

“Competitors Draft Pioneering Program to Address Incivility in the Legal Profession,” Daily Business Review

May 6, 2019

By: Gary C. Rosen



This article profiles one set of three finalists for the Daily Business Review’s Attorney of the Year award, the top honor at the annual Professional Excellence Awards ceremony.

The other finalists are Kerri Barsh of Greenberg Traurig and James Sammataro of Stroock & Stroock & Lavan.

The winner will be announced during an event May 23 at the Rusty Pelican in Miami.

JAMIE COLE

Weiss, Serota, Helfman, Cole & Bierman

GARY ROSEN

Becker

Incivility in the legal profession is something a lot of people grouse about but few do anything about.

Enter friendly midsize law firm competitors Jamie Cole, Broward managing partner of Weiss, Serota, Helfman, Cole & Bierman, and Gary Rosen, Becker managing partner. With the backing of Broward Circuit Chief Judge Jack Tuter, the attorneys created the circuit’s pioneering professionalism and civility magistrate pilot program.

Since the first meeting about 1 1/2 years ago, they drafted a framework for accepting complaints from judges and assigning them to a diverse panel of 20 lay magistrates who started volunteering in January 2018 with the backing of

an **administrative order** issued by Tuter a year ago.

“This would be a forum for lawyers in Broward to sit with highly experienced practitioners in civil litigation who have some stature on the community where some fairly candid discussion can take place about what kind of behavior is over the line,” said Rosen, who has heard some complaints as a magistrate. “In each case it seemed appropriate for the matter to be resolved with discussion among the lawyers with me guiding the discussion.”

Subjects he addressed included cross-accusations of lying to the court and extreme stonewalling on discovery. The context also could include deposition misconduct and unprofessional communications by email, text or phone. Issues of miscommunication and gender sensitivity can be addressed.

Until now, the options for judges were Florida Bar disciplinary referrals and sanctions. The program is intended to address thorny issues that may fall short of the bar’s level of concern in a speedier way.

“I think judges and other lawyers are very reluctant to refer this type of thing to the bar for their review because the bar has much more serious misconduct to investigate between substance issues, and criminal issues and trust account issues,” Rosen said, noting bar complaints can take years to resolve.

“The goal isn’t to punish,” Cole said, acknowledging punishment remains an option. And overnight changes aren’t expected. “The idea here is to have some very senior litigators and family lawyers in Broward County to act as magistrates so when judges have problems with behavior they can refer these lawyers to very senior lawyers on this committee.”

The program requiring face-to-face meetings as well as briefs sets a hurry-up schedule, Rosen said. A complaint in the magistrate program is likely to “wrap up in 45 to 60 days, which is very fast relative to what could happen in the court system and is lightning fast in terms of what could happen with the bar.”

The program is expanding this month from civil to family court following a meeting organized by Cole and Rosen with all of the judges in the division.

Tuter, who is outspoken on professionalism, “has definitely put his full weight behind it, and we’re very grateful for that support,” Rosen said.

The judge told the organizers to expect a three-year rollout.

“I’m always impatient, so it’s much slower than I would have liked,” said Cole, chair of the law firm committee of the Broward County Bar Association. “We’re getting there. We’ve got the infrastructure pretty much in place, we’ve got the magistrates in place, and we’re getting the judges to refer the cases.”

The attorneys are unaware of any other program like it in the country, and there was no model to follow. Word has spread about the expanding program:

Tuter has received inquiries, and Cole has talked to some people at the Dade County Bar Association about it.

Judges' complaints "about attorney behavior are constant, and it's disappointing to hear such widespread commentary on substandard behavior among the lawyers practicing at the bar here," Rosen said.

But Cole doesn't see any geographic boundaries on bad behavior. "This obviously is an issue everywhere. I don't think Broward is any less civil and less professional than anywhere else," he said.

While Cole's and Rosen's firms compete in some practice areas, the two law firm leaders have become friends over the years and have worked together at community organizations.

"We're very friendly competitors. My firm and Jamie's firm have a very good relationship, and Jamie and I have developed a very nice friendship over the years as well. Truth be told, we enjoy the work we do on the program," Rosen said. "It's not every day you can say something like that."