

The BROWARD BARRISTER

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Executive Offices, 735 Northeast Third Avenue, 305/764-8040, Fort Lauderdale, Florida 33304

General Meeting . Wednesday, September 19th

THE SHERATON HOTEL PENTHOUSE — 12:00 NOON
303 North Atlantic Boulevard, Fort Lauderdale, Florida

Lunch: \$4.50

PROGRAM: COURT ADMINISTRATION

by

JUDGE JOHN G. FERRIS

Chief Judge, Seventeenth Judicial Circuit

PLEASE USE THE ENCLOSED CARD FOR RESERVATIONS.

Young Lawyers' Section Meeting

Thursday, September 27, 1973
12:00 Noon

HEILMAN'S RESTAURANT

1701 East Sunrise Boulevard
Fort Lauderdale, Florida

Lunch: \$3.50

PROGRAM

Highlights of the 1973
Legislative Session

by

Daniel B. Bass

Please mail reservations with checks to:

Mr. Drake M. Batchelder
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One Financial Plaza
Fort Lauderdale, Florida 33394

THE ACADEMY OF FLORIDA TRIAL LAWYERS

Trial Seminar
Friday - Saturday
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Contemporary Hotel, Disney World
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The seminar covers the following:
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Registration Fee: \$45.00 for lawyers in practice for 5 years or more; \$40.00 for lawyers in practice for less than 5 years.

Mail registration to Academy of Florida Trial Lawyers, 219 South Calhoun Street, Tallahassee, Florida 32301, before October 22, 1973.

President's Message

Are You an Active Member or Do You Just Belong?

Are you an active member, the kind that would be missed?

Or are you just contented that your name is on the list?

Do you attend the meetings and mingle with the flock?

Or do you stay at home to criticize and knock?

Do you take an actual part to help the work along?

Or are you satisfied to be the kind who "just belongs"?

Do you work on committees whenever you are picked?

Or leave the work to just a few and talk about the clique?

Some come to all the meetings and help with hand and heart.

Don't just be a member, but take an active part!

Think this matter over, you know right from wrong.

Are you an active member or do you just belong?

Nicholas J. DeTardo, President

Court Reporter Fees

By majority vote the Circuit Judges of the 17th Judicial Circuit in and for Broward County ratified the schedule of fees below to be charged by court reporters of the 17th Judicial Circuit, effective September 1, 1973.

ATTENDANCE:

Depositions, Statements, Chambers Hearings, Jury and Non Jury Trials (minimum) \$22.00

Full A.M. or P.M. session \$44.00

Commencing after 5:00 p.m. (minimum) \$33.00

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

OFFICERS

President Nicholas J. DeTardo
President-Elect William F. Leonard
Secretary George A. Patterson
Treasurer Ray Ferrero, Jr.
Past President L. Fred Austin
Executive Secretary Norma Howard

Municipal Court (minimum) \$27.00
Municipal Court (Night Session) \$38.00

Public Hearing, Conventions, Stockholders Meetings, Arbitrations, Conferences, etc. per session \$44.00

(Uncontested Dissolutions of Marriage and Adoptions-same as minimum chambers hearings; transcript rate; minimum original and one copy.)

TRANSCRIPT:

Original and one carbon copy, minimum, per page \$ 1.80
Each additional carbon copy, page60

Expedited Delivery (3 Days, excluding Sunday and Holidays) per page .80
Daily Copy (overnight delivery) per page \$ 1.20

Same Day Delivery \$ 1.80

Public Hearings, Conventions, Stockholders Meetings, Conferences, etc. Original and one copy (minimum), per page \$ 3.00

John G. Ferris, Chief Judge

Assignment of Judges

The following assignment of Circuit Judges shall be effective as of September 4, 1973 and will continue thereafter until further notice:

1. Judge John H. Moore, II, shall be assigned to the Criminal Division and shall assume responsibility for final disposition of all matters then pending in Division HARE.

2. Judge Raymond J. Hare shall be assigned to the General Civil Division

and shall assume responsibility for final disposition of all matters then pending in Division MOORE.

