



COUNTY COURT COURIER



Volume 3, Number 11

April, 1997

Minutes of the Executive Board Meeting Conference of County Court Judges Sawgrass, Ponte Vedra Beach, Florida January 18, 1997

President Hugh Grimes convened the Executive Board Meeting at approximately 8:20 a.m. at which time the minutes of the previous meeting were approved. During the brief remarks of Officers, President-Elect Gene Turner commented that sometimes we forget how much work goes into our Conferences and he extended special thanks to Conference Manager Earl Collins.

The Treasurer's Report was then approved. The proposed budget will be presented at the Spring Board Meeting.

A motion passed during Judge

Grube's Civil Rules Committee Report approving the Conference requesting the Chief Justice to add clarifying language to the Landlord/Tenant Summons.

Judge Collins reported that 184 County Judges registered for the Winter Conference and many positive comments were received.

The Spring Board Meeting scheduled April 23-25, 1997, in Tallahassee includes a Legislative Reception Wednesday evening and all Judges are requested to arrive in time to attend this special event.

The Summer Conference is again set at the Registry in Naples, July 9-12, 1997. The Winter Conference location will be announced when finalized.

Judge Collins extended thanks to the St. Johns County Bar for preparing a list of recommended restaurants during our stay.

Judge Buck Curtin introduced State Representative Grady who was accompanied by the 8th Circuit Court Administrator and spoke on behalf of the 48 Florida Counties that have populations of 75,000 or less and need financial assistance to repair their Courthouses and make them accessible to citizens with disabilities. A number of these courthouses were built in the '30s and '40s with no elevators and don't meet ADA requirements. The Board approved sending a letter to Rep. Grady advising him we would discuss his proposed Cooperative Revenue Enhancement Program and

Continued Page Three

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Pres.-Elect.....	Eugene Turner,	P
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9th Circuit.....	Margaret Waller,	P
10th Circuit.....	Michael Hunter,	A
11th Circuit.....	Shelley Kravitz,	A
12th Circuit.....	Barbara Briggs,	P
13th Circuit.....	Walter Heinrich,	P
14th Circuit.....	Robert Brown,	P
15th Circuit.....	Cory J. Ciklin,	P
16th Circuit.....	Ruth Becker,	P
17th Circuit.....	Joel Lazarus,	P
18th Circuit.....	Phillip Fougerousse,	P
19th Circuit.....	Stu Hershey,	A
20th Circuit.....	Keith Carey,	P

COMMITTEE CHAIRS

Conference.....	Earl Collins,	P
Sentencing.....	Olin Shinholser,	P
Criminal Rules....	Buck Curtin,	P
Senior Judges.....	William Seaver,	P
Prof. Relations.....	Ilona Holmes,	P
Traffic Rules.....	Peyton B. Hyslop,	P

OTHERS PRESENT

Karl Grube, Anne Kaylor, Woody Hatcher, Jeffrey Swartz, Nancy Pollock, Tom Freeman, and Mercedes Bach.

County Court Courier Conference of County Court Judges of Florida

Room 209, Old Court House,
324 S. Ft. Harrison Avenue
Clearwater, FL 34616
(813) 464-3261

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The President's Message

by Judge Hubert L. Grimes

By the time of this publication, we will be well along into the second quarter of 1997. Time moves on and though it seems like it moves faster as one gets older, the ticks of the clock don't change, just our perception.

So too is the perception of life in many areas. As judges we deal with problem resolution on a daily basis whether it is adjudicating a traffic citation, conducting a DUI trial or trying a juvenile delinquency matter as an acting circuit judge. The focus of the people change, but does the judicial perception?

As we rapidly move towards the end of the century, it seems that the types of problems or conflicts which require judicial resolution appear to be

in constant state of change. Last year legislation was introduced to decriminalize certain categories of cases, while at the same time the Article V Task Force compiled an exhaustive study on court system reform. Each of these efforts result from that ever-increasing caseload, which in great measure results from the Court System being called upon to address the new problems of today's society. The Court system of tomorrow must be flexible enough to meet these new demands while oper-

ating within the financial constraints of a tax conscious society.

During the current legislative session and the follow-up Constitutional Revision Commission, a number of

proposals will be explored as to how we can best make the court system more user friendly and flexible to meet the demands of our growing state. I invite each of our judges and/or readers of this column to submit your


ideas to me or to call the CRC as to how these goals may be achieved. With this input we will truly be able to allow values to influence the politics, the politics to influence the economics, the economics to influence technology and the technology to influence our future - not just our court system but our nation as a whole. Join me as we attempt to meet these challenges with you ideas, time, talent and intellectual resources.

