



In Whose Name we Pray:
**Legislative Prayer Again
Reaches the U.S. Supreme Court**

**News from the
Nation's Highest Court**

BRIEFS

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FLORIDA'S REVISED LLC ACT

42 THE NEW YEAR HERALDED IMPORTANT CHANGES FOR LIMITED LIABILITY COMPANIES (LLCS) DOING BUSINESS IN FLORIDA. AS OF JANUARY 1, 2014, THE REVISED LIMITED LIABILITY COMPANIES ACT (THE "NEW LLC ACT") IS NOW EFFECTIVE IN THE SUNSHINE STATE.



ON THE COVER



56 IN WHOSE NAME WE PRAY: LEGISLATIVE PRAYER AGAIN REACHES THE U.S. SUPREME COURT

Justice Brennan once wrote, "if any group of law students were asked to apply the principles of *Lemon* to the question of legislative prayer, they would nearly unanimously find the practice to be unconstitutional."¹ Justice Brennan was referring to the now infamous test in *Lemon v. Kurtzman*, in which a challenged religious practice passes constitutional muster if it has "a secular legislative purpose," "its principal or primary effect . . . neither advances nor inhibits religion," and does not "foster an excessive government entanglement with religion."² Yet Justice Brennan was writing in the minority within *Marsh v. Chambers*, which upheld the Nebraska Legislature's practice of opening its legislative day with a prayer recited by a chaplain paid by the state of Nebraska.³

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Jorge A. Pérez Santiago
Editor-in-Chief

PRESIDENT'S MESSAGE



On February 1st at the Installation Gala, I had the great privilege of thanking Sandra Ferrera for her vision, leadership, and tireless energy. We recognized all that she and the 2013 Board accomplished and celebrated forty years of CABA. We celebrated forty years of working for diversity and equal access to justice, of service to our community, and of mentoring aspiring and young lawyers. And, of course, we celebrated forty years of great parties. This party was no exception. I want to thank the almost one thousand guests who came out to support the organization and made it such a special night.

When I think back on everything that has been accomplished, I am in awe of those that led us here and of the responsibility I have been blessed with. Today's CABA is larger and more active than ever. The CABA Pro Bono Project is representing over 1,000 clients a year. These clients are among the neediest members of our community, including victims of human trafficking and domestic violence, unaccompanied children detained by immigration officials, and families losing their homes. The CABA Foundation has endowed scholarships at six major law schools and awards additional at-large scholarships to truly worthy law students, some of whom recently arrived in this great country and are working hard to better provide for their families. Today's CABA continues to work toward adequately funding our courts and to protect the independence of our judiciary. We provide mentoring to young lawyers and educational programs for our members.

None of this would be possible without the great leadership of the past forty years, our current Board, or you—our members and friends. Thank you for all of your work and support. This is your organization, and I am proud and honored to serve it.

If there is ever anything CABA or I can do for you, please do not hesitate to let me know. I look forward to working with you.

Ricardo M. Martinez-Cid
President

PAST-PRESIDENT'S MESSAGE

It has been my sincere pleasure to serve as the thirty-ninth president of the Cuban American Bar Association. This past year reinforced that we should all be proud of the important daily work being done by TODAY'S CABA. As outgoing President of this admirable association, I am afforded an opportunity to reflect on where our organization has been and where it might be headed. CABA has accomplished many things over the past year in support of its core tenets and in fulfilling the goals we set out early in the year:



We welcomed and acknowledged all county and circuit judges appointed and/or elected in 2012 and thanked them for their commitment to public service in our community.

We remained committed to advocacy efforts near and dear to our organization through our CABA on Cuba Committee, which supported three groups of vetted dissident attorneys in Cuba by donating and shipping to them much needed supplies so that they may continue their active role in Cuba against human rights violations. The Committee also remained deeply involved locally by: (i) overseeing the safe arrival of political prisoner, Julio Cesar Galvez, to Miami; (ii) partnering with Florida International University during Yoani Sanchez's visit to Miami; (iii) advocating for humanitarian visas to be provided to forty-eight Cuban dissident exiles currently stranded in Spain with their families; and (iv) participating in meet and greet(s) with Rene Gomez Manzano and Manuel Cuesta Morua.

We offered thirty-five CLE opportunities for our members, including our full day "Legal Aspects of Doing Business in Americas Conference," which provided our members with invaluable information on cutting edge legal issues facing practitioners that do cross boarder legal work. We remained committed to networking opportunities for our members by hosting numerous Member Appreciation and Young Lawyers Cocktails throughout the year.

We were honored to host a "Celebratory Reception of the Passing of the Gavel Honoring Chief Judge-Elect, Bertila Soto" following Judge Soto's swearing in as Chief Judge of Miami-Dade County.

We celebrated "El Dia Del Abogado" at the Cuban Heritage Collection at the Richter Library in the University of Miami Campus where we recognized and commemorated several of CABA's own Past Presidents, including Osvaldo Soto, Luis Figueroa, Mario Goderich, and Jose "Pepe" Villalobos, all of whom practiced law in Cuba before immigrating to the United States.

We updated our Annual Judicial Luncheon by recognizing and thanking our judiciary for their dedication and public service to our profession and community. We hosted a "Legislator Appreciation Cocktail Reception," which recognized the service and dedication of numerous of our state officials.

CABA's Annual Retreat in Washington D.C. exceeded expectations! CABA heightened its national profile by meeting with numerous officials in the White House, State Department, and the Cuban-American congressional delegation.

CABA expanded its community outreach efforts by being involved in numerous charitable events to benefit local non-profits through: (i) a back to school supplies drive to benefit Children's Home Society and the Miami-Dade County School System's Homeless Assistance Program & Education Fund; (ii) donation of toys and funds to the Miami Children's Hospital Foundation; (iii) a food collection to benefit Camillus House prior to Thanksgiving; and (iv) an annual holiday toy drive performed in conjunction with the State Attorney's Office resulting in hundreds of toys and monetary donations being given to Centro Mater and Abriendo Puertas.

In recognition of the Ten Year Anniversary of CABA's Mentoring Program, a special mentoring achievement award called the "Power of One" was awarded to CABA Past President Marlene Quintana for her leadership and dedication in putting together this important program for CABA. Additionally, CABA's Chispa Intern Program was put into motion by providing a \$2,500 stipend to a deserving law student who was able to obtain terrific experience in the legal profession by interning at CABA's Pro Bono Project for one month and at the Eleventh Circuit Court of Miami Dade County for one month.

CABA's Foundation continued to award scholarships to worthy law students throughout the state. Particularly, five \$2,500 at-large scholarships were awarded in addition to endowed scholarships at numerous law schools throughout the state.

CABA's Pro Bono Project soared to new heights. It was the grant recipient of various funding awards exceeding \$400,000. Additionally, through fundraisers spearheaded by CABA, such as the "Lawyers on the Run" 5K, Art in the Tropics, and We Can Dream Fundraising Party(s), the Project received in excess of \$80,000 in extra funding. A full time Executive Director, Lesley Mendoza, was hired to expand the work of the Project in our community. Lesley has hit the ground running, and the Project has numerous new important initiatives underway to assist our community. These include: (i) Foreclosure Defense Clinics; (ii) Domestic Violence Guardian Project; and (iii) Unaccompanied Immigrant Minors Project. The Project has also recently secured new space where it is presently housed in partnership with Miami-Dade County, Florida, at 2400 South Dixie Highway.

We accomplished great things in 2013, but none of it would have been possible without the hard work and dedication of CABA's Board of Directors consisting of individuals who are thoughtful, focused, and invested in addressing the important issues facing our organization, profession, and community. Many thanks are given to CABA's 2013 Board without whom our many programs and initiatives would not have become a reality. Thank you also to each and every one of my predecessors for

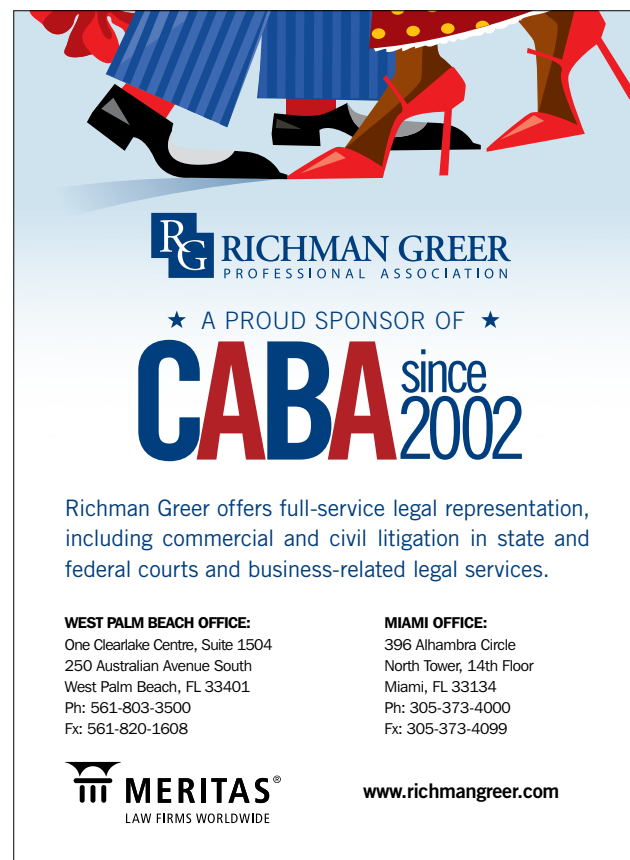
their support and advice over the course of the last year and for paving the way to set CABA apart as a premier bar association in South Florida. I also wish to express my sincere gratitude to Diana Powell, CABA's Executive Director, for her commitment to CABA and also for her friendship. I would also like to give a special and heartfelt thank you to my family and colleagues at Meland Russin & Budwick P.A. for their unwavering support throughout this past year. I could not have done it without them.

As you read this message, I will have passed the gavel and delivered the duties of this office into the capable hands of Ricardo Martinez-Cid. I want to congratulate Ricardo as he takes over the helm of a bar association that is vibrant and prepared for the challenges the association and the legal profession will confront in 2014 and beyond. With his demeanor and his long family roots in the profession, he is the perfect choice in these times for President. Under his direction and the commitment of the 2014 Board of Directors, I am certain that CABA will continue to achieve greater success and relevance throughout the state and beyond.

Sincerely,



Sandra M. Ferrera
Past-President



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EDITOR'S MESSAGE



Dear colleagues:

I hope this issue is a pleasure to read, and that each and every member enjoyed the holiday season and this year's Gala.

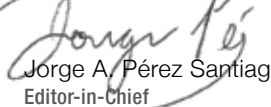
Once again, I have to thank our amazing Articles Editors, Eric J. Eves and Kristina Maranges, for all their assistance this quarter. I would also like to welcome Alexis Bucelo, associate attorney at Adams & Adams, P.A., to *Briefs* as an additional articles editor for next issue.

In this issue of *Briefs*, we have several articles focusing on the successes and achievements of our members. For instance, we celebrate CABA Past President Ray Abadin's election as President of The Florida Bar, and CABA Past President Roland Sanchez-Medina's election to The Florida Bar Board of Governors. We also celebrate CABA Past President Victoria Mendez's appointment as the City Attorney for the Office of the City Attorney representing the City of Miami. It is always a pleasure to celebrate the accomplishments of members of CABA in the community and we hope to continue having reasons to celebrate throughout this year.

Our main substantive article for this issue is on the topic of legislative prayer practice and is written by Jorge R. Delgado, associate attorney at Kluger, Kaplan, Silverman, Katzen & Levine, P.L. This issue is intriguing because the Court could further erode the practice of prayer in government settings and possibly recede from its own precedent. One issue posed by the article appears to be whether historical practice should supersede our constitutional guarantees. Regardless of historical considerations, does legislative prayer lead to excessive government entanglement with religion? Is this much ado about nothing? What do you think? Please share your opinion with us via email at cababriefs@hotmail.com; we would love to read what our members think about government and religion.

