

The BROWARD BARRISTER

OCTOBER, 1978

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Executive Offices: 733 Northeast Third Avenue, 309/764-8040, Fort Lauderdale, Florida 33304

GENERAL MEETING THURSDAY, OCTOBER 19, 1978

PIER 66 — SUITE 66
2301 S.E. 17th Street Causeway
Fort Lauderdale, Florida

Cocktails 6:30 P.M.
Dinner 7:15 P.M.
Price \$15.00

Program: CASINO GAMBLING — THE FACTS

Speakers: David H. Bludworth
State Attorney, West Palm Beach, Florida
Samuel Vitale
Coordinator of "Let's Help Florida."

☞ Please use enclosed card for reservations. ☜

Please return or call 764-8040 by October 17, 1978.

YOUNG LAWYERS SECTION MEETING

Thursday, October 26, 1978

— 12:00 Noon —

Stouffer's Anacapi Inn
1901 North Federal Highway
Fort Lauderdale, Florida

Luncheon: \$5.00 — YLS Members
\$6.00 — Non-Members

Program: Organization and Presentation of the Plaintiff's Case.

Speaker: John F. Spellacy

Reservations and checks (payable to Young Lawyers Section) should be sent to:—

James B. Davis
Post Office Box 9027
Fort Lauderdale, Florida 33310

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Operation: Update/Transition

October 18, 1978

4:30 P.M. — 6:30 P.M.

Broward County Courthouse
Room 250

Topic: Trial Tactics

Speakers: Patrick H. Chidnese

November 15, 1978

Program to be announced.

(\$3.00 contribution requested for printed materials)

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Attorney's Alert Update Out Of Town Checks

In response to an article in the August *Barrister*, Robert E. Busbey, Executive Vice President and Treasurer of First Federal of Broward has furnished us with additional information in connection with First Federal's use of Wachovia Bank & Trust Company checks. It is his position that "In most local banks it (a First Federal check drawn on Wachovia) is treated as cash and can be handled in this manner." According to Mr. Busbey's office, Century Banks, Landmark Banks, First National of Broward, Southeast Banks, Southern National and Barnett Banks in Broward County will either give immediate credit for these checks or exchange them for a cashier's check, in routine situations.

In addition, Mr. Busbey suggested an alternative to the problem of checks and clearing periods: "We offer a

unique service that no other savings and loan offers in that we will wire funds through the account of your designation the same day that it is requested."

If you experience any difficulty with these checks, please contact Mr. Busbey at 763-1121.

John Hume

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Corporation, Banking and Business Law Section

Thursday, October 12, 1978

— 4:30 P.M. —

TOWER CLUB
One Financial Plaza
Ft. Lauderdale, Florida

Program: Trademark Law Pitfalls in the Selection and Use of Corporate Names

Speaker: Eugene F. Malin

Proposed By-Law Amendment. It is proposed that the By-Laws of the Corporation, Banking and Business Law Section be amended by adding to Article IV, Section 1 a new subparagraph (g) to read as follows:

"(g) Anti-Trust Law".

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

OFFICERS

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 Maurice O. Rhinehardt ... *Pres.-Elect*
 Harry G. Carratt *Secretary*
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 Norma Howard ... *Executive Director*

**Fourth District
 Court of Appeal Hearings**

The District Court of Appeal of Florida, Fourth District, will hold a three-day Session of court on November 13, 14 and 15, 1978, in the U.S. District Court Room at 301 North Andrews Avenue, formerly the City Hall, Fort Lauderdale, Florida.

Chief Judge James C. Downey will be presiding and other members of the panel will consist of Judges Harry Lee Anstead and John H. Moore II.

The Court will hear oral arguments in appeals from criminal and civil matters that were tried in the circuit courts in Broward County.

The Fourth District Court of Appeal, which has its headquarters in West Palm Beach, holds sessions in that city and in each of the ten counties which comprise the Fourth District.

The ten counties which are served by the Fourth District Court of Appeal are: Orange, Seminole, Brevard, Indian River, St. Lucie, Martin, Osceola, Okeechobee, Palm Beach and Broward.

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**Report of the Members of
 The Board of Governors**

The Board of Governors of The Florida Bar met for two and one-half days at the Breakers Hotel on September 14-16, 1978, with 34 members in attendance.

The most debated matters were the proposed Revisions Nos. 1 and 6 of The Florida Constitution upon which the citizens of Florida will vote in November.

Revision No. 1 did not receive the support of the Board. This Revision encompasses a number of changes in different Articles and those matters which troubled the Board were:

- (1) The opening of judicial conferences at the appellate level.
- (2) The opening of proceedings of judicial nominating commissions.

Revision No. 6 received the support of the Board. This Revision provides for the merit selection and retention of circuit and county court judges.