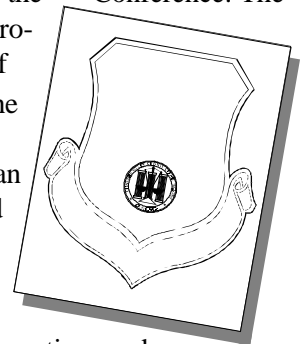
The Court system of tomorrow must be flexible enough to meet these new demands while operating within the financial constraints of a tax conscious society.

BYLAWS AMENDED

At the recent winter business meeting of the Conference the bylaws of the Conference were amended with respect to our annual budget. Under the current bylaws it is now the responsibility of the Treasurer to submit a proposed annual budget for the Conference at the spring board meetings. If approved, the budget becomes effective for the fiscal year beginning with the summer conference of the same year. The bylaws will be published in their entirety in the October, 1997 issue of the *Courier*. 

Conference Handbook Available for New Members

The Handbook of the Conference of County Court Judges of Florida is available to new members of the Conference. The handbook provides a brief history of the Conference along with an easy to read explanation of the Conference structure, operation, and relation to other statewide organizations. To obtain a copy of the handbook please contact Palm Beach County Judge Peter D. Blanc, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, FL 33401. 



Court ordered payments due and partial payment program


by Judge Olin W. Shinholser

Each of us wrestles with the continuing problem of how to collect court ordered fines, fees and costs. In Highlands County all defendants who cannot pay court ordered fines, fees, public defender's fees, cost, etceteras, immediately (except those placed on probation) are given a return court date called a C.O.P.D. (court ordered payment due) date. The defendant must have paid all court ordered payments before the C.O.P.D. date, or must appear in court. If the defendant appears, the defendant is placed into a partial payment program (our clerk does not accept partial payments) through the Salvation Army. The defendant pays an administrative fee and partial payments until the balance is paid. Once the balance is paid, the Salvation Army forwards the entire amount less the administrative fee to the court clerk.

The C.O.P.D. session is scheduled once per month. Persons who are initially appearing are simply referred by me to the Salvation Army personnel. I only converse at the bench with those who have previously been placed into the program and have defaulted on payments. The entire court session lasts fifteen (15) to thirty (30) minutes. Defendants required to be present and those who fail to appear have each purge capiascs issued for their arrest, the purge being for the balance due.

How quickly after sentencing does the C.O.P.D. date occur? That is up to you. I consider the amounts imposed and request of the offender, but since we use the partial payment program, I seldom schedule the C.O.P.D. date more than 2 months beyond sentencing. For example, with first time DWLSR defendants I assess a fine and costs, but advise the offender that if he/she produces a valid license to the clerk within 30 days of sentencing, the fine and costs are reduced by \$105. I assign the

next C.O.P.D. date beyond the 30 day period.

As with all collection efforts this method is not perfect. Some amounts eventually are reduced to liens, D-6 etc. However, the program is relatively successful and effective. It takes little of your time and shows others (including defendants, victims, the press and legislators) that you are serious about enforcing the sentences you impose. After all, if the only sentence you impose is monetary and you do not collect the money, what have you accomplished? 


Minutes Continued from Page One

Special Small County Courthouse Facility Fund.

Judge Karl Grube suggested during the Technology Committee Report, with much support, that Tallahassee be requested to train our education presenters in "power point" (in lieu of the archaic "overhead" and transparencies) thus bringing our presentations into the 21st Century! Information regarding JUDGNET and related computer matters is printed elsewhere in this issue of the *Courier*.


During her presentation of the Education Committee Report, Judge Ilona Holmes expressed the widespread sentiment that this was a good Conference.

Judge Bill Seaver reported that the Senior Judges Committee is preparing a booklet on special issues concerning retirement which should be ready by summer. That Committee's motion that the Conference support an increase for Senior Judges from \$250 to \$300 a day was tabled.

There being no further business, the meeting was adjourned. 

Technology Committee Report

by Judge Scott J. Silverman, Chair

The Technology Committee met on January 14, 1997. Present at the meeting were Chairman, Judge Scott J. Silverman, Vice-chairman, Judge Ann Kaylor; and committee members Judge Mercy Bach, Karl Grube, Ed Voss, and Peter Weinstein. 


The Committee collected e-mail addresses from participating judges. These addresses will be placed on the web, so that conference members will have e-mail access to them.

Additionally, the Committee encourages all judges who want their photo and/or resume posted on the website to forward them to Chairman, Scott Silverman at Scotts@bridge.net or Anne Kaylor at JudgKaylor@aol.com.

