

# The BROWARD BARRISTER

APRIL, 1980

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

## GENERAL MEETING THURSDAY, APRIL 17, 1980

### Gibby's Steak and Seafood Restaurant

2900 N.E. 12th Terrace  
Oakland Park, Florida

6:30 P.M. — Cocktails  
7:15 P.M. — Dinner  
Cash Bar  
Dinner: \$15.00

**Program:** Past Presidents of Broward County Bar Association will be honored.  
J. B. Patterson will be master of ceremonies.

This is a list of the living Past Presidents who will be honored:

J. B. Patterson  
Sherwood Spencer  
Stanley M. Beckerman  
Francis K. Buckley  
William M. O'Bryan  
Richard M. Sauls  
James B. Kerr  
John W. Fleming  
August C. Paoli

Ralph R. Quillian  
G. Earl James  
Robert B. Butler  
A. J. Musselman, Jr.  
Donald H. Norman  
Fred J. Ward  
Robert M. Curtis  
Russell B. Clarke  
Joseph A. Hubert

William G. Miller, Jr.  
Bruno L. DiGiulian  
L. Fred Austin  
Nicholas J. DeTardo  
William F. Leonard  
George A. Patterson  
Ray Ferrero, Jr.  
A. J. Thomas, Jr.  
Paul B. Anton

Please use the enclosed card for reservations. Reservations must be made by April 15, 1980.

**Next Meeting: Friday, May 30, 1980**  
Pier 66  
7:00 P.M. — Dinner-Dance

Installation of officers — Spouses and dates invited.

### YOUNG LAWYERS SECTION MEETING

Thursday, April 24, 1980

12:00 Noon

#### CAFE DE PARIS

715-A East Las Olas Boulevard  
Fort Lauderdale, Florida

Members: \$5.00

Non-Members: \$6.00

Speaker: C. Edward, Jr.

Topic: "Defense of the DWI with and without the BATmobile"

Reservations and checks made payable to "Young Lawyers Section" — should be sent to —

Jesse S. Faerber  
Post Office Box 11022  
Fort Lauderdale, Florida 33339

### CORPORATION, BANKING AND BUSINESS LAW SECTION MEETING

Thursday, April 24, 1980

#### TOWER CLUB

One Financial Plaza  
Fort Lauderdale, Florida

— 4:30 P.M. —

Program: The Formation of the Corporation — Corporate Tax Considerations

Speakers: Michael Casey, Esq. of English, McCaughan & O'Bryan, Richard D. Baxter, Esq. of Ruden, Barnett, McCloskey, Schuster & Russell

Refreshments: Wine and hors d'oeuvres

### LEGAL AID SERVICE OF BROWARD COUNTY, INC.

The Legal Aid Service of Broward County, Inc. was established in January, 1974. Broward County Bar Association obtained funding through filing fees to establish the services. Prior to this, all legal aid cases were referred to members of Broward County Bar Association. The attorneys charged no fees. With the growth of the community, legal aid cases increased and the program was established.

When funding became available through the National Legal Services Corporation, the program's guidelines were changed to comply with its requirements so that the program could be expanded with additional funding.

Currently the principal funding for Legal Aid Service is the Legal Services Corporation in Washington, D.C. Other major funding sources are: Broward County, CETA, State HRS, and the Area Agency on Aging. This funding

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

**OFFICERS**

Maurice O. Rhinehardt .... *President*  
Harry G. Carratt ..... *Pres.-Elect*  
James H. Walden ..... *Sec.-Treas.*  
Norma Howard .. *Executive Director*

provides for a full time staff of 39 employees of which 14 are staff attorneys and 9 are paralegals. All attorneys and paralegals specialize in one of the following substantive areas: Health, Housing, Public Benefits, Domestic Relations, Consumer, Education, Employment, Handicapped, and the Elderly. Ongoing efforts are also made to educate client groups of their rights in the hope of avoiding legal problems and the resulting litigation.

The Program's central office is located at 609 South Andrews Avenue. There is also a North County office located at 3650 North Federal Highway, Lighthouse Point, and a South County office at 2620 Hollywood Boulevard, Hollywood.

Legal Aid Service is currently seeking an attorney with a minimum of 5 years litigation experience in both Federal and State Courts to be the Litigation Director of the program. Applicants should have a demonstrated commitment to delivery of quality legal services to the poor and be willing to make a 3 year employment commitment to the program. Salary is from \$23,000.00 to \$30,000.00 depending on experience. Anyone interested should send a resume to: Executive Director, Legal Aid Service, 609 South Andrews Avenue, Fort Lauderdale, Florida 33301.