The Board discussed the necessity for proper accounting of all funds and the minimizing of expense, to prevent waste, mismanagement and unnecessary growth of the staff. Proposals are being sought for regular "watchdog" auditing assistance and a reserve account was established.

The make-up of the Board will be changed with the addition of one non-resident member. This addition will be

for a two year test period. Non-residents compose over 20% of the total membership of The Florida Bar and will be represented by one member.

The Board adopted the report of the Integration Rule and By-Laws Committee to oppose the petition of 25 Tallahassee area attorneys to amend Article VIII of the Integration Rule to provide for a mail ballot for future dues increases.

Presentation of the Media Awards at the annual meetings will be limited to a maximum of fifteen minutes in the future.

Approval was given for the Lawyer Referral Service to place an advertisement in the Clearwater Sun to advise members of the public of the service. No local Referral Service exists in Clearwater at the present time.

The Board voted to oppose a Petition filed with the Supreme Court of Florida by members of a legal clinic which would permit radio and television advertising.

A number of disciplinary matters were considered in addition to the administering of private reprimands. The Bar has employed eleven part time investigators, most of whom are former F.B.I. agents, to assist in the responsibility emphasized by the Supreme Court for the prompt and proper disposition of disciplinary matters.

HUGH S. GLICKSTEIN
 WILLIAM F. LEONARD
 O. EDGAR WILLIAMS, JR.

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COURTROOM SCHEDULES

Due to the condemnation of a portion of the Courthouse and the consequent loss of the use of Courtrooms 365 and 366, it has been necessary to make changes in Courtroom scheduling for the remainder of 1978 to provide for magistrate hearings, misdemeanor arraign-

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BAR GROUPS MEETINGS

| Date | Organization | Location | Time |
|---------------|-------------------|---------------------------------------|---------------|
| Oct. 10, 1978 | North Broward Bar | The Flaming Pit Pompano, Beach, Fl | 12:00 Noon |
| Oct. 12, 1978 | South Broward Bar | Tropical Acres Ft. Lauderdale, Fl | 6:30 p.m. |

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ments and summary claims hearings. In some instances two judges have been assigned the same courtroom. It is anticipated that these judges will call their calendars in rotation in this courtroom and attempt to work out a schedule between themselves to try remaining cases. In the event they are unable to do so, they will seek assistance from all the other judges and the Court administrator in locating a courtroom to fulfill their trial needs.

It will be helpful if attorneys will advise the Court promptly of settlements in cases scheduled for trial, and the cooperation of the entire Bar is earnestly solicited during this time of courtroom shortage.

The weeks in which it has been necessary to schedule two judges in one courtroom are as follows:

| Week | Courtroom | Judges |
|---------|-------------|--------------------------------------|
| Oct. 2 | 416 | Herring/Mowry |
| Oct. 23 | 418 1050 | Orlando/Farrington Gunther/Gulkin |
| Oct. 30 | 416 | Cocalis/Herring |
| Nov. 13 | 418 850 | Orlando/Moriarty Tedder/Brescher |
| Nov. 27 | 1070 418 | Minnet/Lee Cocalis/Gulkin |
| Dec. 4 | 416 | Mowry/Herring |
| Dec. 11 | 415 850 | Orlando/Miller Tedder/Abram |
| Dec. 18 | 416 | Shahood/Roberts |

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"Florida Securities Act"

By Robert Kisky

The recently enacted "Florida Securities Act" is a step forward for all parties concerned, to wit, the public, the entrepreneur, the securities practitioner and the Division of Securities. The purpose of this brief article is to merely highlight a few of the more noteworthy changes to those relatively few practitioners who continue to practice se-

curities law. It goes without saying that careful scrutiny of the new Act is a prerequisite to its use.

In my opinion, the following sections have the most impact on our clients and on our daily activities as counsel to those both seeking to obtain public funds for their business as well as those who, after investing, feel aggrieved.

1. The Act now encompasses "investment advisers" and bunches them together with brokers, dealers, and securities salesmen. (Section 517.02(5) and 517.12)

2. The sale of an "exempt security" in the form of an interest in a charitable, religious, educational, etc. institution now requires that the issuer of such an interest deliver an "offering circular" complete with financial statements. Rules have not yet been adopted to detail the terms of this exemption. (517.05(8))

3. The previous sale of securities to 20 or 25 persons without registration under the exempt transactions section has been changed to permit, under reasonable conditions, the sale to 35 persons (in a 12 month period). No advertising or payment of commissions to unregistered persons is permitted. If more than 5 purchasers are involved, issuers must have an offering circular. The \$100,000 "heavy hitter" investor is excluded from "35". If there are 6 or more investors, the funds must be escrowed until the offer is completed; the escrow may not be for more than 6 months. Investors have a 3 day "cooling off" period within which to rescind and received a refund of their invested funds. (517.061(11))

