Marcus
AMBROSE
FOR YOUR JUDGE
CIRCUIT COURT

# BLUEPRINT FOR JUSTICE

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## DEDICATION

I would like to thank my parents and law professors who taught me to believe in truth and justice and whose principles I have never lost sight of.

I dedicate my blueprint to the people of Dade County where I have made my home since the day after I graduated law school in May, 1977.

While reasonable interpretations may differ, my blueprint for justice is not intended to be an indictment of either judges or lawyers. Instead, it is a constructive critique of our legal system that is crying out for reform. It is true that some lawyers and judges are part of the problem. This is no great secret. I believe, however, the legal profession is, by and large, a noble one -- although some have lost their way.

Moreover, throughout this article, I do not wish to sound holier than thou. It is, however, from our mistakes that we learn; and we can only hope not to repeat them.

## INTRODUCTION

I became a lawyer because I wanted to help people. My excellent law professors filled me with a sense of lofty idealism. That is how it began. Year after year, although my hard work paid off financially, I became more and more cynical (as did the public) toward the legal profession and judiciary as I witnessed, first hand, the deterioration of the legal system.

Not too long ago I suffered a spinal cord injury resulting in partial paralysis. I submitted to neuro-surgery and faced death and/or total paralysis. The surgery was a success. During the rehabilitation that followed, I fought hard and I recovered fully.

My brush with paralysis/death caused me to reevaluate my life and the legal profession, to which I have dedicated twenty-two years -- fifteen as a lawyer and seven years of higher education to become one. I took a cold, hard look at my profession. Frankly, I don't like what I see.

Our legal system was not designed to benefit the interests of judges and lawyers -- its purpose is to serve the people. Unfortunately, you have become victim of the system, not its beneficiary.

I can no longer sit back in the comfort of my law office and watch our legal system, upon which society so vitally depends to protect our basic freedoms, go to ruin.

We need to elect new judges that can identify the problems we face; that can offer specific solutions; and that have the courage and conviction to put them in place. To this end I have written "Blueprint for Justice."

In the "Blueprint," footnotes are not mere citations of authority. Instead, they are often substantive elaborations of textual material. When cited, they should be read simultaneously in order to fully understand the concept discussed.

## PROBLEM #1

**OUR SOCIETY HAS BECOME LITIGIOUS -- THE MENTALITY IS SUE FIRST AND ASK QUESTIONS LATER. CONSEQUENTLY, OUR LEGAL SYSTEM IS BOGGED DOWN IN A QUAGMIRE OF LAWSUITS. OUR JUDGES WITH BURGEONING AND BURDENSOME CASELOADS DO NOT HAVE THE RESOURCES TO DISPENSE JUSTICE.**

DISCUSSION:

In Dade County alone, approximately 40,000 new civil[1] cases are filed in Circuit Court each year and the number is growing; and there are only 41 Circuit Court Judges. That translates into almost 1,000 new cases each year per Circuit Court Judge.[2]

Our legal system was designed to be a forum for dispute resolution of last resort people turned to when they could not amicably resolve their problems.

Over time, our society's values have changed. A person's word, sense of right and wrong, commitment, promise -- things that form part of one's character and enable individuals to do what is fair -- have deteriorated. Furthermore, people have become indoctrinated, at the first blush of any dispute with another, to rush to see their lawyer. The attorney then counsels the client to say nothing. Thus, all communication -- except through opposing attorneys in an adversarial process -- breaks down. A lawsuit usually follows. Thus, suing each other usually becomes a first and not a last resort.

Once the matter is in the attorney's hands, protracted litigation often ensues because:

1) Many lawyers are paid hourly and it is in their self-interest to drag things out (or as lawyers say: "build the file").

2) The Supreme Court sets guidelines governing legal fees in contingency fee cases (where a lawyer receives a percentage of the money recovered). In most cases, there is a 33% maximum where settlement is obtained before the lawsuit is filed; and 40% when a suit is actually filed. Therefore, a lawyer gets a 7% bonus for just filing a complaint.[3]

Many lawyers, because of economic incentives, have no motivation to resolve their client's dispute without going to court; or quickly exit the litigation process once suit has commenced. The result is:

1) The client pays much more in legal fees;[4]

2) The client pays tremendous court costs[5]; and

3) The client endures endless delays that can, between getting to a jury trial, appeals, possible re-trial, followed by new appeals, ad infinitum, could take ten years or more. After so much time elapses and money spent, any victory "in court" is often a hollow one.

