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JANUARY 1986

Volume 15

Number 1

### **Annual Dinner Honoring the Legislative Delegation**

Thursday, January 23, 1986

Pier 66 Hotel / Panorama Room 2301 S.E. 17th Street / Fort Lauderdale, Florida

Cocktails 6:30 P.M.—Cash Bar

Dinner 7:15 P.M.

Price \$25.00/Person

Speaker: To be announced

Reservations are necessary. Please return the enclosed reservation card by January 20, 1986. Reservations made and not cancelled by January 20, 1986, must be paid if guarantee is not met and the Bar is charged for dinners.

#### Assault on Joint and Several Liability

by Lavon Ward

Insurance lobbyists will make a concerted effort to abolish joint and several liability during the forthcoming legislative session. The campaign to blame rising insurance rates, in part, on this doctrine is already well under way. There is no factual nor legal basis for this assault and the consuming public, as usual, will end up as losers if we lawyers don't take a strong stand to prevent this charade from happening.

Under present law, joint tortfeasors may be sued jointly or action may be taken against one alone for they are severally and jointly liable. While it is difficult to postulate a rule that will cover all cases, generally persons who combine to commit a wrong are joint tortfeasors and are responsible for the acts of each other (our emphasis). Where there is a common duty and by common neglect of that duty another is injured, there is a joint tort with joint and several liability. To change this doctrine is to change the long standing and well principled law of this state.

For several reasons, there is no need to change the law. Joint tortfeasors should be responsible for the acts of each other. Further, the cases cited by the lobbyists are isolated. There is and will be no proof that these isolated cases cause increased

rates. Most important of all, the law as it presently exists has developed over the years to protect the consuming public.

It should also be pointed out that joint tortfeasors have a right to contribution under present Florida law. F.S. 768.31. This right exists in favor of a tortfeasor who has paid more than his pro rata share of the common liability. Also, the cited statute makes it clear that no tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability. Neither does this law impair the liability insurer's subrogation rights. In a recent Miami Herald article two cases were cited as examples where all or most of the money was collected against the wealthiest tortfeasor. In each case the tortfeasor who paid the judgment was entitled to contribution and/or subrogation.

In conclusion, the arguments made by the insurance lobbyists to eliminate joint and several liability are either false or misleading and we in the legal profession should fight against these proposed changes. For once the public should be made aware of the real reason our insurance rates are skyrocketing. As pointed out in the Herald every time there is a downturn in interest rates, the insurance companies are forced to raise their rates and cancel policies. Let's don't let the insurance lobbyists tell us that the cause of rate increases is the doctrine of joint and several liability.

#### **Notice of Change** in Ex-Parte Hours

Commencing January 6, 1986, Probate Division Judges Raymond J. Hare and William Clayton Johnson will hear exparte applications on Mondays and Thursdays, from 9:30 A.M. to 10:00 A.M. Urgent matters only will be heard, i.e., those in which manifest injury will be done if immediate relief is not afforded.

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#### Motion Calendars Suspended

Judge	From	Through
M. Daniel Futch, Jr.	December 23	January 6
Eugene S. Garrett	December 23	January 7
Louis Weissing	January 6	January 9
Bobby W. Gunther	January 20	January 23
Bobby W. Gunther	January 27	January 30
Bobby W. Gunther	February 3	February 6
Bobby W. Gunther	February 10	February 13
Bobby W. Gunther	February 17	February 20

#### Schedule of Circuit Court Civil Division and Criminal Division Duty Judges

The following assignments are for Circuit Court Civil Division Duty Judge:

Week Commencing	Judge
January 3	Eugene S. Garrett
January 10	Estella M. Moriarty
January 17	George W. Tedder, Jr.
January 24	M. Daniel Futch, Jr.
January 31	. Robert L. Andrews
February 7	Louis Weissing

The following assignments are for Circuit Court Criminal Division Duty Judge:

Week Commencing Judge
January 3 . . . . Robert W. Tyson, Jr.

January 10 . . . . Stanton S. Kaplan
January 17 . . . Lawrence L. Korda
January 24 . . . . Russell E. Seay
January 31 . . . . Thomas M. Coker, Jr.

February 7 . . . . . Leroy H. Moe

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#### Designation of Judicial Officers For Weekend First Appearance Proceedings

Date	Judge
January 4, 5	William Clayton Johnson
January 11, 12	Stanton S. Kaplan
January 18, 19	Brian P. Kay
January 25, 26	Lawrence L. Korda
February 1, 2	J. Cail Lee

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Firm:	·
Address:	
City: Stat	e: Zip:
Date of Birth:	
City: Stat	e:
Schools Attended:	Degree:
	**************************************
Date of Graduation from Law Sc	hoo1:
Florida Bar No.	
Date Admitted to Practice in F	lorida:
Other Bar Memberships:	
Languages:	

Please return to:

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#### Young Lawyers Section President's Message

As you know from the accompanying article, the judicial reception is fast approaching. Melanie May's social committee has worked hard to make this year's reception the most successful one yet. We look forward to seeing all of you there.

