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Scandals spark peer review of receivers

South Florida Business Journal - by [Paul Brinkmann](#)

Stung by the scandals of attorney Scott Rothstein and forensic accountant and attorney Lewis Freeman, South Florida lawyers and accountants who specialize in the receivership of failed companies are launching a new effort to restore trust in the legal system.

Members of the now-defunct Florida Receivers Forum have formed the Florida Fiduciary Forum and are attempting to recruit new blood for the group, especially minorities.

The Rothstein and Freeman cases both alarmed the legal community and eroded public trust in the system, industry experts say. Freeman had served as a founding member of the Receivers Forum, but his career ended in disgrace last year when he was charged with using his court appointments to steal \$2.6 million. Rothstein is charged with running a \$1.2 billion Ponzi scheme.

"I think some of the news stories we've seen have raised questions about what court oversight there is of receivers," said **Coral Lopez-Castro**, a Coral Gables attorney and past president of the **Cuban American Bar Association**. "I think the system has been flawed, partly because there has been very little oversight, but I think that will change now."

A receiver is an independent, impartial party appointed by a court to receive, manage and preserve a business or property, pending the outcome of a legal dispute. Many attorneys also serve as trustees over client accounts or for bankruptcy estates. Rothstein's crime involved raiding accounts he was supposed to be overseeing for investors and law firm clients.

The Fiduciary Forum plans a kickoff forum on Sept. 15, with invited speakers including U.S. Attorney Wifredo Ferrer and Miami-Dade County Circuit Court Administrative Judge Kathleen Bailey.

Bailey has asked the **Dade County Bar Association** to propose a qualifications sheet that would present possible receiver candidates to judges.

"My goal is to establish criteria for receivers that are universally understood and appropriate for different categories – and that the pool of potential receivers be an open and robust group of attorneys who are competent, ethical and screened for any professional issues," she said in an interview.

In terms of damage to the profession, Rothstein's scheme was the most visible recent crime. His fraud was considered more severe by his sentencing judge because he forged a judge's signature and used his law firm to launder money.

Freeman's fall was notable because local judges frequently assigned him as a manager of funds that had already been raided in other financial crimes.

Kenneth Welt, another longtime receiver and member of the Receivers Forum, is spearheading the Fiduciary Forum. He is an accountant who was chosen by Freeman to take over Freeman's failed company when he was charged with wire fraud last fall.

The group even had a new logo designed this summer, telling designers that "we want to stress integrity, honor and moral high standards. We are trying to convey the impression of justice, legal integrity and responsibility."

Local courts have never had formal procedures for tracking the number and type of receivers appointed by state judges. In some cases, judges require receivers to post a bond, but that is not a universal requirement.

Lopez-Castro of **Kozyak Tropin & Throckmorton**, called for formal reports of receivership appointments as head of CABA in 2007. After receiving some voluntary reports from judges, she said most receiverships were being appointed to white males. Since then CABA assembled a list of Latinos who were seeking to be appointed as receivers. Lopez-Castro said the list resulted in more appointments of Latinos. She expressed confidence that Bailey will continue that trend.

Calls for watchdogs for Receivers

Prosecutors have said that Freeman's crime went on for 11 years. He moved money out of accounts he was overseeing, used it for personal expenses and covered the deficits by stealing from new assignments.

Because of that long-standing pattern, many are calling for additional watchdogs on receivers.

"The court is not usually sending out a third party to review the work of the receiver," said Maria Yip, a forensic accountant in Miami who has been a bankruptcy trustee and a court-appointed receiver. "Random spot checks by a court-appointed third party could certainly help

prevent fraud.”

Even veteran receivers are acknowledging a need for more accountability.

“The unfortunate truth is, if a fiduciary wants to steal, there’s a way. The easiest way is to throw a false claim into the case,” said Mike Goldberg, an attorney at **Akerman Senterfitt** who has served on some of South Florida’s biggest receivership cases, including concert promoter Jack Utsick’s Ponzi scheme.

Goldberg said judges should not have to accept what receivers are saying only on good faith. He said being part of a large law firm like Akerman Senterfitt means he has more resources and oversight than smaller operators like Freeman, whose firm, Lewis B. Freeman & Partners, had 25 CPAs, according to the Business Journal’s 2009 Book of Lists.

Allegations of cronyism in bankruptcy courts led to reform in the 1970s, when federal law forbade bankruptcy judges from appointing examiners or trustees in bankruptcy cases. Now, bankruptcy judges must accept recommendations for examiners, while the U.S. Bankruptcy Trustee’s Office maintains a bullpen of professionals to serve as trustee/watchdogs in bankruptcy cases. But, even that doesn’t prevent fraud if a trustee is determined to commit a crime, Goldberg said.

Some professionals believe the system in South Florida actually encourages fraud, said Fernando Cancino, president of the South Florida chapter of the **Association of Certified Fraud Examiners**.

“You’re creating a situation where there’s at least an opportunity for fraud to occur, because of this cozy relationship between the appointee and the appointers,” Cancino said. “Then, if one of the favorites gets in trouble financially, they may be rationalizing that they can get away with skimming money because they are in the club.”

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