3. Judge Frank Orlando shall be assigned to the Criminal Division and shall assume responsibility for final disposition of all matters then pending in Division McCAULEY.

4. Judge James A. McCauley shall be assigned to the Family Division and shall assume responsibility for final disposition of all matters then pending in Division ORLANDO.

John G. Farris
Chief Judge

Delta Theta Phi Fraternity

Broward County Alumni

Broward County Alumni of Delta Theta Phi Fraternity is currently updating its membership roster. Any new alumni in the area should contact

Mr. John E. Aurelius
Phone: 772-8222

Anyone willing to assist in planning a fall social event should contact Tom Cazal at 525-3441.

Home Rule Power For Municipalities

By Henry J. Prominski

The 1973 legislative session enacted the much heralded Home Rule Powers for municipalities. Chapter 73-129 becoming effective October 1, 1973, did for the municipalities what the 1970 legislation did for County Home Rule Powers. Florida Statutes 166 as presently constituted have been repealed and the new "municipal Home Rule Powers Act substituted.

The act generally gives municipalities pursuant to Article 8, Section 2 (b) of the State Constitution, the governmental corporate and proprietary powers necessary to conduct government except when expressly prohibited by law. The provisions are to be construed as to secure for municipalities the broad exercise of Home Rule Powers granted by the constitution, with the exception that extra territorial jurisdiction, the terms of elected offices and the form of government may not be changed without a referendum.

***BETTER ABSTRACTS**

at

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All special acts become ordinances of the municipalities. There is also provided methods for charter amendments by petition of 10 per cent of the registered electors, and powers to adopt ordinances and resolutions. Specific powers are granted for borrowing and issuing bonds as well as the authorization to tax and license. Eminent Domain is also specifically provided for.

All municipal attorneys are, of course, urged to read the act in its entirety and compare it with the existing Chapter 166 as well as the specific Municipal Charter Powers.

Sunshine Law

By Henry J. Prominski

The Government in the Sunshine Law received the attention of the Florida Supreme Court in *Canney vs. Board of Public Instruction of Alachua County*, 278 So 2d 260.

This case reached the Supreme Court on certiorari from the First District Court of Appeal in that the District Court allowed the School Board exemption from the Sunshine Law when it considered student suspension, as it deliberated the evidence. This position conflicted with *Time Publishing Company vs. Williams*, 277 So 2d 470. The question was whether the county school board acting in "quasi-judicial" capacity considering the merits of suspension, much as a jury in a civil case, could do so in private. The Supreme Court reversed stating that the school board is a part of the legislative branch of government not the judicial-not with standing the fact they perform some quasi-judicial duties.

The legislature may not authorize persons to exercise judicial powers. A full dress judicial hearing is not required for dismissal of students and the administrative body, the school board, operates within their rules and not as a part of the judicial branch of the government. The sunshine law is designed to cover public boards, and therefore, any action of the school board must be in the Sunshine.

Four justices dissented with Justice Dekel writing a dissenting opinion. The dissent emphasized the judicial matter of the proceedings and as such should have the judicial protection of free deliberation granted to jurors. To do otherwise would be a denial of due process.

Air Piracy

By Henry J. Prominski

The Florida Legislature in House bill 43A approved by the governor, December 8, 1972, made it a crime to pirate aircraft. The Florida Bar Aeronautical Committee has been working on a more comprehensive statute to regulate aeronautics even possibly through the enactment of the Aeronautical Commission for the past year. Several states do have such Aeronautics Commissions, for example, the state of Michigan. The new law although a step in the right direction, does not appear to be comprehensive it merely states: "Whoever without lawful authority seizes or exercises control by force or violence and with wrongful intent, of any aircraft containing a non-consenting person or persons within this state is guilty of the crime of aircraft piracy, a felony of the first degree, punishable as provided in Sections 775-

082, 775.083, or 775.084, Florida Statutes."

The United States Government in October of 1970 amended the United States Code, Transportation Section, to remove the ambiguity of what constituted air transportation for coverage under the aircraft piracy laws.

