campaign for the U.S. Congress, 4th District. I went three times. It was tiring covering 11 counties in the mostly rural District. Over Labor Day, we marched parades, sometimes two a day. We attended county fairs, the National Coon Dog Festival (!), rallies, press conferences, live television, radio and newspaper interviews, taped commercials, breakfasts, lunches, and dinners. I watched the brainstorming at headquarters concerning stances on issues, watched and re-watched the taped television appearances, made cold calls for donations, and dug into my own pocket. I acted as chauffeur on the trips back to Lima after public appearances while Rick dozed. I learned a lot during those trips, and experienced the emotional ups and downs. Planning the election night caused dissention among the family. Where to go early in the evening and where to end up. The press was at headquarters at 10:00. They asked Rick, “What next?” He said, “Go back to work.” And I did, too. (He lost.)

CLERK/BAR COMMITTEE

I attended the first meeting of the Clerk/Bar Committee on Thursday, September 6 along with several other attorneys and many clerks. This Committee is a first-hand opportunity for members to discuss concerns between the clerks and the Bar. Some of the issues before the Committee are the computer system, e-filing, redaction of social security numbers, and the filing fees for re-opening cases. Chair Michael Romm welcomes everyone to his meetings held the first Thursday of every month in the Public Defender’s Office, North Wing Third Floor of the Courthouse.
September was a very exciting and busy month for the YLS and there is no slowing down as we enter the month of October! Football season is in full swing and we were very fortunate to have several events with the Miami Dolphins. The September 27th luncheon was a tremendous success and we had a wonderful turn out. A very special thank you to the Miami Dolphins, the “Big Dog”, Joe Rose, and Nat Moore for speaking at our September 30th luncheon! Joe is a former Miami Dolphin tight end, co-host of 560 WQAM radio morning show with Jason Jackson, NBC 6 sports anchor and color radio analyst for the Dolphin games. Nat Moore is a hot topic and employed by the Dolphins relative to player personnel. Mr. Rose and Mr. Moore spoke about their experiences with the Miami Dolphins, as well as the Dolphins’ remaining games and how the Phins can get back to their winning ways! The YLS would also like to thank the Miami Dolphins for hosting Young Lawyer Day as the Dolphins battled the Oakland Raiders this past September 30th. Dolphin fans had the opportunity to enjoy great seats for a great game and attend a wonderful two hour pre-game tailgating event with plenty of drinks and food for all who attended!

Although we held off on having our September happy hour, the YLS starts off the coming term with a bang and what will likely be our biggest happy hour of the year! October 5th is the Pre-Golf Tournament Happy Hour at Himmarshee Bar and Grill in downtown Ft. Lauderdale. There is no charge for the Golf Tournament Happy Hour; however, a $5 donation would be greatly appreciated. Each attendee will be entitled to a free drink and free appetizers. Each attendee will be entitled to a free drink and free appetizers. October is not the month for the YLS and we are thrilled about the upcoming YLS 20th Annual Charity Golf Tournament. This year’s beneficiary, Healthy Mothers-Healthy Babies Coalition of Broward County...
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1. Arbitration/Garnishment

Capital Factors, Inc. v. Alba Rent A Car, Inc.

Fla. L. Weekly ___ (Fla. 4th DCA 4D06-4330 August 29, 2007)

In a case of first impression, the Fourth District held that even though an arbitration award was not confirmed by the trial court, it was nonetheless final and subject to garnishment as a debt due.

2. Dissolution of Marriage/Dischargeability of Debts in Bankruptcy

Meeks v. Meeks,

32 Fla. L. Weekly D1972 (Fla. 2nd DCA August 17, 2007).

In a final judgment of dissolution of marriage, the trial judge included language opposing the future dischargeability of certain obligations owing by the husband. On appeal, the Second District ordered those determinations stricken from the judgment, since a state court judge lacks the authority to decide the federal issue of discharge prior to the filing of any bankruptcy proceeding. However, the court observed that a state trial court is free to place language in a judgment to memorialize factual or legal rulings on questions of state law that may later assist a bankruptcy court in deciding, as a matter of federal law, the dischargeability of obligations created by the judgment.

