

The BROWARD BARRISTER

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

BROWARD COUNTY BAR ASSOCIATION

GENERAL MEETING

Wednesday, October 16, 1974

— 12:00 Noon —

THE SHERATON HOTEL

303 N. Atlantic Boulevard
Ft. Lauderdale, Florida

→ Lunch: \$5.00 ←

Program: "Judicial Selection, Tenure and Education"

Lawrence Hyde, Professor, Nova Law Center

Discussion of Proposed
Broward County Charter

In Favor

Kenneth Jenne
E. Clay Shaw
Frank Walker

Against:

Robert M. Curtis

Monitor:

Paul Anton

Please Use the Enclosed Card For Reservations

YOUNG LAWYERS SECTION MEETING

Thursday, October 24, 1974

— 12:00 Noon —

THE PLAYERS CLUB

1299 E. Oakland Park Boulevard
Fort Lauderdale, Florida

— Lunch: \$3.75 —

Program: "Legal Aid in Broward County"
Barry N. Klein, Director of Legal Service
of Broward County, Inc.

Please send reservations with check to:
Mr: Ed Sciarretta
381 E. Commercial Boulevard
Fort Lauderdale, Florida 33308.

MAKE CHECKS PAYABLE TO
YOUNG LAWYERS SECTION

BROWARD COUNTY TRIAL LAWYERS ASSOCIATION MEETING

Wednesday, November 6, 1974

5:00 p.m. Case Evaluation and Clinic
(Bring your cases and questions)
6:30 p.m. Cocktail Reception
The Harrison Company
7:30 p.m. Dinner — \$9.50

THE SHERATON HOTEL

303 N. Atlantic Blvd. (A-1-A)
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"Florida Rules of Civil Procedure"
Henry P. Trawick, Jr., of Sarasota

Author:

Trawick's Florida Practice and Procedure"

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(9.50) and 1974 dues (\$10.00) to:—

Frank C. Walker (Ph. 764-7676)
Suite 1800

One Financial Plaza
Ft. Lauderdale, Florida 33394

How Can We Simplify Real Estate Transactions?

by Joe H. Yates

James W. Robinson, who is the Senior Vice President of American Title Insurance Company, recently sent a letter to the Chief Justice of the Supreme Court responding to the speech made by Justice Burger to the American Law Institute on May 21, 1974. In his speech Justice Burger urged a high priority for "a comprehensive reexamination of the entire process of land titles and transfers, title insurance, financing of real estate transactions and closing procedures".

Mr. Robinson stated in his letter that title companies working in harmony with attorneys, mortgage lenders, land developers, surveyors and real estate brokers have already made giant strides in streamlining real estate procedures, e.g. joint title plants have been created; title information has been computerized; land parcel identifiers have been developed and marketability statutes have been sponsored and enacted.

Mr. Robinson states that "we can't have 'push button' titles without trampling on the rights that individuals have traditionally enjoyed in real property under this country's system of laws." Mr. Robinson asks the Chief Justice how he would dispose of the following problems: mortgages, restrictions and covenants running with the land; easements; clerical errors; forgeries; bankruptcies; gas, mineral and air rights; homestead; and various other property rights.

Mr. Robinson stated that ironically the demand for simplification comes usually from those who advocate increasing Federal regulation but that "designating a Federal bureaucracy to simplify procedures is life setting the fox to guard the hen house."

The point of Mr. Robinson's letter is well taken that there is a vast difference between summarily advocating consumer reform and making constructive suggestions on how to accomplish this reform.

Paralegals At Real Estate Closings

by Joe H. Yates

The question of the ethical propriety of the use of paralegal assistants at real estate closings has been answered by The Florida Bar Committee on Professional Ethics in Advisory Opinion No. 73-43. The Committee answered the following question in the negative: Whether a graduate of a paralegal school who was employed by a Florida law firm could conduct real estate closings without an attorney's assistance? She would be instructed not to give advice to the purchasers. The Committee in disapproving of the above procedure stated that: "There is no reason for the employee to attend the closings except to give legal advice and that her presence could be construed as answering unasked questions about the propriety or legality of documents".

Attorneys using paralegal assistants in the real estate field should read Opinions 73-43 and 70-62 for more information.

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

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Legal Assistants At Real Estate Closings

Florida Bar Ethics Opinion 70-62

Lay personnel may be used in a law office only to the extent that they are delegated mechanical, clerical or administrative duties. The attorney may not ethically delegate to a law employee any activity which requires the attorney's personal judgment and participation.

Florida Bar Ethics Opinion 73-43

A Florida law firm has hired an employee who is a graduate of the Para-

legal Institute of New York. One of the firm's clients is a condominium developer. A member of the firm asks:

1. Whether the employee, working under the supervision and direction of an attorney in the firm, may prepare for that attorney real estate documents which the attorney is preparing for the firm's condominium developer client.

2. Whether the employee may attend closings of seals of condominium units to be held in the firm's office but without any attorneys in the firm being present. She will give no legal advice.

3. Whether the employee may identify herself in telephone conversations and when writing letters on firm stationery as a Legal Assistant below her name.

