

CUBAN AMERICAN BAR ASSOCIATION
CABA BRIEFS

SPRING 2008 ISSUE



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GALA EXTRAVANZA!
HON. SANDY KARLAN
CABA RECOGNIZED

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CABA Briefs

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President's Message

CABA: Un Carnaval de Éxitos

For over thirty-four years, the Cuban American Bar Association has endeavored to succeed and be the primary voice for the growing number of Cuban American and Hispanic attorneys in this community. Our founders sought to empower each other, break barriers and stereotypes, and soar through hard work and perseverance. Through their efforts, we earned the proverbial "place at the table" not because we were Cuban American, but in spite of it. Their risks and sacrifices gave rise to the prestige and prominence that CABA enjoys today.

CABA is one of the most important and well respected voices for the Cuban American community both locally and nationally, and also one of the strongest and fastest growing voluntary bar associations in this state. With this growth come new responsibilities and challenges as we strive to serve the interests of a diverse membership and effectuating the changes necessary to ensure that the Hispanic community is appropriately represented in positions of leadership throughout all branches of government.

The 2008 Board and I are committed to continuing the great efforts of my predecessors in mentoring, scholarships, and pro bono work. To these ends, we have begun working with other voluntary bar associations in Florida, focusing more on our similarities than on our differences. We have created a young lawyers membership committee, because we heard our young lawyers when they communicated that they did not know how to get involved. We want all of our members to be involved, and to be recognized for it.

Also new this year is our community liaison committee, created to build partnerships in our community, and make an impact by expanding our outreach efforts. CABA is well positioned to teach and mentor underprivileged children of all ages. These children deserve our attention, our time, and the hope for a brighter future. Our members have rich stories to share, many proving that not every successful person is born with a silver spoon; and that with tireless effort and drive, dreams can come true.

Castro's resignation, woefully insufficient in establishing democracy in Cuba, underscored the continuation of CABA's responsibility to Cuba. CABA is determined to fight for human rights and the restoration of the rule of law in Cuba. We will continue that struggle with the same commitment and resolve of our founders, facing the challenge head-on.

CABA is about the big battles like diversity, sensitivity training, and an independent judiciary reflective of the members of our community. Our commitment to these issues is unlimited and unwavering, and we will not accept anything less than the high standards of integrity, honor, and professionalism that have become synonymous with CABA. We are also, however, comprised of our members and their struggles and victories and passions.

As I urged at the Installation Gala, join me in reveling in all that we have accomplished as individuals and collectively, and persevering in the notion that there is no aspiration that is outside of our reach. It is the reason that we were founded, and the very essence of who we are as Cuban Americans. Somos un carnaval de éxitos. And we should be proud.

Marlene Quintana
President

Editor's Note



2008 — A Year Of Change and Growth

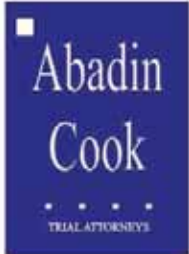
This year promises to reinvigorate our beloved organization with energy and purpose. It is the 2008 Board's goal, under the inspired leadership of our President, to increase CABA's engagement in the community at large, and to make way for meaningful opportunities for the less fortunate in our midst. To this end, every single member is asked to give of his or her time, whether by joining a committee, taking on a pro bono case, or participating at one of the many scheduled events.

2008 also brings a renewed commitment on the part of our Board to increase our membership base and to reward our members with meaningful benefits that will further enhance the value of being part of CABA.

Let's make our numbers count!

Manny Crespo, Jr.
Editor-in-Chief

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CABA Committees

CABA's committees are a key component in our success. Whether it is writing reports on current legislation, hosting CLE programs and events with major speakers or filing amicus briefs in ground-breaking legal cases, our committees shape policy and frame debate on the pressing legal issues of the day. Serving on a committee also offers the opportunity to build a network of valuable professional contacts and friendships. For more information about joining a committee, please contact the Committee Chairs or Co-Chairs directly, or log on to www.cabaonline.com.

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CABA Briefs Newsletter Committee, see Table of Contents

Florida's Data Breach Law

by Luis Salazar*

Thanks to the internet, consumers today are more knowledgeable, more thoughtful in their shopping choices, and more empowered than ever before. Business owners have to work harder to meet consumers' demands and maintain and grow their market share. Many business owners have responded to this challenge and found a competitive advantage by obtaining and maintaining identifying data about their customers, such as names, social security numbers, purchasing histories, and credit card information. Indeed, collecting customer information and data mining for opportunities is a growing marketing tool for businesses, who mine the information to track customer orders, cater to their preferences, or provide new products or services they need.