Other projects for the new year include a seminar for new lawyers, which is being coordinated by Glenn Leonard, our annual softball league and finally our spring beach party. We are also arranging a presentation by the Affiliate Outreach Project of the American Bar Association's Young Lawyers Division to assist us in getting a public service project off the ground for law week in May. Anyone interested in participating in that project in the spring should contact me immediately so that we can make arrangements to include you in the affiliate Outreach Project presentation which we hope to have some time in

On behalf of the Young Lawyers I would like to congratulate Bill Zloch on his appointment as a U.S. District Judge for the Southern District of Florida. I know that he will do an outstanding job on the bench, and we all wish him much success in his new career.

On the other side of the fence, Judge Mark Purdy, who has distinguished himself as a Broward County Circuit Judge for the past several years, has resigned and will be entering private practice with Murray Sams in Fort Lauderdale. I am sure all of the Young Lawyers would also want to join me in wishing Judge Purdy well in his new endeavor.

D. David Keller

#### **Young Lawyers Section** Judicial Reception

It's coming! On February 6, 1986, at 6:00 P.M., the Young Lawyers Section of The Broward County Bar Association will host its third annual judicial reception. The purpose of the reception is to honor all state and federal judges serving Broward County, Florida. Personal invitations to this year's reception will be extended to all Circuit Court and County Court judges of the Seventeenth Judicial Circuit, Fourth District Court of Appeal judges, Florida Supreme Court judges, and all federal judges serving Broward County.

This year's reception will be held at the Marriott Harbor Beach, located at 3030 Holiday Drive, Fort Lauderdale. The reception is scheduled from 6:00 to 8:00 P.M. There will be an admission charge of \$10.00 per person.

All reservations must be confirmed by January 20, 1986. To confirm your reservation, please send your check and reservation card to Melanie G. May, Bunnell, Denman & Woulfe, P.A., 1080 S.E. 3rd Avenue, Fort Lauderdale, Florida 33316. We must receive your reservation by January 20! No reservations will be accepted by phone.

In order to defray the cost of the judicial reception, the Young Lawyers are asking both firms and individual practitioners to assist in sponsoring this event. As in the past, all contributions will be acknowledged at the reception and the following designations will be assigned according to the amount of contribution:

Justice Contributor Barrister Contributor Solicitor Contributor

\$500.00 or more \$200.00-\$499.00 less than \$200.00

Please send all contributions directly to Gerald Morris, Treasurer of the Young Lawyers Section. His address is: 1750 E. Sunrise Boulevard, Suite 302, P.O. Box 4078, Fort Lauderdale, Florida 33338.

To properly prepare the reception, the Young Lawyers Section requests that contributions be sent as soon as possible, but not later than January 20. Any monies received after that date cannot be guaranteed recognition at the reception.

Those firms contributing to the judicial reception will receive one free admission ticket for every \$50.00 contributed. It will still be necessary, however, for all those planning on attending to send in a reservation card. If your firm has contributed funds, please indicate this on the reservation card in the designated area.

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#### Welcome New Members

MICHAEL BERAHA, a native of Haifa, Israel, received his undergraduate degree from State University of New York and his law degree from University of Miami. He is associated with Hasey & Beraha in Fort Lauderdale.

EDWARD DAVID BERGER, a native of Philadelphia, Pennsylvania, received his undergraduate and law degrees from University of Miami. He is associated with Lyons & Sanders in Fort Lauderdale.

EDWARD de R. CAYIA, a native of Ota, Japan, received his undergraduate degree from Florida Atlantic University and his law degree from Nova Law Center. He is a sole practitioner in Fort Lauderdale.

JOHN S. DOWDS, a native of Glen Cove, New York, received his undergraduate degree from Emory University and his law degree from Vanderbilt University. He is associated with McCune, Hiaasen, Crum, Ferris & Gardner in Fort Lauderdale.

**DOUGLAS P. JOHNSON**, a native of Providence, Rhode Island, received his undergraduate degree from University of Rhode Island and his law degree from Nova Law Center.

DONALD JOSEPH LUNNY, JR., a native of Fort Lauderdale, Florida, received his undergraduate degree from Vanderbilt University and his law degree from Stetson University College of Law. He is associated with Lunny, Tucker, Karns & Brescher in Fort Lauderdale.

RALPH M. MARTIN, a native of Brooklyn, New York, received his undergraduate degree from Bucknell University and his law degree from Nova Law Center. He is associated with Oltman and Flynn in Fort Lauderdale.

MARIA CRISTINA NOVO, a native of Havana, Cuba, received her undergraduate degree from Brown University and her law degree from Rutgers University School of Law. She is associated with Nova Law Center in Fort Lauderdale.

JENNIE E. POORE, a native of Fayetteville, North Carolina, received her undergraduate degree from Emory Univesity and her law degree from Nova Law Center. She is a sole practitioner in Plantation.

**MICHAEL M. RASKIN**, a native of Brooklyn, New York, received his undergraduate and law degrees from University of Miami.