4. Whether the employee may use business cards with the firm name and with the words Legal Assistant below her name.

Majority Opinion (Minority opinions are not reprinted here).

We answer the first question in the affirmative. We recognize the increased

use of such personnel and that EC 3-6 of the Code of Professional Responsibility not only permits but encourages their use provided the attorney supervises the work so delegated and takes complete professional responsibility for the work product.

We answer the second question in the negative. The question itself recognizes that the employee may not give legal advice or perform any acts that would amount to practicing law. The committee, one member dissenting in part, is of the opinion that there is no reason for the employee to attend the closings except to give legal advice and that her presence could be construed as answering unasked questions about the properly or legality of documents.

We answer the third question in the negative, two members of the Committee dissenting in part. The Supreme Court of Florida, which has exclusive jurisdiction to regulate the admission of persons to the practice of law, has not authorized any non-lawyers to do work that would constitute the practice of law. It has not created any category of personnel designated as Legal Assistant or Paralegal. These terms have no official meaning and no precise definition that is generally applied or accepted.

The majority of the Committee is of the opinion that the use of the term Legal Assistant might mislead clients or others into believing that such a non-lawyer assistant is a licensed lawyer or has expertise or authority he or she does not in fact possess.

We answer the fourth question in the negative. In opinion 73-4, the committee, after considering the ABA Opinions 909 and 1185 which appeared to allow it, stated that the name of the Law firm should not be shown on the business card of a lay employee because of the appearance of professional status and the suggestion of advertising. We adhere to that opinion here.

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Change of Name

The Attorney General has advised that the 1961 act, appearing at the top of page 315, Volume 5, FSA, requiring publication of notice of intention to apply for change of name, in all counties having a population of more than 450,000, has been repealed.

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DID YOU KNOW?

Marshall Cassedy, Director of The Florida Bar, says that the projected number of members of The Florida Bar will be 30,382 in 1980. In 1985, if present lawyer and nonlawyer population trends in Florida continue, the lawyer-nonlawyer ratio will be 1 to 264.

*BETTER ABSTRACTS at Broward County Title Company

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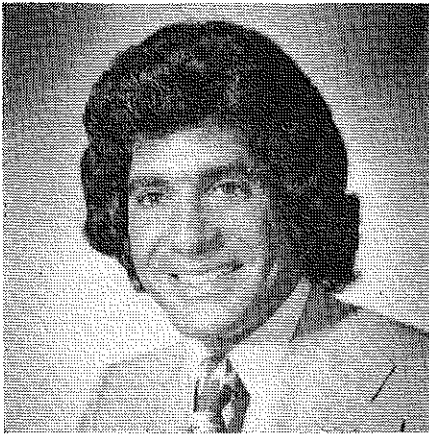
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BARRY N. KLEIN, Executive Director

LEGAL AID SERVICES

In 1973, through the efforts of the Broward County Bar Association, an ordinance was passed by the Board of County Commissioners which provided funding for a community legal aid program. Since then, a non-profit corporation has been formed, and a fifteen member Board of Directors has been designated. The culmination of all this planning and effort was the opening of the Legal Aid Services of Broward County, Inc., on September 30, 1974.

Housed in the Broward County Bar Association Building at 733 Northeast Third Avenue in Fort Lauderdale, the five-person office consists of the newly appointed Executive Director, Barry Klein, Jon Shamres, the Deputy Director, an Office Manager, a legal secretary and a secretary-receptionist.

Legal Aid Service will provide legal service to the indigent population of this county to ensure the proper administration of justice in civil actions in the courts of Broward County.

The agency will also attempt to alleviate the indigents' legal problems which normally go unaided due to their lack of funds for private legal counsel.

The program will operate in this manner: The applicants will be interviewed

and asked to submit information regarding financial status and the type of legal problem involved. Application will then be screened, and upon determination of eligibility under the adopted guidelines, cases will be handled by either Mr. Klein or Mr. Shamres. Applicants who do not qualify under the guidelines will be referred to the Lawyer Referral Service. Although the office staff expects to be able to manage the majority of cases, the overflow will be referred to Mrs. Norma Howard, the Executive Secretary of the Broward County Bar Association, to be assigned in the previously established manner for legal aid.

The bulk of the cases is expected to be in the areas of consumer problems, landlord-tenant matters, child custody and support problems.

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Florida Bar Committee On Economics

The State Bar Committee on Economics is sponsoring a Friday and half-day Saturday seminar in Tampa, Florida, on January 24-25, 1975, at the Host Airport Hotel, Tampa International Airport.

The featured speakers will be: Kline Strong from Salt Lake City, Harris Morgan from Greenville, Texas, and Sam Smith from Miami Beach. One other speaking spot is unfilled at the present time. The topics will include "How to Con Your Partners Into Being More Efficient," "Legal Assistant Systems," "Romancing Fees Into the 20th Century — Revisited," "New Developments in Office Supplies," and "Office Systems and Automatic Typewriters." With the three speakers that are now committed for the program, it is sure to be a split decision as to whether the program will be more entertaining or more educational.