Accordingly, lawsuits, as a first resort, are in the lawyer's and not the client's best interests. Lawsuits are in the client's best interest only when they are a last resort.

## SOLUTION TO PROBLEM #1

## A BETTER ALTERNATIVE TO LITIGATION: MEDIATION[6]

Our legal system is adversarial in nature -- lawyers are combatants. Mediators, on the other hand, are skilled in the technique and art of negotiation, peaceful resolution and compromise.

I intend to prepare a videotape seminar, involving judges, lawyers, mediators and persons who have benefitted from mediation, to fully explain the benefits and advantages of mediation and the pitfalls and disadvantages of litigation.[7]

In my court, when a case is "at issue":[8]

1) All parties (plaintiff and defendant) and their attorneys shall attend the seminar within a reasonable period of time.[9] Failure to comply with this requirement may result in the striking of the non-complying parties' pleadings.[10]

2) After the parties view the seminar, I will require that they meet to discuss the benefits of professional mediation as a tool for resolving their dispute. If voluntary mediation is selected, an appropriate "Agreed Order" will be prepared, entered and the curative process shall begin.

3) If the parties cannot agree to mediate, written and specific reasons shall be submitted by attorneys for all parties stating why voluntary mediation could not be

agreed upon.

4) I will review these pleadings and, if I do not believe the reasons stated therein are valid, I shall order the parties to mediate.[11]

Mediation is not a substitute for litigation, but rather a mechanism to bring parties together who are otherwise inclined to resolve problems amicably.

Through my seminar, by educating, informing and involving litigants in mediation, **before** they travel down the costly and time consuming road of litigation, many cases will amicably settle early on.[12] This will save valuable judicial resources[13] and give litigants a meaningful remedy to their problems.

## PROBLEM #2

**JUSTICE DELAYED IS JUSTICE DENIED.**

DISCUSSION:

The Supreme Court of the State of Florida has established guidelines to be followed by Circuit Court Judges that state that a civil jury trial should be held within 18 months and a non-jury trial 12 months -- from the commencement of the lawsuit. These guidelines were designed to give people their fair day in court within a reasonable period of time so that the remedy they seek remains meaningful.

Nevertheless, in the Dade County Courthouse (this problem is not unique to Dade County) it can take many years for an aggrieved

party to get his or her day in court, or for an innocent defendant to be vindicated of accusations of wrongful conduct. The reality in the Dade County Courthouse flies in the face of these guidelines. Trials are not often had for many years beyond the passing of the "theoretical" deadline. I believe the reasons are in part:

1) Lawyers benefit fee-wise by delay.[14]

2) It is not uncommon for some lawyers to improperly use delay tactics as strategy. First, delay can often result in the attorney charging the client additional fees because work, albeit unnecessary, is being performed. Secondly, some attorneys use these practices to over-burden their opponent, who must expend time and costs for which their client is paying, as an improper means to force the non-abusing side to succumb to a nuisance, value settlement rather than face burgeoning legal fees and costs.

3) The law of civil procedure in Florida only requires that one piece of paper be filed within any given twelve month period to keep a case active and from being dismissed for failure to prosecute.[15]

4) Judges too often allow lawyers to decide when they are ready to go to trial, rather than exercise their discretion to set the case for trial and force lawyers to prepare their cases expeditiously.[16]

5) In many cases where a case is set to go to trial, judges

are often too quick to grant last minute continuances, sometimes repeatedly, for non-compelling reasons -- usually because one or more of the lawyers did not prepare the case timely or properly and needs additional time.

6) Depositions and other hearings, which occur during the course of litigation, are often set and reset and set and reset, ad infinitum.

7) The Rules of Civil Procedure provide deadlines for certain events to occur during the course of litigation. These deadlines are often not met by agreement of opposing counsel, over and over again, who are accustomed to request and be granted additional time to comply with the requirements under said rules.