3. Furnishing Alcoholic Beverages/Cause of Action

Luque v. Allhouse Management, Inc.,

32 Fla. L. Weekly D2027 (Fla. 5th DCA August 24, 2007).

In this case alleging a bar’s liability for serving alcohol to the habitually addicted plaintiff, who was severely injured thereafter in an automobile accident, the trial court entered summary judgment for the defense stating that section 768.125 did not provide a cause of action. Reversing, the Fifth District discussed the history of the statute and made it clear that such a cause of action does exist. Fact issues remained as to whether intoxication caused or contributed to the accident, and the fact that the drunkard himself denied that his intoxication contributed to the accident was not determinative of his claim.

4. Procedure/Forum Non Conveniens

Fihe v. Rexall Sundown, Inc.,

Fla. L. Weekly ___ (Fla. 4th DCA 4D06-100 August 29, 2007)

The Fourth District reversed dismissal of a lawsuit based on forum non conveniens, because the defendants’ motion to dismiss was filed outside the 60 day limitation in rule 1.061(g), Fla.R.Civ.P. The opinion made it clear that the trial court had no discretion to consider the issue, and that the limitation must be strictly enforced.

5. Procedure/Whether Case At Issue

Labor Ready Southeast, Inc. v. Australian Warehouses Condo Ass'n,

32 Fla. L. Weekly D2022 (Fla. 4th DCA August 22, 2007).

Affirming a tenant eviction, the Fourth District wrote an opinion to address the application of rule 1.440, Fla.R.Civ.P., with respect to when an action is at issue and may be removed. The appellate court made it clear that the case should not be dismissed, as the plaintiff’s argument was a reassertion of the rejection argument based on a “hyper-technical violation” of the rule, because the trial court allowed the plaintiff to amend its complaint to correct technical deficiencies. The court stressed that this was not a case where the parties did not have sufficient time to prepare, nor where anyone was prejudiced by the technical amendment. Although recognizing that it had held in other cases that the rule was mandatory, the Fourth District refused to reverse in this case because there was actual notice and everyone was ready for trial.

North Broward Bar Association

All luncheons will be held 12:00p.m.

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Mark Your Calendar

October 9, 2007
Speaker to be announced

November 13, 2007
Speaker to be announced

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During the months preceding the summer break, the Clerk/Bar Committee of the Broward County Bar Association met to discuss various issues affecting the office of the Clerk of Court, The Florida Bar, the Court system, and the public at large.

The Committee compiled the following top ten mistakes with recommended solutions:

1. Pleadings have incorrect case numbers and incorrect styles, or in fact, they are filed in the wrong county. This seemingly simple mistake can cause a great deal of extra work for the clerks who must research each incorrect pleading. If it takes five minutes (a conservative number) to determine the proper style and file number on a misfiled pleading, you can imagine how long it would take if you multiplied that one pleading by hundreds on a weekly basis.

2. Summons name incorrect defendants; they do not name the defendants on the Summons at all, or, more commonly, an individual Summons has more than one party identified.

3. Notices of Trial are not properly filed. There seems to be some lack of consensus among the members of the Committee as to what the proper procedure is for filing Notices of Trial. The clerks state that they are receiving only the original and the attorney is supposed to send enough copies and self-addressed stamped envelopes for all parties so that the clerk can forward the file to the judge and the judge can send out the Trial Orders. Sometimes, attorneys send these packages directly to the judges themselves. The solution is to remember that you should check with each judge to find out whether the package goes to the judge or to the clerk. However, in either instance, make sure the Notice of Trial is sent with the appropriate number of copies and self-addressed stamped envelopes for all parties.

4. Lawyers and law firms fail to file Notices of Change of Address forms with the clerk. Although pleadings may contain the new address, the filing of an official Notice of Change of Address form is utilized by the clerk to formally change the address in the clerk’s computer which will remain the official address for that lawyer until a new change of address is filed. In the event a pleading or something needs to be sent out by the clerk to you as counsel, the clerk will rely on the computer database which could have an address that is three years old, even if you have recently filed pleadings with your current address. Don’t file a Notice of Change of Address form in a single case and expect the clerk to associate the change to all cases in which you are counsel. File it in every case.

