

# The BROWARD BARRISTER

MARCH, 1980

Volume 9

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

## NO GENERAL MEETING IN MARCH

The next meeting will be April 17, 1980

Gibby's Steak and Seafood Restaurant.

The program will be announced.

### YOUNG LAWYERS SECTION MEETING

Thursday, March 27, 1980

12:00 Noon

BUBBA'S

1624 East Sunrise Boulevard  
Fort Lauderdale, Florida

Members: \$5—Non Members: \$6.00

Speaker: Walter G. Campbell, Jr.

Topic: "Ethics: An Essential Part of  
Every Attorney's Practice"

Reservations made with:  
Jesse S. Faerber  
Post Office Box 11022  
Fort Lauderdale, Florida 33339

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### NOTICE

Effectively immediately, all hearings before General Masters John Jordan, Steven Shutter and Linda Vitale will be held in Room 520 of the Courthouse. The Masters' secretaries are still located in Room 482.

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### Monday Morning Observations

Overheard at 8:50 a.m. on a Monday, while waiting in a huge crowd for an elevator at the Courthouse:

"Oh, wow, I'm one-half hour late for the 9:00 a.m. elevator".

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### CPR Sign-Up

The American Heart Association, Broward County Chapter, is fighting for your life. The Association is available to conduct seminars on basic car-

diac life support. It is recommended that each office have at least one person fully conversant with CR. Classes can be conducted and coordinated at the convenience of the class members.

If interested, please call:

Broward County Bar Association —  
764-8040, and leave your name, address, law firm and age.

Programs are conducted by certified personnel at no cost. Please circulate this announcement to all personnel in your office. *Please call by April 1, 1980.*

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### NOTICE

Any attorney having the original, or a copy of any instrument purporting to be the Last Will and Testament of YOLANDE R. KLEIN, a former resident of Broward County, is requested to contact Joseph G. Heyck, Jr., Attorney, at Post Office Box 2111, Tampa, Florida 33601 or telephone A/C 813—223-5351.

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### Young Lawyers Softball Tournament

The Young Lawyers Section of Broward County Bar Association will sponsor a Softball Tournament on April 26, 1980. The place will be selected at a later date.

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.

Registration Fee: \$15.00 per team.

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

### Supreme Court Decision

The recent case of *Baker vs. State* 377 So. 2d 17, first was reported in the newspaper. At that time, I could not believe that the Supreme Court of Florida had made such a decision so I waited until it did come out in publication in the advance sheets. The case involved a conviction of a driver of an automobile wherein a death occurred under Fla. Sta. 860.01 because the driver of the vehicle was intoxicated under the DWI Statute with blood alcohol of .17 although the accident was beyond his control and not a casual relation to the death.

Justice Sundberg, writing for the majority, concluded that causation is not a necessary element of conviction under this Statute, stating that the presence of blood alcohol over .10 as defined by the DWI Statute is conclusive proof of culpability and criminal liability. The Justice concluded that this is not a violation of the denial of substantive due process under the United States and Florida Constitutions.

Firstly, he stated that the legislature intended strict liability by this Statute, apparently ignoring the fact that the state legislature in many instances passes unconstitutional acts and it is a province of the Supreme Court under our division of powers to review and hold statutes that are unconstitutional, in fact, unconstitutional, regardless of legislative intent.

Secondly, he points out there are other statutes holding liability without proximate cause such as our Statutory Rape Statute. Again, this is a poor parallel for the Statutory Rape Statute can easily be distinguished as a crime of intent, the intent to commit sexual intercourse, not knowing that they were a minor being no defense. The act is

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the cause of violating the criminal statute. In the statute under consideration, drunk driving, although a voluntary act, may not be the cause of the crime. The driving may not vary in any way whatsoever from normal, safe driving within the speed limits and all safety regulations. The accident causing the death may be completely the fault of the other driver or pedestrian who has no blood alcohol. The driving under the influence in, of itself, does not cause any criminal violation, except as written into the present unconstitutional statute.