LIANA SILSBY, a native of New York, New York, received her undergraduate degree from Duke University and her law degree from University of Florida. She is associated with George, Hartz & Lundeen in Fort Lauderdale.

LINDA RAE SPAULDING, a native of Columbus, Ohio, received her undergraduate and law degrees from Florida State University. She is associated with Brinkley, McNerney & Morgan in Fort Lauderdale.

WILLIAM W. SYDNOR, a native of Honolulu, Hawaii, received his undergraduate and law degrees from Florida State University. He is associated with Fleming, O'Bryan & Fleming in Fort Lauderdale.

HOWARD ALAN TESCHER, a native of Miami Beach, Florida, received his undergraduate degree from Florida International University and his law degree from Nova Law Center. He is associated with Kopelowitz, Atlas, Pearlman & Trop in Fort Lauderdale.

HENRY T. WIHNYK, a native of Flushing, New York, received his undergraduate degree from Florida Atlantic University and his law degree from Nova Law Center. He is associated with Weaver, Weaver, Lardin & Liroff in Fort Lauderdale.

JOHN F. PAULIN, JR., a native of Queens, New York, received his undergraduate degree from Queens College

(Continued on Page 5)

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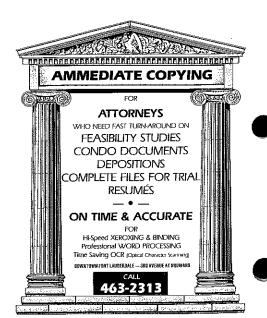
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(Continued from Page 4)

and his law degree from Nova Law Center. He is associated with Dunn & Corey in Hollywood.

LISETTE M. SAULEDA, a native of Havana, Cuba, received her undergraduate degree from Florida International University and her law degree from Nova Law Center. She is associated with Dunn & Corey in Fort Lauderdale.

ADRIENNE E. SKINNER, a native of Munich, West Germany, received her undergraduate and law degrees from University of Florida. She is associated with Dunn & Corey in Fort Lauderdale.

BARBARA K. SUNSHINE, a native of Lima, Ohio, received her undergraduate degree from Ohio University and her law degree from Nova Law Center. She is associated with Max D. Puyanic in Miami.

MARK S. ULMER, a native of New Orleans, Louisiana, received his undergraduate and law degrees from University of Florida. He is associated with Brigham, Moore, Gaylord, Schuster & Sachs in Fort Lauderdale.

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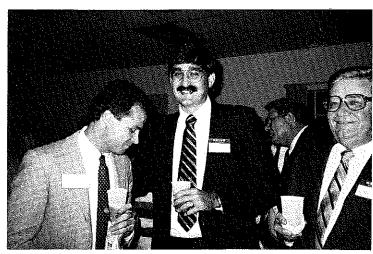
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Board of Realtors, Real Property Section Cocktail Party December 12, 1985

#### Circuit Civil Caseload Report As Of December 20, 1985

Submitted by the Court Administrator's Office

#### SETTING TIME

DIVISION	JURY TRIALS (5 days or less)	NON-JURY TRIALS (2 days or less)	MOTIONS (30 minutes or less) excluding motion calendar
Circuit Court Judges	months	months	weeks
James M. Reasbeck	8	3	6
Paul M. Marko III	4	3	4
J. Cail Lee	8	6	9
Gene Fischer	6	2	2
W. Herbert Moriarty	4	3	3
Barbara Bridge	2	2	4
Joseph E. Price, Jr.	6	2	7
George Shahood	4	2	5
Eugene S. Garrett	2	2	4
Mel Grossman	6	6	9
Robert C. Abel, Jr.	3	2	15
Estella M. Moriarty	4	2	5
Linda Vitale	3-4	1	1
Bobby W. Gunther	4	4	13
Robert L. Andrews	4	4	6
Robert C. Scott	3	2	2



California Federal Savings & Loan Cocktail Party December 6, 1985.

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### **Bench-Bar Conference Workshop Reports**

Broward County Bar Association held its Third Annual Bench-Bar Workshop on November 22, 1985. The workshops address five areas of practice, and the following reports were submitted by the group leaders:

#### Civil Division

#### By Terrence Russell

Meeting was called to order by Terry Russell with 16 civil litigation participants in attendance including the Honorable Patricia Cocalis. There were four major areas of discussion including the following:

- A. The present status of the litigation concerning the Broward County jail overcrowding issue, and the availability of competent counsel to defend our Chief Circuit Judge Miette Burnstein in the event she is named as a party defendant.
- B. A concern that the Broward County jail overcrowding issue is being presented to the public based upon the political desires of present defendants, instead of facts and statistics.
- C. The present status of Broward County Circuit Court's compliance with the time standards issued by the Chief Justice of the Supreme Court through the administrative order dated April 12, 1985.
- D. The present working relationship between the Bench, the Bar and the administrative staff of the Seventeenth Judicial Circuit Clerk's office.
- I. With regard to the first topic of discussion, there was a definite concern among the members of the committee that the Chief Judge of our Circuit Court was being pulled into the jail overcrowding issue because of the political power of other named defendants. Our committee was concerned with the fact that the Attorney General's office would normally provide counsel to represent the Chief Judge when named as a party defendant. In the instant situation, there may be two specific problems with regard to the Attorney General's appearance on behalf of Judge Burnstein.
- 1. The Attorney General's office may have a conflict of interest due to their present involvement in this litigation.
- 2. The Attorney General's office may not provide the best representation possible for our Chief Judge.

