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IN THE SUPREME COURT OF FLORIDA

CASE NO. 77,623

IN RE: COMMISSION ON FAMILY COURT RECOMMENDATIONS

MEMORANDUM IN OPPOSITION TO THE MANDATED ESTABLISHMENT OF FAMILY DIVISIONS

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF FLORIDA

1. As Chief Justice, Mister Justice Overton ordered circuit judges to be periodically rotated to other divisions. Implementing Article V's two-tier judicial system, presumably the Chief Justice believed all or most of the circuit judges would strive to increase their pursuit of learning, broaden their judicial horizons and thus become a judge for all seasons. Mister Justice Overton was right the first time.

2. The family court of the Eleventh Judicial Circuit was an abysmal failure and after several years, the circuit judges voted unanimously to abandon it.

3. On 28 April 1991, The Miami Herald published a comprehensive story entitled "Divorce court spurs Dade battle." Judge Feder was quoted:

> **Bitter memories**
>
> But many Dade and Broward jurists are balking, partly because the family court system failed miserably in Dade a decade ago. "A disaster," said Dade Circuit Judge Richard Yale Feder, the administrative judge now in charge of family cases.

4. The records of the Eleventh Judicial Circuit reflect that sixteen judges served in the former family division:

Judges Goldman, Gordon, Henderson, Knight, Newbold, Simons and Tendrich remain on active service, hold key positions throughout the circuit and each invariably rates very high on the judicial poll. Most of the judges were extremely competent and courteous. True, they were mostly "husband's judges" and few, if any, could be considered a "wife's judge." Three experienced general masters assisted the family court. They were courteous, knowledgeable and honest. I have recently interviewed the active judges who served in the family court. Their observations are consistent with Judge Murray Goldman's published comments of 28 April — Burnout! (Ex. A):

> "We did burn out," said Dade Circuit Judge Murray Goldman, who was one of six judges on the family court before it was closed in January 1981. "In criminal court you see the worst people at their best. At family court, you see the best people but at their worst . . . We had no backup or support. It was just a nightmare."

Two active judges stated they would resign rather than be permanently assigned to a family division. The monotony of hearing one type of case would bore any intellectually active jurist, whether circuit judge, district judge, or Supreme Court justice.

5. Those who have to deal with medical specialists soon learn that specialization leads to blind spots in thinking. Specialists, whether medical or legal, see life in segments and fragments. The specialist comes to see all issues and problems from the point of view of his special interest. Significantly, in

the Report, no mention is made that testimony or discussion was conducted regarding the reduction of fees and costs. To the contrary, it is common knowledge that the specialized family lawyer seeks to obtain between $250 to $350 an hour. Specialization in family law has become commercialized. The desire for personal gain and prestige has crowded out a sense of social responsibility.

6. Scott Peck authored The People of the Lie, which attempts to document how dangerous specialized groups can become. Peck was one of the psychiatrists who did the study of Mylai and the killing of 600 innocent people. He was the chairman of a committee of three psychiatrists appointed by the Army Surgeon General to research and shed light on the psychological causes of Mylai in order to prevent future atrocities. "The most important thing that we discovered," Peck said, "is specialization." The soldiers were our killers. They were the American people's killers. They were our specialty group. "For these examples, we can discern," Peck says, "three general principles. Specialized groups develop a group character that's self-enforcing."

Such groups tend to be socially narcissistic. They always set up "us" and "them" — the insiders and the outsiders. Any lawyer who has had experience with specialized courts does not have to be a social scientist to recognize the difference between the insiders and the outsiders. An interview with the former family judges now holding the most responsible positions in the Eleventh Circuit revealed how the "insider" lawyers, with their private parties and banquets, sought to capture the judges' minds

but abandoned them when the judges were reassigned. Such behavior is endemic to all specialists — scratch my back, I'll scratch yours. When they cannot capture the judge, they seek to exploit the court-appointed experts.

Judges, lawyers and litigants are aware of the evil of the specialized courts and specialized lawyers, with its own jargon, whether it be bankruptcy, probate, tax, small claims, worker's compensation, or even the appellate courts, with former clerks too often arguing appeals before the very judge for whom they were employed, and often had established lifelong esteem, affection and respect for the judge.

7. On 28 February, I wrote a 10-page memorandum to Chief Judge Wetherington and Chesterfield Smith, Esq., with an addendum of four exhibits and a certificate of mailing to all the Justices, three district judges, and to a group of "fearless lawyers, tried and true" (Ex. B).

8. James P. O'Flarity, revered family lawyer and Fellow and past president, American Academy of Matrimonial Lawyers, took exception to my observations concerning the family section and the Academy. On 4 April, he responded in a public letter to the undersigned, copies of which he distributed to each Justice of the Supreme Court of Florida (Ex. C). I rest my case on Jim O'Flarity's response. He candidly expressed the pros and cons of Palm Beach's voluntary family court and confessed: "I am one with very mixed emotions." I suggest Mr. O'Flarity's letter is the

strongest argument yet why family courts should remain voluntary and not compulsory.

9. On 1 March 1991, the Report of the Commission on Family Courts was published.

Thus, the Commission recommends that all family law cases, comprising one-third of litigation in the Eleventh Judicial Circuit be removed from general jurisdiction and assigned to a specialized family division "by the chief judge, who should give special consideration to the aptitude, demonstrated interest, and experience of each judge."

Astonishingly, it appears the Commission did not even consider the sensitive issue of racial and cultural conflict, despite the fact Hispanics and blacks together make up 70% of Dade County's tri-ethnic population. Upon inquiry, nobody is able to state whether a single Hispanic American or African American is board certified in family law or a member of the prestigious Florida Chapter of the American Academy of Matrimonial Lawyers (Academy).

For emphasis, I reiterate, nothing in the minutes of the four conferences or the 1 March Report indicates the Commission concerned itself with whether or not family courts would result in lower or higher fees to the middle class and the poor.

No one speech nor even four conferences will elevate justice overnight. However, the four sessions of the understaffed and underfinanced Commission and its Report were not in vain. Commission member Renee Goldenberg publicly responded to criticism

of the Report (Ex. D): "Nobody is on the middle ground with it. Maybe down the road we'll find it has to change or be modified. Right now, it's better than what we have." If there is no agreement as to the solution, there is unanimity regarding two fundamental problems: I. THE JUDGE. II. STRESS.

10. Even though our vaunted merit selection fails to consistently produce renaissance judges, most concede the merit system, with all its human shortcomings, produces judges with greater capacity, if not more heart, than the electoral system. The weakness of the merit system (contrasted with the electoral system) is not how to obtain a qualified judge but how to remove an unqualified judge in the absence of gross malfeasance.

11. At the Commission's second meeting on 26 October, Judge Feder candidly expressed concern that all judges should be able to serve on all benches. He felt specialization interfered with that laudable philosophy. The quest for renaissance judges should never be abandoned:

> **. . . A man's reach should exceed his grasp, or what's a heaven for?** *Browning — Andrea del Sarto*

12. At the fourth and final meeting of the Commission on 15 February, I protested the mandatory establishment of family divisions. I criticized the failure of the Commission to conduct public hearings throughout the State and offered to pay for a court reporter's attendance at South Florida hearings. Mister Justice Overton stated a public meeting was held in Orlando; ". . . accordingly, sufficient public notice had been given on the matter." Justice Overton stated the Commission had studied

profiles of at least five judicial circuits where successful family courts presently operate. Respectfully, I disagree with the Justice that sufficient public hearings were held, and that volunteer family courts unqualifiedly are successful. Cf., the 4 April 1991 letter of James P. O'Flarity, Esq., *infra* (Ex. C).

