The BROWARD BARRISTER

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Executive Offices, 200 Southeast Sixth Street, 305/525-7236, Fort Lauderdale, Florida 33301

General Meeting . . Thursday, January 18th

THE RED COACH GRILL — 12:00 NOON

1200 North Federal Highway, Fort Lauderdale, Florida

LUNCH: $3.00 (Includes tax and tip)

PROGRAM — GROUP AND PREPAID LEGAL COST INSURANCE

By J. Charles Shores, Jr.

Mr. Shores will present current information on the Group and Prepaid Legal Cost plans in existence. This is of vital concern to all members of the Bar Association and should be given much study.

Mr. Shores is a member of the firm of Fischer, Hinckley and Shores in Fort Lauderdale, a Vanderbilt Law School graduate, and an active member of The Florida Bar's Special Committee on Prepaid Legal Cost Insurance.

An interesting and informative article on the above topic is presented in the Barrister in relation to the proposed program.

YOUR ATTENDANCE IS URGED

PLEASE USE THE ENCLOSED CARD FOR RESERVATIONS

YOUNG LAWYERS SECTION GENERAL BUSINESS MEETING JANUARY 25, 1973

HEILMAN'S RESTAURANT
1701 East Sunrise Boulevard
Fort Lauderdale, Florida

12:00 Noon

Lunch: $3.50

Please call 565-5517 for reservations.

Checks should be made payable to Young Lawyers Section, Broward County Bar Association.

THE GREENING OF THE LEGAL PROFESSION

By J. Charles Shores

There is a revolution coming. It will originate in middle America among moderate income people. As its final act, it may well revolutionize the practice of law as we know it. It may not require the approval of the Bar Association, and it cannot be successfully resisted by the Bar Association. It is the revolution in the delivery of our legal work product through prepaid legal services.

The scope of the prepaid concept raises basic questions crossing the entire spectrum of our present law practice, such as the true role and function of the lawyer, the utility to the public in having an organized bar, and how the legal profession must adapt to the public's needs in order that society might continue with its support and maintain its faith in our judicial system.

The concept of Prepaid Legal Services is nothing more than a method by which people of moderate means may pay for the same legal services that more affluent people already have. It is simply a payment technique for legal services, similiar to many others, whereunder someone other than the client makes the direct payment to his attorney. Modern tendancy is in favor of such arrangements so long as freedom of choice of attorneys can be made available to the public. The purpose of this program, on January 18, 1973, will be to explain this revolutionary system of delivering legal services to the public, in hopes that when the plan is fully understood and reflected upon, that members of our local Bar will envision it in the best interest and tradition of the Bar. The law is perhaps

(Continued on Page 2)

JOINT MEETING WITH BROWARD CHAPTER OF CERTIFIED PUBLIC ACCOUNTANTS

SPEAKER: KENNETH W. WHITTAKER

FEBRUARY 12, 1973

OCEANSIDE HOLIDAY INN
A-1-A and Las Olas Boulevard
Fort Lauderdale, Florida

Cocktails: 5:30 P.M. — Cash Bar
Dinner: 6:30 P.M. — $6.00

Mr. Whittaker is a native of New York, where he received his primary education.

He was awarded his Bachelor of Law Degree from American University in Washington, D.C. He is a member of the Bar, and has been admitted to practice in several states and before the Supreme Court of the United States.

He entered on duty with the FBI as a Special Agent on November 26, 1951, and served in Bureau offices throughout the country, working cases in the criminal, Communist and espionage fields. He was designated Special Agent in Charge of the Miami FBI Office in June, 1970.

PLEASE MARK YOUR CALENDAR

Broward County Bar Association
200 S.E. 6th Street
Fort Lauderdale, Florida 33301
525-7236

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Executive Secretary ..... Norma Howard

PRESIDENT'S MESSAGE

In behalf of the Broward County Bar Association, I hope you have had a very happy holiday season and I wish each of you a prosperous New Year.

In spite of all the tragedy in the world about us, we still should count our blessings and look forward to a better year in 1973.

With all of the holiday spirit at this time of year it is difficult to get much work done, however, the wheels of justice must continue to turn and we as lawyers must do our part in keeping the wheels turning.

