

The BROWARD BARRISTER

PUBLISHED BY THE BROWARD COUNTY BAR ASSOCIATION

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

SEPTEMBER 1981

Volume 10

Number 9

GENERAL MEETING THURSDAY, SEPTEMBER 17, 1981

PIER 66, Suite 66 — 2301 S.E. 17 Street Causeway, Fort Lauderdale

Cocktails: 6:30 P.M. (cash bar) ★ ★ Dinner: 7:15 P.M.—\$15.00/person

Speaker: Frank T. Read
Dean, University of Florida Law School

Topic: Legal Education in the 80's

RESERVATIONS ARE NECESSARY. PLEASE CALL 764-8040 by noon on September 15, 1981. Reservations made and not cancelled must be paid if guarantee is not met and the Bar is charged for dinners.

THE NEXT MEETING IS OCTOBER 15, 1981

It is a joint meeting with South Broward Bar Association at
Emerald Hills Country Club

PRESIDENT'S MESSAGE

In recent weeks each of us has had the opportunity to observe the operation of the Judicial selection process at each level of our Florida Court System—County Court, Circuit Court, District Court of Appeal and Supreme Court. While the process at some levels has not been completed, one comment I have received from numerous lawyers and lay persons is "Why don't more *practicing* lawyers apply?"

I believe that a practicing lawyer often would be the best qualified candidate, if he or she would apply. I subscribe to the assumption underlying the question, that is, not enough qualified practicing lawyers are applying for Judicial vacancies to maintain the quality of the Bench.

I suspect that some of the reasons for the lack of applicants from the Bar include the pay, overcrowded Dockets, inadequate Court facilities, and increased pressure on the incumbents. These are being resolved through the efforts of the Bench and the Bar to improve these areas.

Merit selection has reduced the Politics of Judicial appointment but it certainly has not eliminated Judicial nominations or appointments from Politics.

The more subtle constraints on the practicing lawyer who might consider applying are several. The most often cited is the tremendous cost of educating one's children at the college level.

Another is the reluctance to give up a practice carefully built with significant effort over a long period of time. In addition, there is the very substantial investment of time and emotion in the application and the process—particularly if the applicant is unsuccessful. Finally, there is the attitude of the client which may range from "Who do I call now?" to abandonment or even betrayal.

I suggest that the rewards of Public service, particularly in the Judiciary are very high. Judges are still among the most respected members of our society. Each of us needs to encourage our ablest and most experienced practicing attorneys to apply for Judicial vacancies.

When they do apply they should receive our support and encouragement throughout the process.

Russell E. Carlisle

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Pilot Program — Uniform Motion Calendar

The judges who are participating in the Pilot Program will be attending the Judges' Fall Conference during the week of September 21, 1981, and no Uniform Motion Calendars will be had during that week. Those participating are:

Judge W. Herbert Moriarty, Judge George W. Tedder, Jr., Judge Gene Fischer, Judge John King.

ROBING CEREMONIES

THE BROWARD COUNTY BAR ASSOCIATION

Cordially Invites You To Attend

The Robing Ceremonies of

CIRCUIT JUDGES

Patricia W. Cocalis

Bobby W. Gunther

H. Mark Purdy

George A. Shahood

and

COUNTY JUDGES

Brian P. Kay

Steven G. Shutter

Of The Seventeenth Judicial Circuit
In and For Broward County, Florida

On Thursday, September 10, 1981

At 4:00 O'Clock P.M.

Bailey Concert Hall

3501 S.W. Davie Road

Davie, Florida

Broward County Bar Association
733 N.E. Third Avenue
Fort Lauderdale, Florida 33304
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Russell E. Carlisle *President*
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Norma Howard .. *Executive Director*

APPELLATE TIPS FOR TRIAL LAWYERS

By Nancy Little Hoffmann

Chair, Appellate Courts Committee
(Note: This is the first of a series by members of the appellate courts committee of the Broward County Bar Association, designed to assist members of the bar.)

TOPIC: WHEN AND WHAT TO APPEAL

This article can only scratch the surface of what can be a perplexing problem, but will hopefully serve to alert trial practitioners to some of the changing and conflicting recent cases in this area.