The minutes of the 26 October Orlando meeting reflect the invited appearance of Don Middlebrooks, Esq., of the Florida Bar Commission for Children, which recommended the inclusion of juvenile dependence and delinquency procedures in a family division. When cross-examined why the inclusion of juvenile matters in the family division would rectify dropout, delinquency and dependency rates, Mr. Middlebrooks responded that establishing a family division and leaving the children out did not make sense.

Amazingly, neither Circuit Judges Gelber or Gladstone, from the most populated circuit in the State, were invited to share their experience and thoughts with the full Commission. Having spoken twice with Judge Gladstone in Paris and once with Judge Gelber, I can assert, without attempting to reflect their views, that the Commission and the citizens of Florida are the losers by this oversight to share their judicial experiences.

13. The problem in family law is not that there are too few opinions to guide the trial judge. To the contrary, there are a plethora of opinions — even recent ones — found to support opposite positions. There is as much of a lack of uniformity in the opinions as with the judgments of the circuit court. Judges and lawyers righteously proclaim this is a government of laws and

not of men. Lawyers who try cases or who practice in the appellate courts well-know judgments of a circuit court and the opinions of the appellate court too often prove otherwise. The great and universally respected Judge Gavin Letts, in his opinion in McAllister v. McAllister, 345 So.2d 352, 353-354 (Fla. 4th DCA 1977), observed:

> It would appear that, in some instances at the trial level, the result has very much hinged upon the luck of the draw depending upon which division in the courthouse gets the case; however, we see no such variation at the appellate level, where the recent case law on this kind of long term family marriage breakup has been reasonable uniform. . . . [emphasis added]

Trial judges constantly should be reminded, or admonished under pain of sanctions, that their function is to deliver social and economic justice according to standards established by law, and not social and economic justice according to their personal philosophy. The appellate courts should be vigilant and alert to detect and censor the "husband's judge" or the "wife's judge."

In short, the fault is not entirely with our circuit courts but also our district courts and Supreme Court for adhering to the principle of judicial discretion when it has become common knowledge that the single most important factor in the ultimate outcome of a family law case is the personal philosophy of the judge and, reprehensibly often, which lawyers appear for the respective parties.

I suggest that until there is reasonable uniformity of family law judgments, as contemplated by the monumental Canakaris v. Canakaris, 382 So.2d 1197 (Fla.1980), our appellate court should follow the example of the federal appeals courts, including the

United States Supreme Court, which considers admiralty and certain aspects of defamation, *de novo*. See, Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 80 L.Ed. 2d 502, 515, 104 S.Ct. 1949 (1984).

14. Janice Heller's 18 March Miami Review article, *inter alia* (Ex. D) states:

Family courts almost certain

Critics call separate division a bonanza for lawyers

> The plan means greater expertise among the judges and quicker handling of cases, its proponents say.
>
> Either that or cronyism and borderline corruption, according to critics who call the plan a bonanza for attorneys who specialize in family law.

To the charge:

> . . . you get a bunch of specialists in the court and they get too palsy-walsy with the judges. When an outsider comes in, he about gets killed.

Donald J. Sasser agrees:

> . . . out-of-town lawyers and new practitioners will have problems in the family division, but he says that's true in any division.
>
> When any lawyer comes from out of town, subconsciously the judge is going to give credence to and listen to the person he has confidence in. . . . That happens in every division in every court in Florida. That's just the way it is. [emphasis added]

Mr. Sasser also rendered his opinion for the failure of Dade's family courts:

> Sasser acknowledged that Dade's experiment resulted in cronyism, but that was because the judges who were assigned there were "incompetent and inexperienced." Their assignment was treated like punishment, he said, and not enough judges were assigned to the division to handle the work load.
>
> "The attempt in Miami was a disaster," Sasser said. "Since then, there have ben family law sections established in Tampa, Orlando and Palm Beach, and all of them have been very successful."

> Sasser said Palm Beach County did things right by staffing with enough judges who have more experience.
>
> "You get better justice and you get it quicker," Sasser said. "That's good for litigants."

Mr. Sasser conceded:

> Members of the Family Law Section of the Florida Bar and the Florida chapter of the American Academy of Matrimonial Lawyers have been lobbying for a separate family division for several years.

Regardless of designation or prestigious titles, family law is basically a sub-specialty. The Florida Bar's Family Law Section and the Academy have advanced the quality of scholarship to a degree that the courts of the nation, when considering equitable distribution, look to Florida, as they do our grievance program. James O'Flarity noted when he began practicing, family lawyers were not considered respectable:

> When I began practicing, it was hardly a respectable area of practice. Things were fairly cut and dried in that mama got the house and the kid and permanent alimony, and daddy got the business, either literally or figuratively. . . .

As a result of legitimate lobbying by the Family Law Section and Fellows of the Academy, Florida already has sufficient legislation to simplify the resolution of the most complicated and contentious cases. Any trial judge, capable of serving on the circuit court, should have the intellectual ability to understand and apply this law, even in the multi-million dollar cases, and dispose of the case without expense or delay. This is particularly so if all judge <u>firmly</u> require <u>speedy</u>, <u>complete</u> and <u>truthful</u> disclosure of all assets and income, and enforce any recalcitrance with the full arsenal the court has, including incarceration.

CONCLUSION

The Quaker Vote

I respectfully suggest that on the subject of family courts, it has been demonstrated there is no critical consensus. The Justices should either reject mandatory family courts outright or leave the decision to each circuit. The practice of the old Quakers should be followed. They never voted. If the majority could not persuade the minority to concur, the proposal was dropped. The proponents bared their hearts; the opponents searched theirs. Discussion might convince the minority. But the minority were never asked to subscribe to the views of the other. They were asked to concur in the decision. If they refused, the subject was dropped.

Respectfully submitted,

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The Miami Herald

SECTION B
SUNDAY, APRIL 28, 1991

Divorce court spurs Dade battle

Judges to rule on possible return

By DONNA GEHRKE
And PEGGY ROGERS
Herald Staff Writers

Divorce pulls families apart. These days, it's also splitting Dade judges and lawyers.

They are hotly contesting whether Dade should again set up a separate court where judges would hear only family matters, mostly divorce cases.

Says divorce lawyer Mel Frumkes: "A family division will be more attuned to emergencies." Judges will also be better trained and more uniform in their decisions, he says.

Rebuts his colleague George Caturno: "It was tried before and it was done away with — the judges got sick of it. There's nothing quite as nasty as a nasty divorce case."

The Florida Supreme Court may end up settling the controversy. It is scheduled to hear arguments on June 3 about whether it should require the state's judicial circuits to create a family division.

A special commission, headed by state Supreme Court Justice Ben Overton, is strongly recommending the family division.

The special courts would handle adoptions as well as private tragedies: Couples splitting up; parents fighting over custody of their children; fathers not paying child support.

Plan backers say courts concentrating on family cases would resolve matters quicker and make justice more equitable. Men in Florida usually come away from divorces with more money than do the women, says a 1990 gender bias study. Some experts also say some judges now prolong family cases unnecessarily.