But this information is valuable to more than just business - it's a treasure trove to unscrupulous competitors and identity thieves. In particular, identity thieves are increasingly targeting companies with consumer data, breaching their systems, and using consumers' personally identifiable data to "steal" consumers' credit.

The Cost of Data Breaches

Data breaches create two distinct types of costs for businesses - one, the practical remediation costs, and two, the impact on consumers' perception of their brand. A variety of studies have attempted to determine the "hard" costs of data breaches. The Ponemon Institute, a data privacy think tank, conducted one such study and has determined that the average cost of a data breach is \$197 per compromised record. Actual total costs can run as low as \$1 million to as high as \$34 million.

But the brand impact may be worse. The Chief Marketing Officers' Association surveyed consumers to determine their attitudes towards business reporting data breaches. Consistent with anecdotal evidence, the study found that 40% of consumers have stopped an online transaction due to privacy concerns. Moreover, 30% of consumers would strongly consider not doing business with any company that suffers a data breach, while 25% would definitely not do business with such a company. Thus, over half of all consumers show a strong negative reaction to companies that suffer data breaches.

Florida's Notification Statute

Legislatures throughout the U.S. have been fairly quick to respond to this consumer concern by passing data breach notification laws, and Florida is no exception. Effective since July 2005, Florida's Data Breach Notification Law applies to "any person who conducts business in this state and maintains computerized data in a system that includes personal information."

Defining Covered Data. The statute defines "personal information" as an individual's first name, first initial and last name, or any middle name and last name, in combination with any one or more of the following data elements, if those elements are unencrypted:

Social security numbers;

Driver's license number or Florida identification card number;

Account, credit card, or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

Any information that is lawfully and publicly available is not considered personal information.

Breach Required. A qualifying business with personal information is required to provide notice of any breach of the security of its system "following a determination of the breach, to any resident of the state whose unencrypted personal information was, or is recently believed to have been, acquired by an unauthorized person." There are certainly a number of potentially open issues with this language. For example, the level of encryption is not specified, nor, for that matter, is "acquired" a clear term.

The statute further defines "breach" and "breach of the system" as unlawful and unauthorized acquisition of computerized

* Luis Salazar is a shareholder in Greenberg Traurig's Miami office, and a founding member of the firm's Data Privacy and Security Law Taskforce. He can be reached at 305.579.0751, or at salazarl@gtlaw.com.

THE LAW REVIEW

data that materially compromises the security, confidentiality, or integrity of personal information maintained by a business. To avoid the potentially expensive impact of accidental disclosures to unauthorized employees, the statute exempts “good faith” access by such an employee, provided there is no subsequent unauthorized use.

Harmless Breach. The statute contains a “reprieve” for breach victims. It excuses notification if, after “appropriate” investigation or after consultation with relevant federal, state, and local agencies responsible for law enforcement, a person reasonably determines that the breach has not and will not likely result in harm to the individuals whose personal information has been acquired and accessed. That determination must be documented in writing and kept for 5 years. Failure to create or maintain such records can result in a fine of up to \$50,000.

Timing of Notice. Nevertheless, for qualifying breaches, the statute requires that notification be made without “unreasonable delay, consistent with the legitimate needs of law enforcement” or subject to any measures necessary to determine the presence, nature, and scope of the breach and to restore the reasonable integrity of the system. Notification must be made no later than 45 days following the determination of the breach. The notification requirement can be delayed upon a specific request by law enforcement, if a law enforcement agency determines that the notification will impede a criminal investigation. In that case, the notification time period required by the statute does not start until the affected business receives notice from that law enforcement agency that breach notification may be made.

Notifying Victims. Breach notification, in turn, may be made by several methods: (a) written notice; (b) electronic notice, if consistent with the electronic records and signature provisions of 15 U.S.C. § 7001, or if the person providing notice has a valid email address for the subject person and that subject person has agreed to accept communications electronically; or (c) substitute notice if the affected business can show that the cost of providing notice will exceed \$250,000, that the noticed class exceeds 500,000, or that the business does not have sufficient contact information. If substitute notices are allowed, they must consist of either electronic mail or email notice, if the business has an email address, a conspicuous posting of the notice on the business’ webpage, and notification to major statewide media.

