

The BROWARD BARRISTER

AUGUST, 1979

Volume 8

Number 8

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Executive Offices: 733 Northeast Third Avenue, 305/764-8040, Fort Lauderdale, Florida 33304

NO GENERAL MEETING IN AUGUST

Next General Meeting — September 20, 1979

YOUNG LAWYERS SECTION MEETING

THURSDAY, AUGUST 23, 1979

— 12:00 Noon —

Cafe de Paris

715-A East Las Olas Boulevard
Fort Lauderdale, Florida

Lunch: \$5.00 — Members
\$6.00 — Non Members

Program: "Law Office Management
and Collection of Accounts"

Speaker: Sam Smith

Please make reservations with:
Jesse S. Faerber
Post Office Box 11022
Fort Lauderdale, Fla. 33339

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ATTORNEYS' ALERT

Agricultural Foreign Investment Act Of 1978

As reported in the July issue of the Real Property Probate and Trust Law Section Newsletter, this Act requires that all aliens who own or acquire, directly or indirectly, an interest in "agricultural land" must report such ownership by August 6, 1979 or such acquisition within 90 days of the acquisition. This report must be filed with the USDA (ASCS) local office in the County where the land is located.

The penalty for violation is up to 25% of the value of the interest. For further details see 7 USC §3501-3508 and 7 CFR §781.

John Hume

Corporation, Banking and Business Law Section Meeting

Thursday, August 9, 1979

— 4:30 P.M. —

TOWER CLUB
One Financial Plaza
Fort Lauderdale, Florida

PROGRAM:

Florida's New Usury Laws,
a Practitioner's Perspective

SPEAKER:

Max Wallace, Esq. of English,
McCaughan and O'Bryan

DISCUSSION:

The Proposed Broward County
Lobbying Ordinance (Public Hear-
ing is scheduled for August 15,
1979)

Refreshments: Wine and Cheese

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LEGAL ETHICS COMMITTEE

Each month the Legal Ethics Committee will contribute to the *Barrister* opinions of The Florida Bar Professional Ethics Committee recently supplied to the local committee. Only opinion headnotes will be supplied; the full opinion may be found at the County Law Library or at the office of the Broward County Bar Association.

OPINION HEADNOTES

OPINION 76-11
December 19, 1977

It is ethically improper for attorneys who share office space and secretarial services to hold themselves out as a partnership unless they are in fact partners.

An attorney whose practice includes criminal defense work and who shares

office space and secretarial services with other attorneys who are part-time assistant public defenders, may continue such an arrangement if the Public Defender's Office refers persons who do not financially qualify for its services to a Lawyer Referral Service, rather than to individual private attorneys.

CANONS: 9

C. P. R.: EC 2-13, DR 2-102(C), DR 2-103(C) and (D)

OPINIONS: 70-14, 72-38, 75-23

STATUTES: 27.51(3), Florida Statutes

MISC.: Attorney Gen. Opinions 069-108, 072-208

Chairman Lehan stated the opinion of the committee.

OPINION 77-3

February 14, 1978

If an attorney rents office space from another attorney and performs legal research and other services on an hourly basis for the other attorney, the two may not serve as opposing counsel in uncontested divorce proceeding or (b) execute affidavits or testify concerning reasonable attorneys fees in contested matters for each other.

CANONS: 9

C. P. R.: EC 5-2, EC 5-9, DR 5-101(A)

OPINIONS: 70-15, 76-41; ABA Informal Opinion 995

Mr. Livingston stated the opinion of the committee

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Report of the Meeting of the Board of Governors July 1979

The Board of Governors of the Florida Bar met at Captiva Island on July 12, 13, and 14, 1979.

The Thursday morning session was

Broward County Bar Association
733 N.E. Third Avenue
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Harry G. Carratt *Pres.-Elect*
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the Fifteenth Judicial Circuit

spent in executive session for the consideration of disciplinary actions and the administration of necessary private reprimands.

This was the first meeting presided over by the new president of The Florida Bar, L. David Shear. President Shear welcomed nine new members of the Board of Governors, including Drake M. Batchelder from the Seventeenth Circuit. President Shear indicated that he would soon institute a new procedure for reporting attendance of Board members at Board of Governors meetings in the Florida Bar News.

After nominations, discussion and an election, three nominations for each of the two vacancies on the Florida Board of Bar Examiners were recommended for selection by the Supreme Court.

Former President Ed Adkins in behalf of the Long-Range Planning Committee announced that it would hold a retreat March 28 through 30 of 1980 by a group of from 90 to 125 participants, to consist of 70%-80% lawyers and the rest laymen. The aim is to have a good mix from lawyers throughout the state, with only a maximum of 10 (probably 5 to 7) members of the Board of Governors. The site currently under consideration as the most likely meeting place is Dodgertown in Vero Beach. The purpose of the retreat will be to come up with a workable long-range plan.

Several new plans for prepaid legal services were approved.