Justice Sundberg further agrees that drunken driving is a serious problem and one apparently that justifies such a drastic unconstitutional law to deter

driving while under the influence. Again, the Justice, as the legislature, has ignored the fact that the main cause of drunken driving is a much more deep-seated psychological deficiency in the driver. Alcoholism is considered to be a sickness and a manifestation of a much more serious problem, yet no one has proposed a law stating that anyone with psychological or physical problems should not drive or should be held strictly liable for their accidents. It is clearly apparent from anyone that has driven or has any exposure to drivers who are involved in accidents that the most dangerous driver of a dangerous instrumentality, the automobile, is one who is psychologically unstable. Many elderly people who have lost touch with reality and react violently to other motorists or pedestrians on the road causing accidents and death, younger people who have no appreciation of the dangers involved driving a car or others who have psychological problems who, on the roads, literally use their vehicle as a club or gun to assault other cars on the road, really are the main problem.

Psychological and physical testing should be a prerequisite to being given a drivers license.

In any event, the conclusion by Justice Sundberg appears to be completely abhorrent to our judicial and legislative system. It does not take much imagination to foresee that following his reasoning a driver of a vehicle with more than .10 alcohol blood level who is driving along and happens to collide with a young man who, under the influence of drugs, decides to fly from an overpass and lands on the roof of your car and is killed, that the driver of the vehicle should be held responsible for criminal manslaughter, or that a person deciding to commit suicide by stepping in front of a car, would charge that driver with manslaughter. Also, by the same reasoning, the driver of an automobile who has an alcohol level over .10, but is driving within all safety regulations, and is hit broadside by someone who has had no alcohol going through a stop-sign at 50 miles an hour in a 25 mile an hour zone, would be responsible for the accident. The dissent of Justice Boyd clearly points out that the statute by stating that the death should be caused "by the operation of the car" clearly indicates that there should be some causal, some proximate cause between the alcoholic driving and the death. It is hoped that the Supreme Court, upon rehearing or by a subsequent case, immediately reverses its decision.

#### O. Edgar Williams, Jr. Reelected to Board of Governors of The Florida Bar

I am most pleased and grateful to have the opportunity of representing my fellow Broward attorneys as one of their members of the Board of Governors of The Florida Bar for another two years. The Bar is facing challenges from many directions. I feel it is imperative to the members of the Bar and the general public that its standards be the absolute highest of all the professions and the achievement and maintenance of such standards is our only certain way of meeting these challenges. I feel that the experience I have gained from my first two years service on the Board will greatly assist me in being an effective representative of the Broward attorneys and a useful member of the Board.

— O. Edgar Williams, Jr.

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#### Trial Lawyers Section Workshop Seminar

On April 18, 1980, a Workshop Seminar has been planned by this Section. This will not be a lecture, but will be a workshop type format with Professor Charles W. Earhardt in attendance. The purpose of the workshop is to attempt to bring forth problems which trial practitioners are having with the new evidence code, rules of procedure and general rules of court. Full participation by all persons attending is anticipated.

The seminar is to be held at the Innisbrook resort near Tarpon Springs, Florida with hotel accommodations, if you are desirous of spending the night or the weekend, beginning at \$84.00 per day. Hotel reservation forms will be mailed to you and you will make your arrangements for housing directly with the hotel.

Registration is limited to 40 participants.

Registration fee is \$25.00 for Broward County Bar Association members and \$15.00 for Trial Lawyers Section members.

To register, please call or write:  
Broward County Bar Association  
735 N. E. Third Avenue  
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## NEW MEMBERS

**JOHN A. BOND**, a native of Jamaica, N.Y., received his undergraduate and law degrees from the University of Miami. He is associated with John A. L. Bond Realty Enterprises in Hollywood.

**DENNIS M. CAMPBELL**, a native of Pawtucket, Rhode Island, received his undergraduate and law degrees from the University of Florida. He is associated with Southern Bell in Fort Lauderdale.

**MARK H. GOLDBERG**, a native of Hartford, Conn., received his undergraduate degree from the University of South Florida and his law degree from Holland Law Center, University of Florida. He is associated with Casoria & Goff in Fort Lauderdale.

**ROBERT (R. C.) KAIN, JR.**, a native of Rome, N.Y., received his undergraduate and law degrees from Vanderbilt University. He practices alone in Lauderhill.

**JOHN P. KELLY**, a native of Boston, Mass., received his undergraduate de-

gree from College of the Holy Cross and his law degree from Vanderbilt Law School. He is associated with Fleming, O'Brien & Fleming in Fort Lauderdale.

**NORMAN S. KLEIN**, a native of New York, received his undergraduate degree from the University of Buffalo and his law degree from New York University. He is associated with Bruce Steinhardt in Fort Lauderdale.