"A lot of judges just don't want to hear it," said Fort Lauderdale lawyer Renee Goldenberg, a member of the Overton commission. "With family division, you're going to have more consistency in rulings, more education in the bar, more educated judgments from the bench."

Palm Beach County set up a family division in 1988. Its family judges now hear contested divorces within

Judges, lawyers divided on divorce court return

DIVORCE, *FROM* 1B

six months instead of 18, said Palm Beach Circuit Judge James R. Stewart, Jr., an Overton commission member. The state recommends contested divorces go to trial no more than six months after being filed.

"We were obviously violating the standard," Stewart said. "If your life is being devastated by a dissolution of marriage, you'd rather have it take six months so you can get on with your life."

Bitter memories

But many Dade and Broward jurists are balking, partly because the family court system failed miserably in Dade a decade ago. "A disaster," said Dade Circuit Judge Richard Yale Feder, the administrative judge now in charge of family cases.

"We did burn out," said Dade Circuit Judge Murray Goldman, who was one of six judges on the family court before it was closed in January 1981. "In criminal court you see the worst people at their best. At family court, you see the best people but at their worst . . . We had no backup or support. It was just a nightmare."

Since the closing, all 32 civil court judges take turns handling divorces and other family matters.

Dade Chief Judge Gerald Wetherington has set up extensive support services: well-respected mediators, home studies, even a psychologist. "We think we've done a good job," Wetherington said.

Most of the problems of the old family court could be avoided by assigning more judges and keeping them downtown, he added.

Uniform rulings

Newly elected Dade circuit judges Eleanor Schockett and Carol Gerstein said a separate family court would help judges gain expertise in the field and help them in handing out more uniform decisions.

Schockett said that when she was a lawyer, she knew of two friends — mothers who had been married for about the same number of years — who got divorces at the same time.

FAVORS SEPARATE COURT: Circuit Judge Eleanor Schockett says judges now make unpredictable decisions.

the other, Schockett's client, got alimony for only a few years until she could "rehabilitate" herself for the workplace.

The only difference, Schockett said, was the judges hearing them. "It happens all the time and you can't explain it to a client why it happens," Schockett said.

Gerstein said burnout could be avoided by rotating the judges.

Lawyers are just as divided about family courts as the judges are.

"My sense is that the people who do a tremendous lot of matrimonial work would in general prefer to go to family court," said Kendall Coffey, president of the Dade Bar Association. "A lot of people who sometimes practice family cases would prefer keeping it just as it is."

Lawyer Caturno, who only handles no-contest divorce cases, fears the separate court would encourage cronyism.

"What you're going to get is big lawyers bellying up to judges who get the cases and the rest of us poor suckers are going to be shut out," he said. "If the system isn't broke

EXHIBIT A

28 February 1991

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN RE: FAMILY COURTS

URGENT

_____/

TO: THE HONORABLE GERALD T. WETHERINGTON
CHIEF JUDGE, ELEVENTH JUDICIAL CIRCUIT
DADE COUNTY COURTHOUSE
73 WEST FLAGLER STREET, ROOM 635
MIAMI, FL 33130

CHESTERFIELD SMITH, ESQ.
HOLLAND & KNIGHT
P. O. BOX 015441
MIAMI, FL 33101

Come now, and let us reason together, saith the Lord...
Isaiah I:18

I am aghast by the recurring, widespread statement of "insiders" that after a single public hearing in Orlando, the Justices of our Supreme Court will enter an order mandating creation of a Family Court in the various Circuits, including our own, on 15 March 1991. No longer is this merely an issue regarding the creation of Family Courts. The fundamental issue has become political democracy vs. political oligarchy — government by the few!

Almost every trial lawyer not specializing before existing specialized courts, including Bankruptcy, Workers' Compensation, Probate, Tax or even Appeals, has horror tales of "baptism-by-fire" occurring in these "specialized" courts when encountering an opposing specialist who has the advantage of daily contact with the judges, their assistants and other attendants. The problem is not necessarily evil or even the appearance of evil. The judges and court personnel develop a natural sense of rapport and confidence

EXHIBIT B

in competent "specialists" with their mutual jargon and camaraderie. Inevitably, subtle charm converts a professional relationship into the Good 'Ole Boy-Girl social relationship. The non-specialist appearing in such a court has the impression of being an "outsider" and that opposing counsel, who not only appears before the judge on a daily basis but attends professional meetings and seminars with the judge on a regular basis, has an unfair advantage. Such professional relationships blossom into envied and jealously guarded social relationships and connections. As David Margolick observed about such occasions, "Judges and lawyers meet to relax, play and horse-trade, but there are Don'ts." New York Times, 16 September 1988 (Exhibit 1):

* * *

> The stated purpose of these gatherings is cross-pollination. Around the courthouse, the thinking goes, lawyers and judges can't talk candidly about the administration of justice. Plop them down in some bucolic setting and the inhibitions will evaporate. Some of that undoubtedly occurs. But jurisprudence is hardly the only item on the agenda.
>
> These conferences offer trial lawyers a rare opportunity to meet, schmooze with and charm the very people who control their livelihoods. The practitioners who are invited knew that judges possess what this year's dinner speaker, James O. Freedman of Dartmouth, called a common failing of college presidents: an "infinite capacity for absorbing flattery." They know that when a judge likes someone, he's more likely to trust him, grant him favors, listen closely to his arguments.

* * *

I implore you, as Chief Judge of one of the nation's largest judicial systems, to step forward as the advocate and leader of citizen-lawyers and judges to demand that we be afforded the opportunity to express our opinions, and call upon our experience to participate in public discussions on this critical issue before the

Supreme Court enters any precipitous order mandating a Family Court. Embossed in the bronze seal in the floor of the Rotunda of our Supreme Court is the motto, *sat cito si recte [soon enough if right]*.

If the Supreme Court will assure the Chief Judge of each Circuit the option of creating a Family Court or submitting an alternate program satisfactory to the Court, I shall no longer protest. In that way, our Circuit Judges and any of our 9,000 lawyers desiring the opportunity to enter public discourse of their views regarding the administration of Family Law in this tri-ethnic Circuit, would have fair means for doing so before such a system is instituted in our Circuit.

When rumors of a Family Court surfaced last year, I phoned Chief Justice Ehrlich, requesting the opportunity to be heard. The Chief Justice was unaware of the Family Court issue. However, he advised me that before any such order was entered, the lawyers would be given an opportunity to be heard before the Court. Justice Ehrlich retired, and now we are told the Court will enter its order on 15 March without further ado.

Robert Achor, a member of the Supreme Court Nominating Commission, Irwin "Sonny" Block, the recipient of the National Learned Hand Award, former president of the DCBA, former member of the Board of Governors and Fellow of the prestigious American College of Trial Lawyers, Daniel Neal Heller, veteran trial lawyer extraordinaire, and I addressed a joint written communication on 12 February 1991 to each Justice of our Supreme Court:

> We respectfully request a hearing before the Court to express the reason why we believe the overwhelming

> majority of the Dade County Judiciary and Bar are opposed to the creation of a separate Family Court in Dade County. We believe that the interest of the public will be ill-served by the creation of such a Family Court. The citizenry, Bench and Bar suffered through a previous similar experiment a number of years ago, with tragic and catastrophic results to the administration of justice. We seek an open forum to recite that history and our present objections to this specialized court. The Court should at least hear from the opponents of this proposal before the separate Family Court begins operations.
>
> There are scores of other lawyers who feel as we do, but we did not want to delay the transmission of this letter awaiting their signatures.