8) Computers are being used to wage "paper" wars in court since legal documents and other pleadings employed during the litigation process can now be churned out at a keystroke.

SOLUTION TO PROBLEM #2

Judges have the authority to set cases for trial sua sponte (on their own authority). In my courtroom, I will set cases for trial within the guidelines set by the Supreme Court.

Every lawyer whose new case is assigned to my division will know that his or her case will be timely set for trial...so prepare or beware![17]

Of course, there will be many instances where the circumstances are such that fairness requires a continuance. In my courtroom, when the reasons are compelling and where justice dictates, in order to ensure litigants a fair day in court, a continuance will be granted.

## PROBLEM #3

**MANY TRIAL LAWYERS CALL THE DADE COUNTY COURTHOUSE A ZOO**

DISCUSSION:

A lawsuit begins when the plaintiff files a Complaint in Circuit Court. Shortly thereafter, the defendant files a reply called an Answer. The case is then "at issue." This entire process may take as little as twenty days.[18] From that point until a trial occurs -- a person's day in court -- often many years pass and tremendous expense is incurred by the litigants. Why does it take so long and cost so much to get from point A (the case being "at issue") to point B (the trial)? To answer that question one must analyze the legal maneuvering between point A and point B called "motion and discovery practice" -- where attorneys prepare their case for trial.

To understand motion and discovery practice, it would be helpful to use a military analogy. The complaint filed by the plaintiff is the declaration of war. The defendant answers, by setting up "defenses", and the battle lines are drawn. The war itself takes place when the trial occurs, often many years later. In the meantime, many, many battles are waged by the attorneys

usually initiated by the filing of a "motion."[19] Rarely does the outcome of the battle (ruling on the motion) ever determine who wins the war (the trial itself).

Motion practice usually proceeds by a judge simultaneously setting twenty-five or more motions to be heard -- all at the same time (this is called a "Motion Calendar"). Consequently, it is not uncommon to see thirty or more attorneys in or around the judge's chambers waiting to have their motion heard by the judge. Usually only five minutes per case is set aside for each hearing. Attorneys are often forced to spend one to three hours of time, and therefore their client's money, due to travel time to and from the courthouse and waiting in a long line for their case to be heard.

Motion and discovery practice is one of the most abused, wasteful and inefficient mechanisms for dispute resolution in our court system. I believe this is the singular reason why our courthouse is called by most attorneys who practice there: "a zoo".

The consequences of practicing law in a zoo and not in a courthouse setting defined by law and orderly procedure are:

1) Tragically, litigants sometimes are forced to spend hundreds of dollars in attorney's time when the only benefit derived is five minutes spent in a judicial hearing.[20]

2) Some lawyers abuse motion procedure by dragging other attorneys into court as a strategy to delay and harass. For example, sometimes the moving party (the attorney who

files the motion) is being compensated on an hourly basis and opposing counsel on a contingency fee basis -- thereby allowing one attorney to harass the other attorney. Regardless of the time wasted at a motion calendar, the moving party is going to be compensated and the opposing attorney receives no immediate compensation.

In other cases, both opposing counsel are being paid hourly and increase their "billable time" at their clients' expense.

3) It is not uncommon for some attorneys to file motions and request rulings which they know, in whole or in part, they are not entitled to.[21]

4) Due to time constraints and the "zoo-like" atmosphere, motion calendars do not permit a judge to carefully consider case law. Too frequently the judge rules by "shooting from the hip" and, unfortunately, often misses the mark.

## SOLUTION TO PROBLEM #3

Motion and discovery practice should be used in appropriate circumstances where there is a good faith basis for opposing counsels' disagreement. However, the unnecessary and shameful wasting of judicial and client resources **MUST STOP!**

In my courtroom, motion and discovery practice shall be ethical, professional and properly employed by attorneys in an orderly procedure as follows:

1) Opposing counsel shall be strongly encouraged to speak with each other to see if an agreement is possible to avoid the filing of a motion in the first instance.[22]

2) Where agreement cannot be reached, and a motion is filed, I shall order attorneys on both sides to speak with each other by phone, by a date certain, to discuss amicable resolution. If agreement is reached an "Agreed Order" will be prepared and entered.