I hope you enjoy reading this issue as much as I have enjoyed putting it together. Please send your comments and suggestions to cababriefs@hotmail.com.

Sincerely,



Jorge A. Pérez Santiago
Editor-in-Chief

CHAIR'S MESSAGE



Dear friends and colleagues:
 It is an honor and a pleasure to take over the reins from former CABA Briefs Chair, Jennifer Perez. She and our editor, Jorge A. Pérez Santiago, have done a tremendous job over the past year, and I look forward to building on the foundation set by them and the past CABA Briefs chairs.

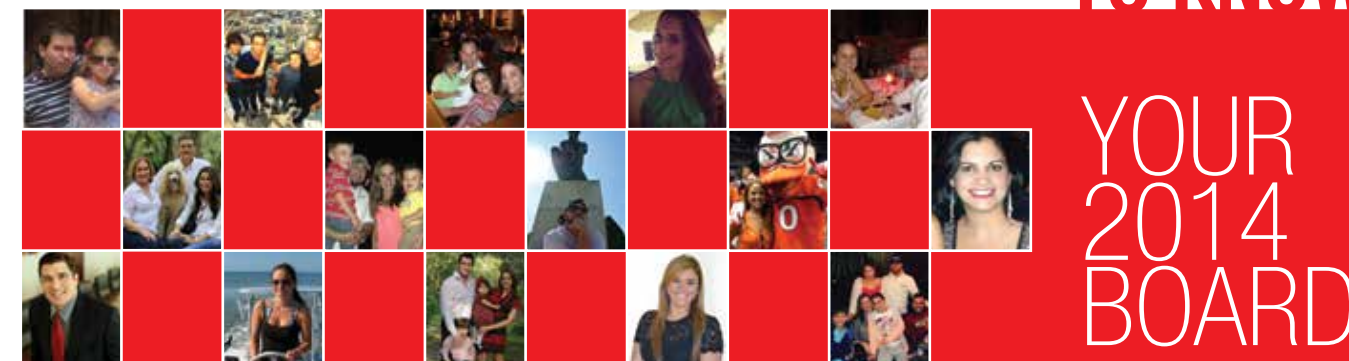
The committee and I will be working diligently behind the scenes to bring you dynamic articles on hot topics authored by some of CABA's most creative writers. We are also instituting slight changes to the layout and adding sections that we think will appeal to the membership, including a Letters to the Editor section starting in our next issue. Please feel free to write to: cababriefs@hotmail.com, and let us hear your comments.

Enjoy!

A. Dax Bello
 Chair

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PRESIDENT:
Ricardo Martinez-Cid

If you can travel anywhere in the world, where would it be, and why?

The Tri-Lamb House at Adams College to see old friends.

If you could do it all over again, what profession would you chose?

Trust Fund Baby.

If you could be any animal, what would it be and why?

Answering "man" is too snarky, so I will say "Winnie the Pooh" because he lives well.

What is something about you that only your very close friends and family know?

I prefer CABA Boxers.



IMMEDIATE PAST PRESIDENT:
Sandra Ferrera

If you can travel anywhere in the world, where would it be, and why?

I would travel without a destination— wherever the road takes me, or, alternatively, to New Zealand because I love its wine.

If you could do it all over again, what profession would you chose?

I would likely stay involved in real estate but would be interested in the development and business side.

If you could be any animal, what would it be and why?

Anything that flies to avoid traffic in Miami.

What is something about you that only your very close friends and family know?

I will pass on this question because if I said it, my very close friends and family would no longer be the only ones who know about it.



PRESIDENT-ELECT:
Manuel Crespo, Jr.

If you can travel anywhere in the world, where would it be, and why?

A free Cuba. It may not be original, but it is heartfelt.

If you could do it all over again, what profession would you chose?

Architecture.

If you could be any animal, what would it be and why?

A dog. Typically, their lives are simple, direct, and full of love. They are naturally joyful, happy, and carefree, but they are nobody's fool and bite when they need to.

What is something about you that only your very close friends and family know?

I hate chocolate.



VICE PRESIDENT:
Anna Marie Hernandez

If you can travel anywhere in the world, where would it be, and why?

I would take a trip around the globe over the span of a year visiting all of the places I have yet to see, and revisiting those places I have loved exploring.

If you could do it all over again, what profession would you chose?

I would become a chef. I have always loved the culinary arts, and can see myself being a Food Network personality.

If you could be any animal, what would it be and why?

A Tiger - they're majestic, beautiful and fierce.

What is something about you that only your very close friends and family know?

I had a very active and vivid imagination as a child.



TREASURER:
Maria Garcia

If you can travel anywhere in the world, where would it be, and why?

Someday, I would like to see Cuba. I have not been to the island, and I hope to one day see where my parents were born and learn more about where my family comes from; and more deeply understand what they have been through and the loss they have suffered.

If you could do it all over again, what profession would you chose?

I truly enjoy being a lawyer, but I would have liked to explore architecture. As an architect, you have the opportunity to be an artist in some way and still build things that are useful and that contribute to people's lives.

What is something about you that only your very close friends and family know?

I am very allergic to dogs (although they are so adorable)!



SECRETARY:
Yara Lorenzo

If you can travel anywhere in the world, where would it be, and why?

Rio de Janeiro, Brazil, in 2014 for the World Cup.

If you could do it all over again, what profession would you chose?

I would not change a thing.

If you could be any animal, what would it be and why?

An octopus. A multi-tasking dream come true.

What is something about you that only your very close friends and family know?

I am awake by 5:00am on most days.



DIRECTOR:
Isabel Diaz

If you can travel anywhere in the world, where would it be, and why?

If I could travel anywhere in the world, I would travel to the "Holy Land" to physically and spiritually experience the history of my faith.

If you could do it all over again, what profession would you chose?

I would choose to be the principal of a school. I would not only thoroughly enjoy the administrative part of this profession, but I would feed my heart and spirit through the children as I educate them and prepare them for their future with a combination of love and discipline.

If you could be any animal, what would it be and why?

If I could be any animal, it would be the penguin. The penguin is extremely loyal to others and specifically, the female penguin is extremely strong and resilient. She travels for weeks on end to find food to come back and feed her family.

What is something about you that only your very close friends and family know?

I love going to nice restaurants and ordering a lot of food (appetizers and main meal) and then end up leaving more than half my plate!

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DIRECTOR:
A. Dax Bello

If you can travel anywhere in the world, where would it be, and why?

Cuba Libre.

If you could do it all over again, what profession would you chose?

I would be a ninja.

If you could be any animal, what would it be and why?

I would be my dog Enzo. Una vida mejor que esa, no lo hay. He does what he wants, when he wants, and everyone loves him for it. He sleeps twenty hours a day, goes for long walks, and spends every weekend in the Keys where he fishes and tans all day. On top of that, I am pretty sure that he is the leader of a gang of dogs from the neighborhood who sneak out of their houses at night and wreak havoc on the cat and fox communities. His only real enemy is "the tail-less cat," but one day, he will catch that cat slipping. One day...

What is something about you that only your very close friends and family know?

I actually really am a ninja.



DIRECTOR:
Nory Acosta-Lopez

If you can travel anywhere in the world, where would it be, and why?

Australia, because all the outdoor activities look like so much fun.

If you could do it all over again, what profession would you chose?

Archeologist. Maybe the female Indiana Jones?

What is something about you that only your very close friends and family know?

My intense (sometimes funny) fear of lizard—I scream, jump, freak out, the works!



DIRECTOR:
Gina Beovides

If you can travel anywhere in the world, where would it be, and why?

Bora Bora! I am a huge fan of the beach, and would love to stay in an over-the-water bungalow.

If you could do it all over again, what profession would you chose?

Would not change my profession. I have wanted to be a lawyer since I was about six years old, and I truly love what I do.

If you could be any animal, what would it be and why?

My dog, Shakespeare! He is the baby of the family and lives the best life of anyone I know.

What is something about you that only your very close friends and family know?

I am afraid of riding a bicycle.



DIRECTOR:
Javier Lopez

If you can travel anywhere in the world, where would it be, and why?

I would travel back in time five years to my family's home in the Keys so I could share a drink with my father on our balcony as we watch the sunset.

If you could do it all over again, what profession would you chose?

I would do exactly what I am doing. I consider it a privilege to practice law and am blessed with wonderful colleagues.

What is something about you that only your very close friends and family know?

There is a reason only my close friends and family know this.



DIRECTOR:
Wendy Polit

If you can travel anywhere in the world, where would it be, and why? I would go to Italy. The country has everything I love: food, wine, fashion, history, and culture. What more could anyone want?

If you could be any animal, what would it be and why?

I would be my dog Enzo. Una vida mejor que esa, no lo hay. He does what he wants, when he wants, and everyone loves him for it. He sleeps twenty hours a day, goes for long walks, and spends every weekend in the Keys where he fishes and tans all day. On top of that, I am pretty sure that he is the leader of a gang of dogs from the neighborhood who sneak out of their houses at night and wreak havoc on the cat and fox communities. His only real enemy is "the tail-less cat," but one day, he will catch that cat slipping. One day...

What is something about you that only your very close friends and family know?

I absolutely HATE the feel of dry cotton balls. My sisters used to chase me around the house with them when we were kids. Just thinking about it gives me goose bumps.



DIRECTOR:
Jennifer Perez

If you can travel anywhere in the world, where would it be, and why?

India. Would love to visit the Taj Majal. So many cultures and religions converged in one place. Also, it is a symbol of love.

If you could be any animal, what would it be and why?

A bird. Your whole job is to travel to different places.

What is something about you that only your very close friends and family know?

I was a great tap dancer when I was a kid.



DIRECTOR:
Olivia Rodriguez

If you can travel anywhere in the world, where would it be, and why?

I would travel to Australia and visit the Great Barrier Reef! I've heard so many wonderful things and would love to experience the culture and lifestyle that makes Aussies so happy...plus that accent is irresistible.

If you could do it all over again, what profession would you chose?

Ideally, I would like to be a professional lottery winner, but since that did not happen, I'll stick to the profession I chose as a 4th grader!

If you could be any animal, what would it be and why?

An Owl. Owls are wise, can see the big picture, and are good at getting what they want. First child syndrome.

What is something about you that only your very close friends and family know?

If I let you in on that information, I would have to kill you.

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DIRECTOR:
Jorge Piedra

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If you can travel anywhere in the world, where would it be, and why?

Great Barrier Reef, Australia—Black Marling fishing and diving.

If you could do it all over again, what profession would you chose?


Five years ago I would have said toll collector, but now they are all out of jobs, so I am glad I chose to become a lawyer.

If you could be any animal, what would it be and why?

A dog in the Piedra house, you get to live like queen and all you have to do is play fetch with the owner.

What is something about you that only your very close friends and family know?

I am bad with names AND faces! **CB**



Zumpano Patricios & Winker
congratulates
Maria D. Garcia
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Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass'n, Inc.,
Case Nos. SC10-2292 & SC10-2336 (Fla. Nov. 21, 2013)

THE IMPLIED WARRANTY OF HABITABILITY: WHAT THE COURT GIVETH THE LEGISLATURE TAKETH (AND WHAT OF THE SEPARATION OF POWERS?)