4. A sale of options through registered 1934 Act dealers, when guaranteed by a 1934 Act broker/dealer and cleared by the Options Clearing Corporation, is a new exempt transaction. (517.061(17))

5. Most beneficial to 1933 Act issuers

and their counsel is the new coordination statute providing that offerings are exempt from registration with the Florida Division of Securities when declared effective by the Securities and Exchange Commission and when a Notice of Intention to Sell is filed with the Division and is accompanied by an application fee and certain other items. This should be a welcomed relief from the often onerous merit review heretofore applicable to most issues. (517.061(19))

6. The requirement of a \$50,000 bond by certain issuers and others has been repealed.

7. A "Security Guaranty Fund" has been legislated into effect. A \$250,000 fund will be developed through the payment of fees by dealers, investment advisers and branch offices thereof. The funds are available to those who: (a) lose money as a result of a violation by licensed dealers, salesmen and/or investment advisers; (b) obtain a final judgment; (c) fail to get full satisfaction of their judgment; (d) make a reasonable search for assets to satisfy same; notify the Department of Banking and Finance by certified mail at the time the action was commenced; and (f) are the victims of violative acts taking place AFTER January 1, 1979. (517-131)

To receive payment from the Fund, one must, in addition to satisfaction of all of the above, assign the portion of the judgment to the Department which equals the payment requested.

Payments are limited to actual or compensatory sums and are limited to \$10,000 per person per occurrence with not more than \$100,000 payable on account of the violations by any one dealer, salesman or investment adviser. (517.141)

8. The Investor Protection Act ("tender offer") section of the law has been revised to exempt from the definition

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of tender offer an offer to not more than 15 offerees in a 12 month period. (517.351)

9. The Statute of Limitations for securities matters is 2 years for most actions and the period runs from the time the facts giving rise to the cause of action were disclosed or should have been disclosed but not more than 5 years from the date of the violation. (95.11)

10. The new Act takes effect November 1, 1978 except for #8 above which became effective July 1, 1978.

There are obviously other changes of which one working with the Act should be aware. This short report, however, was an effort to focus on what at least one securities practitioner feels others should be aware of. Practitioners should also be conscious of the fact that the rules are not yet promulgated and may have a direct bearing on the application of the new statute.

(Outline of program presented August 3, 1978, by the Corporation, Banking & Business Law Section)

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WELCOME, NEW MEMBERS

CHARLES R. BURNETT, a native of Valdosta, Georgia, received his undergraduate degree from the University of Florida and his law degree from Cumberland School of Law. He is associated with the firm of Abrams, Anton, Robbins, Resnick, Schneider & Mager, Hollywood.

THEODORE H. FULTON, JR., a native of New Brunswick, New Jersey, received his undergraduate degree from the University of Nebraska and his law degree from the University of Nebraska College of Law. He is Vice President and Trust Officer of Landmark First National Bank of Fort Lauderdale.

JOSEPH M. GROHMAN, a native of Atlantic City, New Jersey, received

his undergraduate degree from Glassboro State College and his law degree from the University of Miami. He is associated with the firm of Carey, Dwyer, Cole, Selwood and Bernard, Fort Lauderdale.

KENNETH HEYDER, a native of Jacksonville, Florida, received his undergraduate degree from the University of South Florida and his law degree from the University of Miami. He is associated with Larry Singer, Miramar.

MICHAEL J. HORVITZ, a native of Cleveland, Ohio, received his undergraduate degree from the University of Pennsylvania, (Wharton School) and his law degree from the University of Virginia. He is associated with Hollywood, Inc.

TERRENCE L. LABELLE, a native of Hollywood, Florida, received his undergraduate degree from Florida Atlantic University and his law degree from Nova University. He practices alone in Fort Lauderdale.

ALLAN M. LERNER, a native of New York City, received his undergraduate degree from the University of Florida and his law degree from Cornell University. He is associated with

the firm of Beyer & Lerner.

CHARLES R. MULLER, a native of Staten Island, N.Y., received his undergraduate degree from Fordham University and his law degree from Fordham University School of Law. He is the house counsel for Carvel Corporation.

JOSEPH C. POMPONIO, JR., a native of Cambridge, Mass., received his undergraduate degree from Florida Atlantic University and his law degree from Nova University. He is associated with Rocco DeStephano, Hollywood.

CHAD P. PUGATCH, a native of Paterson, N.J., received his undergraduate degree from the University of Miami and his law degree from University of Florida. He is associated with the firm of Houston, Cooper & Easthope, Fort Lauderdale.

J. JEFFREY THISTLE, a resident of Pittsburgh, Pennsylvania, received his undergraduate degree from Washington & Lee University and his law degree from Nova University Law Center. He is associated with the firm of Grimditch, Bentz, Witte & Wunker, Pompano Beach.

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