As you all know, some drastic changes in our Court system and rules of procedure take place effective January 1, 1973. It is anticipated that a certain amount of time will be required to adjust to these changes and there is bound to be some confusion and errors along the way.

As officers of the Court we should make every effort to make the new system work and to assist the Courts and our fellow attorneys as we go along. After the system has been in operation for a while we propose to invite various Judges to our meetings to discuss problems that may have come up and to exchange thoughts and ideas on how to handle any such problems and to further improve the system.

Let's all pass a New Year's resolution to regularly attend Bar meetings and functions in the coming year and thus make 1973 a year to remember.

L. FRED AUSTIN
President

GREENING—LEGAL PROFESSION

(Continued from Page 1)

the most conservative of social institutions and the last to reflect social change. This can be said of the legal profession as well, and as prospective clients amid the general public have found themselves in differing circumstances and changing conditions, the legal profession has failed to develop different and changing arrangements by which people may obtain and pay for legal services.

All of the plans are devoted essentially to the same objectives — making competent legal services available to people of moderate means by improving lawyer accessibility and lowering the cost by spreading it across the broad base of all members subscribing to the plan. No one knows for sure how many prepaid legal plans are presently operating both above and underground throughout this country, since only a few states require registration. Many are sprouting wholly outside the framework of the legal profession and at this point are mostly unregulated by statute or any uniform standards. They are, however, apparently delivering cheap legal services to the public in a manner that they are able to afford. Present estimates are that there are some 2,000 to 4,000 of these plans now operating. Accordingly, the luxury of time is no longer available for the Bar to ponder its approval of the prepaid concept.

Although the public interest must be the controlling factor in the bar's decision on the prepaid concept, the interest of the profession itself deserves considering. The prepaid concept is an effort to bring in people who would be served by lawyers who are not now clients. We are talking about providing new services to new clients. The inevitable results of the prepaid concept are far-reaching indeed. If prepaid or group legal services ever really gets going, it may make it harder for the solo practitioner to make a living, at least off the affairs of lower and middle income people, although not very many lawyers are making a very good living out of that kind of practice anyway, due to the client's near indigency. There are other conceivable results that might occur, such as attorneys may well be required to submit any complaints concerning the quality of their services to peer review or arbitration, or both.

Some of the largest insurance brokerage firms in this country have designed prototype plans providing for complete legal insurance coverage. There is every reason to believe that these policies are at this very moment on the desks of state insurance commissioners across this country for approval. The day is almost upon us when a citizen with a legal problem will walk into your office with a legal services insurance policy. The insurance concept of payment has proved obviously desirable to other professionals like physicians and dentists who are thereby financially able to work and conduct themselves in a dignified manner in the community. The insurance concept has been a "greening" to them in more ways than one. For instance, the California Bar recently found a useful

analogy in a program initiated, directed and controlled by the California Dental Profession, and under which plan, in the year 1970 alone, approximately $49,-000,000 was paid out to participating dentists.

Statistics show that approximately sixty per cent of the families across this nation have incomes of between $5,000 and $15,000. These middle income people are unpoor and unrich. Economic studies have shown that nearly every purchase or expenditure they make above $100 has to be paid in install ments. In our credit economy, these people have found themselves legally indigent when faced with unanticipated legal expenses. Without the Prepaid Legal Plan, accesibility to lawyers by these forgotten clients, and the free choice of an attorney by them, are fictitious concepts. Most people of moderate means have never darkened a lawyer's door except with suit papers. Accordingly, they do not know (1) whether or when they need a lawyer, or (2) how much it will cost. We attorneys then are put in a position of having a product for sale, but we have it gift-wrapped to such an extent that the prospecive buyer does not know (1) whether he needs it, or (2) how much it cost.