On 13 February, each of us were invited by Justice Overton to appear before the Commission on Family Courts in Tampa on Friday, 15 February. Messrs. Achor, Heller and Block had other commitments and could not attend. I appeared and voiced my concern and objections.

Mr. Block succinctly and diplomatically addressed the fundamental issue:

> Dear Judge Overton:
>
> Thank you for inviting me to appear before the Commission on Family Courts on Friday. Unfortunately, I have a prior commitment which will not permit me to be there.
>
> My experience with the prior Family Court Division was very distasteful. Some of the judges involved confided that they were very unhappy listening to family law matters day after day and couldn't wait to be transferred to the General Division. A clique of lawyers was "born" who seemed to spend an abnormal amount of time with the few Family Division judges. This was very disquieting to the other members of the Bar and to the clients who became aware of it.
>
> I respectfully submit that a Family Division would not be in the best interest of the administration of justice.
>
> Respectfully yours,
>
> Irwin J. Block

On 13 February, Dan Heller, inter alia, wrote Justice Overton:

* * *

> But allow me to also express the greater dangers inherent in the creation of a separate Family Court:
>
> 1. It helps defeat the benefits of a blind-filing system. Now, a litigant takes her chance in landing in the division of one of 32 or 33 judges. Whereas, if you have a separate court division, the litigant will end up with rotation between only five or six judges. In no time at all, the word will be out on the street as to who are the wives' judges and who are the husbands' judges and, based on the liberality for disqualifying judges now found int he Florida Rules of Court, and the law decisions construing them, in no time at all you will have wholesale motions to disqualify and/or recuse judges. Chaos.
>
> 2. The judges in the mid-'70's who were assigned to that specialized Court were very unhappy because they felt, and rightly so, that their intellectual abilities were being so narrowly confined as to frustrate them. An unhappy judge reflects poorly on the administration of justice.
>
> 3. You will be encouraging and developing cliques of lawyers and it will soon become a matrimonial lawyer's relief bill. Young lawyers will have no chance to "break-in." Word will soon be out on the street as to which of the five or six judges favor which lawyers and you will have an incestuous inbreeding which could result in disgrace upon the entire Bench and Bar and scandal in the press. The fact that I will be <u>in</u> the clique is no inducement to me to compromise my ethics and sense of fair play.
>
> * * *

Further enclosed is a 1990 roster of the Academy Fellows of the Florida Chapter of the American Academy of Matrimonial Lawyers (Academy) (<u>Exhibit 2</u>). Members of the judiciary are highlighted. Note that Supreme Court Justices Overton and Barkett are Academy Fellows. The Academy is composed of some of the most prestigious divorce lawyers in Florida. Presumably, all of the judges, with the exception of Judge O'Flarity, became Fellows for their outstanding contribution as Family Law judges. For example, enclosed are campaign solicitations in support of candidates Alan Dimond and Terry Russell for President-Elect of The Florida Bar

(Exhibits 3 & 4). If Academy Fellows are juxtaposed with the endorsers of Mr. Dimond, note the names on the two lists are almost identical. In short, the same lawyers who labor so diligently in the Bar's Family Law Section are also members of the prestigious Academy. In essence, the Family Law Section and the Academy, despite their immense contributions to the furtherance and refinement of Family Law, have also emerged as *a de facto* Political Action Committee to further impact the professional and personal interests of its selected members. Note the solicitation for Terry Russell is conspicuous by the paucity of support from members of the Family Law Section and the Academy. Is Mr. Russell anti-Family Law, or do the divorce lawyers so vigorously campaign in order to retain their considerable influence in vital positions of The Florida Bar?

However, unlike the American Bar Association, the Association of Trial Lawyers of America and the American Judicature Society, a lawyer does not become an Academy Fellow merely by application. Membership is based upon professional competence, integrity and reputation. There is a blatant financial conflict between the Academy and the Florida Bar. Compare the austere seminars sponsored by The Florida Bar on Family Law, with the gala, highly profitable, standing-room-only annual seminar of the Academy, attended by 250-500 lawyers at $250 each, which provides 13.5 CLE credits. In short, the Academy and the Bar are in financial competition. Thus far, the answer has been to raise the annual Bar dues while the Academy lavishly entertains and honors the attending

judges and generously donates hundreds of thousands of dollars to universities, further enhancing the prestige and reputation of the Academy and its elected members.

Strikingly, if not cynically, note the high ratio of membership of the judiciary, including Justices Overton and Barkett. I believe their membership in the Academy *ipso facto* disqualifies the two Justices from participating in decision-making deliberations concerning a Family Court by the Supreme Court. Federal Judges and lawyers whom I consider experts on the subject seem to concur that such a relationship between judges and lawyers is unhealthy and unwise; e.g., when a Fellow of the American College of Lawyers is elevated to the bench, the new judge no longer retains membership in that organization. The Academy is not comparable to the American Law Institute or The Florida Bar Foundation, whose members also are comprised of lawyers, professors and judges. The Academy has a program and agenda which is clearly for the enhancement of its specialty as well as the advancement of the standard of Family Law and Family Lawyers; but it is not an unbiased organization to which sitting judges should belong.

Considering the upcoming Florida Bar election for President-Elect, I propose to go public on the issue of <u>mandated</u> Family Courts. To my knowledge, neither candidate has publicly stated his position. Therefore, instead of the usual popularity and sectional contest, our two candidates — before the balloting is closed — should feel compelled to publicly announce his position on this important issue.

Judge Wetherington, you were graduated summa cum laude from Duke, number one on your Bar exam, part-time professor and repeatedly elected by your peers as Chief Judge of the Eleventh Judicial Circuit. You have turned down the opportunity to be appointed to the District Court of Appeal, the Supreme Court of Florida and the United States District Court. For the Commission to recommend a mandated creation of a Family Court in the Eleventh Circuit is to disparage your stewardship. You are not old enough to remember the public debacle in the middle Fifties involving the sniping between Circuit Judges Giblin, Milledge and Holt. The Journal of the Senate, reporting the Court of Impeachment in 1957, memorializes the judicial environment when the Bench and Bar ignored public opinion. As a trial lawyer, presumably you remember the Judge Cannon Era and the ensuing concern and publicity. As Chief Judge, you guided the Circuit Court through the stormy publicity and controversy surrounding Judge Gale. The letters of Messrs. Block and Heller, *supra*, contain irrefutable accounts why our Circuit Judges, after approximately two years of having a Family Court, unanimously abolished it.

The Florida Bar has become so large and financially complex, I suggest it is time for the Supreme Court to create an Ombudsman commission likened to the Army's Inspector General or the Bureau of the Budget. For Chairman, I nominate Chesterfield Smith; as commission members, I recommend fearless lawyers, tried and true, of the caliber of A. J. Barranco, Jr., Hugo L. Black, Jr., Irwin J. "Sonny" Block, James E. Cobb, Sam Daniels, C. Harris Dittmar,

Elizabeth J. Du Fresne, Patrick G. Emmanuel, Arthur J. England, John M. Farrell, Willis H. Flick, Daniel Neal Heller, John R. Hoehl, Ann L. Kerr, David C.G. Kerr, Thomas C. MacDonald, Jr., Guillermo Mascaro, Jesse J. McCrary, Jr., A. Matthew Miller, Michael Nachwalter, John S. Neely, Jr., Brian P. Patchen, Carl R. Pennington, Jr., Aaron S. Podhurst, Albert D. Quentel, Bette Ellen Quiat, Dale R. Sanders, Richard S. Savitt, Chesterfield Smith, H.T. Smith, Jr., Alan C. Sundberg, Richard J. Thornton, H. Russell Troutman, Robert A. "Robin" White, and George W. Wright, Jr. With such auditors, I suggest protests like this would be unnecessary. The Bar needs a forum, other than the JQC or Grievance and Ethics Committees, where lawyers and judges may bring to the attention of the authorities sensitive subjects without undue publicity or fear of retribution. If appropriate, such issues should be addressed in open, civil, public discussion rather than in poorly publicized forums before selected group discussions with a singular goal.

