

Memorandum of Law and Fact regarding Publication of Notice of Action

Applicable Law

Publication of notices of action and the proof of publication are covered in Section 49.10, FLORIDA STATUTES. Notices must be published

in some newspaper in the county where the court is located. Fla. Stat. §49.10(1)(a).

The nature of the newspaper (in which notices must be published) is governed by Section 50.011, FLORIDA STATUTES, which lists six requirements:

1. The newspaper must be published weekly or more often.
2. At least 25% of the words in the newspaper must be in English.
3. The newspaper must be entered or qualified to be admitted and entered as periodicals matter at a post office in the county where it is published (but this requirement has additional qualifications under §50.031).
4. The newspaper must be for sale to the public generally.
5. The newspaper must accept and publish official and other notices from the general public.
6. The newspaper must customarily contain information (i.e., news)
 - A. of a public character or
 - B. of interest or value to the residents or owners of property in the county where published, or
 - C. of interest or of value to the general public.

The seventh and eighth requirements are imposed by Section 50 031, FLORIDA STATUTES:

7. The newspaper shall have been in existence for one year.

The eighth requirement is additionally refined in Section 50.051, FLORIDA STATUTES, which requires the Proof of Publication state that the newspaper

“is a newspaper published at _____, in said _____ County, Florida, and that the said newspaper has heretofore been entered as periodicals matter at the post office in _____, in said _____ County, Florida, for a period of 1 year next preceding the publication of the attached copy of advertisement... .”

Section 49.10, FLORIDA STATUTES, requires that the Proof of Publication must comply with the requirements of law. In other words, the Proof of Publication must provide under oath that the newspaper meets all statutory requirements.

Newspaper entered as Periodical Matter in Broward County

There are four newspapers published in Broward County which are entered as Periodicals matter in Broward County (in alphabetical order):

1. *Daily Business Review -Broward*
2. *Fort Lauderdale Sun-Sentinel*
3. *The Sentry*
4. *The South Florida Business Journal*

The Miami Herald has a Broward edition which is “published” in Broward County, but it is entered as Periodicals matter in Miami-Dade County. Since it is entered as Periodicals matter in the County in which it is published (i e , Miami-Dade), and is also published in Broward County, it can be argued that it meets the technical legal requirements for publishing notices of action from the 17th Judicial Circuit.

Another newspaper which frequently publishes legal notices is the *Westside Gazette*. It is not, however, entered as Periodicals matter in any post office, and the Proofs of Publication which it regularly submits explicitly states that the *Westside Gazette* is entered as **third class** matter (bulk mail), which does not meet the requirements of Section 50.031, FLORIDA STATUTES.

The Sentry

1. is published weekly, and has been published weekly since January 2002;
2. with rare exception entirely in English (the most exceptions being occasional Latin and French words which are commonly used in the English language);
3. is entered as Periodicals matter at the Fort Lauderdale post office;
4. is for sale to the public generally, by subscription, in newsboxes, and at some Winn-Dixie food stores and Walgreen stores;
5. accepts and publishes official and other notices from the general public;
6. customarily contains information (i.e., news) of a public character, of interest or of value to the residents or owners of property in Broward County, and of interest or of value to the general public.
7. has been in existence since the summer of 1995.
8. was entered as Second Class matter (now Periodicals matter) at the Fort Lauderdale post office on February 14, 1996, and has been entered as such continuously since then;

The Sentry therefore meets all statutory requirements to publish Notices of Action.

Newspaper of “General Circulation”

Before there was a statute defining what “general circulation” means, the Florida Supreme Court examined the issue in *State ex rel. Miami Leathercote Co. v Gray*, 39 So.2d 716 (Fla. 1949). The Justices observed that *The Jewish Floridian*

was a class publication devoted primarily to the interests of the Jewish people
had a circulation of 4,000 of which 3,300 were purchased
1,000 of the purchased copies were purchased by the Plaza theater for its patrons
was sold at news stands
it had subscribers throughout the United States
86.5% of its paid subscribers were Jewish
was a weekly newspaper
a portion of each issue was devoted to news of general interest.

The Court concluded that *The Jewish Floridian* was a newspaper of general circulation
Id at 717.

The Florida Supreme Court reached a similar conclusion in *Johnson v. Taggart*, 92 So.2d 606 (Fla. 1957) on facts related to circulation.