It was discussed that the Broward County Bar, pursuant to the requirements of the Code of Professional Responsibility, come to the aid of Judge Burnstein in the event that is necessary. It was discussed that a coalition of firms may be the best manner in which to represent both the Bar and our Chief Judge. Members were concerned that the potential

funding for the defense for Judge Burnstein come either through the Attorney General's contingency fund or through the contingency fund of the Broward County Bar Association. It was hoped that in the event that no funds would be available for fees, perhaps funds could be found for payment of costs with the defense itself being provided on a probono basis by appropriate firms from our local bar.

Resolution: A resolution was agreed upon recommending to the executive committee that if counsel is not available to the Chief Judge of the court, that the Broward County Bar provide voluntary counsel from one or more firms to represent the interests of the Chief Judge and/or the court both in litigation and to the media, provided that first the bar explore whether any funds might be available from the Attorney General's office or the State Court Administrator's office or any other source for the payment of fees and expenses.

II. The jail overcrowding political procedures: With regard to the jail overcrowding issue as it has been presently presented to the public, our group was concerned that the Chief Judge of our circuit is being made a target for blame due to her relative political weakness as compared to the political structure of the other named defendants. Statistics provided by members of our discussion group indicate that the present criminal case load has not changed over the last five years and that those cases are being processed properly. There was discussion about the fact that Broward County has a history of failing to provide appropriate funds for the necessary iail beds for a community of our size. Our community has grown to 1.2 or 1.3 million people yet we rank at or toward the bottom of counties in the state of Florida in regard to number of jail beds compared to our county population. Because of the relatively weak political structure provided by our system of government to the judiciary in general, and more specifically to the Chief Judge as pertains to this problem, a discussion was had relative to the necessity of providing the public with the actual and verifiable facts and statistics relative to the jail overcrowding issue.

Resolution: A resolution was agreed upon recommending to the executive committee of the Broward County Bar Association that the bar president gather the actual facts and statistics on the jail overcrowding issue. After review of same, we feel it is the Bar's responsibility to make a statement through press release disclosing the basis of the jail overcrowding problem and the Bar's position relative to same.

III. Litigation timetables: Discussion was had relative to the administrative order of the Chief Justice of the Florida Supreme Court for timetables for processing litigation. Our group was concerned with whether case management should be left to the litigants as has historically been done in our county or whether case timetables should be standardized through a management program keeping cases on a timetable except under exceptional circumstances. Our group was advised that the Broward County Fast Track program has been abolished. We are concerned that at the end of a two or three year period, we may be embarrassed by our relative compliance with the Supreme Court's mandate. The Honorable Herbert Moriarty and the Honorable Estella May Moriarty joined the discussion group and with Judge Cocalis presented a general feeling that more than half of the cases presently in litigation in the civil division are being handled within the guideline timetables. The reasons for delay on the remaining portions of the cases handled vary from the complexity of the issues, which is a recognized exception to the Supreme Court's order, all the way to the relative experiences of counsel appearing on behalf of their clients and a conscious or subconscious desire to keep cases from actually being tried. The consenus of the group is that our community has grown to a point where we no longer have the luxury of allowing counsel to control the progress of the case.

Resolution: A resolution was passed recommending to the executive committee of the Broward County Bar Association that our Bar encourage the court to create a judicial management program to move cases in a timely manner in compliance with the administrative order of the Chief Justice of the Supreme Court. It is our belief that this action will essentially remove the case progress timetables from counsel's discretion to that imposed by the management body except under exceptional circumstances as presented to the trial court.

IV. Court administration: There was great discussion with regard to the present administrative support staff provided to the Broward County judiciary. Discussion was had as to whether or not judicial administration functions should be accountable to the judges or our circuit as opposed to their present accountability to the political structure of the Broward County Clerk's office. Insight was provided by the Honorable Harry Anstead from the Fourth District Court of Appeal. The Fourth District Clerk's office and the Supreme Court Clerk's office are responsible directly to the judiciary. A discussion was had relative to the present status of the Broward County Clerk's office and the administration of its case load. It was noted that if, in fact, deficiencies exist with regard to the administration of the case load from the clerk's office, those specific deficiencies should be defined and appropriate proposals for a resolution of those specific problems should be addressed. Judge Estella Moriarty enlightened the group on a computer system observed by her in Pinellas County and indicated that the Broward County civil division is scheduled to be computerized by May or June of 1986. Judge Moriarty indicated that a number of routine functions including case reporting and docket deletions for Final Judgments, dismissals due to settlement and dismissals for want of prosecution could be handled by the new computer system taking a great deal of work load away from our judges and their judicial assistants.