I also solicit the support and leadership the great Chesterfield Smith. I doubt whether Chesterfield has ever concerned himself with a Family Court; however, as a card-carrying member of the American Civil Liberties Union and the recipient of the Learned Hand Award, I beseech him to stand before the rostrum and strike a blow for liberty and support our demand for a public hearing on the issue of mandated Family Courts and the subsequent right to present our arguments to the Supreme Court sitting *en banc*.

I urge you and Chesterfield to lead the Loyal Opposition against mandated Family Courts by judicial fiat.

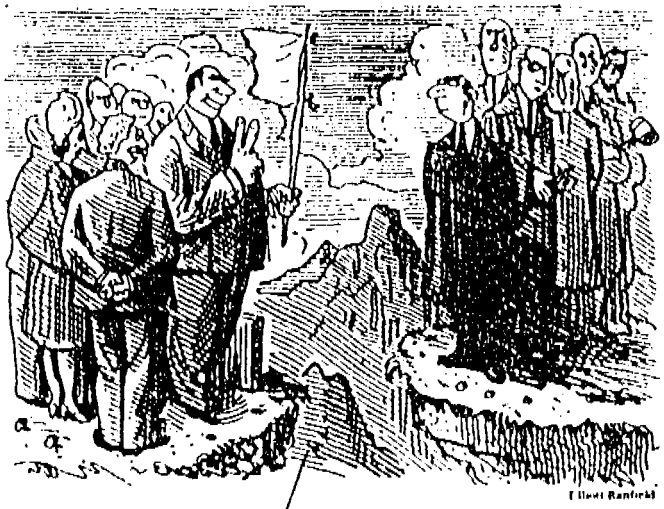
Respectfully,

Paul A. Louis

At the Bar | David Margolick

B6

Judges and lawyers meet to relax, play and horse-trade, but there are Don'ts.



Elliott Raiford

HERSHEY, Pa. — According to Justice Thurgood Marshall, the annual Second Circuit judicial conferences were no big deal when Learned Hand was running them.

"He would call a meeting on the 17th floor of Foley Square, in the Court of Appeals room," Justice Marshall recalled here the other day. "Everybody was there, and he would open the meeting by reading the statute and saying: 'I'm commanded to hold this meeting. I've called it. I now adjourn it. Goodbye.' "

The statute Judge Hand read requires all Federal judges in each of the nation's 11 judicial circuits to meet once each year. But what was formerly a formality is now a three-day extravaganza of speeches, presentations, cocktail parties and golf. A group that once fit a single courtroom now numbers 500, not only judges, but prosecutors, practitioners, spouses and guests.

For the conference Sept. 8-11, the entourage took over the entire Hotel Hershey, a hilltop mansion reminiscent of Charles Foster Kane's Xanadu in "Citizen Kane." It is the only resort in the world where Hershey bars are handed out at check-in, cakes of cocoa butter soap are placed in the rooms and candy kisses on the pillows. Still, not everyone is happy.

Strict constructionists might note that Hershey isn't even in the Second Circuit, which covers New York, Connecticut and Vermont. It's not easy to reach. Also, the Hershey company no longer gives tours past vats of molten chocolate, not even, as in the past, to groups of judges. Nor does Hershey award the judges chocolate gavels anymore.

But the security-conscious judges take over whatever facility they use. Federal marshals were more visible than usual this year. A pair watched warily as Judge Leonard B. Sand, the man who presided over the Yonkers housing desegregation case, batted a tennis ball around.

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The stated purpose of these gatherings is cross-pollination. Around the courthouse, the thinking goes, lawyers and judges can't talk candidly about the administration of justice. Plop them down in some bucolic setting and the inhibitions will evaporate. Some of that undoubtedly occurs. But jurisprudence is hardly the only item on the agenda.

These conferences offer trial lawyers a rare opportunity to meet, schmooze with and charm the very people who control their livelihoods. The practitioners who are invited knew that judges possess what this year's dinner speaker, James O. Freedman of Dartmouth, called a common failing of college presidents: an "infinite capacity for absorbing flattery." They know that when a judge likes someone, he's more likely to trust him, grant him favors, listen closely to his arguments.

And so invitations to these affairs are prized. Once, the same cronies came year after year and outsiders cried foul. So the judges in charge did what came most naturally. They ruled. No judge, they held, could invite a given lawyer more than twice every five years. But judges were practicing lawyers once, and skilled at finding ways to do what they want while following the letter of the law.

It became common practice to circumvent the order by horse-trading invitees. A determined effort over the years by Chief Judge Wilfred Feinberg has opened the conference to younger lawyers, women lawyers and lawyers with more unconventional practices.

Those lucky enough to be here must nonetheless walk a tightrope. Friendly but not effusive; comradely yet deferential. They must follow unwritten protocols. Never discuss a pending cases. Discuss older rulings only in general terms. Never criticize an opinion even if you're still livid over it. Some conundrums remain. Do you offer to buy the judge a drink? Do you dare not? Do you sit alongside him at lunch without an invitation? Do you ask him to play tennis? Do you win?

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For judges, the conference affords a chance to doff their robes, let down their guard. They can act silly, needle one another, and grouse, particularly about salaries that barely exceed what legal greenhorns earn at the large firms.

The unaccustomed lack of judicial restraint was on display in Saturday's after-dinner remarks by William Hughes Mulligan, a former Federal judge now at Skadden, Arps, Slate, Meagher & Flom, the firm that organized the conference, sent out the invitations and negotiated with the hotel.

Mr. Mulligan, seemed to relish an opportunity not available on the bench: the chance to take a swipe at a politician. Introducing the newest Federal judges, he noted that Kenneth Conboy had previously been Commissioner of Investigation in the Koch administration. "Frankly, Ken," he said, "uncovering corruption in New York City in 1986 did not require the brilliance of a Sherlock Holmes."

