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General Meeting . Wednesday, October 17th

THE SHERATON HOTEL — 12:00 NOON

303 North Atlantic Boulevard, Fort Lauderdale, Florida

Lunch: $5.00 (Includes tax and tip)

The program will be presented by the Honorable William C. Owen, Jr., Chief Judge of the Fourth District Court of Appeal, West Palm Beach, Florida. You are urged to attend this meeting.

PLEASE USE THE ENCLOSED CARD FOR RESERVATIONS.

Young Lawyers' Section Meeting

Tuesday, October 30, 1973

12:00 Noon

GOVERNORS' CLUB HOTEL

235 S.E. First Avenue

Lunch: $3.50

SPEAKER
Dean Peter W. Thornton,
Nova School of Law

Topic: Challenges and Opportunities of Opening a New Law School.

PLEASE USE THE ENCLOSED CARD FOR MAKING RESERVATIONS.

Minimum Fee Schedules

The Senate Judiciary Committee's new Subcommittee on Representation of Citizen Interests began its first set of public hearings with witnesses who warned of continuing federal action against bar association minimum fee schedules. The warning came from Bruce B. Wilson, chief of the Department of Justice's antitrust division. No case has been brought against a bar association by the Justice Department though it is anticipated that one may be brought in the near future. There are a number of pending investigations of bar associations. It is the position of the department that lawyers' minimum fee schedules amount to antitrust violations and, further, that the conduct is not exempted under the antitrust laws of the United States.

Broward County Bar Association rescinded its minimum fee schedule in September, 1972. The Committee on the Economics of Law Practice of The Florida Bar recommends that each attorney prepare individual fee schedules for reference and quotation to clients.

Lawyer Referral Service

There is a need on the Lawyer Referral Panel for attorneys who are qualified to handle immigration cases. There is also an increase in the number of requests for qualified attorneys to handle "consumer problems." If you are not a member of the Referral Panel and handle cases of this nature, you are urged to join the referral panel. For information regarding the program, please call the office of the Broward County Bar Association, at 764-8040 or 764-8310.

Decisions Relating To Minors

By Henry J. Prominski

Yordon vs. *Savage,* 279 So 2d 844, decided by the Supreme Court of Florida on the fifth of July, 1973, states that a cause of action for a minor child must have both parents as plaintiffs. The existing law as it was generally understood has always been that the father, assuming two parents were living, would be the plaintiff as natural guardian and next of friend for a minor child.

Apparently the Women's Liberation awareness has reached our Supreme Court and the court must have felt it had been legal discrimination to permit a minor child's law suit in the name of the father alone. Nowhere in the past has discrimination been allowed to enter into this technical legal procedure; nowhere has there been anything other than making the judicial process uniform and less burdenment by selecting one of the parents to be the nominal plaintiff, the object of the court.

Justice Dekle in dissenting, points out that although the petition is brought in the name of one parent it has always protected the unnamed parent and the injured child.

It appears that the growing awareness of Women's Liberation has now caused additional work, complications, and family problems in the area of law concerning injury to a minor.

Broward County Bar Association
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Pornography-Obscenity

By Judge B. Paul Pettie, Jr.
County Court Judge

What's happening in that all but neglected area of the law regarding obscenity and pornography?

The answer to this question can finally (we hope) be found in two recent decisions, to wit: Miller vs. California, 41 Law Week 4925 (1973), and Heller vs. New York, 41 Law Week 5067 (1973).

We are all aware that the final determinations of this "See-Saw" area of constitutional prohibitions, orders, mandates, requirements of adversary and decisions have been made in the past by the United States Supreme Court; but it appears now that the Burger Court has decided the time has come to allow the states to handle these matters in accordance with the state's own "Community Standards." —

In Miller the Court set out the following as" . . . basic guidelines for the trier of fact . . ."

(a) Whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest.

(b) Whether the work depicts or describes, in a potently offensive way, sexual conduct *specifically defined by the applicable state law* (emphasis added); and,

(c) Whether the work taken as a whole, lacks serious literary, artistic, political or scientific value."

In adopting this position (4-3) the Chief Justice explicitly threw out the old (1966) "Social Value" test and made it quite clear that the three guidelines established were, for the present, the only guidelines which must be followed for prosecutions under state law. The Chief Justice went further and stated that the Court will not ". . . propose regulatory schemes for the states," and again explicitly emphasized that the state law may include these guidelines either within their own verbage or by "construction" of the state courts.

In Heller the Chief Justice again delivered the opinion of the Court in what could be called a primarily procedural case. Here the Court specifically set aside any notions that a prior adversary hearing was required before seizure of any allegedly obscene film. In short, the Court has approved a procedure for seizure of any allegedly obscene film. In short, the Court has approved a procedure for seizure of film where the seizure is pursuant to a warrant issued by a neutral magistrate after a determination of probable cause has been made.