Resolution: The group agreed upon a resolution recommending to the executive committee of the Broward County Bar Association that the presently standing court's committee create a sub-committee for liaison purposes with the clerk's office, for the specific purpose of identifying areas of possible improvement with regard to case management.

The meeting was concluded at 4:00 and an oral summary of the above was presented to the entire Bench Bar Conference.

These minutes were reported by David Wm. Boone, Esquire, under the supervision of the group chair, Terrence Russell, Esquire.

#### Criminal Division

#### By Harry Gulkin

At the workshop session of the Criminal Division held on Friday, November 22, 1985, notable officials and members of the judiciary participated in a lively discussion.

Those present included Judge Harry Anstead and Judge Dan Hurley (4th DCA); Judge Barry Stone (Administrative Judge of the Criminal Division of the 17th Judicial Circuit) and County Court Judge Harvey Ford; Michael Satz (Broward County State Attorney); Alan Schreiber (Broward County Public Defender); Hilliard Moldof (President, Broward County Criminal Defense Attorneys Association) and other criminal defense attorneys and members of the State Attorney's Office.

Of course, focus was centered on the topic of overcrowding of the new detention facility as well as the perpetual clogs in the daily scheduling of criminal trials and court hearings.

Analyzing the issue of crowded dockets as well as the crowded jail, we were able to reach general agreement by all sides that all the blame should not be placed on the defense attorneys, public or private.

Cases are continued by the defendants primarily because the defense attorney has not completed discovery. A prevalent problem is in getting law enforcement officers to honor subpoenas that are accepted by the agency's liaison officer with regard to depositions.

Because so many police officers fail to appear for a scheduled deposition, the defense attorney is compelled to request a continuance while filing a motion for sanctions against the non-appearing witness.

The general consensus of the discussion group was that the trial judges are not imposing sanctions when it is warranted.

Accordingly, the criminal division urges the Courts Committee to implore all trial judges assigned to the criminal division to not tolerate blatant disregard by a witness who was served but failed to appear at the deposition.

The discussion group further would endorse a schedule that would have calendar calls for trials begin at 8:30 A.M. or, in the alternative, have a staggered time for the commencement of court among the trial judges, thereby allowing the private attorneys the opportunity to be in more than one courtroom at the same time!

Additional procedures discussed and endorsed in the anticipated easing of congested calendar calls and trial dockets are the following:

- 1. Do not schedule a high number of cases on any single status conference day because of the inordinate amount of time to reach every attorney in the courtroom.
- 2. Attach the NCIC sheet obtained for each defendant appearing in Magistrate Court to the probable cause affidavit. It was the hope of the discussion group that the information contained in the NCIC sheet could cause immediate reduction in bond thereby reducing (a) jail overcrowding on the basis of inability to make bond and (b) additional court's time to hear motions to reduce bond.

- 3. Decide the length of a continuance on a case by case basis rather than a standard three or five week automatic continuance.
- 4. Discuss and agree upon the possible sentence under the guidelines before entering a plea to the charge.
- 5. Dispose of cases that are being handled by private attorneys first to allow them more freedom of movement throughout the courthouse.

In summary, the several hours of discussion and, at times, debate generated a genuine unified voice to speak to the administrative problems facing our division on a daily basis. With the present 3,700 felonies pending in our judicial circuit, the group concluded by expressing hope that the trial judges will attempt to implement the described recommendations in these matters of mutual interest and concern.

### Domestic Relations Division By James Fox Miller

The workshop was very well attended with approximately 30 lawyers and judges spending all or a substantial part of the available time at our meeting. Unfortunately, the "Bar" was much better represented than was the "Bench." All four of the circuit judges who attended are all highly regarded by the Domestic Relations Bar. These judges contributed greatly to the discussion as did several of the judges from the Fourth District Court of Appeal. However, the lack of attendance by many other of our circuit judges led Judge Hurley to suggest that the Chief Judge of the Circuit enter an administrative order declaring a court holiday for the Bench-Bar Workshop, and requiring all of the circuit judges to attend. This suggestion was very well received as it is much more difficult to resolve Bench-Bar problems when the lawyers are basically talking among themselves.

**Recommendation:** Something needs to be done to encourage better attendance at the Bench-Bar Workshop by the Judges.

There is no uniformity concerning the manner in which circuit judges are handling the referral of matters to the General Masters. Rule 1.490(c) states, in part, that no reference shall be made "without the consent of the parties." Judge Estella M. Moriarty addressed this issue and pointed out that there were basically three ways in which the judges were handling referrals:

- 1. That the objection was considered waived if no objection was filed.
- 2. That the objection was considered waived if no objection was filed by the time of the hearing.
- 3. That a consent to the referral had to be obtained before the referral could be made.

The majority of the judges were following the first alternative and relying on Slatcoff v. Dezen, 74 So.2d 59 (Fla. 1954) for the legal proposition that failure to make timely objection constitutes tacit consent to the referral. Those present did not unanimously agree with the alternative selected by the majority of the judges. It was agreed that all of the judges should follow the same policy.