Registration fee will be \$35 per person. This will be a single location seminar, and space is limited to 550 persons. A single mailing will be made in late October by The Florida Bar. Therefore, it is suggested that you mark your calendar and return your reservation form on the day received.

Rohan Kelley, *Chairman*
Broward County Bar
Association Committee on Economics

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Status of Minimum Fees Schedules

by Henry J. Prominski

Three recent cases have interpreted lawyers minimum fee schedules. A New York Court of Appeals in *Lincoln Rochester Trust Company vs. Freeman*,

a March, 1974 opinion ruled that law is a profession not a business and its minimum fee schedules are not subject to state anti-trust laws.

On May 9, 1974 in the United States District Court, District of Oregon, a complaint was filed against the Oregon State Bar. It was alleged by the Department of Justice that the Oregon State Bar has been continuously engaged in an unlawful combination and conspiracy to restrain trade and commerce in violation of Section 1 of the Sherman Act, by in concert fixing, stabilizing and maintaining fees charged by the Bar Association for legal services, and in specific by adopting a uniform minimum fee schedule, adopting uniform suggested fee schedules and publishing, circulating and utilizing uniform minimum fee schedules. The government stated that this combination and conspiracy has the effect of stabilizing artificial and non-competitive levels, further restraining competition and that the purchasers of legal service have been denied the right to obtain such services at competitively determined fees.

The third case in this area was reported from the United States Court of Appeals for the Fourth Circuit. An appeal from the U.S. District Court for the Eastern District of Virginia *Goldfarb vs. Fairfax County Bar Association*. This was a class action created to recover treble damages for violation of federal antitrust laws. The Goldfarbs alleged that the state bar association has conspired to restrain interstate commerce through fixed fees. In this case the State Bar Association announced in bar opinions its intentions to discipline any attorney who repeatedly charges less than the fees set out in the minimum fee schedule adopted by the local bar association, when motivated by a desire to increase his practice resulting in personal gain. When the Goldfarbs contracted to purchase a home in Rustin, Virginia, they contacted numerous attorneys to provide legal services at the lowest possible cost. They stated they could not secure services at rate less than that prescribed by the minimum fee schedule.

The U.S. District court did not find the State Bar Association in violation of the Sherman Antitrust Act. By statute, Virginia has given their courts the authority to make policy involving suggested fee schedules and to disseminate the minimum fee schedule reports. The court admitted that the professional code of responsibility is for the benefit of the public and that a minimum fee schedule is only one factor among a multitude of variables providing the public with competent legal services.

However, where the State Bar Asso-

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ciation was clothed with legislative protection the action of the Fairfax County Bar Association has no such cloak of legislative command. The District Court found it abundantly clear that the fee schedule and enforcement mechanism was a substantial restraint of competition among attorneys practicing in Fairfax County.

The Appellate Court stated that according to the Supreme Court it is recognized that the practice of a learned profession, law is not a trade and unlike the mechanic or a butcher, a lawyer has a professional duty to provide his services at a reduced rate to those who need but cannot afford his services. They cannot advertise therefore the learned profession is not within the provisions of the Sherman Antitrust Act.

The Court went on however, and found no such exemption from the provisions of interstate commerce. The Appellate Court did find that passing on titles with purchase mortgages was a part of interstate commerce.

The lower court found no liability as to the state bar association but the Fairfax County had violated the federal antitrust laws. The Circuit Court of Appeals whose decision we have been studying in this article reversed as to Fairfax County and found no violation of the Sherman Antitrust Act.

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SCHEDULE OF NON-COURTHOUSE HEARINGS — CIRCUIT COURT

Date	Pompano	Hollywood
Oct. 15	Circuit Judges' Conference	
Oct. 22	Judge Johnson	Judge Fischer
Oct. 29	Judge Warren	Judge Farrington
Nov. 5	Judge Tedder	Judge Booher
Nov. 12	Judge Richardson	Judge Weissing
Nov. 19	Judge Gonzalez	Judge LaMotte
Nov. 26	Judge Booher	Judge Franza
Dec. 3	Judge Johnson	Judge Seay
Dec. 10	Judge Hare	Judge Ferris
Dec. 17	Judge Moe	Judge Fischer

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MISSING REPORTS

The Law Library at Rutgers University is trying to locate the following:

Alabama Reports: v. 83-90, 92-96, 100-122

Florida Reports: v. 96, 97, 99-103, 148

Mississippi Reports: v. 132, 134, 145, 219-224, 254

Virginia Reports: v. 101-1-6, 110, 157-164, 168-183

Copies may be sent to:—

Miss Jessie L. Matthews, Reference Librarian Law Library, Rutgers University, The State University of New Jersey, Camden, N.J. 08102.

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The Academy of Florida Trial Lawyers Seminar

Friday, November 15, 1974

Doral Golf and Country Club
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For additional information write to:—
The Academy of Florida Trial Lawyers,
220 Center Building, 330 Adams St.,
Tallahassee, Florida 32301.



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The Florida Bar
American Bar Association
Clerk of The Circuit Court

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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