The Conference Home Page will serve not only as a means to supply information about the Conference to its membership, but also to the public. It will also serve as an archive of Conference assignments, by-laws and other pertinent information, including back issues of the *Courier*.

The Technology Committee is also making a formal request of the Education Committee to supply it with published conference educational materials. Judge David Demers has graciously consented to make his most recent Criminal Law Review the first outline to be published on our website. All judges who desire to publish their writings on the site should submit their disks, to Chairman Scott Silverman or Anne Kaylor.

The Conference website will continue to go through a metamorphosis to make it more informational and substantively helpful. The Committee will contact various vendors of law related software and hardware for purposes of displaying their wares at the Summer Conference.

Lastly, the Committee will explore the possibility of vendor advertising on its site, to make it self-supporting. 

From The Editor

by Judge
Radford W. Smith

Ethics and professionalism were central themes at our January Educational Conference at Pontre Vedra. I remember ethics and professionalism being discussed when I was in law school. "You are about to embark upon a career in the world's most prestigious profession of letters" I remember one of our lecturers saying. "Our profession is founded upon the highest moral and ethical standards," he said. We were cautioned that if our professions were to remain sound we would have to assume responsibility for guarding and protecting it by taking care of each other as professional colleagues. There could be no codified rules of ethical or professional conduct specific or comprehensive enough to protect our enviable status as lawyers. That was 35 years ago.

Twenty years later I had a brief conversation with William Bennett (Drug Czar, Secretary of Education, Book of Virtues). I asked, "Dr. Bennett, do you think we are still members of a profession of letters?" "Oh no", said Bennett, "for the most part those who practice law are not engaged in a true profession at all, much less a profession of letters. The practice of law has become a common business." It made me shudder to realize how much truth there was in Dr. Bennett's response. But people were telling jokes comparing lawyers to used car salesmen and I knew in my heart we lawyers were taking care of each other about as well as one used car salesman takes care of another.

Last January at Pontre Vedra I at-

tended a presentation on professionalism led by Florida Supreme Court Justice Harry Anstead and Paul Remillard, Director of the Professionalism Enhancement Program of the Florida Bar. Their presentations centered on discovery violations and dealt extensively with Motions to Compel and Motions for Protective Orders where hearings had degenerated into screaming matches with lawyers calling one another "disingenuous". Unhappily, some of these hearings are characterized by an even lower level of professional dignity. On one recent occasion I remember, before I could regain control, two lawyers were screaming and calling one another liars.

"For the most part those who practice law are not engaged in a true profession at all, much less a profession of letters. The practice of law has become a common business."

We judges must not tolerate this kind of behavior.

It is encouraging that trends in continuing legal and judicial education are placing more and more emphasis on the importance of ethical behavior and professionalism. But change will not occur because of educational efforts alone.

At this moment in history there are several generations of lawyers practicing in our courts who have never experienced a legal community such as the one I knew 35 years ago. That community was dominated by lawyers, who regarded each with care, respect and trust and didn't seem to perceive a conflict between their personal relationships and their daily practice as skilled, energetic advocates for their

client's interests. If this kind of legal community is a vestige of the past it is one worth reviving.

We hear a lot about "public perception" of lawyers and the judicial system as though public perception doesn't reflect reality. I don't think that's the case. I think the public's perception is awfully close to the center of the target.

The Florida Bar recognizes the problem and its leaders are working on it. In his "President's Page" Message, in the February, 1997 Florida Bar Journal, John W. Frost, II says "We cannot continue to act as if our community's and our nation's respect doesn't matter, as if only fighting to get our way matters. Respect does matter. Civility matters. Honor matters. These vital qualities matter enough that, by measuring ourselves by such professional standards and by practicing law with integrity and civility, we can rebuild our profession... a lack of professionalism has eroded public trust to such an extent that we must rebuild it..."

Like pornography, professionalism may be hard to define precisely but we all know it when we see it. We see it in our courtrooms daily and unhappily we see and suffer from its conspicuous absence all too often. Let us County Court Judges strive to be professional role models and require, nurture and thus rebuild professionalism in our courts.