5. Another mistake is when a lawyer files paperwork in a case on the same day of the hearing. The pleading does not make it into the file before the hearing and, in the case of a criminal proceeding, a Capias issues. The pleading may show it was received by the clerk on the morning of the hearing, but it doesn’t get into the Court file. The Court takes action as if the pleading was not filed and then all parties have to get together and fix the mistake later causing extra work for everybody. If you want a pleading to make it into the clerk’s file for a hearing, it must be filed a few days before the hearing.

6. The clerks request that any party wishing to file multiple lawsuits at one time bring them for filing in the afternoon when they are not as busy. Filing multiple lawsuits early in the morning is strongly discouraged. By filing in the afternoon, the clerks will be free to do their usual caseload in the morning allowing them sufficient time in the afternoon to tend to multiple case filings.

7. Appeals:

A. Attorneys are failing to pay the estimated “pre-bills” for the preparation of the record on appeal, but still expect the clerk to prepare the record.

B. Attorneys are failing to attach two copies of the Order from which an appeal is taken to the Notice of Appeal.

C. Attorneys put the wrong dates on the Designation to Court Reporter. Check your dates please!

8. Disruptions of clerk’s work which is neither necessary nor justified:

A. Calling the Felony Clerk on Violations of Probation Arrest for information wanting to know why a hearing has not been set when the arrest occurred the day before.

B. When experiencing a problem, instead of asking for the division manager and giving the division manager a chance to solve the problem, attorneys go directly to upper management (Felony, Probate, and Juvenile).

C. Attorneys in Felony Court interrupt data terminal operators in the Courtroom to look up information for them instead of “being prepared.”

D. Smile. Impatience and rudeness at the counter will not inspire the clerks to want to help you.

9. Probate Only:

A. Show Cause hearings are set by the Court or the General Master. These hearings can only be canceled by the Court or the General Master. Please do not contact the Guardianship audit division and expect the auditors to cancel hearings for you. They simply do not have the authority.

B. Do not combine audit checks with other fees in one check. Pay audit fees in a separate check from other fees and verify amounts.

C. Accounting Reports must be properly identified. If an Accounting Report is “Amended,” then it should say “Amended.” The clerk cannot write “Amended” on your report and accept it for filing. It will be returned to you.

10. If you send a request for copies of documents, please make sure to send a self-addressed stamped envelope.

The Broward Bar Association is proud to be the sponsor of this event. The Broward Bar is made up of dedicated practitioners of the law in Broward County, Florida. The Broward Bar is committed to providing high-quality legal services, representation, and professional ethics for the benefit of our members and the community. Please support the Broward Bar and its mission by joining or donating to the organization. You can learn more about the Broward Bar at www.browardbar.org.
I represent landlords and tenants in residential and commercial eviction actions. In representing landlords, the most common factual scenario that I encounter is a landlord who calls into my office with a Three Day Notice that he/she has prepared and given to a tenant for non-payment of rent. The landlord then typically says, "I have already given the tenant a Three Day Notice. All I need is for you to file the eviction." Almost without exception, when I review the Three Day Notice that the landlord has given to the tenant, it is flawed (i.e. "legally defective"). When I inform the landlord that I cannot file the eviction based on the flawed Three Day Notice, generally, the landlord will look at me incredulously and tell me where he got the Three Day Notice ("e.g. Office Depot, the internet, previous attorney"), so that must be valid. I then have to deliver the news that the tenant must be served with another Three Day Notice, which I will prepare. This is frustrating for most landlords because the process to evict the tenant becomes delayed. In Florida, the law is that a landlord cannot evict a tenant for non-payment of rent unless the landlord first gives the tenant a legally sufficient Three Day Notice. A legally sufficient Three Day Notice terminates the landlord/tenant relationship. Therefore, if a landlord files a Complaint for Eviction based on a legally deficient Three Day Notice, the complaint may be dismissed, with the tenant then being entitled to attorney’s fees as the prevailing party. No landlord wants to pay his/her attorney to file an eviction action, lose the eviction and then end up paying the tenant’s fees as well.