3) If the parties cannot agree, I shall require that a memorandum of law in support of the moving party's motion be filed setting forth the specific case authority upon which they rely in support of their motion; and the opposing party shall be given a reasonable but specified period of time in which to reply.[23]

4) I will read the motion and accompanying memorandum of law and rule without the necessity for a hearing wherever possible. In some cases, because of the novelty of the legal issue, complexity or lack of clear-cut legal precedent, fairness and justice will dictate that a hearing on the motion be granted so that it can be properly decided. In such cases, I will do one of the following:

   a) Using existing telephone technology, I will set up a phone conference so that a hearing can be held by allowing counsel to "appear" before me while remaining in their own law offices. Properly

employed, telephone conferencing of motion practice can solve half of the problem and save countless hours of attorneys' time and clients' money.

b) In other cases, it may be appropriate to have a hearing "in person". Accordingly, I will set motions to be heard in my chambers at a date and time certain. Again, minimizing the waste of attorney time and clients' money.

I expect that the longstanding abuses of motion and discovery practice will die hard. Therefore, in anticipation, I will issue clear guidelines as follows:

1) Attorneys shall use good faith to work all matters out amicably with professional courtesy.

2) Attorneys shall not file or oppose motions without merit or in bad faith.

3) The most valuable asset that an attorney has is his or her reputation. Attorneys who abuse motion practice will be doing themselves and their clients a great disservice since they risk losing their credibility.

When abuses do occur, I will impose sanctions as follows:

1) Issue oral and private reprimands to attorneys in the hope that this may deter future abuses.

2) In more severe cases, issue a written reprimand to the attorney privately and/or where appropriate in the body of my Order.

3) In rare but necessary cases, file a grievance with the

Florida Bar.

4) Tax fees and costs.

What I propose is unheard of; in part, because judges depend on lawyers for their popularity in Florida Bar polls and for re-election contributions

I will run my courtroom without an eye on re-election. I intend to force some lawyers to elevate the quality and standards of their practice. Most lawyers, however, already have these guidelines of professional conduct but are unable to properly maintain them in a legal system in a state of decay.

It is possible that my Blueprint For Justice will make me unpopular with some lawyers. If that is the case, so be it. I believe, however, that the vast majority of sincere, hardworking lawyers will appreciate my efforts for reform. My courtroom will be a place where such lawyers can do a good job for their clients and feel good about themselves and their profession. This atmosphere of justice will benefit all of the people who come before me. I intend to be their Judge.

**PROBLEM #4**

**IN COURTROOMS IT IS OFTEN WRITTEN "HERE WE SEEK THE TRUTH" -- ALL TOO OFTEN LAWYERS, PLAINTIFFS, DEFENDANTS AND WITNESSES DISTORT THE TRUTH.**

DISCUSSION:

I have witnessed countless cases of perjury; and in many I exposed the lie only to have the presiding judge shrug his or her shoulders and do nothing.

Perjury, although illegal (on the books) has become so common in the Dade County Courthouse that it is tolerated by many judges and attorneys. This tolerance encourages attorneys, clients and witnesses to play fast and loose with the truth. There is a perception that there will be no repercussions to a person distorting the truth or committing perjury.

**THIS MUST ALSO STOP.**

## SOLUTION TO PROBLEM #4

In my courtroom an oath to tell the truth under God will not be a mere statement uttered as a prefix to the distortion of the truth or a lie. It will be what it was intended to be: a solemn oath. Further, I will not hesitate to hold any attorney, party or witness in contempt of court or to employ all legal sanctions available to me under the law, including referring matters of perjury to the State Attorney for investigation and/or prosecution.

While it is my hope and expectation that all attorneys practicing before me represent their clients zealously, it must be done within the bounds of the law and propriety. Oaths will no longer be a meaningless recitation of words.

## PROBLEM #5

## ABSENCE OF PROCEDURAL UNIFORMITY BREEDS CONFUSION AND CHAOS[24]

DISCUSSION:

There are forty-one Civil Circuit Court Judges. Guidelines exist called the Florida Rules of Civil Procedure that provide limited procedural uniformity. In reality, however, there are as many sets of different rules of procedures as there are judges. These rules guide a case from the filing of suit to trial and include but are not limited to: motion calendars, submission of orders, requesting special appointments, pre-trial procedures, jury selection and trial procedure. The disparity that exists among judges, however, is a double-edged sword.