**YOUNG LAWYERS  
SOFTBALL TOURNAMENT**

The Young Lawyers Section of Broward County Bar Association will sponsor a Softball Tournament on April 26, 1980 at Croissant Park, 245 West Park Drive, Fort Lauderdale, Florida at 9:00 A.M.

Registration deadline is April 21, 1980, — 5:00 P.M.

The name of the team and captain with a roster of players not to exceed 15 must be submitted. Umpires will be judges on the 17th Judicial Circuit. There will be a family style barbecue for all participants and spouses/guests.

Registration Fee: \$15.00 per team.

For more information, contact Jesse Faerber — 566-0600.

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**LAW DAY, U.S.A.**

Free conferences with attorneys will be available to the public on May 3-4, 1980 in the following locations:

Pompano Fashion Square

Broward Mall

Hollywood Mall

Attorneys are needed! If you can give a few hours to help in this program, please call 764-8040.

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**NOTICE**

This is to inform you that the Trial Lawyers Section Workshop Seminar scheduled for April 18, 1980 has been cancelled. The seminar was to be held at the Innisbrook resort near Tarpon Springs, Florida.

**WELCOME NEW MEMBERS**

MICHAEL E. CHRISTIANSEN, a native of Pittsburgh, Pa., received his undergraduate degree from Penn State University and his law degree from the University of Pittsburgh. He practices alone in Fort Lauderdale.

STEVEN L. FRISCHER, a native of Cleveland, Ohio, received his undergraduate degree from Princeton University and his law degree from Ohio State University Law School. He is associated with First American Title Insurance Company in Plantation.

PAUL H. KUPFER, a native of Miami Beach, Florida, received his undergraduate degree from the University of Miami and his law degree from South Texas College of Law. He is associated with Shirley B. Weisman in Pompano Beach.

L. ANTON REBALCO, a native of Miami, Florida, received his undergraduate degree from Florida International University and his law degree from Nova University. He is associated with Devitt, Friedrich, Blackwell, Mikos & Ridley in Fort Lauderdale.

RONALD L. SIEGEL, a native of Pittsburgh, Pa., received his undergraduate and law degrees from the University of Pittsburgh and his L.L.M. from the University of Florida. He is associated with Capp, Reinstein and Kopolowitz in Fort Lauderdale.

BILLIE TARNOVE, a native of Atlantic City, New Jersey, received her undergraduate degree from Hofstra University and her law degree from American University. She practices alone in Fort Lauderdale.

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**MUST THE STATE GIVE  
NOTICE TO THE  
DEFENDANT IN  
DEATH CASES?**

Ray Russell

Florida Statute 921.141(5) sets forth the list of eight aggravating circumstances which are to be followed by the jury and then the trial court in determining whether or not the defendant in a capital case should receive the death penalty. (Mitigating circumstances are not limited by statute and include such factors as the defendant's character, record, or circumstances of the offense.) Is the defense entitled to a statement from the State setting forth which of the eight aggravating circumstances the State will rely on in seeking the death penalty as well as a summary of the evidence to be

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utilized in support thereof? In *Clark v. State*, 379 So.2d 97 (Fla. 1979), the Supreme Court of Florida held that a defendant in a capital case is not entitled to a statement of particulars as to the aggravating factors upon which the State will rely at the penalty phase of the trial. (Florida utilizes the bifurcated guilt-penalty procedure in death cases.) In *Clark* the issue was dispensed with in one sentence, citing *Menendez v. State*, 368 So.2d 1278 (Fla. 1979). (In *Menendez* this issue was dealt with in a one-sentence footnote as being without merit.)

*Clark* and *Menendez* may be difficult to reconcile with a short per curiam opinion rendered by the United States Supreme Court on November 6, 1978, *Presnell v. Georgia*, 99 S.Ct. 235 (1978). In a complicated fact situation, the U.S. Supreme Court in *Presnell* held that "fundamental principles of procedural fairness apply with no less force at the penalty phase of a trial in a capital case than they do in the guilt-determining phase of any criminal trial." In so holding, the *Presnell* majority cited *Cole v. Arkansas*, 68 S.Ct. 514 (1948). *Cole* held it was a violation of due process to convict an accused on a charge on which he was never tried (regardless of his apparent guilt on that uncharged offense) as it would be to convict an accused of a charge that was never made.

When the U.S. Supreme Court in *Presnell* held that the general standard to be applied to the penalty phase of a capital case was "fundamental principles of procedural fairness," the Court left open the question of what constitutes compliance with this general standard. This is apparently to be resolved by the lower courts and ultimately by the U.S. Supreme Court.