**YOU KNOW YOU
MIGHT BE A REDNECK
JUDGE IF...**

**YOU RULE ON
OBJECTIONS BY
SAYING EITHER "THAT'S A BIG
10-4
OR NEGATORY."**

Sentencing Committee Report

by Olin W. Shin-

The sentencing committee discussed the amendments to Florida Rules of Appellate Procedure 9.140 and 9.600. The amendments are effective January 1, 1997. Rule 9.140 makes a condition precedent to appealing a sentencing error or an alleged involuntary plea the filing of a motion to correct sentence or motion to withdraw plea with the trial court. Rule 9.600 grants the lower court jurisdiction to hear 3.800(a) motions after an appeal has been filled. Amendment



to these rules should eliminate many appellate reversals on issues such as public defender fees, court costs, notice and opportunity to be heard, etc.

The sentencing committee discussed the implementation of the new public defender's statute. Judge Joel Lazarus of Broward County shared a form that his county is using and made the form available to conference members. No uniform procedure for the implementation of this statute was noted by committee members.

Criminal Rules Committee Report

by Judge Aymer L. "Buck" Curtin, Chair



The Criminal Rules Committee met on January 15, 1997 and 16 members were present. Attendance is greatly improved and is appreciated by the leadership.

A brief review of the Criminal Rules Committee report from the *County Court Courier* was given. Specific reference was made to a proposed change in Fla. R. Crim. P. 3.313(k) summons on misdemeanor charges and related changes to appropriate statutes. These proposals have not been completed. If any members of the committee or conference members want to draft proposed changes they can do so and send to myself or Judge Graham, Dade County.

Judges Emas and Slom addressed a recurring problem in Dade County with DUI cases and speedy trial. Due to the volume and complexity of these cases, a number have been discharged pursuant to Fla. R. Crim. P. 3.191(N). A proposed motion and second to extend speedy trial in DUI's to 180 days was discussed at length and then defeated. A possible proposed solution was more Judges and supporting court personnel to handle the tremendous volume of cases Dade County and other counties face. Another suggestion was to reconsider the right to a jury trial in a first offense.

Judge Swartz has presented the Committee with a proposal to amend Section 316.656 F.S. and Rule 6.290 of Rules of Traffic Court. The changes are to address the problems of a defendant pleading at first appearance to a DUI and the prosecution not having the opportunity to determine relevant out of state information as to prior convictions. The proposed amendment reads as follows:

Proposed Amendment to Rule 6.290 Rules of Traffic Court

(1) The prior provision are to

redesignate Subsection (1)
 (2) The provision of Subsection (1), above, notwithstanding, the court may defer adjudication and sentencing for a period of no more than 30 days upon motion of the State Attorney, or its own motion, if it appears that reasonable cause exists that the defendant held a drivers license in a foreign jurisdiction, to determine information relevant to the sentencing provision of Section 316.193 F.S. The proposed changes are published for your comment and consideration. We will address the issue at the Spring board meeting in Tallahassee.

I encourage the continued participation from our previous members and invite our new members to actively join us.



New Judge Orientation

by Judge Judy Goldman, Chair

Twenty new County Judges attended the Fourth New Judge Orientation Luncheon and participated in roundtable discussions with "Old Judges". Topics ranged from "Losing your first name" to docket management issues as well as matters of importance to individual Judges.

This was the first time New Judges were placed in small groups of 4 and 6 (instead of tables of 8) which enabled everyone to participate more easily and comfortably than the previous larger groups. There are always wonderful new ideas and experiences that New Judges bring with them and we all learned from them in our orientation effort.

Many thanks to the following "Old Judges" for participating in this special welcome: Earl Collins, Gene Turner, Buzzy Heinrich, Tom Skidmore, Linda Dakis, Ilona Holmes, Peter Blanc, Bob Zack, Peter Ramsberger, Rad Sturgis and Terry Lewis.



General Business Meeting Report

by Judge Judy Goldman, Chair

President Grimes convened the General Business Meeting and a quorum was determined. After brief introductory remarks, Judge Grimes turned the meeting over to Judge Peter Blanc for presentation of two proposed bylaw amendments, which are printed in their entirety elsewhere in the *Courier*.

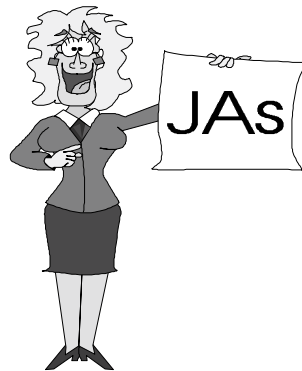
The first eliminates certain unnecessary language in the existing bylaws and the second changes the deadline for the Treasurer to submit the proposed budget to the Spring Board Meeting. Both amendments were approved without opposition.

All additional business was set over to the Executive Board meeting the following morning and this meeting was adjourned.