On the one hand, it allows innovative judges to carve out creative reforms within their own courtrooms. As you know, this freedom and discretion is the cornerstone of my "Blueprint"-- to rebuild the courthouse, one courtroom at a time, starting with my own: and, thereafter influence other judges to adopt my procedural reforms after they have been tested and proven effective.

On the other hand, since each new case is assigned to a judge by random draw (a lottery), and there are forty-one Civil Circuit Court Judges, a trial lawyer may appear before a specific judge only once or twice a year -- if at all. Consequently, it is impractical if not impossible for lawyers to learn all the rules and guidelines in every judge's courtroom since judges change their own rules, some retire and others are defeated and new judges are elected. The result: chaos, confusion, loss of attorneys' time and

clients' money.

## SOLUTION TO PROBLEM #5

Procedural uniformity, by adopting certain specific rules and procedures, would be better than the existing confusion; but admittedly would discourage new, dynamic approaches since written rules, adopted by the Legislature or the Supreme Court, would be slow and resistant to positive change.

My approach would be by hybrid:

1. Adopt procedural uniformity where the overwhelming consensus of judges agree there is a "best way," thereby limiting the discretion of judges who follow old and outdated schools of thought.
2. In procedural areas where there is a reasonable basis for judges to differ in their individual approaches, and to encourage innovation, judges should do what I have done and will do: set forth written and specific guidelines so that lawyers know in advance what is required and expected rather than learn the ropes at their clients' expense.

## PROBLEM #6[25]

**JURY TRIALS -- THE SINGLE GREATEST CONSUMPTION OF JUDICIAL RESOURCES -- TAKE TOO MUCH TIME**

DISCUSSION:

The average judge, with thousands of cases assigned to him or her, would be lucky to have the time to try thirty jury trials a year. One highly publicized case can take up a judge's calendar for

many months, leaving pending cases in limbo and other litigants waiting for their day in court.

Believe it or not, in most cases, it is too often the lawyers, not the judges, who decide how long a trial lasts. Unfortunately, jury trials go on much longer than necessary if some judges would take greater control of their courtrooms.

It is true that all judges, in advance of trial, send out to the lawyers what is known as a "Pre-Trial Order." This judicial edict requires opposing counsel to: exchange lists of both prospective witnesses and documents to be introduced at trial, and to meet and examine each other's evidence. In reality, lawyers name almost every person listed in a small phone book and almost every piece of paper ever printed--regardless of whether they really intend to call the witness or actually introduce the evidence in their feigned "compliance" with the judge's order.[26]

Of course, this wastes attorneys' time, clients' money and judicial resources for lawyers just to figure out what is really going on and to scurry to prepare to meet their burden of proof at trial.

The Pre-Trial Order is supposed to avoid surprises at trial and reduce the time it takes to try a case. Unfortunately, it does just the opposite.

SOLUTION TO PROBLEM #6

In most cases, I will order opposing counsel to appear before me, at a pre-trial conference. They will be required to:

1. Meet with each other before hand and certify that

they have done what is required of them in my Pre-Trial Order in good faith. This will reduce the time it takes to have a productive pre-trial conference that will follow. Violators will be sanctioned.

2. Divulge the lay witnesses and expert witnesses they actually intend to call at trial and the specific nature of their testimony and the point of disputed fact their testimony is intended to prove.

3. Eliminate all unnecessary cumulative documentary evidence and testimony.

4. Agree on the documentary evidence to be introduced without objection, thereby avoiding the costly and time consuming procedure of calling records custodians as witnesses to authenticate these documents.

5. Agree to stipulate to undisputed facts and law so that the case can be tried on the narrow areas of law and fact actually in dispute.

6. Present and argue all pending matters of law; and I will rule on pre-trial issues (motions "in limine") so the lawyers will know the posture of their case in advance of trial.