EXHIBIT 1

THE FLORIDA CHAPTER
OF THE
AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

Presents Its

Twelfth Annual Institute
A Symposium

1990
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An Advanced Seminar and Update on Family Law in Florida

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CLER:
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DIANA J. SESSUMS

EXHIBIT 2

ACADEMY FELLOWS—FLORIDA CHAPTER

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*Benson, Seymour
Berkman, Jason
Boyer, Wayne J.
Brawer, Marc H.
Chonin, Neil
Cohen, Meredith J.
Colernan, Larry K.
Cypen, Stephen H.
Datz, Albert J.
Drucker, Norman A.
Elliott, Edna Y.
Elser, Marsha B.
Fields, Robert W.
Fletcher, Lyman T.
Frumkes, Melvyn B.
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*Glickstein, Hugh S.
Goldman, Joel L.
Greene, Cynthia L.
Haines, Martin L.
*Jamieson, Frances A.
Johnson, Thomas S.
Jones, Charles Eugene
Kapner, Lewis
Kerr, Ann L.
*Knight, Phillip W.
Kutner, Maurice J.
Leinoff, Andrew M.
*Letts, Gavin K.
Levin, David H.
Linden, Neil P.
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Mason, Miriam E.
Miller, A. Matthew
Miller, James Fox
Nevins, Arnold
Novey, Jerome M.
**O'Flarity, James P.
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*Overton, Benjamin F.
Pearson, Ray H.
Penrose, William L.
Reiter, Joseph J.
Rose, Walter T.
Rosin, Robert P.
Rubinstein, Alan J.
Samuels, Sue Rose
Sasser, Donald J.
Schockett, Eleanor L.
Schultz, G. Robert
Sessums, Stephen W.
*Sharp, Winifred J.
Walsh, Michael R.
Whitehurst, Leon
Young, Burton
Zisser, Elliott

*Member of Judiciary
**Past President, National American Academy of Matrimonial Lawyers and President Emeritus

Committee to Elect

ALAN DIMOND

CANDIDATE FOR PRESIDENT-ELECT
THE FLORIDA BAR
1991-1992

February 25, 1991

Re: Alan Dimond, Candidate for President-Elect of The Florida Bar 1991-1992

Dear Family Law Section Member:

You will soon receive a President-Elect ballot from The Florida Bar. Please join us and the other members of our Section listed below in voting for Alan Dimond. Alan is an outstanding lawyer who will be an articulate, competent and strong leader for The Florida Bar in dealing with the significant issues that confront us.

Alan has served on the Board of Governors since 1983, and has chaired the Legislative, Budget and All Bar Conference Committees. He has always been supportive of Section requests and has served as an active and effective liaison for three Sections, including our own. Alan will work to improve the liaison process between the Sections and the Board of Governors.

As chairman of The All Bar Conference Committee Alan has been a strong advocate for the Sections. He believes in Section autonomy and views the All Bar Conference as an important method of providing grassroots input to the Board of Governors from the sections and voluntary bar associations. He has worked for openness and membership participation.

ALAN DIMOND IS EXPERIENCED AND READY TO LEAD!

Please join us in our support of Alan Dimond.

Sincerely,

Ira Abrams
Chairperson

N. David Korones
Chairperson Elect

Cynthia L. Greene
Immediate Past Chairperson

Stephen W. Sessums
Past Chairperson

Donald Sasser	Maurice Kutner	Miriam E. Mason	Lew Kapner
Brenda Abrams	Marsha Elser	Mel Frumkes	David Levin
Bruce Christensen	J. Fraser Himes	Elliott Zisser	Meridith J. Cohen
Cynthia Stump Swanson	Larry K. Coleman	Nancy S. Palmer	Wayne Boyer
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Martin L. Haines, III	Deborah B. Marks	Scott L. Rubin	

EXHIBIT 3

TERRY RUSSELL

Candidate for President-Elect of The Florida Bar

CONTINUING A TRADITION OF STRONG LEADERSHIP

Steering Committee

Roger I. Abrams
Dean, Nova University
Shepard Broad Law Center

James C. Adkins
Justice, Supreme Court of Florida
1969-1987

Joseph A. Boyd
Justice, Supreme Court of Florida
1969-1986

Robert Butterworth
Attorney General, State of Florida

Talbot "Sandy" D'Alemberte
Dean, FSU College of Law 1984-1989

Raymond Ehrlich
Justice, Supreme Court of Florida
1981-1990

Richard Ervin
Justice, Supreme Court of Florida
1964-1975

Robert M. Levin
President, The Florida Bar
1965-1966

J. Rex Farrior, Jr.
President, The Florida Bar
1975-1976

Ray Ferrero, Jr.
President, The Florida Bar
1982-1988

Delbridge L. Gibbs
President, The Florida Bar
1963-1964

Earl B. Hadlow
President, The Florida Bar
1973-1974

Mark Hulsey
President, The Florida Bar
1969-1970

Stephen C. O'Connell
Justice, Supreme Court of Florida
1955-1967
President, University of Florida
1967-1973

James C. Rinaman, Jr.
President, The Florida Bar
1982-1983

B. K. Roberts
Justice, Supreme Court of Florida
1949-1976

Chesterfield Smith
President, The Florida Bar
1964-1965
President, American Bar Association
1973-1974

Samuel S. Smith
President, The Florida Bar
1981-1982

William Reece Smith
President, The Florida Bar
1972-1973
President, American Bar Association
1980-1981

Russell Troutman
President, The Florida Bar
1977-1978

February 22, 1991

Dear Fellow Attorney:

As Chairpersons, Former Chairpersons, Officers and Executive Council Members of the Sections and Committees of The Florida Bar, we have endorsed **Terry Russell** for the Presidency.

Since he began his service on the Board of Governors, **Terry** has continuously recognized the importance of the Sections of the Bar. He believes strongly in the autonomy of the Sections and as Legislative Chair of the Bar, encouraged the Sections to develop independent legislative agendas.

He has served as liaison to the Judicial Nominating Procedures Committee, Disability Law Committee, the Professional Ethics Committee, and most recently, the Real Property, Probate and Trust Law Section and the Bench-Bar Commission.

During the 1990 legislative session, **Terry** organized the first Florida Bar Legislative Issues Conference. The Conference, to be repeated this year, brought Voluntary Bars and Sections together to coordinate and offer mutual support for each organization's legislative agenda. The success of the Conference contributed in part to the Bar's strong showing in the legislature and prompted former President, Steve Zack, to refer to **Terry** as "the best legislative chair The Florida Bar ever had."

Terry has also supported the All Bar Conference and has suggested improvements, including the Conference's control of its own agenda, selection of its own chairperson, and representation for the thousands of members of the Bar who are not presently represented at the All Bar Conference.

Please join us in our support for **Terry** and vote for him when you receive your ballot shortly after March 1, 1991.

REAL PROPERTY PROBATE AND TRUST LAW SECTION:

Thomas P. Evans, Former Chair

Earl B. Hadlow, Former Chair

William E. Sherman, Former Chair

Samuel S. Smith, Co-Chair, Probate Rules Committee

BUSINESS LAW SECTION:

Neil Howard Butler, Chair, Bankruptcy/UCC Committee

F. Perry Odom, Vice Chair, Financial Institutions' Committee

CRIMINAL LAW SECTION:

William Pierce White, III, Chair

Michael Salnick, Former Chair

ENVIRONMENTAL & LAND USE LAW SECTION:

Thomas G. Pelham, Chair

Alfred G. Malefatto, Chair-Elect

GOVERNMENT LAWYERS SECTION:

Robert A. Butterworth, Chair

TRIAL LAWYERS SECTION:

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Jean A. Bice, Chair-Elect

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HEALTH LAW SECTION:

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Christopher Davies Rolle, Immediate Past Chair

LOCAL GOVERNMENT LAW SECTION:

John Forth Dickinson, Chair

LOCAL GOVERNMENT LAW SECTION:

Michael Kevin Grogan, Chair

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EXHIBIT 4

ADMINISTRATIVE LAW SECTION: George Steven Pfeiffer, Secretary; Enoch Jonathan Whitney, Board Liaison; Executive Council: Diane Dubois Tremor, Nikki Ann Clark, O'Bannon M. Cook, M. Catherine Lannon

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MARITAL AND FAMILY LAW
APPELLATE PRACTICE

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WEST PALM BEACH, FLORIDA 33401-4022
TELEPHONE (407) 659-4666

April 4, 1991

Paul A. Louis, Esquire
1125 Alfred I. DuPont Building
Miami, FL 33131

Dear Paul:

I have just received a copy of your undated letter to Judge Wetherington and Chesterfield Smith regarding family courts.

