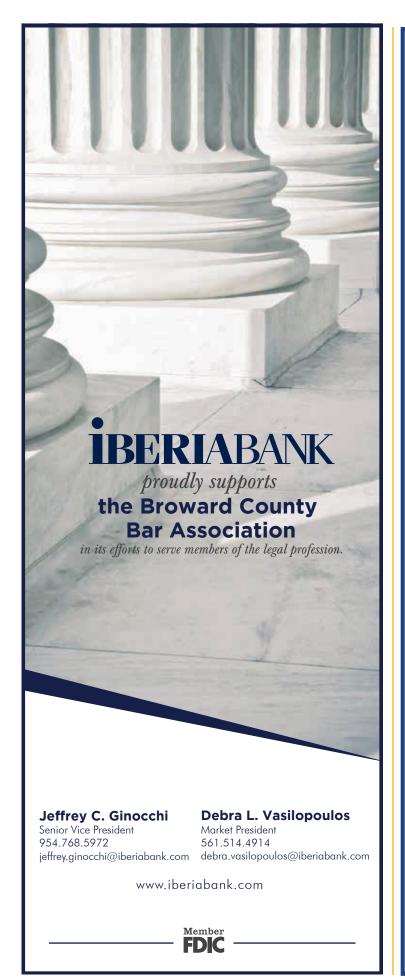
BROWARD COUNTY BAR ASSOCIATION ARRIVATION ARRIVATION OF THE PROPERTY OF THE

JUNE 2018

New Professionalism & Civility Magistrate Program



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Broward County Circuit Court's New Professionalism and Civility Magistrate Program

by Gary C. Rosen and Jamie A. Cole

In 2013, the Florida Supreme Court in *Florida Bar v. Norkin*, 132 So. 2d 77, 89 (Fla. 2013), stated that it was "profoundly concerned with the lack of civility and professionalism demonstrated by some Bar members," and referenced a survey that showed that over two-thirds of the Florida Bar members who responded believed that "in recent years, relationships between attorneys have become more adversarial."

Unfortunately, since then, the situation has gotten even worse, and things are no better in Broward County. Nearly all Broward litigators have experienced or heard anecdotes about lawyers who have discredited themselves and the legal profession with abhorrent behavior. Whether it is obstreperous conduct during depositions, foul or insulting language with adversaries, or simply refusing to follow normal protocols and courtesies in scheduling hearings or depositions, unprofessional behavior is a problem that has not been effectively tackled by professionalism panels that lack any enforcement authority or even the ability to require lawyers to appear before them. Broward judges are now about to try a new solution. This month, three divisions of the Broward Civil Circuit bench are participating in a pilot professionalism and civility magistrate program, enlisting the services of some of Broward's experienced civil litigators to hear referred matters relating to professionalism and civility, and issue reports and recommendations of sanctions arising from that conduct.

The idea for the program emerged from the Broward County Bar Association's Large Law Firm Managing Partners Committee about a year ago. Over the past several months, a small working group has developed the concept with an eye toward deterring those few lawyers whose behavior repeatedly strays outside professionally acceptable boundaries. These managing partners have enlisted colleagues who have at least 20 years of civil litigation experience and are located here in Broward County to serve as magistrates. The magistrates are volunteers and will serve for no compensation.

On May 2, 2018, Chief Judge Tuter issued Administrative Order #2018-35-Civ detailing the program. The stated purpose of the program is "to promote and better enforce the appropriate level of professionalism and civility among the lawyers practicing in the Civil Circuit divisions of Broward County Circuit Court." A participating judge may refer a matter to a volunteer magistrate if in the court's judgment the conduct of an attorney should be examined. The purpose of the magistrate program is not to address routine matters: rather, the only types of matters that are to be referred to a magistrate are those that concern "[b]ehavior involving issues of civility in the courtroom, discovery or other interaction between counsel that undermines the integrity or professionalism of the Bar, including:

- i. Non-routine discovery disputes involving conduct that has occurred more than once
- ii. Non-routine discovery disputes where one party/counsel's conduct is the subject of multiple motions
- iii. Conduct that is the subject of a sanctions motion that the trial court determines has prima facie merit based on written submissions

iv. Repetitive disregard for scheduling protocols.

All filings with the magistrate shall be through the electronic filing system and will be a matter of public record. Following submission of written submissions by all parties, a hearing will be held before the magistrate, and a report and recommendation will be issued. The magistrate process is designed to work expeditiously, with the total time from referral to the issuance of a report and recommendation estimated to be no more than 45 days.

Admittedly, this magistrate program is an experiment that may require modification and adjustment. However, the ultimate goal of a more professional and civil practice of law in this circuit is well worth the effort.



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