In an era of consumerism, public demand is certainly relevant and cannot be ignored. Lately these consumers, both individually and in groups, have generated much fervor and discussion over legal fees. These consumers, especially the groups, are complaining that the cost of legal services and their delivery techniques are much too important to be left up to lawyers. They may be right. They have a growing feeling that the Canons of Ethics preclude the legal system from operating within the capitalist model of efficiency. According to that model, the consumer is supposed to have all of the information he needs to make purchases that are going to best maximize the utility of his limited purchasing power. Where is he going to get that information? In theory he gets it from advertising, which our Canons prohibit. The burden of proof is rapidly shifting, and where the public, or a large segment thereof, wishes to obtain lawyers' services through various Prepaid Legal Service plans that they find beneficial and useful, but which plans are not deemed permissible under traditional prohibitions on law practice, then on such an issue, it is the legal profession's obligation to justify its restrictions, and not the public's burden to prove its need. Some consumer critics of the legal profession have begun to seriously question whether free choice of an attorney is really that important to the consumer-client, who is generally uninformed about attorneys' competence and qualifications, and argue that if the Bar's first duty is to the public interest, the public, if given the choice, might opt for a lawyer selected by an organization if it meant a substantial reduction in the cost of the legal services.

It may make little difference to the public that we think our view is in their best interest, since the public cannot be expected to differentiate between our selfish interest and what it may deem our mistaken notion as to their interest. The public often sees legal ethics and money as closely related. The plain fact is that the profession often appears in the worst possible light when it cannot offer justifiable reasons for rejecting what the public considers to be socially useful and beneficial. If this attitude among the public continues to increase, then lawyers may expect to decline in social utility and to no longer be the bulwark of individual freedom. The future and vitality of our profession lies not in its adroit legal ability to police and resist encroachment by other institutions into its till, but in its own ability to adapt to the present day needs of all members of the public. We delude only ourselves in continuing under anarchronistic rules adopted in and for a time long past, and by failing to establish a working rapport with the vast market of potential clients needful of legal services, which market the prepaid concept is designed specifically to reach. All members of the Broward County Bar Association are therefore sincerely urged to attend the program on January 18, 1973, which will include an explanation and survey of the various plans now operating, the coverage afforded under them, the ethical considerations involved, the recent activities of The Florida Bar in the direction of Prepaid Legal Services, etc.

NOVEMBER MEETING OF THE BOARD OF GOVERNORS OF THE FLORIDA BAR

Several things occurred at the last meeting of the Board of Governors which should be called to the attention of all of the members of the Bar for reaction and response on a local basis.

Rules of Juvenile Procedure

The Supreme Court has requested the Bar to prepare and submit proposed Rules of Juvenile Procedure. The proposed Rules were published in the December issue of The Bar Journal. Please review them and quickly present comments and suggestions to Russell E. Carlisle or to me.

Florida Institute For Judicial Nominating Commissions

It was announced that the Florida Institute for Judicial Nominating Commissions will meet in Tallahassee on February 1 and 2, 1973. The Bar has urged all members of the Judicial Nominating Commissions to attend the institute for the purpose of education and exchange of ideas.

Fee Dispute Arbitrations

The idea of Fee Dispute Arbitration was presented to the Board with the view that many present so-called grievances are actually fee disputes which could be avoided if there were a proper forum in which to hear the dispute. The idea of arbitration was approved in principle and the Board asked the Arbitration of Fee Disputes Committee to develop a plan to present the matter to the membership of the Bar. Of particular concern was whether such a plan should be on a mandatory basis or voluntary basis. There was some thought that any mandatory arbitration would require action of the legislature and that arbitration, if any, would require voluntary submission by both parties to the dispute.

If you have thoughts or suggestions, again please submit them to Russell E. Carlisle or to me so that we will be armed with a cross-section of the local views on this matter prior to the next Board meeting.

JOHN S. NEELY, JR.

CONSUMER FRAUD

By Patricia Cocalis

Consumers are recognizing, and in turn receiving more recognition, of their interests and rights in the courts, in governmental agencies and in state legislatures. Record numbers of cases concerning products which don't work as they should are replacing automobile accidents as the nation's number one cause of litigation. Five years ago 100,-000 court cases were litigated compared to 500,000 cases last year. According to Jury Verdict Research in Cleveland, the percentage of cases in which juries rule in favor of plaintiffs has also risen from 49 per cent in 1965 to 52 per cent this

year. The amount of the average award has also increased from $11,644 in 1965 for household chemical cases to $67,290 in 1969 and, during the same period of time, from $38,112 to $77,763 for cases involving automobiles and trucks.

The consumer is receiving aid and recognition in other areas as well. Governmental agencies having regulatory powers, such as the FDA, FCC and FTC are also becoming more active and vocal on behalf of consumers, their interests, health and safety. Evidence of this can be seen in the decisions involving use of cyclamates, food additives, cold remedy claims and advertisements and safe toys.