The statute also provides notification exception for businesses that have their own notification procedures as part of that information security or privacy policy that is otherwise consistent with the timing requirements of the statute, and for notification procedures established by rules, regulations or procedures established by the primary or functional federal regulator of a particular business. If notice is made consistent with either of those two exceptions, the business will be considered to be in compliance with the breach notification statute.

Notifying Reporting Agencies. In addition to notifying victims, any person discovering circumstances requiring notification of more than 1,000 people must also notify all consumer reporting agencies without “unreasonable delay.”

Enforcement. The Department of Legal Affairs is charged with enforcing this statute. The statute does not bar, however, private causes of action for damages caused by data breaches.

Consequences of Non-Compliance. Sanctions for failure to comply can be quite severe. Any person failing to provide notice within the required 45 day time period is liable for an administrative fine not to exceed \$500,000, which breaks down to \$1,000 for each day the breach goes undisclosed for up to 30 days, and, thereafter, \$50,000 for each 30-day period or portion thereof up to 180 days. If notification is not made within 180 days, any person required to make notification and failing to do so is subject to an administrative fine of up to \$500,000. Fines are levied per breach, and not per affected individual.

In conclusion, it is possible that Congress will enact a National data breach notification law that will preempt the various different state statutes now creating a maze of compliance issues. But until then, Florida businesses – and their lawyers – should be careful with their data, and be alert to notification requirements. Penalties for data breaches are simply too steep to ignore.

We Congratulate the 2008 Officers and Board of Directors of the Cuban American Bar Association and our own Jose "Pepi" Diaz



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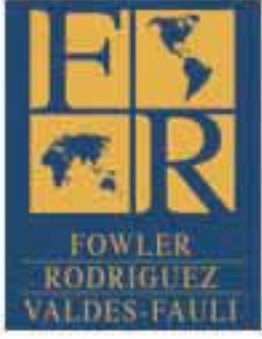
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BNY MELLON congratulates CABA's incoming President, Marlene Quintana, and the members of the 2008 Board of Directors. We have always valued our long-standing relationship with you, and we were honored to once again be the Event Sponsor of your Annual Installation Dinner.

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The Honorable Sandy Karlan

Associate Administrative Judge

Family Division

Eleventh Judicial Circuit

By Marie E. Mato

Judicial Profile

She grew up in the Manhattan suburb of New Rochelle, NY in a family that was atypical for its time. Anyone who has visited Judge Sandy Karlan's office has seen photographs of her father, Bernard Karlan, surrounded by his teammates on the New York Giants and of her mother, Muriel Richter with her Brooklyn Law School Class of 1931. At a time when most women were stay-at-home moms, Muriel Richter maintained a full-time family law practice in Manhattan (which she kept her entire life), was a founding president of the New York Women's Bar Association, and was active in the American Bar Association.

Judge Karlan came to Miami in 1970 to finish college at the University of Miami. Upon graduation, she worked for the Sonesta Beach Hotel and was active in the Dade County Chapter of the National Organization of Women where she chaired fundraisers and promoted the First Women's Film Festival. Inspired by the work of the women she met as well as her own mother, Judge Karlan entered law school. During her law school years, Judge Karlan served on the board of the Florida Feminist Credit Union which helped women obtain credit when it was otherwise unavailable. In 1978 she graduated with honors from the Shepard Broad Law Center at Nova Southeastern University.

Upon graduation, Judge Karlan clerked for Judge Alan Schwartz of the Third District Court of Appeal and became active in the South Florida legal community. She was a founding member of the Dade County Chapter of the Florida Association for Women Lawyers (FAWL) and served as its president in 1984. During her tenure, she helped develop the FAWL scholarship program. Together with Judge Gill Freeman, she worked tirelessly to have the Florida Supreme Court create the Gender Bias Commission. This commission helped eliminate gender bias in Florida's courts and its laws. Also, as one of the first women members of the Florida Bar Board of Governors, Judge Karlan was instrumental in having the Board create a Special Committee for Gender Equality in the Profession which adopted the gender bias recommendations. Judge Karlan juggled all these projects while working in private practice as a bankruptcy and family law attorney.