1. What is a final appealable order?

The general rule has long been that an order is final and appealable if the judicial labor required or permitted to be done has been accomplished. *Slatcoff v. Dezen*, 72 So.2d 800 (Fla. 1954). Similarly, where nothing further remains to be done to fully effectuate termination of the cause between the parties directly affected except enforcement by execution or otherwise, the judge-

ment is final. *Hensley v. Palmer*, 59 So. 2d 851 (Fla. 1952).

Some recent examples of what may and may not be considered final orders include a pair of conflicting decisions from the Fourth and Third Districts. In *Cordani v. Roulis*, 395 So.2 1276 (Fla. 4th DCA 1981), the Fourth District held that an order granting a motion to dismiss a complaint with prejudice is a final appealable order. The court declined to follow a recent case from the Third District, *Gries Investment Company V. Chelton*, 388 So.2d 1281 (Fla. 3d DC A1980). The Third District takes the view that such an order is not appealable, and that a further order actually dismissing the cause is required for finality.

Another question often raised is whether dismissal of one count of a complaint is separately appealable. The main rule as set forth by the Supreme Court in *S.L.T. Warehouse Company v. Webb*, 304 So.2d 97 (Fla. 1974) is that piecemeal appeals are not permitted where claims are interrelated. The main exception to that rule, announced in *Mendez v. Flagler Family Ass. Inc.*, 303 So.2d 1 (Fla. 1974) is that the dismissal of one count may be appealed where it constitutes a separate and distinct cause of action which is not interdependent with other pleaded claims. That rule is, however, often difficult to apply. The Fifth District recently addressed that question, and held that an order dismissing a claim for punitive damages, but leaving the compensatory damage claim standing, is not final for appellate purposes where all claims arose out of the same set of facts. In *Gibbs v. Reliance Insurance Company*, 6 FLW 1502 (5th DCA, June 24, 1981), that court held that dismissal of such a claim, whether contained in a single or multiple counts, would not be appealable where the claims arise out of the same set of facts. In that same case, the court reaffirmed the rule that dismissal of one count of a multicount complaint, even though based on a different legal theory from the remaining counts, is not appealable where all counts arise out of the same factual circumstances.

An important case to note in this area is *Chan v. Brunswick Corporation*, 388 So.2d 274 (Fla. 4th DCA 1980). The court there held that the phrase "for which let execution issue" is not

an essential ingredient in determining a judgment's finality.

The Fourth and Third Districts are again at odds over the appealability of orders granting and denying motions to vacate defaults. The Third District will permit appeals from orders denying motions to vacate, *Pedro Realty, Inc. v. Silva*, 392 So.2d 1005 (Fla. 3d DCA 1981). The Third District had earlier held that orders granting motions to vacate defaults were not appealable, *Praet, v. Martinez*, 367 So.2d 657 (Fla. 3d DCA 1979), but more recently in an opinion on rehearing in *Bache, Halsey, Stuart, Shields, Inc. v. Mendoza*, 6 FLW 1641 (Fla. 3d DCA, July 1, 1981), reversed its position and held that such orders are appealable. The Fourth District, on the other hand, does not permit an appeal from either the granting or denial of a motion to vacate a default. *Leibman v. Sportatorium, Inc.*, 374 So.2d 1124 (Fla. 4th DCA 1979); *Caribbean Agencies, Inc. v. Agri-Export, Inc.*, 384 So.2d 281 (Fla. 4th DC-A 1980). The Fourth District has recently certified that conflict to the Supreme Court in *Doctor's Hospital of Hollywood, Inc. v. Madison*, 6 FLW 1154 (Fla. 4th DCA, April 29, 1981).

2. When is a notice of appeal timely?

(Continued on page 6)

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YOUNG LAWYERS SECTION NEWS

PRESIDENT'S COLUMN

PRO BONO PROJECT

The Young Lawyers Section of the Broward County Bar Association has been asked by the Inner City Task Force of the Broward Workshop to participate in a pilot project by providing pro bono legal services. Specifically, the Task Force is in the process of targeting low income areas in the City of Ft. Lauderdale for "clean up".

The role which the Young Lawyers Section has been asked to play in this particular project is to provide attorneys who are willing to counsel residents of the targeted area as to their rights to enforce building codes, leases, and other statutory and code requirements. Thus, the role of the Young Lawyers Section is to provide lawyers who are willing to undertake both counseling and civil litigation on behalf of these residents.