Prior to this amendment, the Act applied to aircraft in air commerce. The new wording expands the jurisdiction of the Federal Government to aircraft "within the special aircraft jurisdiction of the United States." This special aircraft jurisdiction of the United States is defined as any United States aircraft movement from the time the motor is started and to foreign aircraft movement within the territorial limits of the United States. (See 49 U.S. Code, Section 1472 and 49 U.S. Code, Section 1301, subparagraph 32, for the definition of the special aircraft jurisdiction.)

Florida had no hijacking law, however, it does have a general larceny statute which could encompass aircraft. (F. S. 811.021) The Federal jurisdiction would not appear to be preemptive and I would assume that a Florida hijacking law would be compatible to the Federal law.

A piracy statute should encompass threats at piracy assault in attempted piracy and any other illegal act which if committed on the ground would be a violation of State Law.

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Florida Capital Punishment Act

By Henry J. Prominski

The new Florida Capital Punishment Act, Florida Statutes Chapter 775.081 and 775.082 states that: a capital felony shall be punished by life imprisonment requiring no less than 25 years of imprisonment before becoming eligible for parole. In Florida Statutes 921.141 a person convicted of a capital felony shall have the court conduct a separate sentencing proceeding to determine whether or not the death penalty shall be imposed. This proceeding shall be conducted before the jury and the jury shall render an advisory sentence considering the mitigating circumstances. Notwithstanding the recommendations of the jury, the court may enter either a life sentence or impose the death penalty.

This new law has been tested for the first time by a Broward County Court. The jury considering life or death recommended life imprisonment. Judge McCauley imposed the death sentence. It is almost certain that this conviction will be appealed as the first test of the Florida Revised Capital Punishment Act.

The rationale behind holding the old Capital Punishment law unconstitutional in a broad sweep of all existing State Capital Punishment Statutes, seemed to be that the laws were being enforced unequally, that the jury by recommending mercy presumably discriminated against Black accused. It is hard to follow this reasoning since the basis of any

adjudication of guilt is guaranteed by a jury which has discretion in weighing the evidence.

The new law takes away the jury's final decision for capital punishment. This appears equally fallacious reasoning in that time and expense of a jury are used but their recommendations need not be followed. The discretion has now shifted from a jury panel of 12 to a single judge. Surely, there would be more basis for discrimination in imposing the death penalty under the new law.

The obvious answer for a constitutional death penalty is to carefully spell out what crimes are capital including deletion, if so desired of first offenses under mitigating conditions but enforcing those capital crimes indiscriminately with the death penalty.

Attorneys Take Note

In order to expedite the service of summonses, subpoenas, and various other writs, it is requested that all attorneys include their telephone number along with their address on papers to be served by the Civil Division of the Broward Sheriff's Office.

It is the desire of the Sheriff's Office to render the best possible service and when it is necessary to communicate with an attorney because of a poor address, change of address, or for any other reason, it can greatly speed matters if the deputy involved has the telephone number of the attorney who has filed the process to be served.

James P. Denvir
Supervisor, Civil Division

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Mobile Home Owners

Significant legislation was also enacted effective July 1, 1973 for mobile home owners. Mobile home park owners may not evict except for non-payment of rent, court conviction deemed detrimental to the other people in the mobile home park, for violation of reasonable rules or regulations after written notice or after change in the land use of the mobile home park.

Chapter 83 of Florida Statutes was also amended so that a mobile home park cannot require the resident to sell or be denied the right to sell his mobile home. There is further clarification of entrance fees and refunds, as well as minimum standards for tie down requirements.

Have You Moved?

There have been many moves of offices in the past two months. If you have *not* notified the following of your correct address and telephone number

PLEASE DO SO NOW.

Broward County Bar Association
The Florida Bar
American Bar Association
Clerk of The Circuit Court

Change of Address

The Broward County Bar Association office has been moved to

735 N.E. Third Avenue
Fort Lauderdale, Florida 33304

The telephone numbers are as follows:
Broward Co. Bar Association 764-8040
Legal Aid 764-8110
Lawyer Referral Service 764-8310

**"Light is the task when
many share the toil"**

Help, Help, Help!!!

There is a desperate need for articles for the Barrister. All contributions will be most welcome . . . ideas, articles, suggestions, etc.

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