In 1995 Governor Lawton Chiles appointed Judge Karlan to the bench. She is currently the Associate Administrative Judge of the Family Division in the Eleventh Judicial Circuit. In addition to handling her administrative duties and her regular division, Judge Karlan is one of two judges assigned to the Complex Litigation Division. This specialized division was created as a result of the work done by the Florida Supreme Court's Family Court Steering Committee, of which Judge Karlan was a member. The Steering Committee developed a model family court designed to coordinate the fragmented divisions of the courts that address the problems of families. The Unified Family Court Model (UFC) was adopted by the Florida Supreme Court in 2001 and has been implemented through administrative order by the various judicial circuits. In the Eleventh Judicial Circuit, the UFC is known as the Complex Litigation Division (CLD) and is comprised of one judge from the family division and another from the juvenile courthouse. Families are referred to the CLD if they have two or more open cases in the court system, including at least one domestic relations matter (pre or post judgment) and a dependency proceeding.

As the family court judge in the CLD, Judge Karlan coordinates the proceedings with the judge in the criminal court and/or the delinquency court if the parties have proceedings there as well. The purpose of the CLD is to have the parties leave the court system in better shape than they entered it. The CLD accomplishes its mission by streamlining the proceedings, eliminating conflicting court orders, avoiding referrals to repetitive programs, cutting costs, preventing the split up of issues into different divisions, and relying on alternative methods of dispute resolution such as mediation. Judge Karlan points to the statistics which underscore the success of the "one judge, one family" model. Since 2002, Judge Karlan has seen over 100 families in her division which represent over 350 cases – of these only 5 have been tried and only 7 have returned (usually for collection of child support). Judge Karlan's work with the CLD and as chair of the Florida Bar Commission on the Legal Needs of Children has been highlighted by Judge Seymour Gelber in his book, "On Behalf of Children."

As a judge, Judge Karlan has dedicated herself to improving the treatment of and services provided to families and children in the courts. In addition to her work on the bench, Judge Karlan mentors young lawyers and judges, actively participates in CABA, and enjoys ballroom dancing and spending time with her husband Joe Lupo.

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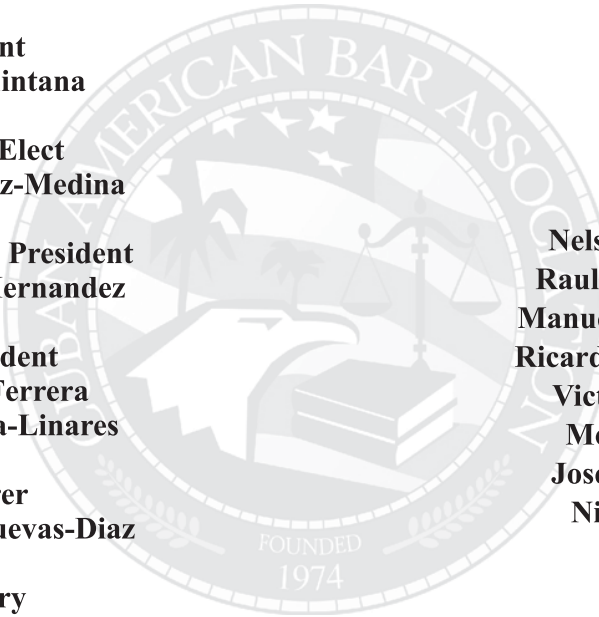
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I would like to take this opportunity to thank my partners at Houck Anderson for affording me the opportunity to participate in CABA. Their support has allowed me to fully participate in what I believe to be the greatest voluntary bar organization around. I am very proud to be part of the leadership of CABA.

Raúl J. Chacón Jr., Esq.
CABA Director, 2005 - present

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Preparing Your Expert for his Direct Examination at Trial

By Francisco Ramos, Jr.

An effective direct examination of your expert begins well before he takes the stand. Weeks, if not months before trial, meet with your expert at his office and lay the foundation for his trial testimony. Make sure to cover the following:

Curriculum vitae. Get the expert's latest curriculum vitae and cull out his accomplishments that are related to the topics and issues he will be addressing at trial. Does he teach, write, or speak about the issues you want him to talk to the jury about? Discuss them with the expert and plan on how to show the jury that this person speaks with authority.

Expert's deposition. Painstakingly review the expert's deposition with him. He cannot change those words at trial without the threat of being impeached by imposing counsel. Nothing sinks an expert's credibility like being impeached with his own words. Make sure he knows what he said and is prepared to be consistent when he testifies at trial.