Judicial Assistants Liaison Committee Report

by Judge Judy

Our committee had the pleasure of meeting JAAF President Carole Royal who updated us on JAAF's current issues. Their next J.A. Educational Conference is scheduled at the Sheraton Westshore in Tampa beginning June 25, 1997. There remains a great need for funding/reimbursement for many J.A.s who will otherwise be unable to attend. Our Conference leadership will be seeking assistance from



the Chief Judges and all Judges are encouraged to do the same in their respective counties.

The group is hoping for an across-the-board State Employees raise this year, however the effort to increase and possibly modify leave and retirement benefits has been tabled while the merits of accrued vs. non-accrued vacation and sick leave are discussed.

We were also told that historically, JAAF has and is in favor of equal pay for Circuit and County J.A.s "Rate" money has become exceeding scarce in some Circuits for J.A.s as those monies have gone to Court Administrators and Guardian Ad Litem Offices in some instances.

What various counties do for temporary and/or floater employees during J.A.s' vacation or sick leave was discussed with several Judges reporting that there was no such thing in their counties! How does a Judge survive without a J.A.?

Traffic Court Rules Committee Report

by Judge Peyton B. Hyslop, Chair

The traffic court rules committee met on January 15, 1997. The meeting was attended by seventeen (17) judges. Among other items, two specific concerns were discussed.

The expanding use of traffic magistrates has caused concerns in some counties where magistrates are utilized. Magistrates are required to complete a certain amount of ongoing training or education to continue as traffic magistrates. No organized educational program has been developed and instituted on a statewide basis. Additionally there are no rules which regulate the appointment processes. The Florida Bar is considering rules for these concerns and those proposed rules should be available for review by this committee at the April meeting.

Magistrates are required to complete a certain amount of ongoing training or education to continue as traffic magistrates.

The second area discussed was Rule 6.290 F.R.T.C. and 316.656 Fla. Stat., which both require a defendant be sentenced immediately upon entering a plea to a DUI. The state usually does not have an opportunity to obtain out-of-state conviction records if a defendant pleads at first appearance or at arraignment. A proposed change will be reviewed at the April meeting which would grant the state a reasonable and specified period of time from the arrest date to obtain such records and then allow the judge to utilize that data for sentencing purposes.

Mark Your Calendars!

Spring Workshop
April 23-25, 1997

Radisson Hotel, Tallahassee

Summer Conference
July 9-12, 1997

The Registry Resort, Naples

COURIER DEADLINE
MAY 9, 1997

Fall Workshop
Tentative Dates & Location

October 29-31, 1997
Ocala Hilton, Ocala

U.S. Attorney General and Hud Secretary brief Judges on “One Strike and You’re Out” eviction policy.

by Judge Karl Grube

Twenty judges from throughout the nation, including 3 county court judges from Florida, met in Washington with Attorney General Janet Reno and Housing and Urban Development (HUD) Secretary Henry Cisneros on December 16th. Designated as a “judges forum”, the purpose of the meeting was to acquaint judges with a new “get tough” policy that HUD will be urging Public Housing Administrators to implement in the management of their public and assisted housing facilities.

The “One Strike and You’re Out” policy is an outgrowth of the Housing Opportunity Program Extension Act of 1996 which amends the U.S. Housing Act of 1937 (42 U.S.C. 1437). The existing law and recent amendments were presented as having three objectives:

- 1 Prevention through tougher screening.** Prospective adult tenants will be screened for criminal convictions records. Housing may be denied based upon prior criminal convictions and for prior illegal use of drugs and/or alcohol. Applicants who have been previously evicted may be banned for 3 years unless they show proof of rehabilitation.
- 2 Vigorous lease enforcement.** Agencies will be encouraged to utilize lease provisions that provide for eviction, after notice and opportunity for hearing, in the event of any criminal activity by the tenant and/or drug related criminal activity either on or off the premises. Criminal conviction will not be necessary for eviction but there must be adequate proof. Family members

not involved in criminal or drug activity may be allowed to remain in occupancy.

- 3 Tenant involvement and education.** Tenants will be vigorously educated concerning their obligations under their leases. They will be encouraged to become actively involved in the activities of their own households to ensure that their relatives and guest do not engage in any of the prohibited practices.

Although the 1996 Extension Act allows the development of a “one strike” policy, it is ultimately up to local public housing authorities and their administrators to implement such policies.