While I am flattered, your reference to me on page 5 as a judge, is incorrect. While I have the deepest admiration for those who take on the problems of a judgeship, particularly distinguished trial lawyers who take a financial beating to go on the Bench such as Pete Fay, I have no aspirations in that direction.

I should like to make very clear that although I am Past-President of both the National American Academy of Matrimonial Lawyers and the Florida Chapter, and have the honor to be elected Permanent President Emeritus of the Florida Chapter, I have no official standing otherwise, and do not speak for nor do I have any authority to speak for the Academy. My comments are solely my own views.

I was somewhat puzzled by your attack on the Florida Chapter of the Academy. As the founding president, I have stayed current, attending meetings of the Chapter, etc. and so far as I am aware, the Chapter has never taken a position on the issue of separate family courts. The Academy has not lobbied the Supreme Court or any other body for the creation of such. In fact the issue is a very mixed bag among members of the Academy. There are indeed those who favor the creation of separate family courts, however there are those who equally oppose it, and some who have mixed emotions about it.

The Chapter has also never endorsed any candidate for the presidency of The Florida Bar or for any other public office.

Your claim that there is a blatant financial conflict between the Academy and The Florida Bar is certainly the first that I have heard. Up until 1976, the Sections of The Florida

EXHIBIT C

Bar did not participate in CLE, and all seminars were put on through the CLE Committee. In 1976, as Chairman of the Family Law Section, I convinced Sylvan Strickland, then Director of Continuing Legal Education, to allow the Family Law Section to put on a seminar. We did so, publishing the book, Florida Dissolution of Marriage and with lectures around the State, and this was so successful, that other Sections jumped on the bandwagon. To my best knowledge, The Florida Bar CLE program is profitable, and the Section of Family Law gets a substantial return each year from the CLE courses which they sponsor. I do not believe that Bar dues are contributed to make up any deficit, certainly in the family law area, although I stand to be corrected in this if I am in error.

While President of The Florida Chapter, I put together the First Annual Institute. In fact before that time, the Academy and The Florida Bar had jointly sponsored a CLE program, and The Florida Bar participated in the first two or three institutes that were put on by the Academy with the proceeds divided equally between the two organizations. The Institute will have its 13th session next month, and as you point out, it is successful. However, it is on a different level from the programs of The Florida Bar in that it is designed to be an intensive one and one-half day advanced course for established family law practitioners or at least those who are knowledgeable in the area. The Florida Bar's courses range from basic to intermediate and are rarely on the advanced level. I am totally unaware of any conflict whatsoever between the Academy and The Florida Bar, either financial or otherwise, and in fact the Family Law Section and the Academy cooperate frequently in various projects.

While the Chapter has made some contributions to universities, I do not believe or understand that the Chapter has ever had "hundreds of thousands of dollars" for any purpose, much less to contribute to universities. Would that it were so!

In my 25 years at the Bar, there have been very substantial changes in family law of which I am certain you are aware. When I began practicing, it was hardly a respectable area of practice. Things were fairly cut and dried in that mama got the house and the kid and permanent alimony, and daddy got the business, either literally or figuratively. I am unaware of anyone in the State at that time who limited his practice to family law although there could have been some specialists without my knowledge.

I think that there have been very substantial changes and improvements in the area, and that it is now a respectable area of practice, although still not the most lucrative. I hope that the Family Law Section and the Academy have contributed to those improvements. I am totally unaware that either organization is a Political Action Committee to impact the professional and personal interests of its selected members. The Academy does indeed have certain standards for admission, however any lawyer may become a member of the Family Law Section by paying the dues. Neither organization impacts the personal interest of its members to my knowledge, except such exposure, or benefits that might flow from the individuals services in the various organizations. Certainly we all have a professional interest in the advancement of family law and each individual benefits from that improvement, whether members of the Academy, the Family Law Section, or individuals who come to Court on family matters.

With reference to the issue of family courts, I am one with very mixed emotions. We have had such here in the Fifteenth Circuit for some three years, and there have been certain benefits in that we are now getting to trial much quicker than we were before the division was instituted, and a back log of cases has been cleared. It is true that the judges and lawyers get to know each other and after a time, judges become somewhat predictable. However, the "Good 'Ole Boy-Girl" syndrome which you mention has certainly failed to materialize here. In fact one of our prominent lawyers has been in substantial conflict with a couple of judges.

I think that the down side is that judges burn out very quickly in family law. We have already had a complete rotation of the judges who were first assigned to the division, and each fled the family court joyfully. Practically no sitting judges want to be assigned to the family court, and in fact five of our six family court judges in Palm Beach County were assigned to that division immediately upon becoming circuit judges within the last year or so. This seems to be the evil, in that the family division becomes Siberia and there are indeed unhappy judges which in turn creates an unhappy Bar and consequently, unhappy litigants. The other down side is that the practitioners cases are concentrated, and he cannot avoid it. If you have one or two heavily biased judges in the division, either pro-man or pro-woman, there is nothing that can be done about it. You are still going to try a high percentage of your cases to these individuals. Prior to the establishment of the division, cases were tried by all general jurisdiction judges, and overall, your chances of getting an unbiased judge were much greater.

I might say that the "wholesale motions to disqualify and/or recuse judges" has certainly not materialized in Palm Beach County. In fact none of the evils predicted by Mr. Heller have materialized. The intellectual abilities of the judge are certainly not narrowly confined in family law but in fact are probably more exercised there than in any other area of law. Many judges seem to prefer criminal law because they do not have to make decisions of great consequence. The jury decides the guilt or innocence of the individual, and the judge applies the sentencing guidelines. In no area of law other than family law, are judges so required to evaluate expert testimony in so many areas, or to make such mathematical judgments. The burn out comes not from the narrowing of intellectual abilities, but the grinding down of consistent conflicts of people who are in the emotional depths.

I am not clear as to why your letter, which obviously is concerned about family courts, should involve the Academy and the Family Law Section. I believe that the Section has officially endorsed family courts but has not lobbied for nor is it responsible for the creation of such to the best of my knowledge. However, I hope that I have clarified some matters.

With best wishes, I am

Sincerely yours,

James P. O'Flarity

JPO:jm
pc: The Honorable Gerald T. Wetherington
Chesterfield Smith, Esquire
Chief Justice Leander J. Shaw, Jr.
Justice Ben F. Overton
Justice Parker Lee McDonald
Justice Raymond Ehrlich
Justice Rosemary Barkett
Justice Stephen H. Grimes
Justice Gerald Kogan

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MODELS OF SUCCESS, FAILURE

Family courts almost certain

Critics call separate division a bonanza for lawyers

BY JANICE HELLER
REVIEW STAFF WRITER

DADE County's experiment with a family court division was a flop. Palm Beach County tried it, and by all accounts it's a fabulous success.

The idea of a separate court division to handle the divorces, adoptions, name changes and the like that make up half of the court system's civil caseload, is expected to become a statewide reality next year.