**Recommendation:** That all circuit judges should follow the same policy with respect to referrals to General Masters.

There is a major problem obtaining time before the judges for temporary relief hearings. Either the judges' judicial assistants are not aware the hearing must be granted within 15 days or they are choosing to disregard the rule. Some of the judges do provide hearing time within 15 days but very few.

Recommendation: That the lawyers continuously remind the judicial assistants that hearing time must be found within 15 days.

There was discussion concerning how to obtain the necessary time for a temporary hearing in a large case where the hearing cannot be conducted in 15 minutes to an hour but where several hours or even a day or more are required. No conclusions were reached, but Judge Mark E. Polen indicated that in his division he conducts the equivalent of a pretrial conference on temporary relief, and then, as necessary, conducts the hearing in segments. No definite conclusions were reached, but the problem was identified.

Discussion was had of the major problem of getting judges to rule. Several lawyers had "horror stories" of cases where there was no ruling for more than six months, more than a year and in one case, believe it or not, for more than three years. The lawyers expressed that old problem of "o.k., you want a decision, you lose . . ." There is an administrative rule requiring judges to advise the Chief Judge of the names of all cases in which they have not ruled within 60 days. Lawyers can check the "Reserve Ruling List" to determine whether the case has been listed and then can choose, if they wish, to follow through in some manner. Most lawyers expressed reluctance to take this step. It was also suggested that the judge should be contacted to see if the case "slipped through the cracks." There is always the chance that the judge has forgotten that a decision has not yet been made or that a decision has been made and been lost in the mail. Lawyers have to be careful that the time for appeal has not run. If the decision was placed in the mail and was lost, a malpractice suit could be forthcoming.

Lawyers are facing a major problem in that there is a distinct lack of appreciation by the judges of the need for temporary fees, suit money and costs. Most wives do not have sufficient funds to pay the cost of the litigation, Representing these women is a very dangerous occupation. Lawyers should not have to finance their client's cases. Why should not reasonable and necessary litigation expense be paid just like any other reasonable and necessary obligation? Most husbands will comply with temporary orders requiring the payment of fees, suit money and costs. Waiting to the end of the case often results in the lawyers not being paid for several years while the appellate process proceeds.

**Recommendation:** The judges need to substantially increase the award of temporary fees, suit money and costs where there is a clear ability to pay.

The manner in which Final Judgments are entered in contested cases varies from division to division. Some judges call both lawyers. Some judges call one lawyer and ask that lawyer to call opposing counsel. Some judges prepare their own Final Judgments. Some judges conduct a Final Judgment Conference. Some judges ask each attorney to prepare a proposed Final Judgment. Judges do different things in different cases.

Clients are very unhappy when only the other lawyer is called. Judges who prepare their own Final Judgment very often omit resolving certain issues. It is not satisfactory for a judge to add a final paragraph to the effect that "all prayers for relief not otherwise granted are denied." With hearing time so difficult to obtain in many divisions, motions for clarification and motions for rehearing and other disputes with respect to the form of the Final Judgment can delay the litigants for months or even longer.

**Recommendation:** That there be some uniformity in the manner in which Final Judgments are entered in contested divorce cases. Conference calls should be considered.

There is a wide variation of the positions taken by judges in granting continuances of final hearings in contested divorce cases. The advent of the non-jury trial docket often results in lawyers having several cases scheduled for the same week or two week period. The lawyers realize that many cases settle at the last minute. The lawyers also realize that the judges need to dispose of their cases so that their dockets are not overly crowded. On the other hand, the lawyers want the judges to be more sensitive to the fact that it is impossible to be properly prepared to do the best job possible going from one complex trial to another. The issues which will be resolved by the court are often the most important issues in the

lives of the litigants. The manner in which the issues are resolved have long lasting effects on the litigants and their children. If the lawyers can legitimately demonstrate why they cannot be ready, the court should give more consideration to the request for a continuance for a reasonable period of time.

Additional issues were touched upon such as the scope of appellate review and whether or not there should be a domestic relations division of the Circuit Court. All of the discussion was very useful. The lack of unanimity on the issues did not detract from the discussion. It was worthwhile to hear differing views.

### Probate and Guardianship Section

By Donald H. Norman

The Probate and Guardianship Discussion Section of the Bench-Bar Workshop had a consensus on the matters outlined below:

1. Depositories for Estates and Guardianships

It has been suggested that the appropriate bar committee review the provisions of F.S. 69.031, which specifies the designation of financial institutions as depositories for assets in the hands of guardians, curators, administrators, trustees, receivers or other judicial officers. At present, the statute limits deposiories to banks, trust companies or savings and loan associations. The difficulty experienced by the court is that a number of banks will no longer accept depository accounts. The banks experience a lack of internal control over withdrawals. Some flexibility would be desirable. An amendment to the statute permitting the court to authorize deposits with other financial institutions, under such safegaurds as are deemed prudent by the court, is suggested.