The simple, meaningful and fully utilized use of the existing rule governing pre-trial conferences could cut trial time in half and possibly double the number of jury trials a judge can effectively handle per year without hiring one new judge!

## PROBLEM #7

**BY JUDGES BEFRIENDING LAWYERS PUBLICLY, THEY CREATE THE APPEARANCE OF BEING PARTIAL**

DISCUSSION

Judges are often seen in and out of the courthouse fraternizing with certain lawyers, calling them by their first names and giving the appearance that they are close friends or acquaintances.

Lawyers less known to the judge often feel that they are at a disadvantage before a judge openly known to opposing counsel. This may be true (the judge is partial) or it may be only an appearance (the judge is in fact impartial). In any event, it creates a reasonable doubt as to the judge's impartiality in the minds of both the attorney and his/her client.

## SOLUTION TO PROBLEM #7

I will maintain a professional and cordial relationship with all lawyers who come before me. In other words, I will create the proper "distance." I believe that propriety is not enough; a public servant--and certainly a judge--must avoid even the appearance of impropriety or partiality at all times.

Every lawyer and litigant who comes before me in my courtroom must know and truly believe that each and every ruling I make is based upon three factors only: the law, the facts and what is just.[27]

## PROBLEM #8

**NUISANCE AND PROLONGED LITIGATION ERODE A PREVAILING PARTY'S VERDICT.[28]**

DISCUSSION:

The Florida Constitution guarantees the people the right of access to our courts.[29] In other words, regardless of a lawsuit's merits, or total lack thereof, anybody can drag an innocent party into court by paying approximately $150.00.[30] Consequently, thousands of frivolous lawsuits are filed in Circuit Court each year.[31]

Moreover, since it is so inexpensive to file suit, for the plaintiff it is often a heads I win, tails I win proposition: You can win the lawsuit; and if you lose by taking a cheap shot, you have lost very little.[32]

The abuse is not limited to plaintiffs. Many defendants and their attorneys prolong litigation for years by setting up disingenuous defenses as a strategy to delay the inevitable: entry of an unfavorable verdict.[33]

The unfortunate and prevalent practice of filing nuisance lawsuits by plaintiffs; and the defendant's strategy of prolonging litigation has serious consequences to our legal system by:

1) Clogging an already overburdened legal system designed to resolve quickly, efficiently and inexpensively legitimate legal disputes.
2) Wasting judicial resources already at a premium.

3) Forcing defendants, in suits they would otherwise win, to enter into settlements for nuisance value just to avoid the expense of protracted litigation. In other words, to submit to a form of legal extortion that sacrifices principal to be practical.

4) Causing plaintiffs with legitimate disputes to receive less than they should be entitled to if they got a quick day in court because defense delay tactics erode their recovery by: incurring attorneys fees, costs and loss of the time value of money.

5) Wasting taxpayers' dollars to support a legal system fraught with inefficiency and abuse.

**THIS MUST STOP NOW.**

## SOLUTION TO PROBLEM #8

A rule requiring that, in all Circuit Court litigation, the prevailing party be entitled to recover a reasonable attorneys' fee from the losing party (including appeals taken, if any).[34]

This simple solution[35], which will require legislative reform that I will author and lobby for in Tallahassee[36], will in one fell swoop eliminate or minimize all of the abuses I have outlined and:

1) Plaintiffs, defendants, and their attorneys will now think long and hard before filing a weak or frivolous suit; and defending litigation by engaging in disingenuous delay tactics as a strategy.

2) I believe that many weak cases will not be filed in the first instance; or will be settled much more quickly and fairly. Moreover, the risk of paying the prevailing party's attorney's fees will act as a catalyst to resolve, early on, meritorious litigation; and, further enhance the mediation process (discussed in problem and solution #1).

3) Plaintiff's recoveries at trial will be greater since, as the prevailing party, they will be awarded attorney fees; and defendant's vindication at trial will be meaningful because their attorneys fees will be paid by the losing plaintiff.

My solution will benefit everybody: plaintiffs, defendants, attorneys, the legal system and you, the taxpayer.