Although the 1996 Extension Act allows the development of a “one strike” policy, it is ultimately up to local public housing authorities and their administrators to implement such policies. Some authorities using pre-existing laws and strong lease provisions have already successfully implemented “one strike” policies. Housing authorities have been sustained on appeal in cases involving:

- 1 eviction for drugs belonging to a guest even though the tenant had no knowledge of the drugs in the apartment because the lease provided for eviction if a guest engaged in drug-related activity. *Housing Authority of New Orleans v. Green* 657 So. 2d 552 (La. App. 1995). and
- 2 eviction based on violation of a lease provision that prohibited

drug related conduct and drugs were found on the premises. *San Francisco Housing Authority v. Guillory* 49 Cal Repr. 2d 367 (Cal Super. 1995).

Claims that eviction violates the double jeopardy provisions of the constitution have also been rejected where criminal drug defendants have been evicted in addition to being prosecuted for possession of the drugs which were found on the premises. *Taylor v. Cisneros* 913 Fed. Supp. 314 (Dist. Ct. N. J. 1995). Courts have, however recognized that tenants are entitled to notices of termination and procedural due process in the eviction procedure and failure to observe such safeguards will prevent eviction for drug related activity. *Housing Authority of Newark v. Raindrop* 670 A. 2d 1087 Sup. Ct. App. 1996).

The purpose of the judges’ forum was not formally stated, but it appears to be to alert the limited jurisdiction judges who preside in tenant eviction proceedings that their local public housing authorities may be implementing the “One Strike and You’re Out” program. Both the Attorney General and HUD secretary were eager to emphasize that such programs can be implemented within the context of procedural and substantive due process requirements. The role of the judiciary in these cases will remain as it is presently; namely, to insure that no one is evicted without due process of law. Those interested in obtaining further information may contact the Office of the General Counsel, Department of Housing and Urban Development 451 Seventh Street S.W. Washington, D.C. 20410. Telephone: 1-800-578-3472.

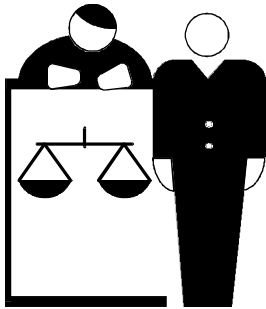


Civil Rules Committee Report

by Judge Ronn Legendre, Chair

The committee discussed future changes to the Civil Rules of Procedure. Any suggestions should be given to Judge Grube or Judge Legendre. The Fla. Bar Rules committee will discuss deleting the 120 day requirement to serve defendants and proposed forms for replevin final judgment.

Judge Grube reported on a judges forum held in Washington, D.C. to acquaint judges with the "one strike & you're out" eviction policy regarding public housing administrations. This is the result of a 1996 Act.



It was pointed out that the new eviction summons form 1.923 does not specify that a defendant need not deposit rent money to defend against money damages.

A sub-committee was appointed to investigate if there should be a requirement of good faith for a plaintiff to deny that a defendant has an exemption to a garnishment.

There was a discussion about having an offer of judgment rule in Small Claims Court.

The problem of arbitration in PIP cases where there is an assignment by the insured and then a re-assignment back to the insured from a doctor. One suggestion is that when the insured signs an assignment, the right to go to court is lost. Another view is that a key factor is whether the doctor has already filed a claim with the insurer.



Education Committee Report

by Judge Terry P. Lewis, Chair

The Education Committee Meeting was well attended, although several members left early to attend the Conference Committee Meeting. The tentative agenda for the summer conference education program includes:

- a plenary session for legislative, civil and criminal law updates,
- domestic violence (plenary and tracked), and
- writing to avoid reversal.

Tracked courses include:

- sentencing oddities,
- costs and fines,
- DUI,
- civil jury trial issues,
- mediation and small claims,
- pro se litigants,
- fact finding and decision making, and
- computer skills.

We are also looking for a way to set up "round table discussions" for some portion of the program, on a variety of subjects. Also, we are shooting for summer for distribution of a criminal Bench Book.

J.Q.C. Report

by Judge Thomas B. Freeman

The Amendment to Judicial Discipline passed. Those that were optimistic about the Amendment I believe were disappointed. We are now in the process of drafting new rules. The previous Constitutional Requirements were that it took seven affirmative votes of the thirteen member of the J.Q.C. to have a Complaint go public and nine affirmative votes of the thirteen member J.Q.C. to impose any type of discipline. The new Constitutional Amendment now provides only that four votes are necessary for a Complaint to go public or for conviction and discipline.



Another penalty provision is that cost of prosecution can be assessed against a Judge. The existing Constitutional Amendment was passed in the wee hours of the morning as the Legislature was wrapping up business and there are some substantial areas that need to be corrected.

If you have any questions regarding the new Constitutional Amendment, I would be happy to discuss them with you.