In *Johnson*, the challengers asserted that the *Riviera Beach Press* was NOT a newspaper of general circulation because (1) it had only limited circulation in West Palm Beach, and (2) no circulation in “the Negro section of that city. ”

The Court pointed out that the circulation characteristics were “not necessarily a requirement made by the statute.” Id. at 607. The court noted that the newspaper met the “base requirements prescribed by” the applicable statutes. Id.

Additional Requirements Imposed Judicially are NOT permitted

In *Johnson* a dispute had arisen over whether courts could examine circulation to determine the validity of a published notice. The Florida Supreme Court held that courts cannot embellish legislative requirements with judicial “notions of what might be fair or morally just,” Id. at 608

The opinion also says that

The newspaper in order to qualify should be one of general circulation although it is not required that it be read by everyone in the county so long as it is available to the general public.” Id at 608.

Examining Circulation Numbers

If one did question circulation, one would find that the *Daily Business Review* reported to the US Postal Service that in the year ending September 28, 2006 it had an average press run (copies printed) of just over 3,000 daily, with nearly two thirds of its circulation being through vendors and couriers, and about 150 copies circulating through the mail as Periodical matter. Its total average circulation was under 2,500.

The Daily Business Review focuses on news of interest to the business and legal communities, and can hardly be said to be of interest to most Broward residents. Yet, it does have news which is of value to residents and owners of property in Broward County, thus meeting the content requirement.

Yet, the Daily Business Review meets all statutory requirements for publishing Notices of Action.

By contrast, *The Sentry* reported to the US Postal Service that in the year ending September 28, 2006 it had an average press run (copies printed) of 5,500 weekly, with nearly all copies being distributed.

There is a vast array of subjects featured in *The Sentry*, including current events, crime, local politics, science, health, the Iraq war, elections, history, and the popular Senior News Digest.

And *The Sentry* meets all statutory requirements for publishing Notices of Action.

InterNet Access

InterNet access to published legal notices is NOT a criteria for meeting statutory criteria for published legal notices. But all newspapers mentioned in this memo have a website.

As for availability of legal notices for people doing InterNet searches, ONLY *THE SENTRY* presents legal ads exactly as published, and offers unrestricted access to them.

The Daily Business Review restricts InterNet access to legal notices to its subscribers.

The Sun-Sentinel requires legal notices be located by doing “a search.” There is no link to legal notices.

The Business Journal does not provide InterNet access to legal notices.

Minority Ownership Status

Of the six newspapers cited in this Memo, *The Sentry* and *The Westside Gazette* are the only two which are recognized by the State of Florida as “minority owned enterprises.”

But this is NOT a statutory requirement nor factor in whether or not a newspaper is legally qualified to publish legal ads.

Curiously, judges in the 17th Judicial Circuit recognize *The Westside Gazette* as a legally authorized vehicle for publishing legal ads, even though it does NOT meet the minimum statutory requirements.

But minority ownership status is NOT a statutory requirement nor factor, and should not be a part of any legal decision which newspapers pass judicial muster.

Summary

The Legislature has established the requirements newspapers must meet in order to publish legal notices (including notices of action) *The Sentry* (and three other newspapers in Broward County) meet those requirements.

The Florida Supreme Court has held that judges may not impose additional requirements on newspapers which publish legal notices.

It is therefore the duty of 17th Circuit trial judges to accept that publication of a notice of action in *The Sentry* meets all legal requirements.

Respectfully submitted,
Law Offices of M ROSS SHULMISTER
590 SE 12 Street
Pompano Beach, FL 33060-9409
(954) 785-9600

By: M ROSS SHULMISTER
Fla. Bar #165205

Which newspapers can publish legal ads in Broward County?

The 2006 Florida Statutes

CHAPTER 50

LEGAL AND OFFICIAL ADVERTISEMENTS

50.011 Where and in what language legal notices to be published.

50.021 Publication when no newspaper in county.

50.031 Newspapers in which legal notices and process may be published.

50.041 Proof of publication; uniform affidavits required.

50.051 Proof of publication; form of uniform affidavit.

50.061 Amounts chargeable.

50.0711 Court docket fund; service charges; publications.

50.011 Where and in what language legal notices to be published.—Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a newspaper printed and published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

History.—s. 2, ch. 3022, 1877; RS 1296; GS 1727; s. 1, ch. 5610, 1907; RGS 2942; s. 1, ch. 12104, 1927; CGL 4666, 4901; s. 1, ch. 63-387; s. 6, ch. 67-254; s. 21, ch. 99-2.