## CONCLUSION

This document is a blueprint and will require changes and revisions through time and experience. I invite the Bench, the Bar and all interested persons to submit ideas and criticisms so that my blueprint can be a living and breathing document that changes with the times and needs of our judicial system.[37]

With the many good judges, good lawyers, your support, and my blueprint in hand, we can rebuild our courthouse -- one courtroom at a time -- and return the courts to their rightful owner: you, the people.

I want to be **YOUR JUDGE.**

My Pledge To You,

MARCUS AMBROSE, ESQ.

**FOOTNOTES**

1. My Blueprint examines civil trial practice in state Circuit Court.
2. Statistics obtained from Dade County Courthouse Clerk of the Circuit Court. These figures do not include county or criminal court cases or Circuit Court judges assigned to the criminal division.
3. See Rule 4-1.5 Rules Regulating The Florida Bar.
4. Many lawyers are professional, ethical and are able to set aside their own financial considerations and act in the best interest of their client. Unfortunately, this is not always the case.
5. Filing fees, court reporters, process servers, expert witness fees, depositions, transcripts, copying, postage, translations, translators, parking, long distance charges, etc.
6. Mediation and arbitration is presently being utilized by some judges and lawyers but too little and too late. This valuable tool is being wasted.
7. Mediation only costs $500.00 on the average. It lasts for approximately two days and the costs are usually shared

equally by both sides. When timely and properly employed, mediation can avoid years of wasteful and unnecessary litigation, legal fees and costs. A small price indeed. I will devise a procedure whereby the mediator selected will be competent and respected by opposing counsel.

8. At the point where a complaint is filed, motions to dismiss disposed of and an answer filed, the case is "at issue." This can occur in as little as thirty days from the filing of suit.

9. An affidavit of compliance will be required by all attorneys of record. Attorneys who have previously viewed the seminar need not re-attend.

10. The seminar will be offered regularly, at different times of the day and/or night, for the parties' convenience. When justice requires, in cases of the sick, handicapped, or foreign corp[orations who do not have offices in Dade County--a procedure will be set up to view a copy of the video which can be sent by mail and viewed privately.

11. In some cases, based on the circumstances and the extent of disagreement, personalities involved, and other practical considerations, mediation may be premature and should be deferred. In such cases, attorneys shall proceed in accordance with Fla.R.Civ.P. 1.700 et. seq. I will monitor those cases to determine when and if they become ripe for mediation; and,

should that occur, I will exercise my authority as Judge to order the parties to mediate.

12. The vast majority of cases settle prior to going to trial. My mediation procedure will act as a catalyst for settlement at the outset of litigation rather than at the eleventh hour before trial.

13. Judges need time to more effectively handle the backlog of cases where mediation is not appropriate or otherwise premature.

14. The fee structure and hourly rate process is more fully explained on page 6 of the "Blueprint".

15. See Fla.R.Civ.P.1.420(e). If the professional code of ethics, which requires that a lawyer zealously represent the interests of his or her client is not enough of an incentive, the Rules of Civil Procedure should be changed to require that attorneys and people who choose to burden our courts with litigation, and all that it implies, actively pursue the litigation without unnecessary delay.

16. In most cases, it is the attorneys who file a pleading notifying the judge that they are ready to go to trial and request a trial date be set. That event may occur in one year or six years. Many judges do not closely monitor the status of their caseloads.

17. Inasmuch as I will be inheriting an existing, heavy and backlogged litigation caseload, it would be impractical and impossible to set all existing cases for trial at the same time. My plan for speedy trials will have to be put into effect gradually by staggering the existing and newly filed cases for trial over a reasonable period of time. It is my intent to implement and make this system operational by the end of my first term as Circuit Court Judge.

18. The process of disposing of preliminary motions to dismiss, strike, more definite statement, etc., usually takes 45-90 days.

19. A motion is a pleading in which a party simply asks something of the other party or for judicial intervention. If the motion is opposed, as is often the case, the judge must intervene by granting or denying the motion and declaring one party the victor of the battle.

20. Attorneys have every right to bill for their time and should be compensated for appearances at motion calendars. The motion calendar practice and procedure, however, wastes attorneys' time and their clients' money.

Some attorneys, knowing their client got so little value for the time actually spent in court, do not bill for the entire time spent. Unfortunately, the attorney's time is neither

billable nor productive.