Professional Relations Committee Report

by Judge Ilona M. Holmes, Chair

The Professional Relations Committee meeting was called to order by Judge Holmes on Wednesday, January 15, 1997 at 10:30 a.m. Attending the meeting were Judges Terry Lewis, Ron Rothschild, Bill White (Vice Chair), Rad Sturgis, Sonny Palomino, Shelly Schwartz, Joel Lazarus, Martin Dishowitz and Karl Grube.

The Chair expressed concern that

not many of our members know that the Awards, Media and Professional Affairs committees have been "merged" to form this new and expanded committee. Judge Steve Rushing will head the media committee as a subchair of this committee. Judge Holmes will get the names of the judges appointed to this committee into the *Courier* for publication. Neverthe-



less, all newly appointed and elected judges are encouraged to join this committee.

The committee is diligently working on completing its mission statement. However, all agreed that we would work on ways to improve the perception of the public, the Florida Bar and our colleagues towards county judges.

This committee will act as the liaison for county judges and the *Courier*. If something good is happening to you or for you, forward the news to Judges Holmes or directly to Judge Smith for publication in the *Courier*.

The meeting was adjourned at 11:00 a.m.



Message from the Professional Relations Committee Chair...

by Judge Ilona M. Holmes

I am very excited about the formulation of this committee. I see this as an opportunity for the public, bar and others to gain a better perception as to who county court judges are as well as what we do. Often we come under attack because of a lack of insight. I also feel that this committee can be the springboard for the promotion of professionalism that the Supreme Court is mandating. No longer is it enough to do things right (ethics) but we must do the right thing (professionalism). I urge all of our new county judges to get involved with all conference committees but especially this one.

This committee is also assuming the monumental task of putting together a County Court Judges Directory. I thank all of you who took the time to have your photos taken for the directory. I will be getting with President Grimes and the photographer to get prices for those of you who want personal copies of your poses. I also thank those judges who have already

sent me copies of their curriculum vitae (resumes). I urge all judges to forward them to me before the summer conference.

If you are interested in becoming a member of this Committee please contact me or President Hugh Grimes as soon as possible.

The following persons have officially been appointed to the Professional Relations Committee but I intend to ask President Grimes to add to the committee all of you who attended the meeting during the winter Conference:

- ◆ **Bill White, Vice-Chair, Escambia County**
- ◆ **Joseph Williams, Baker County**
- ◆ **Margaret Waller, Osceola County**
- ◆ **Shelley Kravitz, Florida Bar Liaison, Dade County**

- ◆ **Beth Bloom, Dade County**
- ◆ **Steve Rushing, Media Sub-chair, Pinellas County**
- ◆ **Ellen Sue Venzar, Dade County and**
- ◆ **Lester Langer, Dade County**

Lastly, I urge you all to read your future *Couriers* for news about the **Harvey Ford Memorial Award**. This award will be presented during the summer conference. Details about the award and nomination forms are forthcoming. I urge you all to nominate the "bestest and brightest" judge for this honor. Judges Grimes, Waller, Lewis Bach and Fougousse have agreed to serve with me as the committee to determine the recipient.

I look forward to hearing from you soon.



Judge Reprimanded for not Exercising Discretion in Misdemeanor Plea Taking

by Judge Karl Grube

Judge Claude Whitney handled in-custody misdemeanor arraignments in the Central Orange County Municipal Court. Following appointment of special masters, hearings were held, evidence taken and the California Commission on Judicial Performance recommended his public censure. His indiscretion was that he:

"...failed to exercise his judicial discretion to consider release of defendants on their own recognizance, or to consider grants of probation or concurrent sentencing for defendants pleading guilty or no contest at arraignment. He further refused to appoint counsel to assist defendants at the arraignment itself, and failed to inform defendants pleading guilty or no contest of the negative consequences a conviction could have on a non citizen with regard to immigration."

The commission found that these acts constituted willful misconduct in office and conduct prejudicial to the administration of justice. On October 3, 1996, pursuant to the commission's recommendation, the California Supreme Court publicly censured Judge Whitney and reported the matter in 56 Cal. Repr. 2d 705. 922 P. 2d 868 (Ca. 1996).

Could This Happen In Florida?

Could this failure to exercise judicial discretion cause a Florida County Court judge to be subjected to public reprimand or perhaps even worse?

Hopefully not. In California there apparently exists a fine line between committing reversible legal error and "...engaging in conduct prejudicial to the administration of justice that brings the judicial office into disrepute." The remarkable aspect of this California decision is that it involved a failure of the judge "... to exercise his judicial discretion..."