Several members of Judicial Nominating Commissions were elected, including Marjorie Gadarian, who was elected to serve on the Nominating Commission for the Fourth District Court of Appeal to replace Fred Ward from Orlando, who will go out of office once the Fifth District Court of Appeal is established.

The new Florida Juvenile Procedure Rules were approved by the Board of Governors with the exception of an amendment inserting "mental retardation" in rule 8.170.

An amendment to the standing policies of the Board of Governors was passed permitting any number of the Bar to submit his name directly to the executive director for consideration for nomination for any position elected by the

Board of Governors when a vacancy occurs and, further, provide maximum periods of service generally geared to preclude the perpetuation of persons in office in any position and setting limits on the term which they can serve.

A recommendation of the Budget Committee that expenses of Board of Governors members be reimbursed commencing July 1, 1980, was defeated by a substantial vote.

Action was taken to change the name of the Workmen's Compensation Section to "Workers' Compensation Section" in compliance with the new designation for this field established in the last session of the legislature.

Immediate past president, Robert L. Floyd, was elected by acclamation as The Florida Bar's delegate to the House of Delegates of the American Bar Association.

The Disciplinary Review Committee recommended that a "model plan" for fee arbitration be routed to local Bar presidents for their input for later consideration by the Board of Governors. It appears imperative that such plans be adopted on a statewide basis to comply with the expressed desires of the Supreme Court.

A proposed amendment to the integration rule was adopted and recommended to the Supreme Court to provide for the notification of partners, associates, and employed attorneys of any alleged violations involving the trust fund of a law firm.

A new by-law 11.11 was adopted to comply with the new wording of the Supreme Court's order on the Karl Committee report pertaining to petitions for reinstatement to membership.

At the request of the Circuit Judges' Conference, it was decided to set up panels of volunteer lawyers in the various circuits to represent judges involved in any orders limiting press coverage on trials, or appeals therefrom, resulting from the new procedure established by the Supreme Court for immediate appeals by the press. We will be calling on our fellow attorneys to serve on these panels and would welcome any names volunteered or suggested for such service. These panels are to be established by

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the next meeting of the Board of Governors scheduled in September.

Ron Richmond of New Port Richey gave the report of the Unauthorized Practice of Law Committee and procedures were considered to more expeditiously dispose of the 235 cases currently being investigated at the circuit level throughout the state. We will be meeting with the local committee chairmen regarding this.

The Board authorized President Shear to attempt to find federal funds for a study to determine ways to provide better legal services to indigents as mandated by the Supreme Court and authorized the use of \$17,500 for such a study if federal funds cannot be located.

President Shear announced the ap-

pointment of Mike McNerney and Judge Hugh Glickstein, both of our circuit, to the coming year's Budget Committee. This is a very important committee, and we are happy to have such fine representation from this circuit.

President Shear announced that as soon as details can be worked out, Poe and Associates will be mailing out the prospectus for the issuance of 6 percent debentures to fund the Florida Bar's new reciprocal self-insurance program. It is imperative that we support this program and purchase these debentures in the amount of \$300 each to permit us to become self-insured for malpractice insurance.

Certain changes asked by the Environmental Law Section in its by-laws were approved by the Board.

In the last item of business, the president of The Florida Bar was authorized to contact the Florida Bar Examiners to see if they wish to file an amicus brief in the Dasher case, which involved a ruling of a Federal District Court that a graduate of a law school not accredited by the American Bar Association could not be denied the right to take the Bar exam. If the Bar Examiners do not elect to file an amicus brief, the president was authorized to designate someone to file one in behalf of The Florida Bar. This case does not involve The Florida Bar examination, but could have wide-reaching effect on all state Bars.

O. Edgar Williams, Jr.
Hugh S. Glickstein
Drake M. Batchelder

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NOTICE OF BAR GROUP MEETINGS

Date	Organization	Location	Time
8/17/79	Federal Bar Assn. (For reservations, call Pat Barry 462-3301)	Riverside Hotel 620 E. Las Olas Blvd. Ft. Lauderdale, FL	12:00 Noon
8/14/79	North Broward Bar Assn.	Flaming Pit Restaurant 1150 N Federal Hwy. Pompano Beach, FL	12:00 Noon
8/22/79	Broward County Legal Secretaries Assn. (For reservations, call Muriel Kennedy 462-3301)	Social meeting Oakland Dinner Theatre 4850 W. Oakland Pk. Blvd. Ft. Lauderdale, FL	7:00 P.M.
8/9/79	South Broward Bar Assn.	Emerald Hills Country Club 4100 N. Hills Dr. Hollywood, FL	6:30 P.M.

Procedural Tips and Queries

Writ of Possession Against Bankrupt

Tenants Ms. A and Mr. B (a single man and single woman living together), were three months delinquent in rental payments. Suit was brought in Palm Beach County Court for eviction and damages, Mr. B. filed a Suggestion of Bankruptcy in the suit. Ms. A did not. The complaint was amended to seek damages from Ms. A. only and eviction of both tenants. Landlord's Proof of Claim was filed in the U.S. District Court against Mr. B. Counsel for Defendants in County Court then stipulated to issuance and service of a Writ of Possession against and on Defendants. The County Court ordered issuance and service of the Writ.