The Task Force is also in the process of obtaining participation from the Broward County State Attorney's office to participate in the project. The combined effect of both concentrated civil and criminal litigation hopefully is to provide a better environment for the residents.

At the present time, the Young Lawyers Section Executive Committee is in the process of evaluating this project both from the standpoint of potential problems and liabilities as well as to determine if there is sufficient interest

among our members to undertake such a project. An inherent part of this proposal includes the staffing of an office to counsel the clients and to process the litigation. Therefore, it is essential that the Section obtain sufficient participation from the membership at large. If you are interested in participating in this program or if you have some comments concerning the project, I would appreciate it if you would get in touch with me so that I can have the benefit of your thoughts and comments (at 473-1500).

Jesse S. Faerber, President
Young Lawyers Section

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CREDIT UNION

This year, the Broward County Young Lawyers Section is undertaking a new project to organize a credit union. The function of this credit union is to provide financial services, not only to members of the Bar, but in addition, to all employees of law offices throughout Broward County.

Fritz Heidgerd, who serves as local counsel to several credit unions, has agreed to undertake the primary responsibility of organizing the credit union. As a consequence of Mr. Heidgerd's expertise in this area, it is not going to be necessary to solicit any further organizational help.

However, I would be interested in receiving any comments or suggestions from members of the Broward County

Bar. Specifically, I would like to have some idea as to the receptiveness of this unique project. As I have mentioned in previous articles, the Dade County Bar has had a similar organization which has functioned for several years. Naturally, I believe this is going to be a most worthwhile project. Please let me have your thoughts and comments.

Jesse S. Faerber
President

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Young Lawyer's Annual Beach Party

WHEN: — Saturday, September 26, 1981. 6:30 p.m. - 11:00 p.m.

WHERE — Harbor Beach Surf Club (From Intersection of A1A and Harbor Beach Parkway, go east one block)

Those lucky young lawyers who attended last year's Beach Party will recall a veritable feast of oysters on the half shell, barbecued ribs and trimmings catered by Sonny's Barbecue, and lots of cold beer and wine.

Never to be outdone, the Young Lawyers will attempt to repeat last year's festivity and we invite all members of the Broward Bar, law school graduates and their spouses to an evening of music, good food and spirits, volleyball if the mood suits you, and camaraderie.

For further information, please call BETTY ANN PALMER, 473-1500.

The September Meeting of the Young Lawyers' Section of the Broward County Bar Association will be held on Thursday, September 24, 1981, at 12:00 Noon at:

CHI CHI'S RESTAURANT
6500 North Federal Highway
Fort Lauderdale, Florida

The guest speaker will be Chuck Dowdle, Sportscaster from Channel 10 News, who will speak on a sport-related topic.

Please phone in your reservations to Charlotte, secretary to Steve Lauer at 565-0501 — no later than September 21, 1981.

Cost of the luncheon — \$7.00

Please make your check payable to YOUNG LAWYERS SECTION. You may mail your check to E. Steven Lauer, P.O. Box 9027, Fort Lauderdale, Florida 33310 or bring it to the luncheon.

RESERVATIONS ARE A MUST!!

_____ No. Reservations — \$6.00 Members, \$7.00 Non-Members

_____ Name

Please make check or reservation(s) payable to YOUNG LAWYERS SECTION. You may mail your check to E. Steven Lauer, Post Office Box 9027, Fort Lauderdale, Florida 33310 or bring it to the luncheon. **RESERVATIONS ARE A MUST!!**

Golf Tournament "In Swing" For October

The annual Golf Tournament for Young Lawyers, Members of the Broward Bar, Judges and Friends, is set for the morning of Saturday, October 17, 1981, at the Jacaranda Country Club. The entry fee which is to be announced includes cart and greens fees, and luncheon buffet. For further information, call Romney Rogers at 462-1431.

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Football League Deadline — September 10, 1981

As announced in the August issue of *The Broward Barrister*, the Flag Football League will begin September 21, 1981. For all of you "frustrated" "would be" "Sunday", and even actual football players who wish to play, don't forget to get your team rosters and entry fees in to Philip Morgan, 2881 East Oakland Park Boulevard, Post Office Box 11022, Fort Lauderdale, Florida 33339; or Romney Rogers, 800 East Broward Boulevard, 700 Cumberland Building, Fort Lauderdale, Florida 33301, by *September 10, 1981*. For further information see the article in last month's *Barrister* or call Philip Morgan at 566-0600 or Romney Rogers at 462-1431.