The Supreme Court accepted jurisdiction in *Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass'n, Inc.*, *Id.* at 6, to resolve a conflict between the Fifth District Court of Appeal's decision in *Lakeview Reserve Homeowners v. Maronda Homes, Inc.*, 48 So. 3d 902 (Fla. 5th DCA 2010), and the Fourth District Court of Appeal's decision in *Port Sewall Harbor & Tennis Club Owners Ass'n, Inc. v. First Fed. Savs. & Loan Ass'n of Martin County*, 463 So. 2d 530 (Fla. 4th DCA 1985). In addition to resolving the conflict, the opinion reflects on the separation of powers.

Lakeview Reserve, a residential homeowner's association, sued Maronda Homes, the residential subdivision's developer for having "defectively designed and constructed the subdivision's infrastructure, roadways, retention ponds, underground pipes, and drainage systems," thereby "breaching the implied warranties of fitness and merchantability for the residential home development and causing damage to the entire residential subdivision." And based on its expert engineer report, Lakeview Reserve alleged that these were latent defects that "were not readily discoverable by home purchasers who lacked specialized knowledge, and undiscoverable by homebuyers upon the exercise of reasonable diligence at the time of purchase." *Id.*

Maronda Homes moved for summary judgment contending that the implied warranty of habitability could not stretch so far as to cover a drainage system or any other infrastructure that does not *immediately support the homes themselves*. *Id.* at 6-7. The trial court agreed, and granted summary judgment for Maronda Homes. *Id.* But the Fifth District saw it otherwise, and conflicting with the Fourth District, held that the warranty of habitability does indeed extend that far. *Id.* Thus, the Florida Supreme Court had an interdistrict conflict to resolve.

The Florida Supreme Court began its review of the implied warranty of habitability with a discussion of the well-worn doctrine, *caveat emptor*, "let the buyer beware." *Id.* at 7. The Court noted the doctrine's erosion, however, with the rise of mass-produced goods and the increased recognition by courts of implied warranties designed to protect consumers. *Id.* at 8-9. And this erosion is especially noticed, the Court wrote, in the context of residential homes, where developers and contractors have far more specialized knowledge than the average consumer. *Id.* at 9-10.

Reviewing its own precedent, although recognizing that it had drawn a distinction between construction that directly supports the residence and construction that does not, the Court explained that the more prominent and pertinent point of distinction is whether the purchase of the home was intended for investment or residence. *Id.* at 10-14, 20-22. And the Court focused on that distinction because investors are deemed to be more sophisticated and therefore on a stronger footing in bargaining with contractors and developers. *Id.*

The Court thereupon held that any infrastructure that affects access to and from each lot in a residential subdivision is covered by implied warranties. *Id.* at 17-18, 23-24. And that is so, the Court explained, because the developer is in the best position to ferret out defects, whereas "innocent purchasers" could be left with homes that are unlivable as a result of poor drainage and sewage. *Id.* at 18. Indeed, the Court noted that "this is particularly applicable where the residential real estate is within a mass development," in which development it is contemplated that each lot will be connected to the others. *Id.*

The *Maronda Homes* decision marks an increase in protection for home buyers with the implied warranty unmistakably extended to non-structural elements of a home that go to support the home, such as drainage and sewer systems. And that is a shift in the test for the implied warranty. Application of the implied warranty will no longer turn on the "structural" test as outlined in investor-purchaser decisional authority. Instead, going forward, the "essential services" test will be determinative of the implied warranty's application. *Id.* at 23-24.

But there's another interesting aspect to the *Maronda Homes* decision. During the pendency of the proceedings, the Florida Legislature enacted legislation explicitly aimed at reversing the Fifth District's decision and ensuring that the implied warranty would have no application to offsite improvements, such as the essential services defined by the Supreme Court. *Id.* at 25-27. That is, under the new statute, a homeowner is required to prove three elements to support an implied warranty claim: (i) that the claim regards a new home; (ii) that the claim regards a structure or improvement on the home's lot; and (iii) that the structure or improvement immediately and directly supports the habitability of the home. And that's directly contrary to the Supreme Court's holding.

The question then became whether the statute would apply retroactively to block Lakeview Reserve's cause of action. *Id.* at 28-29. The Court held that it did not. The statute prescribes new rights and duties, and does not merely clarify existing law, and so it could not constitutionally be applied retroactively. *Id.* at 32-35. And so, at least for homes built prior to the statute's enactment, the essential services test for the implied warranty will remain the standard as defined by the Court. Going forward, however, the Florida Legislature has significantly curtailed such causes of action and essentially reversed the Court's decision.

This case adds significantly to the jurisprudence on the implied warranty, to be sure, but more so it presents a clear look into the separation of powers and the ability, or inability, of the legislature to have an immediate and retroactive effect on Court holdings. **CB**

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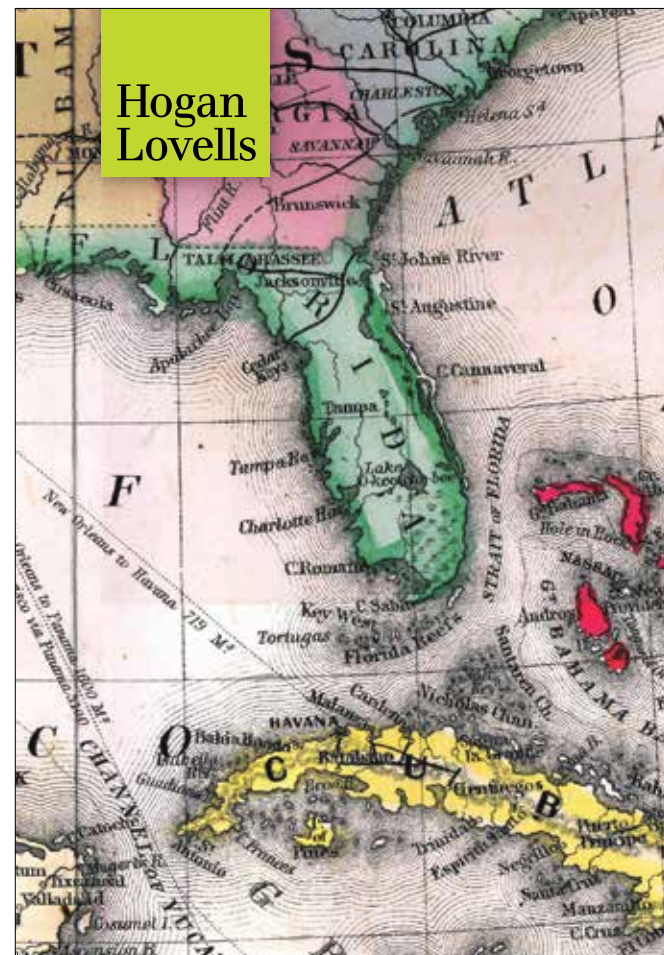
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Sucart & Gomez v. Office of the Commissioner, etc., et. al.,
Case Nos. 3D13-1928, 3D13-2242, & 3D13-2251 (Fla. 3d DCA Dec. 18, 2013)

CERTIORARI REVIEW: YOU CAN STEP UP TO THE PLATE AND TAKE YOUR SWING, BUT IT'S A HARD BALL TO HIT. THE PREFERENCE IS FOR THE PLENARY APPEAL.

The Third District Court of Appeal's decision in *Sucart & Gomez* shows just how difficult the standard for certiorari review has become. In a lawsuit brought by the Office of the Commissioner of Baseball (the "Commissioner") against eight defendants alleged to have interfered with player contracts, including collective bargaining agreements that prohibited the use of certain performance-enhancing drugs, the Commissioner sought to take deposition testimony from two non-party witnesses. *Id.* at 2. In seeking to quash service, the non-party witnesses attacked the trial court's subject matter jurisdiction, contending that the lawsuit would require the trial court to interpret Major League Baseball's collective bargaining agreement. *Id.* And by requiring that level of interpretation, the non-party witnesses contended that the lawsuit was therefore preempted by the federal Labor Management Relations Act. *Id.* at 2-3.

The trial court disagreed and required the non-party witnesses to submit to a deposition. *Id.* at 3. And the non-party witnesses filed petitions for certiorari review with the Third District arguing that the trial court did not have subject matter jurisdiction. *Id.* (Interestingly, it was a close call whether the trial court's ruling could be appealed as a final order, as it reflects a final order vis-à-vis the non-party witnesses; and there's some authority out there for it. And as it turned out, that strategy call could have made a difference.)

The Third District first held that non-party witnesses have standing to attack subject matter jurisdiction. *Id.* Next, the Third District examined the standard for certiorari review, noting at the outset of the discussion that the required departure from the essential requirements of law "means something far beyond legal error." *Id.* at 5. Indeed, the Third District stressed the high bar a petitioner must meet to show a departure from the essential requirements of law, equating that standard to a showing of an abuse of judicial power. *Id.* at 5-6. And with that standard in mind, the Third District held that the non-party witnesses struck out, at least at the pleadings stage of the litigation. *Id.* at 6. That is, because the collective bargaining agreement is not directly at issue in the lawsuit, the Third District could not hold that resolution of the lawsuit "is substantially dependent upon analysis" of the collective bargaining agreement. *Id.* And that is so because the non-party witnesses could not point to any particular provision of the collective bargaining agreement that must be interpreted to resolve the lawsuit. *Id.* at 6-7.

Interestingly, though, the Third District recognized that as the lawsuit develops it could well become the case that some portion of the collective bargaining agreement is implicated and the state court lawsuit at that point would indeed be preempted. *Id.* at 8. The Third District went so far down that line as to indicate that, at such a point, "the conclusion that this case is not preempted would have to be re-examined." *Id.* The Third District adjuration that its ruling is merely preliminary was of no help, of course, to the non-party witnesses who will be compelled to sit for deposition, rendering any eventual preemption argument meaningless to them.

At bottom, merely because the trial court's order "appears reasonable," the Third District held the depositions must go forward because the trial court's order could not be considered "an abuse of judicial power, an act of judicial tyranny." *Id.* at 8. And that's a game changing call that should weigh on all petitioners seeking certiorari review. Essentially, the Third District wrote that if this were a final appeal the decision might have turned out differently, and on plenary review it may well be that the lawsuit will be preempted. But that is not for today, the Court opined (although, the non-party witnesses will not have recourse at that point inasmuch as their depositions having been taken).

This conundrum will likely play itself out repeatedly so long as legal error is not considered a departure from the essential requirements of law. The Third District has set forth that a petitioner must show that the trial court willfully ignored the law in order to obtain certiorari review. And so, already narrow, certiorari review appears now to occupy only a sliver of space. Practitioners, of course, would do well to frame petitions as an abuse of judicial power without attacking the trial judge, but that fine line will have to be walked so long as the appellate courts continue to narrow the scope of certiorari review. **CB**



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AN ORDER VACATING AN ARBITRATION AWARD IS REVIEWABLE BY CERTIORARI, BUT HAS THE PANEL INVITED EN BANC REVIEW TO CHANGE THAT

The First District Court of Appeal was compelled by precedent to conclude that an arbitration award is reviewable by certiorari. But we will see just how long the precedent survives.

The Heart Surgery Center, a physician practice group, expelled Dr. Thomas J. Bixler, II, for numerous reasons, but primarily because of alcohol use. *Heart Surgery Center, et. al. v. Bixler, M.D.*, Case No. 1D13-0965 (Fla. 1st DCA Nov. 20, 2013). The partnership agreement required that any dispute relating to the partnership must be submitted to arbitration under the Florida Arbitration Code. *Id.* at 2. The dispute was submitted to arbitration; the arbitrator found that Dr. Bixler had been removed from the practice group for good and sufficient cause. *Id.* at 3. Dr. Bixler went straight to Google to find out about this arbitrator, and discovered that years earlier he had brought suit against a drunk driver involved in an accident in which the arbitrator's son had been killed. *Id.* at 4. With this information in hand, Dr. Bixler moved to vacate the arbitration award, contending that the arbitrator's prior experience indicated a possible source of bias. *Id.* The trial court granted the motion, finding that the failure to disclose the incident was sufficient in and of itself to vacate the arbitration award. *Id.* at 4-5.