### 2. Forms for Probate and Guardianship

Probate and guardianship practice depends heavily upon the use of standardized forms to handle the volume of work. Difficulties have been experienced by the clerks in receiving forms that are not current, which do not have all the blanks filled in, and which are not signed by either the attorneys, or personal representatives, or, occasionally, both. It is a problem which should be addressed by the bar. Internal checking by secretaries and paralegals to make sure that pleadings are being submitted in proper order would expedite the handling of the forms received.

#### 3. Probate Checklist

The Section discussed the use of a mandatory probate checklist for closing estates, as has been used in Palm Beach County. The clerk's office has a checklist which it uses in reviewing forms, before the file is submitted to the court. It was decided that a formal checklist would not be useful for Broward County, although attorneys were encouraged to utilize a checklist of their own to insure that final closing papers are in order.

#### 4. Fees in Guardianship Matters

Attorneys fees in guardianship matters have been of concern to the court. Fees in probate are set forth in accountings, and not reviewed, unless beneficiaries file objections. The court has, however, an obligation to review fees in guardianship matters, and setting forth the details regarding services rendered would be helpful in expediting these matters.

### 5. Waivers under the Probate and Guardianship Rules

The Probate and Guardianship Rules provide a waiver of all pleadings in the processing of an estate, with the exception of the Petition for Administration, Letters of Administration, and the Inventory. Waivers from beneficiaries may be obtained to expedite administrations.

#### 6. Probate Auditor

To provide for the employment of a probate auditor, to review guardianship accountings, it has been suggested that the appropriate bar committee recommend increasing the fee for probate matters, either on an annual basis, for the filing of guardianship accountings, or for the filing of all probate matters, in order to provide a fund to employ a probate auditor. The auditor would review accountings in guardianship matters, and perform such other duties as will assist the probate division.

#### 7. Ex Parte Applications

An abuse of ex parte applications for emergent matters has become evident. Provided to handle matters which would cause imminent loss of property or other distress, applications have been presented to expedite the issuance of Letters without true emergencies, or to accomplish that which has been allowed to become an emergent matter because of delay. Ex parte applications will be reduced to two days per week, and only true emergencies will be considered.

### 8. Need for Additional Probate Judges

The Probate Division has approximately 13,000 open files, of which 9,000 are probate and 4,000 are guardianship. Two judges have been handling this work for a number of years. It is difficult to process the volume of pleadings required to keep the probate system moving, and to handle the increasing volume of litigation. The two judges have to find time for bench trials, and sign many orders, daily. Some relief is needed in this area. An additional judge, or half the time of an additional judge, would provide much needed assistance.

## Appellate Division By Harry G. Carratt and Nancy Little Hoffman

The Appellate Division workshop was well attended by judges of the Fourth District Court of Appeal and members of the Broward County Bar. There was considerable discussion between the judges and the attorneys relating to the practice before the Fourth District Court of Appeal and appellate practice.

The first topic discussed was whether additional judges are needed for the Fourth District Court of Appeal and, if so, what action could be taken by the bar to assist the court. It was reported by the judges that the court had not yet determined whether it would request additional judges. It was explained that enlarging the court has its drawbacks as well as its benefits. It was agreed that if the court did decide to certify the need for additional judges to the Chief Justice, the Broward County Bar should support that request. The judges also reported that the court is in the process of hiring two senior staff attorneys, as well as seeking an increase in the present law clerks' salaries.

The court expects to have some additional word processing and data processing equipment within eight months, and needs additional funding to allow for sufficient use of its Westlaw Unit by the judges.

The second topic discussed concerned the setting of oral arguments in Broward County. The court presently has oral argument six times a year in Broward County, primarily at Nova University. The judges explained that traveling to Fort Lauderdale causes some logistical problems and reduces the amount of work the judges can accomplish because of travel time. Nonetheless, the judges present expressed their willingness to continue with this arrangement. The lawyers present were of the opinion that there was no need for the court to make additional trips to Broward, and that if the court finds it necessary to reduce the number of oral arguments in Broward, this will not pose a problem for Broward County appellate lawyers. The attorneys expressed their appreciation of the court's cooperation in setting oral arguments here.

The group also discussed delays and problems with the timely preparation of transcripts and record on appeal. Several lawyers expressed difficulties with court reporters (particularly those official court reporters designated by a particular judge) who were unable to prepare transcripts on time. It was suggested that attorneys should place more pressure on the court reporters at the local level and make it clear when hiring a reporting firm that the attorney expects the transcript to be completed in a timely manner. In aggravated cases, it was suggested

that a motion for rule to show cause be filed in the Appellate Court. With respect to the problem of clerks being unable to prepare the record on time, the judges volunteered to have someone from the court speak to the Clerk's Office about this problem.