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UNITED WAY RUN

The Young Lawyers' Section of the Broward County Bar is pleased to announce that they will be sponsoring the Second Annual United Way Run on Saturday, October 31, 1981, beginning at 8:00 a.m. at Sunrise Musical Theatre. This will be a 6.2 mile or 10,000 meter event which can be entered by anyone for an entrance fee of \$6.00. All funds go to the United Way. The event is being sponsored by Miami Herald and the official race radio will be WFTL. Entry forms can be obtained from the United Way office located at 1300 S. Andrews Avenue, Fort Lauderdale, Florida. Entry blanks will also appear in the Herald. The Young Lawyers' Section is sponsoring lawyer competition and will provide prizes to the top finisher in the various age categories. All young lawyers are urged to participate in this event. Last year's run was a great success and enjoyed by all who participated. Remember to run for the United Way on October 31, 1981.

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BROWARD COUNTY COURT VACANCIES

THIS IS TO NOTIFY YOU that the Judicial Nominating Commission in and for the Seventeenth Judicial Circuit announces three (3) County Court vacancies. All qualified members of The Florida Bar interested in making application, may obtain Application Forms at the Office of the Court Administrator, Broward County Courthouse, Room 880, 201 S.E. Sixth Street, Fort Lauderdale, Florida.

All applications must be completed and returned no later than:

Friday, September 11, 1981, at
5:00 o'clock, P.M.

at the following address:

Chairman, Judicial Nominating
Commission
c/o Court Administrators' Office
Broward County Courthouse
Room 880
201 S.E. 6th Street
Fort Lauderdale, Florida 33301.

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MEDIA AWARDS

Three media organizations in South Florida have won American Bar Association Gavel Award honors "for outstanding public service".

Silver gavels were presented to the 1981 "Gavel" winners on August 10, 1981, in New Orleans. Awards to Certificate of Merit winners were mailed to the recipients in July.

The South Florida winners are:

Fort Lauderdale News (Gavel) for "Broward Courts: Justice Denied", an in-depth investigation report by Marion Hale, Dan Lovely, James E. Smith and Bill Clark.

Miami Herald (Certificate) for its monumental effort to unearth and document police brutality and discipline before, during and after, the May 17, 1981 riots.

WCKT-TV, Miami (Certificate) for "Mortgage Man", an investigative report about improper practices by an attorney and contractor engaged in a real estate transaction.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

No. 81-17-Misc.-Civil
In Re: Adoption of General Local Rule
27

ORDER

Upon consideration by the Court en banc, it is

ORDERED that General Local Rule 27 be and the same is hereby approved and adopted as follows:

"RULE 27. DANGEROUS SPECIAL OFFENDER NOTICE.

In any case within the District wherein a notice is to be filed under 18 U.S.C. §3575 or 21 U.S.C. §849 which alleges the existence of a defendant who is a dangerous special offender, such notice shall be filed with the Clerk of the Court in a sealed envelope, the outside of which states the regularly assigned case number and Assistant United States Attorney. In addition to the statutory notice, the envelope shall contain an affidavit from the Assistant United States Attorney stating the information contained in the notice has been disclosed to the defendant and defendant's counsel, date of disclosure, and any other facts relevant to the disclosure. The Clerk of the Court shall retain the sealed envelope in a file which is separate from the regular criminal files and docket sheets. This file shall not be subject to subpoena or public inspection during the pendency of the criminal matter. Applications for modification of this procedure should be directed to the Chief Judge of the District or his designated substitute. This rule shall not affect the statutory right of the interested parties to consent to early disclosure of the notice."

DONE AND ORDERED at Miami, Florida this 22nd day of July, 1981.