The First District, called upon to exercise its certiorari jurisdiction to review the vacatur order, first considered whether the vacatur order caused irreparable injury that could not be remedied on appeal, visiting the well-established standard. And the First District followed its recent decision in *Felger v. Mock*, 65 So. 3d 625, 626 (Fla. 1st DCA 2011), wherein the First District explained the irreparable harm of such an order: "[T]he situation presented by an order vacating an arbitration award is capable of repetition while avoiding review, because the circuit court could simply continue to vacate subsequent arbitration awards and order new arbitration, even if none of the statutorily enumerated grounds for vacating an arbitration award existed." *Id.* at 6-7. And the First District refused the invitation by Dr. Bixler to follow the

Fourth District's conflicting decision in *Loewenstein, Inc. v. Draheim*, 898 So. 2d 1129, 1130 (Fla. 4th DCA 2005), recognizing that it was bound by its own *Felger* decision. *Id.* at 7-8.

Next, examining whether the trial court departed from the essential requirements of law, the First District enunciated the well-settled standard: "A ruling constitutes a departure from the essential requirements of the law when it amounts to 'a violation of a clearly established principle of law resulting in a miscarriage of justice,' and that "[t]he term 'clearly established law' refers to 'recent controlling case law, rules of court, statutes, and constitutional law.'" *Id.* at 8 (citing *State, Dep't of Revenue ex rel. Carnley v. Lynch*, 53 So. 3d 1154, 1156 (Fla. 1st DCA 2011)). The First District concluded that the trial court indeed had done so.

The First District noted that the arbitration code allows for the trial court to vacate an arbitration award upon showing that "[t]here was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party." § 682.13(1)(b), Fla. Stat. (2010). And noting as well that "[t]he proper interpretation and application of section 682.13(1)(b) appears to be a case of first impression in this district," the First District looked to the Fourth District's decision in *Jones Sandall Zeide Kohn Chalal & Musso, P.A. v. Beasley & Hauser, P.A.*, 925 So. 2d 1142 (Fla. 4th DCA 2006), upon which both parties relied, and wherein the court affirmed an order denying vacatur based upon a failure of proof of "evident partiality prejudicing the rights of the party," and commenting that "the partiality of the neutral must be obvious and plain and must be shown to have unfairly affected the rights of the complaining party." *Id.* at 10-11 (citing *Jones*, 925 So. 2d at 1145). And the First District went on to note that "the particular circumstance that a party relies on to show evident partiality must be something that logically would reasonably tend to tilt the decision of the arbitrator." *Id.* (citing *Jones Sandall Zeide Kohn Chalal & Musso*, 925 So. 2d at 1146).

The First District also considered the Fifth District's decision in *RDC Golf of Fla. I, Inc. v. Apostolicas*, 925 So. 2d 1082 (Fla. 5th DCA 2006), in which that court explained that "the reasonable impression of partiality standard was the appropriate test, which consists of judging whether the complaining party made a showing through credible evidence, giving rise to a reasonable impression of partiality' that was 'direct, definite, and capable of demonstration, as distinct from a mere appearance of bias that was remote, uncertain, and speculative.'" *Id.* at 11-12 (quoting *RDC Golf of Fla. I*, 925 So. 2d at 1095) (internal quotations omitted).

Respecting Bixler's allegations of arbitrator bias, the trial court did not find that the arbitrator "did anything 'obvious and plain' to demonstrate his partiality," and instead grafted a new standard into Florida's Arbitration Code—granting vacatur upon evidence of mere nondisclosure. *Id.* at 12-13. The First District disapproved, concluding

that "by failing to apply the proper test provided by the applicable version of section 682.13(1)(b) and interpreting case law, which resulted in vacatur of the arbitration award, the circuit court departed from the essential requirements of the law." *Id.* at 14.

But going back to the First District's comment that it was bound by *Felger*, there is a noteworthy footnote, (Opinion at 8, n.2), in which the First District commented that were the panel writing on a blank slate it would surely have found that the injury could be repaired on a final appeal, as the Fourth District had found in *Loewenstein*. It could be an invitation for *en banc* review? Or maybe it is a signal to other districts passing on this issue writing on a blank slate not to be swayed by the First District's decisional authority? But it is certainly instructive on the wisdom of staying alert to the differences in procedure amongst Florida's district courts of appeal. Let us keep an eye on this one. **CB**

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Cessac, et. al. v. Stevens, et. al.,
Case No. 1D12-5834 (Fla. 1st DCA Nov. 20, 2013)

PROBATE: WHAT CONSTITUTES A VALID EXERCISE OF A POWER OF APPOINTMENT? (DRAFT CAUTIOUSLY)



In *Cessac, et. al. v. Stevens, et. al., Case No. 1D12-5834 (Fla. 1st DCA Nov. 20, 2013)*, the First District considered just how specific a deviser must be in exercising the power of appointment pursuant to a trust. Sally Christiansen (the decedent) died testate, and devised \$5,000 to one person, with the rest and remainder of her estate to be devised to Cessac. *Id.* at 2. The decedent's will also made provision for the disposition of certain trust assets, stating that "[i]ncluded in my estate assets are" three trusts and the decedent named the location of the assets of each trust. *Id.* at 2-3.

Each trust, originally devised by a third party, indicated that the decedent had the power to appoint the beneficiary of the trust, but in so doing required the decedent to make "specific reference to the power herein granted." *Id.* at 3. After the will was admitted to probate, Marcia Stevens, the decedent's daughter, petitioned the court to construe the will as not validly appointing the trusts as estate property. *Id.* at 4. Stevens argued that the will did not explicitly reference a power of appointment and that such failure ensured the power was not properly executed. *Id.* The trial court agreed, and granted summary judgment.

On appeal, the First District affirmed, upon a holding that reference to the location of the trusts did not constitute substantial compliance with the power of appointment, and relying on *Talcott v. Talcott*, 423 So. 2d 951 (Fla. 3d DCA 1982), wherein the Third District "held that evidence of the [decedent's] intent to exercise the power of appointment was immaterial in light of his failure to comply with the specific reference requirement of the trust." *Cessac*, Case No. 1D12-5834 at 6.

And so the First District explained that to validly exercise the power of appointment, the decedent was required to reference not only the trust but the power itself, because: "whether a donee has validly exercised a power of appointment depends not on the intent of the donee, but on whether the power was exercised in the manner prescribed by the donor." *Id.* at 7. Thus, at least a general reference to the powers of appointment would be necessary effectively to exercise that power.

The First District "recognize[d] the seemingly harsh result of [its] conclusion" because the decedent clearly intended to exercise that power of appointment. But the original donor's intent is paramount, and so the First District noted that it was compelled to conclude that the original donor had the right to place "whatever restrictions he desired on the disposition of his property" and the decedent was obliged to follow those restrictions. *Id.* at 12.

And so, the First District issued a cautionary footnote to practitioners, commenting that this was all avoidable; the attorney "could have easily drafted the will to comport with the original donor's intent." *Id.* at 12-13, n.4. It is an extraordinary suggestion to see in an appellate decision, but the message is clear: practitioners must be careful in drafting wills so as to comply with every requirement including specifically to exercise a power of appointment. **CB**

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By: Jane Muir ¹

NO MORE RETAIL— CUBAN GOVERNMENT

BACKPEDALS ON OPEN MARKET REFORMS TO MAINTAIN MONOPOLY ON SALE OF GOODS

In 2010, the Castro regime made news when Raul Castro and his Communist government initiated policy changes that were hailed as “sweeping reforms,” including loosening travel restrictions by eliminating visas, permitting cars to be imported, bought, and sold, and approving approximately two-hundred previously banned vocations. Newly approved vocations included food vendor, builder, and even clown, among many others that previously had existed, if at all, as part of Cuba’s black market.

Only two years later, in 2012, reports indicated the Communist leadership’s reforms had worked too well for its liking: enterprising residents had adopted categories like seamstress or household supplies salesman, and sold imported clothing and supplies in greater variety and at lower cost than the state, or bought items at state stores to resell.

In an effort to curb sale of imported clothing, the government sharply increased taxes on imported goods. Travelers, who were informally importing clothing and supplies by individually bringing large suitcases filled with desirable items, began to pay hefty taxes. Evidently, the taxes were not enough to deter retailers.

At a July 2013 Parliament meeting, new regulations were announced to attempt to curb retail sale of imports and resale of local goods. Restrictions on the permitted vocations have been added, along with the high tariffs, to try to maintain the superiority of the state’s retail outlets. For example, the definition of “seamstress” now “does not include the sale of manufactured or imported clothing,” and the definition of “household goods salesman” “does not include articles obtained from retail stores or imported (e.g., appliances, furniture, clothing and shoes, among others).”

In September 2013, when the more restrictive policies went into effect, Cuban residents vocally opposed the measure, evidently aimed at protecting the government’s monopoly on sale of goods. The policy changed anyway, and by December, entrepreneurs were racing to sell their imported goods before January 1, 2014, when enforcement began. An “economic reform commission” under the regime estimated twenty thousand residents would be affected.² **CB**

¹ Jane Muir is a civil litigator with Gersten & Muir, P.A. For more information, please visit www.gerstenmuir.com.

² Sources: <http://www.voanews.com/content/reu-conflict-breeds-in-cuba--over-ban-on-sales-of-imported-goods/1762625.html>; <http://www.reuters.com/article/2013/09/26/us-cuba-reform-idUSBRE98P0WD20130926>; <http://www.ntd.tv/en/news/world/north-america/20131231/84329-ban-prohibiting-sale-of-imported-garments-goes-into-effect-in-cuba.html>.

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By: Alejandro Miyar ¹

RAY ABADIN ELECTED FLORIDA BAR PRESIDENT

FORMER CABA PRESIDENT RAMON "RAY" ABADIN III HAS BEEN ELECTED TO LEAD THE FLORIDA BAR.

"I am humbled and overwhelmed. I am privileged to live in this country. I am privileged to be a lawyer and a member of The Florida Bar," Abadin shared in *The Florida Bar News* bulletin announcing his election. He was elected without opposition and will serve a one-year term as Bar President beginning in June 2015, succeeding current President-elect Greg Coleman.

"I am very mindful of my roots and where I came from. CABA is the starting point for my journey of bar service," Abadin told *CABA Briefs*.

He first became involved in CABA in 1997, becoming our organization's president in 2004. In 2006, he was elected to the Florida Board of Governors to represent the 11th Judicial Circuit. Abadin has since dedicated countless hours of his time to leadership committees of The Florida Bar and local bar organizations, including, of course, CABA.

"I joined CABA to be part of the Cuban-American legal community in Miami—to develop and foster my friendships with my colleagues," said Abadin, who was born in Cuba and immigrated to the United States with his parents in 1961 at the age of two.

"CABA was started in 1974 by a group of lawyers to help and support each other and their legal practice. CABA's mission has always been the same vis-à-vis its members," Abadin said. "I would not be where I am today professionally without the efforts of CABA's founding members."

Abadin has demonstrated a steady commitment to his fellow attorneys and all those in need of quality legal service. His term as Florida Bar President will coincide with the completion of The Bar's Vision 2016 commission. Vision 2016 is an effort to perform an in-depth review of the future of legal practice in Florida, specifically involving legal education, technology, Bar Admissions, and delivery of legal services/pro bono. Abadin is chair of Vision 2016's Legal Education Group.

"My hands will be full with the Vision 2016 work about the dramatic changes in the marketplace and lawyers' place within the marketplace," Abadin told *The Florida Bar News*.