In a death penalty case do the "fundamental principles of procedural fairness" require the prosecution, upon demand, to disclose to the defense which of eight

aggravating circumstances and a summary of evidence it intends to rely on in seeking the death penalty? Although the Florida Supreme Court in *Clark* and *Menendez* answered the question in the negative, in my opinion compliance with the *Presnell* standard calls for this question to be answered in the affirmative. The last critical portion of a capital case should give the accused notice of which of the eight aggravating circumstances the State will rely on and a summary of the evidence to support each circumstance. The sanction sought by society is the most extreme penalty and the burden of disclosure on the State does not call for undue labor. The obligation on the State to disclose this information prior to the penalty stage should be no less than at the trial stage. Procedural fundamental fairness begins with notice.

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## AVOIDING UNINTENTIONAL GRIEVANCES

### Creating Great Expectations

Another common complaint is the allegation that a lawyer upon accepting employment, "promised the moon" but has delivered "only green cheese."

Lawyers should recognize that optimistic statements about the soundness of the cause of a client unsophisticated in the legal system tend to create unjustifiably great expectations as to the ultimate results.

When the final outcome does not measure up to the client's expectations, he becomes frustrated and may file a complaint against the lawyer. Although such complaints rarely result in disciplinary action, they do embarrass and harass the respondent lawyer and consume the time and effort of those serving in the disciplinary process.

Such malfeasance complaints can of-

ten be avoided if the lawyer moderates his optimism about the client's case with a strong caveat to the client explaining that "air-tight" cases do not exist and that the possibility of unforeseen circumstances or developments arising is always present.

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CASE NO. FRE80002

## IN THE SUPREME COURT OF FLORIDA

WILLIAM H. KILBEY,  
*Petitioner,*  
v.  
THE FLORIDA BAR,  
*Respondent,*

The Petitioner, William H. Kilby, has applied for re-instatement to The Florida Bar. Anyone who has information applicable to this petition for reinstatement, should contact Lance J. Thibideau, Assistant Staff Counsel, The Florida Bar, as soon as possible. It is requested that any such information pursuant to the above be submitted in writing.

Mr. Kilby's resignation pursuant to Florida Bar Integration Rule, article XI, Rule 11.08, was accepted by the Supreme Court of Florida on March 10, 1977.

The facts leading to Mr. Kilby's resignation centered around Mr. Kilby's misuse of approximately \$9300 in client's funds.

LANCE J. THIBIDEAU  
Assistant Staff Counsel  
The Florida Bar  
315 S.E. 17th Street, Suite 302  
Fort Lauderdale, Florida 33301



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# FLORIDA WILL MANUAL

## NEW EDITION OF LANDMARK'S TIME-SAVING AID TO LAWYERS WHO DRAFT WILLS AND TRUST AGREEMENTS. REFLECTS CHANGES IN FEDERAL TAX LAW AND FLORIDA PROBATE CODE.

This is the Florida edition of the highly regarded Will Manual used by leading attorneys throughout the United States. Widely used in Broward County.

The forms in the Florida Will Manual are annotated to Florida Statutes. Copious footnotes cite authorities and guard against common errors in draftsmanship.

### EASY TO USE

Forms are conveniently arranged in usual will and trust sequence, with many optional and alternative clauses. The table of contents, index, and divider tabs afford rapid access to all sections and clauses. There are frequent cross-references.

### CONTENTS ARE COMPREHENSIVE

The Manual allows you to adapt each form to the special requirements of your client, depending upon family relationships, nature of assets, tax circumstances, and other considerations. Included are:

- Will forms
- Marital and residuary trust clauses
- Inter vivos trust forms
- Insurance trust forms
- Charitable trust forms
- Clauses to handle special situations

### THOROUGH SCHOLARSHIP

The editors are Robert A. White and Robert C. Gunn, members of the Florida Bar. The collaborating editors are Elmer Lee Fingar and David R. Bookstaver, members of the New York Bar.

Each form is supplied with footnotes by the editors to alert the practitioner to Florida statutes and case law. The forms are designed to reflect the Tax Reform Act of 1976, with citations by the editors.

### CONVENIENT AND CURRENT

The Florida Will Manual is a looseleaf hard cover book, 10½" by 7½", with over 180 pages. Annual supplements are available at low cost to keep the contents up-to-date with new forms, current laws and decisions, and comments by the editors. Price: \$48.00 postpaid plus 4% Florida sales tax. Sent only to members of the Broward County Bar Association.

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