After approving this method, however, the Chief Justice placed an additional burden on the trial courts by imposing a requirement that ". . . following the seizure, a prompt judicial determination of the obscenity issue in an adversary proceeding (there must be) available at the request of any interest party; . . ."

It is now therefore concluded by this writer that the Burger Court as it now stands has correctly decided to allow states to impose their own "community standards" in the determination of the obscenity issue. The Court has given us a "Community Standard" test to be determined by state standards and, it is submitted will permit us to use local and area standards.

The Court has further established reasonable guidelines which can be followed by trial courts without having to be conconfronted by a morass of conflicting decisions which can only have the effect of leading us to an abyss of error; and finally the decisions gave us good basic principals from which reasonable jury charges can be drafted.

The only questions in Florida left open now are due to the fact that the state's

new Obscenity Law (F.S. 847.011 filed 6-7-73, now law) does not specifically spell out the acts prohibited as required by Miller, thus this leaves us to the "construction" alternative permitted by the Supreme Court.

The question then is, "which Court can authoratatively construe the statute?" It is obvious that since the construction must be binding on the trial court a trial court cannot make the required construction. This leaves only two possible courts of our three tier system . . . either the District Court or the Supreme Court. The Fourth District Court, in a decision filed August 6, 1973 (Papp vs. State of Florida) implicitly decided that, as the lowest court having its decisions reported and being binding on the trial courts of the district, it has jurisdiction to "authoratatively construe" and therefore "specifically define" the conduct prohibited within the purview of Miller. Again, the other alternative would be for the Supreme Court of Florida to "authoratatively construe" the new statute specifically defining prohibited conduct.

This writer took the obviously conservative approach and certified the question as to which court has the authority and jurisdiction to do this to the Supreme Court of Florida, pursuant to Florida Appellate Rule 4.6, on the reasoning that the matter should be settled immediately and on a theory that if the district courts could so construe the statute we would have a seemingly illogical result that four different constructions would be "the law" within the various judicial districts of the State. Or in the alternative, perhaps "Contemporary 'Community' Standards" requires this illogical result — you speculate further — I will not.

Long-Arm Jurisdiction

Martin H. Cohen

The 1973 Legislature has significantly strengthened Florida's long-arm jurisdiction. Chapter 73-179, Florida Laws, adds two new sections effective July 1 to Chapter 48 of the Florida Statutes. First, section 48.193 enumerates acts which constitute submission to this state's jurisdiction for causes of action predicated upon the conduct described therein. The section provides that service of process upon any person who is subject to the jurisdiction of this state, as provided in section 48.193, may be personally served with process under new section 48.194. Section 48.194 merely allows service of process without the state in the same manner as within, thus allowing the non-resident defendant whose whereabouts are known to be "tagged" without the necessity of serving the Secretary of State.

Conduct upon which jurisdiction for personal service outside of the state's territorial boundaries is based includes the following: (a) engaging in or carrying on a business; construction of this subsection will presumably be similar to Florida Statutes, section 48.18. (b) the commission of a tortious act within this state; this clause appears to incorporate *inter alia* the conduct described in Florida Statutes, section 48.171 (non-resident owner or operator of motor vehicle), and section 48.19 (non-resident owner or operator of watercraft or aircraft). (c) ownership, use, or possession of real property within this state. (d) contracting to insure any person, property, or risk located within this state at the time of contracting; this supplements the service of process provisions of the Insurance Code, Florida Statutes, sections 624.422 and .423. However, since the Insurance Code states that its method is exclusive, it would appear that the instant provision applies exclusively to unauthorized insurers. (e) residence within this state at or before the time of commencement of an action for alimony, child support, or division of property in connection with an action for dissolution of marriage or for support of dependants, unconnected with action for dissolution. (f) causing injury to persons or property within this state arising out of an act or omission outside of this state by either a defendant engaged in solicitation or service activities which resulted in such injury, or where the defendant's products, materials, or things which are processed, serviced or manufactured anywhere were used or consumed in Florida resulting in injury; this is adapted from former section 48.182 which was repealed by chapter 73-179, Florida Laws. (g) breaching a contract within this state by failing to perform acts within this state.

Although new Florida Statutes, section 48.193 extends Florida's long-arm jurisdiction to the limits of the Due Process Clause, comparable provisions can be found in other states for each part of the new statute. For example, the Illinois Civil Practice Act, section 17, contains clauses indentical to subsections (b), (c), and (d), concerning the commis-

sion of a tortious act, ownership, use and possession of real property, and insurance contracts, respectively. With regard to subsection (e) on actions for dissolution of marriage and related matters, the Illinois provision is virtually identical in substance. Moreover, as to subsection (g), "single contract" statutes are found in section 617.3 of the Iowa Code and section 262.05 of the Wisconsin Statutes Annotated.