A partner at Sedgwick LLP's Miami office, Abadin's practice focuses on complex commercial, insurance and corporate litigation matters, as well as specialty tort defense litigation and premises liability. He practices law alongside his wife Kimberly Cook; they met as law students and are parents to Michael, 24; David, 21; and Julia, 17.

Abadin is a 1977 alumnus of Christopher Columbus High School in Miami. He received his bachelor's degree from Tulane University in 1981 and his law degree from Loyola University New Orleans School of Law in 1985. **CB**

¹ Alejandro Miyar is a corporate lawyer in Fox Rothschild LLP's office in Miami, Florida

RESOLUTION CONGRATULATING RAMON "RAY" ABADIN FLORIDA LAWYERS MUTUAL INSURANCE COMPANY

WHEREAS, Florida Lawyers Mutual Insurance Company was created by the leadership of The Florida Bar in the late 1980s to provide a perpetual source of professional liability insurance to Florida lawyers when it was difficult to obtain affordable coverage due to the instability of the insurance market; and

WHEREAS, Florida Lawyers Mutual Insurance Company's Board of Directors, is comprised of licensed Florida lawyers many of whom have held leadership positions in The Florida Bar, and, collectively, represent the geographic and cultural diversity of The Florida Bar's membership; and

WHEREAS, Ramon "Ray" Abadin was appointed to and served as a member of Florida Lawyers Mutual Insurance Company's Board of Directors in 2004; and

WHEREAS, in addition to his service on various Board Committees over the years, Ray gave his time and talent to the Company's risk management and business development activities by writing articles and speaking on related topics; and

WHEREAS, Ramon "Ray" Abadin's wisdom, intellect, dedication and professionalism substantially contributed to the success of Florida Lawyers Mutual Insurance Company since his appointment to serve as a director; and

WHEREAS, in view of his duties and responsibilities as President-Elect Designate of The Florida Bar and as an active member of The Florida Bar's Vision 2016 Committee, Ramon "Ray" Abadin resigned from Florida Lawyers Mutual Insurance Company's Board of Directors on January 8, 2014.

NOW THEREFORE, BE IT RESOLVED, that Florida Lawyers Mutual Insurance Company commends and congratulates Ramon "Ray" Abadin on his election to the office of President-Elect Designate of The Florida Bar and sincerely thanks him for his dedicated and selfless service to Florida Lawyers Mutual Insurance Company and its policyholders.



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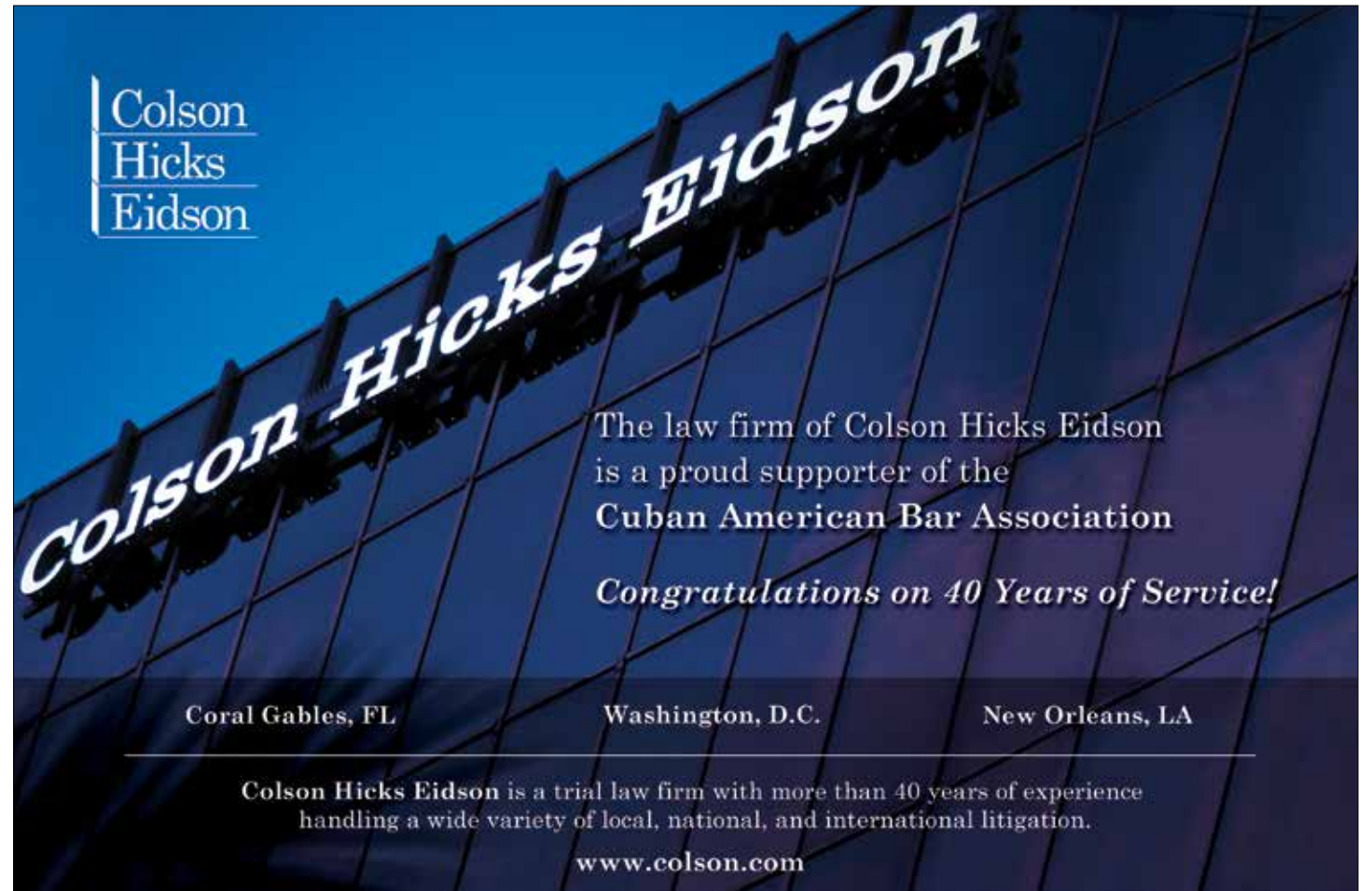
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Meland Russin & Budwick, PA, salutes our partner, Sandra M. Ferrera, on a job well done leading CABA in 2013. Best wishes to Ricardo Martinez-Cid and the 2014 Board of Directors for continued excellence in the legal profession and to advancing the goals of the Cuban American Bar Association.

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SANCHEZ-MEDINA ELECTED TO BOARD OF GOVERNORS



By: Alejandro Miyar¹

Roland Sanchez-Medina, Jr. has been elected, without opposition, to the Florida Bar's Board of Governors. Sanchez-Medina, who served as CABA President in 2009, will represent the 11th Judicial Circuit.

"It is a tremendous honor and even more rewarding when you consider that I am taking over the seat held by Ray Abadin, who will be president of The Florida Bar in 2015. I served on the CABA Board when Ray was president and am very proud of the work he has done to promote CABA," said Sanchez-Medina. "I have very large shoes to fill in that regard, and I want to honor the work previously done on the Board of Governors by Raquel Mata, the late Hon. Manny Crespo, Manny Morales, and Frank Angones, all of whom served as presidents of CABA."

The fifty-two-member Board of Governors has exclusive authority to formulate and adopt matters of policy concerning the activities of the Bar, subject to limitations imposed by the Rules Regulating the Florida Bar. Sanchez-Medina intends to further diversity efforts as a member of the Board.

"The attorneys who serve on CABA's Board and committees allowed me to meet dedicated and honorable people who sincerely care about our legal community and its relationship with Cuban Americans and Hispanics. They steered me in the direction of service," said Sanchez-Medina. "My involvement has furthered my humility, teamwork abilities, and passion for our ethnicity. CABA has profoundly changed the lawyer and man I am today."

Sanchez-Medina will serve a two-year term that will commence upon oath of office at the Bar's Annual Convention in June. Roland previously served as Chairman of the Business, Corporations and Financial Services Committee of The Florida Bar's Business Law Section from 2010-2011.

"Diversity in the Florida Bar will always be a goal of mine. More can be done to communicate with members especially in this age of information. I would like to be part of the Bar's improved communications with all diverse groups," Sanchez-Medina told *CABA Briefs*. "As CABA President, I enjoyed working with local organizations, such as the Dade County Bar, the Florida Association of Women Lawyers, Wilkie Ferguson Bar, APABA, Caribbean Bar, Gwen Cherry and more. Miami-Dade attorneys are fortunate to have so many terrific organizations to help them serve the legal community and I intend to further those efforts as a member of the Board of Governors."

He is a founding partner at Sanchez-Medina, Gonzalez, Quesada, Lage, Crespo, Gomez, Machado & Preira LLP in Coral Gables. He focuses his practice in the areas of corporate/securities, real estate, and tax law.

Sanchez-Medina is a graduate of the University of Miami and Boston College Law School. He received an L.L.M in Taxation from New York University. **CB**

¹ Alejandro Miyar is a corporate lawyer in Fox Rothschild LLP's office in Miami, Florida



She pointed out CABA has had a profound impact on her development as an attorney and as a person overall. “It is like having an extended family, constantly being mentored. It has been extremely rewarding and beneficial to be a part of CABA,” Mendez said.

VICTORIA MENDEZ, CITY ATTORNEY FOR THE CITY OF MIAMI



By: Jason Silver¹

Since September, in the Downtown Miami administrative headquarters of the City of Miami, the new pulse generating from the bustling and successful Office of the City Attorney has been under the new leadership and guidance of Victoria Mendez, Esquire, a Cuban American Bar Association Past President, 2011-2012, and passionate longtime member of CABA.

Known around the South Florida community for her leadership on many levels since her undergraduate and law school days at the University of Miami, Mendez was selected by the Miami City Commissioners out of a group of five qualified candidates to run the law-firm sized, fast-paced office of more than twenty attorneys and a very large staff. Her first day in office was September 30, 2013.

It was quite a stirring morning when Mendez was sworn in, with other leading Hispanic women from the South Florida legal community who are CABA members and community leaders taking part. Chief Judge Bertila Soto of the Eleventh Judicial Circuit of Florida swore Mendez in; Marlene Quintana, Esq., a CABA Past President from 2009-2010, and shareholder at GrayRobinson, led the invocation; and Vivian de las Cuevas-Diaz, Esq., another CABA Past President from 2012-2013, and partner at Holland & Knight, gave the introductory speech.

“The ceremony gave great perspective of five women who have come up through the legal community and CABA and are now very successful,” said Vivian de las Cuevas-Diaz, a close friend and colleague.

Mendez views her new task as a way to make a significant impact on the community to which she is so close. “It (becoming the City Attorney) was the opportunity to assist our politicians with effectuating real and meaningful change in the community that I love,” Mendez said.

De las Cuevas Diaz says it is Mendez’s commitment to public service above all else that will position her for great success. “Her commitment is public service. There is no doubt she has all the credentials,” said de las Cuevas-Diaz. “But it is her dedication to public service that makes the difference. She has had her opportunities to join private practice, but she stayed to serve the government and the community.”

To say Mendez is looking forward to her new position is an understatement. “Words cannot express how humbled and honored I am to be the City Attorney for the city of Miami. I am extremely excited and ready for the challenge,” Mendez said.

The roots of Mendez’s skills in leadership certainly can be connected back to her time on Miami’s campus in Coral Gables, where she was a *Who’s Who of American Law Students*, a Student Bar Association Senator of the Year, participated in Moot Court, and was elected to the very prestigious Iron Arrow Honor Society. Mendez also has a Masters Degree of Public Administration from the University of Miami, which will serve her well in her new post.