21. Good lawyers, however, know the law, what they are entitled to get and obligated to give. Consequently, in many cases, they submit "Agreed Orders" on motions thereby obviating a hearing.

22. In order to document the record, a skeletal motion can be filed and an "Agreed Order" entered thereon.

23. Lengthy memorandum of law with endless strings of citations or the use of "boilerplate" (where attorneys use standardized text and legal citations in a shotgun rather than rifle shot approach) will not be tolerated. Memorandum of law shall be brief and incisive (it may be enough in many instances to merely say: Judge, please read the attached case). Moreover, opposing counsel shall certify in their pleadings that they, as required, have attempted to reach an agreement on the motion; and state the basis of their disagreement.

24. This problem and solution was inspired by a conversation with Luis Stabinski, Esq. of Stabinski & Funt, P.A.

25. This problem and solution was the result of a thoughtful critique of my "Blueprint" by Angel Castillo, Esq.

26. This, of course, is an exaggeration, but you get the point. The truth is many trial lawyers do not comply with the pre-trial order in good faith and many judges do not enforce their order.

27. Otherwise, a judge must, on his or her own motion, recuse themself.

28. This problem and solution was brought to my attention in a conversation with Clemete Vazquez-Bello of Valdes-Fauli, Cobb, Petrey & Bischoff, P.A.

29. See Florida Constitution Article 1, Section 21 which states:

> **Courts shall be open to every person** for redress of any injury and justice shall be administered without fail, denial or delay (emphasis added)

30. The present, approximate cost of filing a complaint and service of process in circuit court.

31. A frivolous lawsuit is one that is not completely devoid of merit but which seriously lacks any real probability of success if properly defended.

32. You may have to pay your own attorney's fees; or no fees at all if the case is based upon a contingency fee retainer. Additional court costs may be taxed against you, but these costs and fees do not deter most parties from filing suit. Professional and ethical attorneys should **control** their clients to do what is proper, even if the client is willing to pay them to do so, and not file suit; and some lawyers do follow that practice.

33. Many defendants prefer to pay their own attorneys to "buy time" which further prolongs litigation. This forces the other party to unnecessarily incur additional attorney's fees unless

the case was taken on a contingency fee basis. In those cases, opposing counsel expends time without compensation. This too is often an inappropriate defense attorney's tactic.

34. This is known as the "English Rule" which has been adopted in a piecemeal and limited manner by the Florida Legislature in certain instances such as landlord/tenant and medical malpractice litigation. The time is now to apply this enlightened rule to all circuit court litigation (and any appeals taken) in the State of Florida. Furthermore, the attorneys for both plaintiff and defendant must be required to fully explain to their clients and get their written consent that, if they lose, they risk being forced to pay their opponents legal fees as well as their own.

35. There is, however, one drawback. In cases where one party is judgement-proof and the other has a deep pocket, some abuses could still occur. All that means is that the solution is not perfect. It will, though, go a long way to promote justice.

36. See discussion found in footnote 37.

37. Some of the procedural rules and guidelines I have adopted may be challenged. Appellate Courts, though, are vesting more and more authority with trial court judges. I believe that all or most of these reforms are within my discretion as a judge and would be upheld.

If necessary, I will lobby the Florida Bar, Florida Legislature, Supreme Court and Administrative Judges statewide to adopt the reforms required to make the "Blueprint for

Justice" effective. Once I take my seat on the bench as a Circuit Court Judge, lobbying efforts will conform with the Judicial Qualifying Commission and Judicial Code of Conduct.

BIOGRAPHY OF
MARCUS AMBROSE

PROFESSIONAL EXPERIENCE

1981-1991 Law Offices of Marcus Ambrose
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General practice with primary emphasis on Civil Trials and Appellate Practice in State and Federal Courts: Commercial Litigation, Personal Injury & Wrongful Death, Product Liability and Professional Malpractice.

1979-1981 Lidsky & Blumenthal, P.A.
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Associate Attorney

1977-1978 Williams, Salomon, Kanner, Damian, Weissler & Brooks
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Major: Political Science
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Activities and Honors:
Degree conferred with "High Honors"
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Law School Wayne State University Law School
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