Considering the constitutionality of these new extentions of jurisdiction found in section 48.193, each appears to be based upon sufficient "minimum contacts" with the forum state to comply with the test of due process laid down in *International Shoe Co. vs. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945). For instance, the Vermont "single tort" statute was held constitutional in Deveny vs. Rheem Manufacturing Co., 319 F. 2d 124 (2d Cir. 1963). The provision on insurance contracts falls directly within the holding of *McGee vs. International Life Ins. Co.*, 355 U.S. 220, 78 S. Ct. 199 (1957). Finally, the Iowa "single contract" statute, section 617.3 of the Iowa Code, was upheld in *Sporcam, Inc. vs. Greenman Bros., Inc.*, 340 F. Supp. 1168 (S.D. Iowa 1972).

The benefits of Florida plaintiffs are readily apparent in chapter 73-179. On its face the new law places Florida among the leading states in establishing liberal long-arm statutes. Furthermore, by allowing direct service of process by an appropriate officer in the state where the defendant is located, unnecessary expense and inconvenience will be avoided. This is particularly true in actions for dissolution of marriage and in actions involving real property.

Uniform Probate Code

The Probate section of the Committee on Circuit Courts has held meetings to study the proposed Uniform Probate Code. Any suggestions or recommendations from any member will be appreciated. Please send these to the office of Broward County Bar Association as soon as possible.

The Uniform Probate Code Study Commission will be holding hearings in Miami on October 19th, and 20th, 1973 at the Deauville Hotel.

Welcome, New Members

ARNOLD T. BLOSTEIN, a native of Ohio, received his undergraduate degree from Ohio Northern University and his law degree from Cleveland-Marshall Law School. He is associated with the firm of Tripp, Niles & O'Neil in Fort Lauderdale, Florida.

JAMES A. BROWN, a native of Florida, received his undergraduate degree from Florida A & M University and his law degree from Howard University Law School. He is associated with W. George Allen in Fort Lauderdale, Florida.

BERNARD COHEN, a native of New York, received his undergraduate degree from Brooklyn College and his law degree from the University of Toledo. He is associated with Cohen & Cohen, P.A. in Hallandale, Florida.

PAUL FREDERICK CRAMES, a native of New York, received his undergraduate degree from Florida State University and his law degree from the University of Miami. He is associated with the firm of Andrews, Lubbers & Obrig in Fort Lauderdale, Florida.

HENRY H. FOX, a native of Florida, reveived his undergraduate degree from Florida State University and his law degree from Duke University. He is associated with the firm of English, McCaughan & O'Bryan in Fort Lauderdale, Florida.

DAVID FRIEDMAN, a native of Massachusetts, received his undergraduate degree from the University of Illinois and his law degree from Northwestern University. He is associated with Berhnard Garfinkel in Hollywood, Florida.

KENNETH D. HUTCHISON, a native of Illinois, received his undergraduate degree from the University of Edinburgh and his law degree from the University of Miami. He is associated with the firm of Carlisle and Tworoger, Fort Lauderdale, Florida.

DANIEL A. McKEEVER, JR., a native of Georgia, received his undergraduate degree from Auburn University and his law degree from the University of Florida. He is an assistant State Attorney.

WALTER L. MORGAN, a native of Washington, D.C., received his undergraduate and law degrees from the University of Florida. He is assoociated with Walter M. Dingwall, Fort Lauderdale, Florida.

JOHN B. OSTROW, a native of New York, attended the University of Florida and Florida Atlantic University and holds a Masters Degree in Education. He received his law degree from Florida State University. He is associated with the firm of Huebner, Shaw and Bunnell, Fort Lauderdale, Florida.

LOUIS J. PLEETER, a native of New York, received his undergraduate degree from City College of New York. He attended Brooklyn Law School and New York University of School of Law. He holds an L.L.M. degree in taxation.

MARVIN J. POWERS, a native of Kentucky, attended the University of Kentucky and George Wishington University. He holds a Masters Degree. He received his law degree from the University of Maryland. He is associated with Chesley V. Morton in Fort Lauderdale, Florida.

ROBERT D. SCHRAM, a native of Ohio, received his undergraduate degree from DePaul University and his law degree from the University of Miami. He practices law alone in Fort Lauderdale, Florida.

BRUCE E. WAGNER, a native of Ohio, received his undergraduate and law degree from the University of Miami. He is in the Criminal Division of the United States Attorney's Office in Miami, Florida.

"Light is the task when many share the toil"