Board Certified in City, County & Local Government Law by The Florida Bar, Mendez began her legal career as an Assistant State Attorney, where she litigated over thirty jury trials at the Circuit and County Court levels ranging from misdemeanors to first-degree and life felonies.

Upon arriving at the Office of the City Attorney, Mendez quickly made an impact, reviving the internship program, which has allowed a countless number of law students to develop a passion for municipal-related law, and immersing herself with drafting legislation, ordinances, and resolutions for the City Commission. She has represented the City across the board in state and federal courts in land use litigation, quiet title actions, injunctions, demolition cases, civil rights matters, and eminent domain matters.

Directly before being selected the new City Attorney, Mendez was the Assistant City Attorney Supervisor for the General Government, Quality of Life, and Administration Division since 2010, where she oversaw the areas of Land Use and Zoning, General Government, Environmental, Building, and Elections.

It has been close to ten years since Mendez started with the office, and she paused to reflect on the attorneys with whom she has worked and on reaching the high honor of becoming the City Attorney of one of the most vibrant and developing cities in the United States, which is the largest municipality in Miami-Dade County with over 440,000 residents. “I worked under

some great City Attorneys and wondered if I could ever hold such a position,” she said. “Determination and hard work pays off, though, and here I am today.”

A few weeks into her role as the new City Attorney, Mendez has high expectations to make her office nothing less than the best. “To me, it is an awesome responsibility that I do not take lightly. I plan to work very hard to make my office the best municipal office in the nation,” she said.

Mendez has a special place in her heart for CABA, which is the largest voluntary bar association in Florida with close to 2000 members. She started serving on the Board of Directors back in 2004, and was elected President for the 2011-2012 term.

She pointed out CABA has had a profound impact on her development as an attorney and as a person overall. “It is like having an extended family, constantly being mentored. It has been extremely rewarding and beneficial to be a part of CABA,” Mendez said.

Her time as President of CABA provided Mendez the confidence to take on the serious responsibility that falls on the City Attorney. “After being President of CABA, you can do anything. Leading a 2000 person organization like CABA prepares you for any leadership role you take on after,” Mendez said.

Although there is no doubt all of Mendez’s success and leadership experiences have prepared her well for her new role, her biggest challenges, which she will take on with great enthusiasm, may still be ahead of her.

She plans to work hard and execute new approaches to build on the success of her predecessor. “I believe the changes I will implement in the coming months will excite our Commissioners and the office will achieve the next level of success, as started by former City Attorney Julie O. Bru.”

De las Cuevas-Diaz has no doubt of what the future holds for the City of Miami’s new City Attorney. “She will probably be the best City Attorney ever,” said de las Cuevas-Diaz. “She is the most dedicated, hardworking, and humble human being with a heart of gold.”

Mendez is another example of a CABA member making a profound impact on the community and in the lives of others. There is no doubt she will succeed in taking the Office of the City Attorney at the City of Miami to the highest echelon in America.

CB

¹ Jason is a member of the Banking & Finance Litigation team for Greenspoon Marder Law, representing various banks, servicers, and financial institutions in real estate litigation, bankruptcy matters, and municipal code enforcement matters.



OLD

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NEW YEAR BULLETIN:

FLORIDA'S REVISED LLC ACT



By Alejandro Miyar

The New Year heralded important changes for Limited Liability Companies (LLCs) doing business in Florida. As of January 1, 2014, the Revised Limited Liability Companies Act (the “New LLC Act”) is now effective in the Sunshine State.

The New LLC Act should improve Florida's attractive business climate and maintain our competitive advantage as a state at the forefront of LLC innovation. Limited Liability Companies operating in the United States have grown in rapid number since their introduction in the late 1970s. Florida was the second state in the union to authorize LLCs in 1982 and is now the sixth to revise our LLC laws with improved standards.

The popularity of LLCs is chiefly attributed to their flexible blend of elements of corporate and partnership structures. Of course, LLCs provide the tax and management advantages of a partnership with the liability limitations of a corporation.

Offering modernization and improvements to the previous statutory regime, the New LLC Act is based on the Uniform Law Commission's Revised Uniform Limited Liability Company Act of 2006 as amended in 2011,¹ with tailoring specific to Florida. It is codified in Chapter 605 of the Florida Statutes.

The New LLC Act governs all LLCs formed on or after January 1, 2014. Previously existing LLCs now face a transition period until January 1, 2015, during which they may affirmatively elect to opt into the New LLC Act, or await next year's full repeal of the previous statutes, as codified in Chapter 608 of Florida Statutes. Notably, all LLCs existing before 2014 must conform with the Department of State's filing requirements under the New LLC Act—irrespective of whether they choose to fully opt in prior to 2015.

The New LLC Act remains a default statute—LLCs are usually governed by an operating agreement that may opt out of many statutory rules. However, Florida has expanded the default statutory provisions and definitions provided by law, including an expanded list of matters that may not be waived by any particular LLC.²

¹ UNIFORM LIMITED LIABILITY COMPANY ACT OF 2007 AS AMENDED IN 2011, National Conference of Commissioners on Uniform State Laws, 2011, *available at* www.uniformlaws.org.

²THE FLORIDA SENATE: BILL ANALYSIS AND FISCAL IMPACT STATEMENT: CS/SB 1300, The Professional Staff of the Committee on the Judiciary, *available at* <http://www.flsenate.gov/Session/Bill/2013/1300/Analyses/2013s1300.ju.PDF>.

MOST SIGNIFICANTLY, THE NEW LLC ACT:

- Imposes an obligation directly on the members or managers of an LLC, as applicable, to correct information in articles of organization that become inaccurate;
- Expands the list of nonwaivable default rules that cannot be superseded by the operating agreement of an LLC;
- Authorizes an LLC to file a statement of authority, which provides constructive notice as to who can bind the LLC;
- Modifies provisions addressing the LLC's management structure. It removes the concept of a “managing member” who is elected from among the existing members (an LLC that was managed by a “managing member” is now considered to be member managed and the former managing member is not entitled to compensation unless agreed upon in an operating agreement);
- Requires the unanimous vote of the members to amend the operating agreement or the articles of organization of a member-managed LLC;
- Allows a member of an LLC to dissociate at any time, rightfully or wrongfully, by withdrawing by “express will” (If a member dissociates, the member loses the right to participate in the LLC's management. Additionally, the bill provides 14 new causes for dissociation of a member other than bankruptcy or insolvency of a member, which already exist in current law);
- Provides specific procedures for service of process on an LLC, including the method of delivery and waiver of a right to any notice given by the bill, the articles of organization, or the operating agreement of the LLC;
- Allows a member of an LLC to maintain a derivative action to enforce a right of the LLC when, within a reasonable time, an action is not instituted after a member or manager makes a demand (If the demand would be futile or irreparable injury would result to the LLC by waiting for the members or managers to bring the action, the bill authorizes the member to begin a derivative action);
- Permits interest exchanges in another business entity and allows non-U.S. entities to become LLCs in this state while continuing its existence in the foreign jurisdiction.³

A product of considerable effort by members of the Business Law, Tax, Real Property, Probate, and Trust Law Sections of The Florida Bar, the New LLC Act will undoubtedly improve the overall operation of LLCs in Florida. **CB**

³THE FLORIDA SENATE: SUMMARY OF CS/CSSB 1300 – LIMITED LIABILITY COMPANIES, Judiciary Committee, *available at* <http://www.flsenate.gov/Committees/BillSummaries/2013/html/575>.



CABA EVENTS

CHRISTMAS PARTY

CABA's Christmas Party this year was held in the lovely home of its new President, Ricardo Martinez-Cid. Past Presidents, the Board, and CABA members convened to celebrate the holiday season and CABA's accomplishments throughout 2013.

ELECTIONS

Hosted by Regions Bank in Coral Gables, the CABA elections was once again one of CABA's premiere networking events as hundreds of members, fashioning campaign buttons and stickers, packed into the spacious lobby of Regions Bank in Coral Gables. On the ballot were candidates for the 2014 Board of Directors and President-Elect.

12TH ANNUAL CUBAN AMERICAN BAR FOUNDATION AND THE CUBAN AMERICAN CPA ASSOCIATION GOLF TOURNAMENT

Cuban-American attorneys and CPAs hit the links for the 12th Annual Cuban American Bar Foundation and the Cuban American CPA Association Golf Tournament at Trump National Doral on October 25, 2013.

LEGAL ASPECTS OF DOING BUSINESS IN THE AMERICAS CONFERENCE

CABA's 2013 Legal Aspects of Doing Business in the Americas Conference was held at the beautiful Intercontinental Hotel in downtown Miami. Panelists from all over the Americas gave CABA members insight on how to expand their practices to tap the business waiting for them just beyond our nation's borders.

ANNUAL MENTORING KICKOFF RECEPTION & SCHOLARSHIP AWARDS PRESENTATION

CABA's commitment to mentorship was highlighted at the 2013 Annual Mentoring Kickoff Reception & Scholarship Awards Presentation. Hosted at the Northern Trust Bank's reception hall in Brickell, law students and young lawyers were grouped with more experienced members of different practice areas, and given the opportunity to network and seek advice. Academic scholarships were awarded to exemplary future CABA members, and Marlene Quintana was the recipient of CABA's first Power of One Award for her outstanding dedication to its mentoring program.

FIRST ANNUAL MURDER MYSTERY DINNER

The Cuban American Bar Foundation held its first Annual Murder Mystery Dinner at the Coral Gables Museum on the weekend before Halloween. Members and guests participated in this fully interactive presentation best described as a real life enactment of the popular board game Clue™. The pictures speak for themselves!



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GOLF TOURNAMENT



ELECTIONS



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News from the Nation's Highest Court

In Whose Name we Pray: Legislative Prayer Again Reaches the U.S. Supreme Court



By Jorge R. Delgado

Justice Brennan once wrote, “if any group of law students were asked to apply the principles of *Lemon* to the question of legislative prayer, they would nearly unanimously find the practice to be unconstitutional.”¹ Justice Brennan was referring to the now infamous test in *Lemon v. Kurtzman*, in which a challenged religious practice passes constitutional muster if it has “a secular legislative

purpose,” “its principal or primary effect . . . neither advances nor inhibits religion,” and does not “foster an excessive government entanglement with religion.”² Yet Justice Brennan was writing in the minority within *Marsh v. Chambers*, which upheld the Nebraska Legislature’s practice of opening its legislative day with a prayer recited by a chaplain paid by the state of Nebraska.³

The reason for the *Marsh* decision, despite *Lemon*, was predominantly history. While the *Marsh* Court warned that “historical patterns cannot justify contemporary violations of constitutional guarantees,”⁴ the Court nevertheless found that for more than 200 years, starting with the First Congress, “the practice of opening legislative sessions with prayer has become part of the fabric of our society.”⁵ As such, the Court reasoned, legislative prayer in this context could not be seen as establishing religion, but simply acknowledging widely held, varied beliefs.⁶ In light of this historical background, the Court found no issue with the fact that only one chaplain gave prayers—the Court found his reappointment was by virtue of his performance, not theology—or that he was paid from State funds—this was also a long-held tradition.⁷ Nor did the Court find issue with the prayers themselves, which the Court said did not proselytize Christianity or disparage other religions.⁸

The United States Supreme Court has since continued to recognize *Marsh*’s validity and unique position in Establishment Clause jurisprudence.⁹ For instance, in *Lee v. Weisman*, the Court rejected the Sixth Circuit Court of Appeals’ reliance on *Marsh* when upholding invocations at the beginning of public school graduations, holding that there are “[i]nherent differences between the public school system and a session of a state legislature”¹⁰ The Court reasoned that the atmosphere of a legislative opening, where adults are free to go as they please, is different from a constraining school event that students must attend.¹¹ Moreover, in *County of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, the Court rejected an application of *Marsh* when holding that a nativity scene in a courthouse was unconstitutional, reasoning that the nativity scene was a much more specific Christian symbol than the general prayers in *Marsh*.¹²