FOR THE COURT:

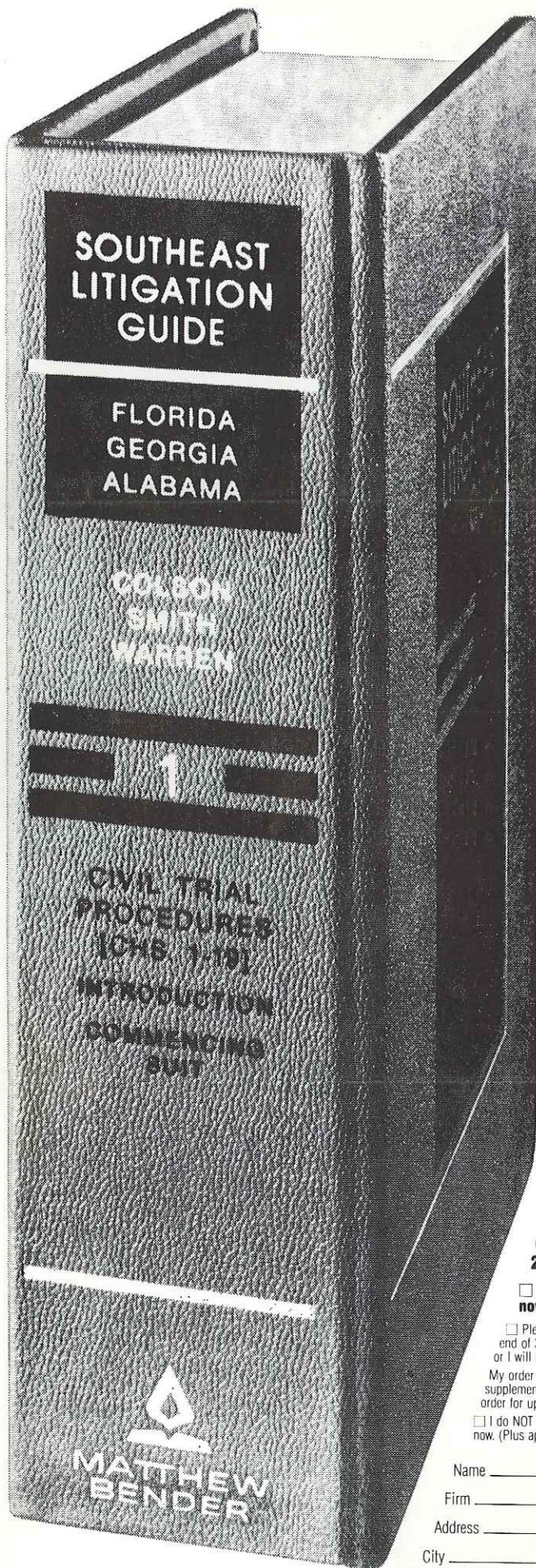
C. Clyde Atkins
CHIEF JUDGE

★ ★ ★ ★ ★ ★

BROWARD COUNTY JUDGES INSTALLED

Judge Harvey Ford of Broward County was installed as Executive Secretary, Judge George Shahood as 4th D.C.A. Vice-President and Judge Alfred Skaf as a Director of the Conference of County Court Judges of Florida at their annual meeting in Haines City the week of June 16-20.

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(continued from page 2)

There is no question but that a notice of appeal from a final order or judgment must be filed within thirty (30) days or "rendition" of the order to be reviewed. Rule 9.110(b), Fla.R. App.P. Similarly, on appeals from non-final orders, the same thirty (30) day period applies. Rule 9.130(b). The difficult question is "when" rendition occurs.

"Rendition" is specifically defined in the appellate rules (Rule 9.020(g)), as the filing of a signed, written order with the clerk of the lower tribunal. As to non-final orders, the notice of appeal must be filed within thirty (30) days of that date. As to final orders, however, rendition may be postponed if there is filed an "authorized and timely motion for new trial or rehearing, to alter or amend, for judgment in accordance with prior motion for directed verdict, notwithstanding verdict, in arrest of judgment, or a challenge to the verdict." It is essential to note that such a motion must be both timely and one of those listed. For example, since Florida Rules of Civil Procedure do not authorize Motions for rehearing, etc. directed to non-final orders, such motions will not postpone rendition thereof and a notice of appeal filed more than thirty (30) days after entry of the original order will be untimely. *Wagner v. Bieley, Wagner & Associates, Inc.*, 263 So.2d 1 (Fla. 19-72); *Florida East Coast Railway Company v. Southern Sanitation Service, Inc.*, 370 So.2d 1200 (Fla. 4th DCA 1979).