Note.—Former s. 49.01.

Which newspapers can publish legal ads in Broward County?

50.021 Publication when no newspaper in county.—When any law, or order or decree of court, shall direct advertisements to be made in any county and there be no newspaper published in the said county, the advertisement may be made by posting three copies thereof in three different places in said county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.

History.—RS 1297; GS 1728; RGS 2943; CGL 4667; s. 6, ch. 67-254.

Note.—Former s. 49.02.

50.031 Newspapers in which legal notices and process may be published.—No notice or publication required to be published in a newspaper in the nature of or in lieu of process of any kind, nature, character or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof, shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper which at the time of such *publication shall have been in existence for 1 year* and *shall have been entered as periodicals matter at a post office in the county where published*, or in a newspaper which is a direct successor of a newspaper which together have been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed. *No legal publication of any kind, nature or description, as herein defined, shall be valid or binding or held to be in compliance with the statutes providing for such publication unless the same shall have been published in accordance with the provisions of this section.* Proof of such publication shall be made by uniform affidavit.

History.—ss. 1-3, ch. 14830, 1931; CGL 1936 Supp. 4274(1); s. 7, ch. 22858, 1945; s. 6, ch. 67-254; s. 1, ch. 74-221; s. 22, ch. 99-2.

Note.—Former s. 49.03.

Which newspapers can publish legal ads in Broward County?

MAILING REQUIREMENTS



August 31, 2006

To whom it may concern,

This letter has been requested to notify you that the Ft Lauderdale Post Office has several Periodical publications that publish here in Broward County.

The SENTRY (USPS 014-225)
2500 SE 5th COURT
POMPANO BEACH, FL 33062
(954) 532-2000

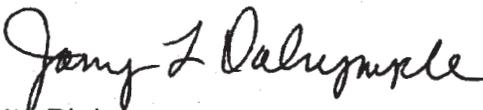
SOUTH FLORIDA BUSINESS JOURNAL (USPS 556-930)
100 E HILLSBORO BLVD STE 103
DEERFIELD BCH, FL 33441
(954) 949-7578

DAILY BUSINESS REVIEW
P O BOX 14366
FT LAUDERDALE, FL 33302
(305) 347-6674

THE SUN-SENTINEL
200 E LAS OLAS BLVD
FT LAUDERDALE, FL 33301
(954) 425-1260

A periodical publisher is required by Postal regulations to publish their Statement of Ownership annually in the issue closest to Oct. 1st. If publisher fails to publish the Statement of Ownership or has abandoned their publication privileges they **no longer** are entitled to periodical rates and privileges.

If there is any further information needed, please don't hesitate to call my office.

for 

Fritz Blain
District Mgr BMEU

Which newspapers can publish legal ads in Broward County?



BMEU

Confirm Periodical Account 

Today's Date: 10/05/2006

Message Center

Permit Type: **Periodicals (PE)**

Account Management

Applicant Information
Publication/News Agent: **SENTRY, THE**
Company Address: **2500 SE 5TH CT
POMPANO BEACH, FL 33062-6108**

Contact Information
Name: **KAREN M. FOLEY**
Phone Number: **(954) 532-2000**
Email:

Balance and Fees

Finance Number: **11-3030**
Comments: **954-418-8942
fax# 954-532-2002**

Customer Assistance

Permit Information:
Account Status: **ACTIVE**
Cancellation Date: **N/A**
Cancellation Reason: **N/A**

Dashboard

Dashboard - Pre-9.0.0 Jobs

Periodical Information:
USPS Pub No: **14225**
Location: **FT LAUDERDALE BMAU**

Manifest Mailing System

Application Date: **02/14/1996**
Effective: **02/14/1996**
Cancellation Date:

Official Classification: **Original Entry**
Application Type: **General Publication Privileges**
Total Application Fee: **\$395**
Original Entry ZIP Code: **33310-9998**

Reports

Publisher Name: **KAREN M. FOLEY**
Rate Code: **200 General Publication**

Publication County: **BROWARD**
ISSN No:

Transactions

Frequency: **Weekly**
Advertising: **General Advertising**
Consolidated Mailer: **No**

Select Finance Number

BMEU Reporting

BMEU Reporting

BMEU Admin

Location Admin

MERLIN Admin

BMA - Managers

BMA Directory (View Only)

District Channel Checklist (Add)

District Channel Checklist