The Court now has an opportunity to reevaluate *Marsh*’s reach in its review of the Second Circuit’s decision in *Galloway v. Town of Greece*,¹³ which invalidated one town’s legislative prayers. Beginning in 1999, the Town of Greece, New York, began inviting local clergy to deliver opening prayers before every Town Board meeting.¹⁴ The town argued that it did not reject any requests for opening invocations—including nonreligious requests—and did not censor any invocations.¹⁵ However, in its entire history, save four exceptions, Christian clergy delivered every opening prayer.¹⁶ In addition, the town almost exclusively invited clergy to speak from within the town limits, which did not contain non-Christian places of worship.¹⁷

The Second Circuit interpreted *Marsh* and its progeny, specifically *Allegheny*, as standing for the proposition that when viewed in their entirety, legislative prayers cannot advance a single religious sect.¹⁸ The *Galloway* court, however, rejected a simple sectarian/nonsectarian test when evaluating legislative prayer, reasoning that to do so would impermissibly create a state-sponsored “vague theism,” and noting that sectarian prayers are not categorically impermissible.¹⁹ Nevertheless, the *Galloway* court still recognized that the issue of legislative prayer is a unique one that is not amenable to the *Lemon* test.²⁰ Rather the *Galloway* court found that the legislative prayer issue must be a fact intensive one—whether “an objective, reasonable person would believe that the town’s prayer practice had the effect of affiliating the town with Christianity”—even though the court admitted that such a framework necessarily gives little guidance to municipalities.²¹ In other words, the *Galloway* court was willing to dwell deeper into the circumstances underlying a legislative prayer, as opposed to engaging in the rather terse analysis within *Marsh* or establishing a bright-line rule.

Within its facts, the *Galloway* court found troublesome, inter alia, the predominance of Christian prayer gives, the unique Christian language throughout the prayers, and unique Christian gestures that Town officials made while in attendance.²² Moreover, although the *Galloway* court recognized that the Town had seemingly good intentions when attempting to be inclusive, the court faulted the Town for not attempting to explain the purpose of the prayers or recruiting non-Christian speakers from outside its borders.²³ The court concluded that these, and other factors, would leave the impression that the Town officials had adopted Christianity and that residents attending the Town Board meetings had to participate in Christian prayer.²⁴

The United States Supreme Court has since accepted certiorari review of *Galloway*, and held oral argument on November 6, 2013. Notably, the United States filed an amicus brief urging the Court to uphold its long-standing history of legislative prayer. During oral argument, some Justices expressed skepticism about the special treatment given to legislative prayers—asking, for example, why prayers would not be permissible before the Court—as well as the persuasive force of legislative prayer’s persistent historical presence. Other Justices saw issues in policing the content of prayers to make them nonsectarian, or wholly denying officials the ability to seek spiritual guidance before legislative prayers. How the Court’s considerations will impact an opinion will only be known in the summer of 2014, when an opinion is expected to issue. **CB**

¹ *Marsh v. Chambers*, 463 U.S. 783, 800-01 (1983) (Brennan, J., dissenting).

² See *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

³ *Marsh v. Chambers*, 463 U.S. 783 (1983).

⁴ *Id.* at 790.

⁵ *Id.* at 792.

⁶ *Id.*

⁷ *Id.* at 793-94.

⁸ *Id.* at 794-95.

⁹ See *Van Orden v. Perry*, 545 U.S. 677, 688 (2005); *Lee v. Weisman*, 505 U.S. 577 (1992); *County of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 602 (1989); *Wallace v. Jaffree*, 472 U.S. 38, 63 (1985) (Powell, J. concurring); *Lynch v. Donnelly*, 465 U.S. 668, 679 (1984).

¹⁰ *Lee*, 505 U.S. at 596.

¹¹ *Id.* at 597.

¹² *Allegheny*, 492 U.S. at 604.

¹³ 681 F.3d 20, 28 (2d Cir. 2012), cert. granted, 133 S. Ct. 2388 (U.S. 2013).

¹⁴ *Id.* at 23.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 23-24.

¹⁸ *Id.* at 28.

¹⁹ *Id.* at 29.

²⁰ *Id.* at 30.

²¹ *Id.* at 33.

²² *Id.* at 31.

²³ *Id.* at 32.

²⁴ *Id.* at 34.

We are very proud to announce that **Jennifer Olmedo-Rodriguez** has been promoted to Shareholder. As a commercial litigator and appellate counsel, Jennifer exemplifies our firm’s client service standards, commitment to excellence, and high professional values. Jennifer was also recently honored as a member of South Florida’s Real Estate Litigation Department of the Year by the *Daily Business Review*.

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CABA's Pro Bono Project

New Faces and Spaces

CABA PRO BONO PROJECT (PBP) CONTINUES TO GROW AND IMPROVE IN ORDER TO MEET THE GROWING NEEDS OF OUR COMMUNITY.

NEW SPACES

At the end of 2013, PBP moved its office to a much larger and more central location. They are now located at 2400 South Dixie Highway and are easily accessible to clients using public transportation. CABA Pro Bono Project is also now in the same building as the Coordinated Victims Assistance Center (CVAC), a Miami-Dade County Community Action and Human Services program. This is especially beneficial for clients that are also victims of domestic violence or human trafficking, who in addition to having their legal needs addressed by PBP can obtain additional support and services from CVAC, in the same building.

In 2014, PBP will also be holding office hours at various locations across Miami-Dade County in an effort to reach even more members of the community in need of free legal representation. Beginning in February, and in collaboration with the Florida Bar One Campaign and the Miami Pro Bono Roundtable, PBP will be conducting intake interviews of unaccompanied immigrant children in the pro bono rooms at the Miami Immigration Courthouse twice a month. CABA Pro Bono Project was also given office space at the

Culmer Community Action Center located at 1500 NW 3rd Avenue and plans to begin providing free legal services to indigent members of our community out of this location on a regular basis soon. As part of its Foreclosure Defense Project, PBP will continue holding office hours twice a week, Mondays and Thursdays from 8:30 am to 10:30am, at the Miami-Dade County Courthouse Library located at 73 West Flagler. In partnership with Legal Services of Greater Miami, PBP will also be holding a simple divorce clinic on a monthly basis at 3000 Biscayne Blvd.

CABA Pro Bono Project will also continue increasing its outreach efforts by organizing and attending various legal clinics across Miami-Dade County. In January 2014, PBP held a citizenship drive together with the Venezuelan Awareness Foundation and Read 2 Succeed at the Arepazo in Doral. Over sixty clients were assisted with their applications for citizenship. Many additional foreclosure defense and immigration clinics are planned throughout the year in Kendall, Hialeah Gardens, Opa Locka, and Little Havana.

NEW FACES



Silvia Perez

CABA Pro Bono is proud to welcome their new Staff Attorney, Silvia Perez.

Silvia graduated from St. Thomas University School of Law in 2001 with a Juris Doctorate. While at St. Thomas, she was an integral part of Law Review and the community. In her final semester at St. Thomas, Silvia undertook an internship at the Dade County Bar Association Legal Aid Society as a certified intern in the Family Court Clinic. In 2001, she was the attorney hired to establish the satellite office in Florida City at the Everglades Community Association providing assistance to the migrant farm workers in the South

Dade Community. The following year, she became the Project Attorney of the Homestead satellite office Domestic Violence Project where she fully dedicated herself to the community and in representing survivors of domestic violence. Silvia also worked as Project Attorney for the Legal Aid Society until December of 2010. At the Legal Aid Society, in addition to Project Attorney, Silvia also trained and supervised certified legal interns from St. Thomas University enrolled in the Family Law Clinic program. For the past three years, she has been in private practice handling cases in the area of family law, including domestic violence, dependency/juvenile, as well as arguing cases and handling appeals before the Third District Court of Appeal. A substantial number of her cases were handled on a pro bono basis.

Silvia's dedication and passion to serve the public is evident both professionally and personally. Among the numerous

notable outreach activities and honors, Silvia authored an article "Alternatives in Fighting Street Gangs," which was published in the Winter 2001, St. Thomas University Law Review. In October 2002, Silvia was awarded a Community Service Award from the City of Homestead and Hispanic Chamber of Commerce. In September 2004, she was a Faculty Presenter at the 27th National Children's Law Conference sponsored by the National Association of Counsel for Children in Las Vegas, Nevada (Topic: Representing Children in Civil Cases involving Domestic Violence). Silvia was a solo guest at "The Voice of Women" radio program sponsored by FIAC at Radio Station 'Union' 1450 AM in December of 2005. She was a co-presenter in March 2008 at the Florida Coalition Against Domestic Violence (FCADV) training for the South Florida Clerk of Courts. In February 2009, Silvia received The Arête Award for distinguished alumni in public service from St. Thomas University School of Law.

BOARD OF DIRECTORS



Isabel Diaz

Isabel Diaz, PBP's Co-Chair for 2012 and 2013

Isabel Diaz, PBP's Co-Chair for 2012 and 2013, and Vivian de las Cuevas Diaz, PBP director for the past four years, have finished their terms on the Board. CABA Pro Bono Project is extremely grateful for the countless contributions made by both. Without their hard work, dedication, and leadership, PBP's continued success would not have been possible.

New additions to the Board for 2014 are Jorge Piedra, who will be serving as the Chair, and CABA President-Elect, Manuel Crespo Jr., who has previously served on the PBP Board. CABA Pro Bono Project is proud to have both on the Board and excited about the contributions they will make. CABA Pro Bono Project is confident that under their leadership the program will continue to grow and evolve to better address the increased needs in our community.



Jorge L. Piedra

Jorge L. Piedra, Chair

Jorge L. Piedra is a trial lawyer. Trained and mentored by some of Florida's top trial lawyers, Jorge enjoys a reputation as one of the finest commercial litigators in South Florida.

Jorge was admitted to practice law in the State of Florida in 1996. He is also admitted to practice in the United States District Courts for the Southern, Middle, and Northern Districts of Florida. He attended the Florida State University College of Law where he graduated with honors. He was a member of the Journal of Transnational Law and Policy and an Articles and Notes Editor of the Journal of Land Use and Environmental Law. Jorge also attended Florida State University for his undergraduate studies, obtaining a B.S. in Political Science in 1992.

Since 2001, he has owned his own law firm, Piedra & Associates, P.A. Currently, Piedra & Associates, P.A. includes 8 attorneys and is recognized as one of the top commercial trial law firms in South Florida. Jorge is the managing partner of the firm. He has handled more than 75 jury and non-jury trials, dozens of arbitrations, and has argued numerous cases before various courts of appeals. He has been awarded the prestigious AV rating from Martindale-Hubbell. Additionally, he was selected and listed in Florida Super Lawyers magazine as one of the top 5% attorneys in the state from 2007 through 2013. In 2009, 2010, 2011, and 2012, he was selected as Florida's "Legal Elite" in commercial litigation by Florida Trend Magazine. Florida Trend Magazine also selected him for "The State's Legal Leaders" in 2012. He is recognized by Best Lawyers & The Wall Street Journal as one of the "Best Attorneys in Florida" selected by peer recognition since 2010.

He is an active member of the Cuban American Bar Association (CABA) and was honored as the organization's Outstanding Young Lawyer in 2003. In 2010, he was elected as a member of CABA's Board of Directors.