The Palm Beach County Sheriff's Department refused, on advice of its counsel, to serve the Writ on Mr. B, serving only Ms. A.

Sheriff's counsel maintained that while Bankruptcy Rule 401 appears to be

Date	Seminar	Place	Sponsor
Sept. 10, 1979 thru Sept. 13, 1979	Comparative Legal Seminar The Legal Systems of South America & the United States Registration Fee: \$195.00	Pier 66 Ft. Lauderdale	Nova University Law Center
Oct. 5-6, 1979	Fourth Institute on Condominium & Cluster Housing Registration Fee: \$100.00	Eden Roc Hotel Miami Beach	University of Miami Law Center

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worded so that the automatic stay applies of liens, the stay currently being issued by the U.S. District Court is broad enough to encompass evictions: *Badger Lumber Co. vs. St. Louis-San Francisco Ry. Co.*, 89 S.W. 2nd 954, 338 Mo. 349 (permitting ejection where no judgment for damages was sought) was decided under the prior language of the Rule; the U.S. District Court's Stay takes precedence over the County Court's judgment of Eviction; Defendants' counsel cannot by Stipulation waive the rights of the Trustee in Bankruptcy, and Plaintiff's remedy is to apply to Federal Court for a dissolution of the Stay for the particular purpose of the eviction of Mr. B.

A spokesman for the Broward County Sheriff's Department, Civil Division, stated that in Broward County, the Writ against Mr. B. would be posted, but not executed.

Again the questions are those of basic fairness and interpretation of law. Do the current Federal Court stays comply with the intent of Rule 401? Are the Sheriff's Departments justifiably fearful of a suit by the Trustee in Bankruptcy or of contempt proceedings in Federal Court? Does prevailing procedure unduly and unnecessarily restrict landlords

whose tenants file for Bankruptcy?

Alan J. Pollock

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Law Day U.S.A. Committee

Judge Morton L. Abram, Chairman Law Day, U.S.A. Committee, is requesting that all members of the Broward County Bar who will be willing to assist in planning activities for Law Day, U.S.A. on May 1, 1980 to join the Committee as soon as possible. Anyone who has any ideas who might be willing to spend a little time to make next year's event a success should join up now.

Law Day, U.S.A. has become a most important activity of local Bar Associations throughout the Country. If plans are formulated and implemented well in advance, the Broward County Bar Association should be in a position to make next year's observance a meaningful and rewarding experience which will reflect credit upon all members of the Bar.

Anyone who wishes to assist in this worthy endeavor should contact Judge Abram by telephone, 765-4739, or Norma Howard, 764-8040.

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WELCOME NEW MEMBERS

ALAN R. ARONS, a native of New York City, received his undergraduate degree from Syracuse University and his law degree from Stetson University. He practices alone in Lauderhill.

JAMES H. BABKES, a native of Brooklyn, N.Y., received his undergraduate degree from Hofstra University and his law degree from Cumberland School of Law. He is associated with Joseph Schmier in Hallandale.

ROCHELLE J. DANIELS, a native of New York, N.Y., received her undergraduate degree from City College, CUNY, and her law degree from

Brooklyn Law School. She is associated with Broward Employment and Training Administration (BETA), Ft. Lauderdale.

STEVEN W. EFFMAN, a native of New York, N.Y., received degrees from the University of Massachusetts and Hofstra University and received his law degree from John Marshall Law School. He practices alone in Ft. Lauderdale.

GARY M. FADER, a native of New York City, received his undergraduate degree from Oberlin College and his law degree from Stetson University. He is associated with the firm of Pallotto, Weir & Hayson in Hollywood.

BRUCE HURWITZ, a native of Worcester, Mass., received his undergraduate degree from Kent State University and his J.D. from New England School of Law and his L.L.M. from Temple University School of Law. He is associated with the firm of DiGiulian, Spellacy & Bernstein in Fort Lauderdale.

ROBERT S. KLEINMAN, a native of Newark, New Jersey, received his undergraduate degree from the University of Rochester and his law degree from Rutgers University. He practices alone in Deerfield Beach.

JOHN F. O'DONNELL, a native of Cleveland, Ohio, received his undergraduate degree from Boston College and his law degree from Georgetown University Law Center. He is associated with Marc S. Nurik in Plantation.

EDWARD P. PHILLIPS, a native of Miami Beach, Florida, received his undergraduate degree from the University of Miami and his J.D. from the University of Florida and his L.L.M. from New York University. He is a Professor of Taxation at Florida International University, North Miami.

DAVID HEINY (FT. LAUD.)	522-8500
PETER KACZOR (HALLANDALE)	457-8500

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