Legislators too, are becoming increasingly more concerned with consumers' rights and in addition to those civil and criminal penalties already provided for, have enacted special consumer fraud or consumer protection laws. Florida has enacted Consumer Protection legislation, contained in Chapter 501, Florida Statutes, in addition to special legislation found in other chapters throughout The Statutes.

If criminal penalties are provided for in these statutes and if consumers' interests are involved, the complaints or cases in Broward County will usually fall within the Consumer Fraud Division of the State Attorney's Office. Cases are referred to this Division by local police departments, private attorneys, private consumer fraud agencies and word of mouth. Many of the cases referred are civil, with the majority of complaints involving automotive repairs, home building repairs and additions (including mobile homes) and electronic repairs. They are treated as civil cases because either no criminal penalties have been provided for in the law or the complainant wants his money returned, the work performed in a satisfactory and workmanlike manner, or some remedy other than that provided for under criminal sanctions. Although there is a statute prohibiting charging for auto parts and accessories not furnished or charging for services on motor vehicles not actually performed, the majority of cases received in the Division relate to unauthorized repairs performed in conjunction with authorized repairs, higher charges than the estimate given to the customer or poor workmanship. While future legislation in this area may aid the consumer, he has few remedies available presently.

Home building repairs and additions sometimes involve written contracts, in which case civil remedies are available. More often, however, they are verbal agreements for the performance of certain repairs entailing the use of particular materials. Either the work is never performed, performed badly, or started and not finished. Again, there are no criminal penalties and the consumer usually has to initiate a civil action since he wants his money returned or the job performed satisfactorily.

The consumer fares far better if his complaint deals with electronic repairs because this area is covered quite extensively in Chapter 468.150 of the Florida Statutes, entitled Electronic Repair, with criminal sanctions provided.

It is often a tedious and perhaps expensive experience for the average consumer to obtain and adequate remedy for his problem. Perhaps an arbitration panel consisting of representatives of the industry or company involved, a consumer organization and/or the complainant, a neutral party, in the manner of an arbitrator or mediator, will eventually help solve some of the consumer's problems.

RULES FOR CIVIL PROCEDURE

By Henry J. Prominski

The new rules for civil procedures that will become effective as of January 1, 1973 have some far-reaching and important substantive changes.

Every attorney should make an effort to attend the Continuing Legal Education seminar on these rule changes. For those unable to attend a seminar, I will try and highlight the major procedural changes in this and subsequent Barrister articles.

The new discovery procedures generally conform Florida rules to the Federal discovery rules.

It is no longer necessary to state "good cause" in order to use the discovery procedures. All that is necessary is that the party make a statement that he has not found the material and he is unable to obtain substantial equivalant without undue hardship.

It is also possible under the new rules to obtain conclusions or opinions, however, please take note that when one asks for an opinion in an interrogatory that is just what one will get and it is not admissive of any fact. One may obtain, however, a statement of the facts from which the witness draws his conclusion or opinion.

Expert witnesses are divided into two catagories. Those who are expected to testify at a trial and their discovery is pretty much as it has been. First the interrogatories must be propounded and then the deposition to identify the expert, the subject matter of the testimony, substance of the facts and opinions, and the summary for each opinion.

The second class of experts are those that are advisory and provide a party with the background information for the trial such as an expert of the manufacturer whose product is now being attacked in the courts. Advisory experts who will not be called to trial connot be subjects for discovery except if there are exceptional circumstances.

All experts now are entitled to reasonable fees and expenses whether they are expected to be called to trial or not and the fee may be apportioned at the discretion of the Court.

Rule 1.310 allows deposition notice to be served any time within thirty days of service of process. To depose within thirty days a Plaintiff still needs a court order unless the Defendant pursues discovery procedures.

In Rule 1.280d, there are no longer priorities in discovery except as to experts.

A subpeona duces tecum must list the items required and why you want them provided. If the proper custodian of the record is not known, he may be subpeonaed by class and it is up to the party to furnish the proper person.

Sorry — due to lack of space this month, the balance of the December article on Filing Fees in Probate Court must be held until February.