**NEIL LEAVITT**, a native of Chicago, Illinois, received his undergraduate degree from Roosevelt University and his law degree from John Marshall Law School. He practices alone in Fort Lauderdale.

**ROSS MANELLA**, a native of Montreal, Canada, received his undergraduate and law degrees from McGill Law School. He practices alone in Hollywood.

**ROBERT A. PLAFSKY**, a native of New Jersey, received his undergraduate degree from George Washington University and his law degree from Northwestern University. He is associated with Ruden, Barnett, McClos-

ky, Schuster & Russell in Fort Lauderdale.

**DEBORAH C. POORE**, a native of Wurtzberg, Germany, received her undergraduate degree from Morehead State University and her law degree from the University of Kentucky. She is associated with Fleming, O'Bryan & Fleming in Fort Lauderdale.

**BRUCE S. SCHWARTZ**, a native of Philadelphia, Pa., received his undergraduate and law degrees from the University of Miami. He is associated with N. S. Klein and R. Steinhardt in Fort Lauderdale.

**JOHN C. SUSKO**, a native of Allentown, Pa., received his undergraduate degree from Johns Hopkins University and his law degree from Washington University. He is associated with Fleming, O'Bryan & Fleming in Fort Lauderdale.

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## AVOIDING UNINTENTIONAL GRIEVANCES

### Procrastination

The most common complaint made by clients is that the lawyer "hasn't done anything."

Many such complaints may be avoided by the simple expedient of forwarding to the client copies of pleadings, briefs, memorandums and relevant correspondence as the matter progresses.

Despite their honest intentions to complete matters expeditiously, lawyers do sometimes procrastinate in violation of Disciplinary Rule 6-101(A), which provides that:

"A lawyer shall not: . . . (3)

Neglect a legal matter entrusted to him."

Such violations can result in disciplinary action.

## NOTICE OF BAR GROUP MEETINGS

Date	Organization	Location	Time
3/19/80	Broward County Women Lawyers' Association	Venetian Room Pier 66 Hotel 2301 S.E. 17th Street Causeway Ft. Lauderdale, Fla.	5:30 P.M.
4/2/80	Broward County Trial Lawyers' Association	Stouffer's Anacapri Restaurant 1901 N. Federal Hwy. Ft. Lauderdale, Fla.	5:30 P.M.
4/10/80	South Broward Bar Golf Tournament	Emerald Hills Country Club 4100 N. Hills Drive Hollywood, Fla.	12:30 P.M. 1:00 P.M. Tee Times
4/15/80	North Broward Bar	Flaming Pit Restaurant 1150 N. Federal Hwy. Pompano Beach, Fla.	12:00 Noon



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Actual neglect can be prevented by a systematic priority list, conscientiously adhered to, and by office procedures under which secretaries or other assistants are made responsible for reminding the lawyer of deadlines.

Neglect of a client's affairs is often aggravated by the lawyer's failure to respond to the client's phone calls or letters. Such failure can cause complaints even when the lawyer has not actually neglected the client's matters. When a lawyer is unable to respond to a letter or phone call from his client, the lawyer should delegate to his secretary or assistant the initial responsibility for responding to the client's inquiry. Thereafter, as soon as possible, the lawyer should respond to the client directly.

#### Refusing to be Discharged by a Client

A related complaint is that the lawyer, who has been informed of his client's desire to retain other counsel, re-

fuses to withdraw from the representation when requested to do so by the client. This refusal is often predicated on the erroneous assumption that it is justified by an existing lawyer's lien for his fee. There is no authority for such a position under the Code of Professional Responsibility. Disciplinary Rule 2-110(B) states:

"A lawyer representing a client before a tribunal . . . and a lawyer representing a client in other matters shall withdraw from employment, if: . . . (4) He is discharged by his client."

Withdrawal from representation is mandatory upon discharge by a client.

Disciplinary Rule 2-110(A)(2) further sets forth the duties of a lawyer upon withdrawal from employment, and Disciplinary Rule 2-110(A)(3) provides:

"A lawyer who withdraws from employment shall refund promptly any

part of a fee paid in advance that has not been earned."

A lawyer can avoid this type of complaint by promptly taking the necessary steps to withdraw from employment as soon as a client has indicated to him that his services are no longer desired. If the lawyer wishes to assert a statutory or common law lien or recover any unpaid portion of his fee, he must rely on the civil procedures available for assertion of such rights.

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