He is a member of the Latin Builders Association (LBA) where he served on the Board of Directors and Executive Committee from 2002 until 2011. He previously served as Secretary, General Counsel, and Chairman of the LBA's Legislative and Community Affairs Committees. In 2002 and 2005, he was selected as the LBA's Attorney of the Year. In 2010, Piedra & Associates, P.A. was selected as the LBA's Law Firm of the Year.

In 2007, Jorge became the President of the Big Five Club, an exclusive private country club that offers a variety of recreational sports and social facilities to its members. Previously, he served as the Club's Secretary and General Counsel.

He is also a member of the Kiwanis Club of Little Havana, organizers of the world famous "Carnival Miami" and "Calle Ocho" festivals. The Kiwanis Club of Little Havana is a non-profit organization geared toward providing community programs and scholarships to underprivileged children in South Florida. Jorge has served on the Kiwanis Club of Little Havana's Board of Directors since 2003 and has chaired the golf tournament and voter registration drives.

Jorge resides in Miami with his wife, Cristina, and their five children. Jorge is also the owner and founder of the Rock Star Fishing Team, which has been featured in numerous nationally televised fishing shows and national magazines. Rock Star Fishing Team won the 2008 World Sailfish Championship, the 2009 Sailfish Pro Series, the 2010 Miami Open Billfish Series, and the 2010 Miami Billfish Tournament.



Manuel L. Crespo, Jr.

Manuel Crespo Jr., Director and CABA's President-Elect

Manuel L. Crespo, Jr., is a partner at Sanchez-Medina, Gonzalez, Quesada, Lage, Crespo, Gomez & Machado, LLP. Manuel concentrates in the following areas of practice: residential and commercial real estate transactions and real property dispute litigation.

Manuel received his Juris Doctorate in 1991 from Boston College Law School. He received his undergraduate degree of Bachelor of the Arts, with honors, from Duquesne University in 1988.

He is admitted to practice law in Florida and is currently serving his third term on the Board of Directors of CABA. He also serves on the Board of Directors for Legal Services of Greater Miami, Inc., and the Dade County Bar Association.

Joining Jorge and Manuel on the Board of Directors for 2014 are returning members: Yara Lorezo, Vice-Chair; Ralph MacNamara, Treasurer; Ricardo Martinez-Cid, Director and CABA President; Sandra Ferrera, Director and CABA's Immediate Past President; Eddie Dominguez, Director; Monica Cunill-Fals, Director; and Javier A. Ley Soto, Director. None of PBP's progress and evolution would be possible without the commitment, support, and dedication of the Board of Directors.

If you would like to learn more about PBP please feel free to contact Lesley Mendoza, Executive Director, at lesley@cabaprobono.com or (305) 646-0046. You can also visit our website at www.cabaprobono.com. Together we can make Miami a better place by "Helping Miami One Resident at a Time." **CB**

SHAPE students

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The need to prepare our young people for the future and the desire to help create civically-minded students has propelled our organization forward with assistance from various partnerships. Currently, SHAPE partners with the Miami-Dade, Broward, Palm Beach, and Orange County School Boards. We also partner with The Children's Trust, and over 150 local non-profits to ensure the success of our 42 programs. SHAPE students participate in hundreds of hours of community service, and fundraise thousands of dollars to assist local non-profits annually. Our students are always seeking out organizations that can use their services and partner with them throughout the school year. A part of our program is instilling the importance of collaboration and unity; thus, teaching our students how to become more powerful advocates in their communities.

However, philanthropy does not stop after high school; our students are learning to give forever. One of our former students, Samantha Metayer, a junior at Florida International University, reached out to our organization to become our graduate ambassador to ensure her peers were continuing to volunteer, donate, and give back. This further proves the success of our program and how our students are being "shaped" into caring, philanthropic, and productive citizens. Samantha implemented the program ACE of SHAPE (Alumni Continuing Excellence) and began the process of bringing

together our alumni to assist them in connecting with organizations and foundations in their various areas. ACE of SHAPE members partner with the high school programs to encourage and provide mentorship as our students prepare for college and various careers.

SHAPE students are making a difference and many of them are providing their skills, services, and time in your community. Our students are always seeking out opportunities to volunteer and partner with various organizations. We welcome organizations and individuals who, like us, desire to make a difference in their communities by lending their time, talent, and expertise. We invite you to join us as we continue to change the world! **CB**

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Dichos de Cuba



by Monica M. Albarello¹

It has been challenging to determine when a saying my family uses is an adage and not just a family saying. I think my family has some clever sayings they have created that I know I will be sharing with my own family one day. My favorite family saying is: **Bota, que no es compota!** *It's not fruity compote so expel it!* This saying, believe it or not, is used to motivate a sick kid to blow his runny nose, cough with the intent to expel what is making you sick, or to throw up if the kid is holding it in. When I would get sick growing up, I used to cry my eyes out if I had to blow my nose. While I was crying and melting, my grandmother would be holding my neck with one hand and held a tissue to my nose with the other, and she would repeat over and over again: Bota que no es compota! She made a great point—why are you holding that bad stuff in? It is not fruity or tasty so why keep it inside?!

Terminó como la fiesta de Guatao.

That ended like the party in Guatao.

Although this article is titled *Dichos de Cuba*, many of the sayings I have written about did not originate in Cuba. Some clearly originated in Cuba such as: **Terminó como la fiesta de Guatao.** *That ended like the party in Guatao.* Guatao is a village that was founded in that late 1700s and is located just north of Havana, Cuba. This saying is very famous and many people claim different origin stories. However, the earliest origin story took place in 1896, when the Spaniards were trying to rule Cuba and the United States became its obstacle. Supposedly, the village of Guatao, primarily made up of farming families, used to have village parties that were popular and well attended. At one of the village parties in 1896, some Spanish soldiers crashed the party. To make a long story short, a large fight broke out and it was alleged that over eighteen people died and more than thirty others were sent to the hospital. It is rumored that some of those hospitalized later died as well. Now, when a big group of people gather together, whether it is at a party or a conference, and a fight breaks out, tragedy strikes, or the cops raid the party, then it ended just like the party in Guatao in 1896.

¿Quién le pone cascabel al gato?

Who puts a collar with bells on a cat?

One saying that is internationally known is: **¿Quién le pone cascabel al gato?** *Who puts a collar with bells on a cat?* Think how difficult it must be to put a collar with noisy bells on a cat ... it is just as difficult as explaining something to Mr. Know-it-all. Many people who are know-it-all's are usually stubborn, in denial, or both, so explaining something that is different to a know-it-all's position is as effective as talking to a wall. A dear friend of mine lives in denial every day and he is also an extremely stubborn Mr. Know-it-all. When he and I are discussing something and he has made up his mind on what is right in his eyes, he disconnects from the conversation. My friend just sits there staring at me with a stare that clearly tells me "I stopped listening to you ... a while ago." Even though I know he is no longer listening, I still finish what I have to say to him. Maybe I am stubborn too, I do not know. What I do know is that it may be easier for me to grab a cat and put a collar with bells on its neck, than to tell this friend of my mine he does not always know best.

Los niños hablan cuando las gallinas mean.

Children only speak when hens urinate.

There are also sayings that are a little vulgar for some audiences but nevertheless, they will still be passed down to other generations. One that is on the borderline of being vulgar is: **Los niños hablan cuando las gallinas mean.** *Children only speak when hens urinate.* Since hens and chickens do not urinate, I guess children are never meant to speak when adults are talking. This is meant to teach young children not to interrupt adults when they are talking or an adult is on the phone. My mother made this saying a rule and she made sure my brothers and I lived by that rule. the law of attraction rules. Put on a smile and think positive!

¹ Monica M. Albarello, Esq., practices personal injury law and civil litigation at Conerly, Bowman and Dykes, LLP, a law firm in Destin, Florida. She can be reached via email at malbarello@emeraldcoastlawyers.com or by phone at (850) 837-5118.



La Cocina de Christina



Pierna de Puerco Asado a la Criolla

I have wanted to tackle a Cuban pig for a while now. I have dreamt of making my own *lechón*, with tangy, glistening *cebollitas*. I have had visions of *salsita* being poured over Killer Rice. The family gathered around the *chicharrón* skin and the juicy meat, picking at the onions—all too hot to eat right away.

When I sat down to really examine this recipe, I felt it was going to be a winner. And it was. This recipe is THE *lechón* recipe of recipes; the one people will praise you for and ask you to repeat over and over again.

The best part? Its simplicity. *Lechón* asado has never been more within your reach. I hope you give it a try. Email me at lacocinadechristina@gmail.com or share your Cuban pig story with us on Facebook at <http://facebook.com/lacocinadechristina>.

Ingredients: 6 lbs fresh ham shank (Pierna de Puerco or Pierna de Cerdo); 1 whole garlic; 2 Tablespoons salt; 1 Tablespoon oregano; 2 teaspoons cumin; 1/2 teaspoon black pepper; 3/4 cup juice from fresh sour oranges; 1 pound white onions.

Instructions:

1. Make sure the pork you buy is trimmed of any overly excessive fat but still has the skin intact, as the skin crisps during cooking to form a *chicharrón* (crackling);
2. Place pork inside a large turkey bag. Bag will be used during marinating process, not during cooking;
3. Cut slits in the pork with a sharp knife, on both sides of the pork;
4. Using a mortar and pestle, crush all the garlic cloves;
5. Add the salt to the garlic and crush well, ending up with a paste-like consistency;
6. Add the oregano, cumin and black pepper, pausing between each spice to fully incorporate each one into the mix;
7. Pour the spice-paste into the sour orange juice and mix well, to create your *mojo*. Let it sit while you do step number 8;
8. Slice up the onions into rings;
9. Rub the *mojo*, with your hands, all over both sides of the pork, making sure you get the juices and paste into all crevices. Pour any leftover liquid over the top of both sides and rub well with your hands;
10. Place the onion rings over, under, and inside the pork. The smallest circles from the rings fit perfectly into the slits in the pork. Close up the bag and put away for 48-72 hours. Turn bag over after each 24 hours so that juices can cover all parts of the pork while it marinates;
11. When ready to cook, heat oven to 325 degrees and remove pork from bag, into a large roaster. Pour all juices from bag over the pork, into the roaster;
12. Cook for four hours. Check temperature using a meat thermometer. Pork is ready once the thermometer reads 185 degrees;
13. Slice and serve with black beans and rice, using the excess onions and *salsita* (sauce) as a dressing for the rice. Can also be served inside Cuban bread as a sandwich, in a *Pan con Lechón*, with the onions and *salsita* as a condiment for the sandwich.

Enjoy and sop up any leftover salsita with extra Cuban bread.

MOVING FORWARD



by Jorge A. Pérez Santiago
cababriefs@hotmail.com

This issue ushered in and welcomed CABA's new leadership, which, like the New Year, always brings resolutions, ideas, and hope. Among these new ideas and resolutions, which will be fulfilled, includes working diligently on making improvements to *Briefs*. As our Chair, A. Dax Bello, noted, slight changes to the layout and new sections will be added to *Briefs* to make the publication more appealing to our membership. As always, we are open to suggestions so please send us your comments, questions, concerns, or some of your best Spanish chistes!

Next issue will also celebrate Justice Jorge Labarga's tremendous accomplishment—by July 1, 2014, he will have become the first Cuban American to serve as Chief Justice of the Supreme Court of Florida. As chief justice, Justice Labarga will serve as chief administrative officer of the state courts system, which is a tremendous position of leadership over our state's courts.

We will also continue to highlight the work of CABA and its members, such as CABA's Pro Bono Project and other philanthropic activities, and CABA's amazing events. **CB**

THE NEWS IS OUT!
The best is yet to come...

Ricardo M. Martinez-Cid
President

Manuel L. Crespo, Jr.
President-Elect

CONGRATULATIONS
to CABA's new leaders!

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