The next item on the agenda was whether there is any need for changing the present procedure in setting amounts of attorney's fees on appeal. The present practice in the Fourth District is that the court determines only the question of entitlement to fees and remands to the Trial Court for a determination of the amount. The judges indicated that sometimes it is necessary to remand the question of entitlement to the Trial Court as well, for an evidentiary hearing, particularly in dissolution of marriage cases. The judges indicated that the court will determine the amount of the fee only in situations where a fee is being imposed as a sanction. Although it was noted that the Third District is presently setting the amount of fees, both the judges and attorneys present at this conference agreed that the Fourth District's method of handling attorney's fees was preferable and should be continued.

On the question of granting extensions of time, the judges observed that the granting of numerous extensions of time is causing a problem in the scheduling of oral arguments. This in turn is causing problems for the court in complying with the Supreme Court's guidelines for disposing of appellate cases. The judges indicated that the court's present policy is that, in the absence of objection from the opposing party, the clerk is empowered to grant each side one 30 day extension. Thereafter, if additional extensions are requested, the matter will be referred to the judges who are on the motion panel on that case.

The final topic discussed was whether there is a need for guidelines and/or suggestions so as to limit the abuse of motion practice before the court. The judges indicated that they receive approximately 800 motions per month, and that a great deal of their time is spent on reviewing frivolous motions. They urged that members of the Bar carefully examine the merits of their motion before filing it, and it was suggested that the attorneys minimize their motion practice. The judges observed that the filing of motions for rehearing are grossly abused, and that many attorneys apparently file motions for rehearing as a matter of course, simply rearguing the merits of their case (which is of course prohibited by the Rules of Appellate Procedure). The advisability of amending the Rules of Appellate Procedure so as to eliminate the automatic tolling of time which now occurs upon filing of any motion is to be discussed by the Appellate Restructuring Committee at a future date.

Broward County Bar Association 733 N.E. Third Avenue Fort Lauderdale, Florida 33304 764-8040

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#### Motion Calendars Suspended

Judge	From	Through
M. Daniel Futch, Jr.	December 23	January 6
Eugene S. Garrett	December 23	January 7
Louis Weissing	January 6	January 9
Bobby W. Gunther	January 20	January 23
Bobby W. Gunther	January 27	January 30
Bobby W. Gunther	February 3	February 6
Bobby W. Gunther	February 10	February 13
Bobby W. Gunther	February 17	February 20

#### Schedule of Circuit Court Civil Division and Criminal Division Duty Judges

The following assignments are for Circuit Court Civil Division Duty Judge:

Week Commencing	Judge
January 3	Eugene S. Garrett
January 10	. Estella M. Moriarty
January 17	George W. Tedder, Jr.
January 24	M. Daniel Futch, Jr.
January 31	. Robert L. Andrews
February 7	Louis Weissing

The following assignments are for Circuit Court Criminal Division Duty Judge:

Week Commencing Judge

January 3 ... Robert W. Tyson, Jr.

January 10 ... Stanton S. Kaplan

January 17 ... Lawrence L. Korda

January 24 ... Russell E. Seay

January 31 ... Thomas M. Coker, Jr.

February 7 ... Leroy H. Moe

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#### Designation of Judicial Officers For Weekend First Appearance Proceedings

Date	Judge
January 4, 5	William Clayton Johnson
January 11, 12	Stanton S. Kaplan
	Brian P. Kay
January 25, 26	Lawrence L, Korda
	J. Cail Lee

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At the November 22, 1985, meeting, left to right: George English and William F. Leonard; Grace Burwell and Linda Pratt; Frank O'Connor, Judge Robert Scott and Terry O'Connor.



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### **CALENDAR OF EVENTS**

Date	Group & Event	Time & Place	Reservations
1/10/86	Christian Lawyers Assn. Monthly Meeting	Holiday Inn, State Road 84 (just west of I-95) Ft. Lauderdale, 12:00 Noon	Ronald Houchins 752-8100
1/14/86	North Broward Bar Assn.  Monthly Meeting	Flaming Pit Restaurant, 1150 N. Federal Hwy. Pompano Beach, 12:00 Noon	John L. Korthals 943-2020
1/15/86	Broward County Women Lawyers Assn. Meeting	Cafe De Paris, 715A E. Las Olas Blvd. Ft. Lauderdale, 12:00 Noon, \$12.00	Susan Tillman Bonidy 474-9151
1/16/86	Young Lawyers Section Luncheon Meeting	Cafe de Paris, 715A E. Las Olas Blvd. Ft. Lauderdale, 12:00 Noon, \$9.00	Gerald M. Morris 525-0531
1/23/86	BCBA General Meeting, Annual Dinner honoring Legislative Delegation	Pier 66 Hotel Panorama Room 2301 S.E. 17th St., Ft. Lauderdale Cocktails 6:30 P.M., Dinner 7:15 P.M.	BCBA 764-8040
2/6/86	Third Annual Judicial Reception hosted by the Young Lawyers Section	Marriott Harbor Beach, 3030 Holiday Dr. Ft. Lauderdale, 6:00-8:00 P.M., \$10.00	Melanie G. May Bunnell, Denman & Wolfe, P.A. 1080 S.E. 3rd Ave. Ft. Laud., FL 33316 (By 1/20/86)

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