How does Florida view the exercise of judicial discretion in light of our Code of Judicial Conduct? Some indication is visible from our Supreme

In California there apparently exists a fine line between committing reversible legal error and "... engaging in conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

Court's decision in the case of **In re Inquiry Concerning a Judge**, J.Q.C. No. 77-16 1978 357 So. 2d 172 (Fla. 1978). Therein the court said:

"In the interest of protecting and preserving a strong and independent judiciary, we must be careful never to judge a respondent and determine whether to remove him from office on the grounds that he possesses an unpopular philosophy, has offensive idiosyncrasies, has rendered unpopular

decisions or is too compassionate. Every judicial officer is granted broad discretionary powers, and one not the great strengths of our system is the right to exercise independently those powers." 357 So. 2d, 177-178

In exercising judicial discretion our Supreme Court went on to note that:

"No judge is permitted to substitute his concept of what the law ought to be for what the law actually is. He may exercise his discretion conservatively or liberally, and he may temper justice with mercy, but he may not deny justice to any person." 357 So. 2d, at 179

Did Judge Whitney abuse his judicial discretion in not giving probation, or concurrent sentences or appointing counsel? Would he be subject to discipline in Florida?

Those questions are not answered in this short article. But, Judge Whitney's situation does focus on the somewhat delicate balance that may exist between the perception of ethical behavior and the exercise of judicial discretion.

Are there conclusions to be drawn and lessons to be learned from Judge Whitney's case? Perhaps one that comes to mind is that "California may be a nice place to visit but...". Another conclusion is that, in Florida, we are fortunate to have forums and educational opportunities through our Conference where we can discuss and reflect upon these questions before they become a personal issue.



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OTHERS PRESENT

Karl Grube, Ilona Holmes, Jeff Calbath, Harvey Kornstein, Tom Skidmore, David Ackerman, and Jay Spechler.

**Minutes of the Executive Board Meeting
Conference of County Court Judges
Ocean Reef, Key Largo, Florida, July 27, 1996**

Incoming President Grimes convened the Executive Meeting and conducted a moment of silence in recognition of those slain or injured in the Olympic bombing incident. He then introduced Circuit Judge Dale Roth who spoke in opposition to the proposal pending before the Supreme Court to limit Chief Judges to two terms only. After discussion, the Board adopted a resolution opposing mandatory term limits for Chief Judges as proposed by The Florida Bar.

Minutes from the Fall Executive Board were then approved as was the Treasurer's Report.

A motion to make the Awards and Merits Committee a subcommittee of Professional Relations by way of proposed bylaw passed.

Conference Manager Earl Collins reported that 175 Judges registered at our Summer Conference. The Winter Conference will be held at the Marriott Sawgrass in Ponte Vedre, January 15-18, 1997. The Board then approved the Radisson in Tallahassee, April 23-25, 1997, for the Spring Board Meeting, and will host a Legislative Reception that Wednesday night.

Judge Collins urged all Judges to please register early for the Winter Conference with the assurance that none of the checks are deposited until the conclusion of that Conference.

During Education Chair Terry Lewis' report, he informed the Board that the five Vice Presidents will be asked to review the ongoing "Bench Book" project.


During J.A. Liaison Chair Judy Goldman's report, the Board approved President Grimes writing to each Chief Judge requesting reimbursement for all J.A.s to attend JAAF's educational conferences and thanking those who already do.

Judge Peter Blanc was appointed

Legislative Committee Chair.

A motion to adopt a resolution regarding traffic magistrates was tabled.

The Trial Court Selection Committee will suspend its activities until further direction by the President.

There being no further business, the meeting was adjourned. 

**Minutes of The
General Business
Meeting - 1996
Summer Confer-
ence - Ocean Reef**

President Zack called the Business Meeting to order and determined that a quorum was present. He then announced the following recipients of Conference awards:

**Harvey Ford Award -
Terry Lewis**

**President's Leadership Award -
Harvey Baxter**

**Achievement Awards -
Rad Smith & Brian Kay**


Legislative Consultant Don Lamonica then addressed the assembly and answered questions.

The following proposed amendments to the Bylaws passed:

- Professional Affairs and Administration & Management Committees are now combined.
- Traffic Adjudication is now a subcommittee of Education.

The various counties and districts then conducted their caucuses and selected Circuit Representatives and D.C.A. Vice Presidents, who are listed in the current *Courier*.

Elections were then conducted and those results are also listed in the current *Courier*.

The meeting was then adjourned. 

This *Courier* wants/needs your contributions! Send articles, reviews, comments, reminders, opinions etc. to the Editor or your District Vice-President.

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