THE COURTS

The plan means greater expertise among the judges and quicker handling of cases, its proponents say.

Either that or cronyism and borderline corruption, according to critics who call the plan a bonanza for attorneys who specialize in family law.

"It's the worst possible thing for the public," says Daniel Neal Heller, a name partner with Miami's Heller and Kaplan, who practiced in Dade County's unsuccessful family division in the mid-1970s. "They'll come out of this with a bad taste in their mouths. It's disgusting. It's slimy."

Says Miami lawyer Paul A. Louis: "What happens is you get a bunch of specialists in the court and they get too palsy-walsy with the judges. When an outsider comes in, he about gets killed."

West Palm Beach lawyer Donald J. Sasser agrees that out-of-town lawyers and new practitioners will have problems in the family division, but he says that's true in any division.

"When any lawyer comes from out of town, subconsciously the judge is going to give credence to and listen to the person he has confidence in," says Sasser, president of the Florida Chapter of the American Academy of Matrimonial Lawyers and former chairman of the Family Law Section of the Florida Bar. "That happens in every division in every court in Florida. That's just the way it is."

Dade Chief Judge Gerald T. Wetherington.

Sasser acknowledged that Dade's experiment resulted in cronyism, but that was because the judges who were assigned there were "incompetent and inexperienced." Their assignment was treated like punishment, he said, and not

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Lawyer Renee Goldenberg, a member of the panel that recommended a family court division be formed: 'Nobody is on the middle ground with it. Maybe down the road we'll find it has to change or be modified. Right now, it's better than what we have.'

Family court: Faster justice or wholesale chaos?

FAMILY COURT, FROM PAGE 1

enough judges were assigned to the division to handle the work load.

"The attempt in Miami was a disaster," Sasser said. "Since then, there have been family law sections established in Tampa, Orlando and Palm Beach, and all of them have been very successful."

Sasser said Palm Beach County did things right by staffing with enough judges who have more experience.

"You get better justice and you get it quicker," Sasser said. "That's good for litigants."

In Palm Beach County's family division, cases that used to take 18 months to get to court are now finished within six months, said West Palm Beach lawyer Jack E. Ackerman, a name partner with Ackerman, Rakst, Lauer & Scherer.

"I can't tell you how much I like it better than it was before," Ackerman said. "This way, we get our cases tried much faster."

In addition, decisions have been more consistent, according to Chief Judge Daniel T.K. Hurley of Palm Beach County.

"I think the pluses outweigh any negatives," he said.

The issue has been hot one, with lawyers and judges having strong opinions on both sides.

"Nobody is on the middle ground with it," said Renee Goldenberg, a name partner with Fort Lauderdale's Goldenberg & Goldenberg and a member of the Commission on Family Courts, which recommended that the divisions be formed. "Maybe down the road we'll find it has to change or be modified. Right now, it's better than what we have."

Lawyer relief bill

Although the commission's plan for family divisions statewide by 1992 is expected to win easy approval from the Florida Supreme Court, opponents like Miami lawyer Heller are doing what they can to get in its way.

In a Feb. 13 letter to Florida Supreme Court Justice Benjamin F. Overton, Heller warned: "You will be encouraging and developing cliques of lawyers and it will soon become a matrimonial lawyer's relief bill. Young lawyers will have no chance to 'break in.' Word will soon be out on the street as to which of the five or six judges favor which lawyers and you will have an incestuous inbreeding which could result in disgrace upon the Bench and Bar and scandal in the press. The fact

> 'It's the worst possible thing for the public. They'll come out of this with a bad taste in their mouths. It's disgusting. It's slimy.'
>
> DANIEL NEAL HELLER

ducement to me to compromise my ethics and sense of fair play."

In addition, Heller said in an interview, judges will quickly be identified as wife's judges and husband's judges and the lawyers will file motions asking the judges to recuse themselves.

"You'll have wholesale chaos," Heller said.

That's not necessarily true, Sasser said of the matrimonial lawyers. If an attorney knows a judge tends to lean one way or another he or she may be more willing to negotiate with the other party, he explained.

"It's good to know how judges are going to rule," he said. "It saves the litigants money and time without having to go to trial. That promotes settlements. That's not all bad."

Lobbying efforts

Members of the Family Law Section of the Florida Bar and the Florida chapter of the American Academy of Matrimonial Lawyers have been lobbying for a separate family division for several years, Sasser said.

That lobbying is done for self interest and not to help the litigants, charged Louis, a partner in Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertnik. Louis noted that the Florida chapter of the American Academy of Matrimonial Lawyers lists two Florida Supreme Court justices as members: Overton, who chairs the family court commission, and Rosemary Barkett.

Ira Abrams, chairman of the Family Law Section of the Florida Bar, said the pressure for family law divisions has come from the public and lay groups. In addition, it has been supported by the Supreme Court's Gender Bias Commission.

"This issue has been beaten to death and explored to exhaustion by various groups and commissions," said Abrams, a name partner at Miami's Abrams and Abrams.

"There are multiple advocates who are involved in this," said Justice Overton. "Everybody on the commission is looking at what's best going to serve the public."

last year after the Governor's Constituency for Children and the Florida Task Force on Marriage and the Family recommended the creation of family divisions. The commission was appointed to make recommendations about how a family court could be implemented in the state. The commission, in a report released this month to the legislature and the Supreme Court, found that legislation was not needed, because the Supreme Court can order judicial divisions to be created statewide.

"Most of us who work in the field welcome a family division," said Ailene Hubert, a mediator with Broward County's Mediation and Conciliation unit. "In a family court, it's more combined. All of the people involved in family are under one heading and that can be more helpful."

Jurisdiction

Under the current system, one family can have three cases at the same time in different divisions. A divorce case, for example, could be in civil court, a child abuse case in criminal court and a child dependency case in juvenile court. Under the commission's recommendations, most cases involving one family would be in the family court system under the same judge.

The family division would have jurisdiction over divorce, child support and custody, domestic violence, name changes, adoptions, paternity suits and modification proceedings. The commission also recommended that each circuit consider including juvenile dependency and delinquency in the family division.

Each circuit would have the flexibility to design its own family division. But the commission recommended the creation of separate divisions in all circuits large enough to support them.

Dade Chief Judge Gerald T. Wetherington said he's not thrilled with the prospect of being forced to create a separate division of judges to hear only family cases because of Dade's past problems, though he does favor the concept.

"We support specialized handling of family cases," Wetherington said. "We provide the bulk of what any family court would provide already. The only thing we have not been doing is taking all the cases and handing them to a small amount of judges. Our position has been that we should be given discretion in the way in which we implement the criteria."

In Broward, Chief Judge-elect Dale Ross says the proposal puts him in a bind because he doesn't have enough judges for the divisions he has now.

"Where am I going to get the judges?" Ross asked. "If they want to give us the money and fund the program completely, then we seem to have a real opportunity to do something right for a change."

But Ross said he suspects that legislators won't fund the support services properly to operate a family court.

State Rep. Steve Press of Delray Beach, who served on the commission, said the new division would not need funding to get started. The support services could be added later, he said.

"A family division established by the Supreme Court will not really need to add personnel and will not require more money," Press said. "I don't think there is going to be a fiscal impact initially."

The support services such as mediation and conciliation units, social workers and psychologists may be funded for just three pilot divisions for 1992, Press said. If the pilot programs are successful, that could encourage legislators to fund support services all over the state, he said.