Well, you wonder, what is difficult about preparing a Three Day Notice? When I review the Three Day Notice that the landlord has given to the tenant, it is flawed (i.e. "legally defective"). When I inform the tenant that the Three Day Notice is legally insufficient, the tenant typically says, "I thought you were an attorney. I submitted the Three Day Notice to a tenant for non-payment of rent. The landlord then typically says, "I have already given the tenant a Three Day Notice. All I need is for you to file the eviction." Almost without exception, when I review the Three Day Notice that the landlord has given to the tenant, it is flawed (i.e. "legally defective"). When I inform the landlord that I cannot file the eviction based on the flawed Three Day Notice, generally, the landlord will look at me incredulously and tell me where he got the Three Day Notice ("e.g. Office Depot, the internet, previous attorney"), so that must be valid. I then have to deliver the news that the tenant must be served with another Three Day Notice, which I will prepare. This is frustrating for most landlords because the process to evict the tenant becomes delayed. In Florida, the law is that a landlord cannot evict a tenant for non-payment of rent unless the landlord first gives the tenant a legally sufficient Three Day Notice. A legally sufficient Three Day Notice terminates the landlord/tenant relationship. Therefore, if a landlord files a Complaint for Eviction based on a legally deficient Three Day Notice, the complaint may be dismissed, with the tenant then being entitled to attorney’s fees as the prevailing party. No landlord wants to pay his/her attorney to file an eviction action, lose the eviction and then end up paying the tenant’s fees as well.

Well, you wonder, what is difficult about preparing a Three Day Notice for non-payment of rent? Nothing. Everything. A Three Day Notice can be legally deficient because in calculating the three day period to pay, the landlord counted legal holidays, or week-ends. If the Three Day Notice fails to give the tenant a date by when to pay, it may also be deemed defective. Or a Three Day Notice may be legally insufficient because the landlord does not list his address on the notice. The Three Day Notice may be legally insufficient because it requests an incorrect amount for rent owed (e.g. if the landlord lists the amount as valid late charges). Maybe the most common error landlords make in a Three Day Notice is the use of language that the tenant must "quit or vacate." There are times that the Three Day Notice must be legally insufficient because the landlord does not list his address on the notice. The Three Day Notice may be legally insufficient because it requests an incorrect amount for rent owed (e.g. if the landlord lists the amount as valid late charges). Maybe the most common error landlords make in a Three Day Notice is the use of language that the tenant must "quit or vacate." There are times that the Three Day Notice must be legally insufficient because the landlord does not list his address on the notice. The Three Day Notice may be legally insufficient because it requests an incorrect amount for rent owed (e.g. if the landlord lists the amount as valid late charges).
Jon Krupnick, Walter “Skip” Campbell, Kevin Malone, Joseph Slama, Kelly Hancock, Scott Liberman and Robert McKee from Krupnick, Campbell, Malone, Buser, Slama, Hancock, Liberman & McKee have been named the 2008 Best Lawyers in America Publication.

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AT THE LAWYER REFERRAL SERVICE

The staff at the Lawyer Referral Service would like to acknowledge Attorney Trey Miller as the attorney of the month for September. He has been a tremendous asset to the BCBA in helping our Lawyer Referral Service run smoothly and efficiently. He has gone the extra mile time and time again in helping our staff/clients and can always be counted on at a moments notice. He is a testament to his profession!

Thank you, Trey, from the staff of the Lawyer Referral Service.

CONGRATULATIONS
RICHARD CHOSID, ESQUIRE
Broward Lawyers Care Attorney of the Month for September

Mr. Chosid, a sole practitioner who practices general law in Broward County, has been a member of the Broward Lawyers Care Pro Bono Panel since 1994 assisting over 15 clients and contributing 100+ hours of his time. Your acts of kindness have given life to so many people!

BACK BY POPULAR DEMAND

The Broward County Bar Association's Family Law Section, Legal Aid Service of Broward County, Coast to Coast Legal Aid of South Florida and Broward Lawyers Care's annual Family Law CLE Seminar is scheduled to take place in March 2008. This seminar is free to all that accept a Pro Bono Case from Broward Lawyers Care. Suggestions for topics and speakers are welcomed kzaffere@legalaid.org

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How are we going to be ready in time?
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SEPTEMBER 8 BOARD RETREAT

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2. John Primeau, Angel Petti Rosenberg, Jordana Goldstein, and Roshawn Banks
3. Jorge Hurtado, Facilitator Paul Finizio, and Secretary/Treasurer Carlos Llorente
4. Michele Cavallaro, Allison Bethel, and Marie Montefusco
5. Todd McPharlin and Bruce Weihe

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