As to final orders, a motion will not toll the time for filing a notice of appeal unless it is itself timely filed as well as being an authorized motion. Rule 1.530(b), Fla.R.Civ.P., requires that the motion be served not later than ten (10) days after the rendition of a verdict in a jury action or the entry of judgment in a non-jury action. The trial court is not authorized to extend the time for filing such a motion. *Feinberg Feinberg*, 384 So.2d 1304 (Fla. 4th DCA 1980). Late service of such a mo-

tion will of course render it untimely, and thus it will not operate to toll the time for filing a notice of appeal. Equally hazardous, apparently, is the early filing of such a motion. In *Karl A. Kandell Associates, Inc. v. Urbanek*, 391 So.2d 782 (Fla. 4th DCA 1980), the Fourth District dismissed an appeal as untimely where the appellant filed its motion for rehearing after the trial court's oral ruling but before entry of a written order.

Finally, the Supreme Court has recently changed the law with respect to when a judgment is "entered". The Third and Fourth Districts have held that a final judgment is "entered" when filed, applying Rule 9.020(g), Fla.R.App.P. *Casto v. Casto*, 388 So.2d 1 (Fla. 4th DCA 1980); *Dibble v. Dibble*, 377 So.2d 1001 (Fla. 3d DCA 1979). The Supreme Court now says that a final judgment is not "entered" until it has been actually recorded. *Casto v. Casto*, 6 FLW 452 (Fla. July 16, 1981). Thus, it now appears that if an appellant serves his motion for rehearing within ten (10) days of recordation of the judgment, it will be considered timely

and will suspend rendition of that judgment until the motion has been determined.

* * * * *

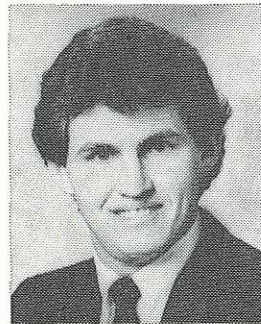
NOVA LAW LIBRARY

Nova Law Library is pleased to announce the addition of three tapes to the collection of circulating audiocassettes. This material will be kept at the reserve desk and will be charged out to members of the Broward County Bar Association upon presentation of their Broward County Bar Association membership card.

The following tapes were donated by Russell Carlisle:

ACCOUNTING PROVISIONS OF THE FOREIGN CORRUPT PRACTICES ACT (1 cassette);
REPRESENTING THE FOREIGN INVESTOR IN THE UNITED STATES (1 cassette);

THE TRIAL OF A CIVIL ACTION IN THE FEDERAL COURTS AND THE PROSECUTION AND DEFENSE OF FEDERAL CRIMINAL CASES (2 cassettes).



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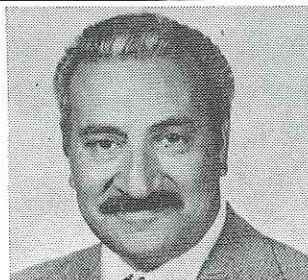
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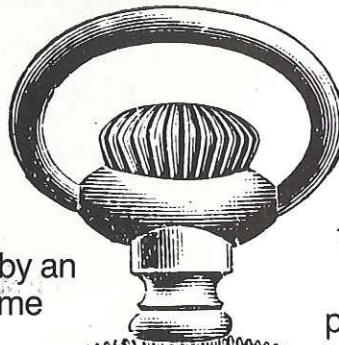
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CALENDAR OF EVENTS

Date	Group	Event	Time & Place	Reservations
9/10/81	BCBA	Robing Ceremonies	Bailey Concert Hall 3501 S.W. Davie Road Davie, Florida	
9/17/81	BCBA	General Meeting	Pier 66, Suite 66 2301 S.E. 17th Street Fort Lauderdale, Florida 6:30 P.M.	BCBA 764-8040
9/21/81	YLS	Flag Football League		Philip Morgan 566-0600 or Romney Rogers 462-1431
9/24/81	Young Lawyers Section	Monthly Luncheon Meeting	Chi Chi's Restaurant 6500 North Federal Highway Fort Lauderdale, Florida 12:00 Noon	Charlotte 565-0501
9/26/81	YLS	Beach Party	Harbor Beach Surf Club 6:30 P.M. — 11:00 P.M.	Betty Anne Palmer 473-1500
10/13/81	North Broward Bar Association	Monthly Meeting	Flaming Pit Restaurant 1150 North Federal Highway Pompano Beach, Florida 12:00 Noon	Donald Wich, Jr. 941-4920
10/17/81	YLS BCBA	Golf Tournament	Jacaranda Country Club Morning	Romney Rogers 462-1431

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