Documents. Review with the expert all the documents he saw at deposition and any new ones that have cropped up since. Your expert must be familiar with all the relevant documents and appreciate their significance and impact on the case. Don't hide evidence from your expert to "preserve" his opinions. Make sure he knows everything that is out there and is prepared to handle it.

Your theme. Every case has a theme. Don't keep it to yourself. Share it with your expert and discuss how his testimony will reinforce that theme and make it vivid in the eyes and ears of the jury.

The good stuff. List everything that helps your case - facts, circumstances, evidence - and discuss with your expert how he can bring these things out during his testimony.

The bad stuff. You have to take the bad with the good. List everything that hurts your case and discuss with the expert how he can deaden the blow of these items during his questioning.

Terminology. If you are using an expert, chances are you are wrestling with concepts and issues that require big words to explain. Big words are fine for text books and scholarly journals, but not for juries. Have your expert talk through his testimony and stop him every time he uses a word or a phrase that a jury would struggle with. Go over that testimony and break it down until it is in bite size pieces a jury can digest.

Exhibits. Testimony is more than just words. Visuals are just as important, if not more so. While you are at the expert's office, look around and see if he has any models or posters or something else that he uses with his patients, clients or colleagues to explain what you want him to explain to the jury. Have him show you how he uses these items and decide with the expert how these props will be used at trial. If he does not have his own exhibits, work with him to craft ones he feels comfortable using.

Your questions. There should not be a single question from you that your expert hears for the first time at trial. Likewise, there should not be a single answer from your expert that you hear for the first time at trial. To ensure this, you need to prepare a script with every question you plan on asking, and go through each and every one of them with the expert. In doing this, you will discard some questions, add others and rework some too, until you have all the questions you want and have them in the order you want.

The other side's questions. There should not be a single question you expect the other side to pose to your expert that your expert does not hear first from you. Put him through the ringer and see how he does. Keep swinging at him until he learns how to fend off your blows and learns how to land a few of his own. By role-playing the other side's cross, you will have a greater appreciation of what the scope of your direct examination should be.

Communicate. It is your expert's job to communicate your case to the jury. How do you know he is doing that? First, is he communicating to you? Does he speak to you, does he convince you, does he move you? Your opinion, admittedly, is biased. You hired this expert. Don't rely simply on your own reactions. Bring a non-lawyer spouse or friend to a prep session with your expert and have them hear your direct examination. Do they understand what your expert is trying to say? Do they understand the words he uses? The concepts he expresses? If this person does not understand your expert, is not moved by him, the chances are neither will the jury. This person will serve as a sounding board to help improve your expert's message.

By the time trial comes, you will have met with your expert several times, reviewing with him his deposition testimony, the deposition testimony of others, numerous documents and his testimony in painstaking detail. You will have done all this to ensure that at the time of trial his words will effect change in the hearts and minds of that jury.



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Que Pasa CABA? [kay passa cah-ba]

UPCOMING CABA EVENTS

**Annual Spring Mentor Reception:
Passing on Leadership and
Presentation of Law Firm
Diversity Survey Awards**
Thursday, April 10, 2008, 5:30 p.m.
to 7:30 p.m.
Greenberg Traurig, 1221 Brickell
Avenue, Miami, Florida 33131

**Members' Luncheon: What You
Need to Know to Go Solo -**
Panelists include: Robert
Fernandez, Esq., Robert
Fernandez, P.A.; Roger Cabrera,
Esq., Dray Cabrera & Zacca, LLP;
Frank Jewett, MicroDesk; and
others TBA.
May 2008, 11:30 a.m. to 1:00 p.m.
Ritz Carlton, Coconut Grove, Florida
More information to be provided

**Service Juris Day: A day of
volunteer service by
Miami's legal community**
Saturday, May 17, 2008 at the
Juvenile Justice Center
Time and event registration
information will be available in the
coming weeks.



**If you are interested in sponsoring an event:
Contact Monica Gordo at MonicaGordo@MiamiSAO.com
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Thank you for your support.**



UPCOMING EVENTS OF INTEREST

**Miami Bridge Youth and Family
Services, Inc.
Annual Dinner and Dance**

"Bridge to the 60's"
Saturday, April 26, 2008, 7:00 p.m.
Cocktails, 8:00 p.m. Dinner
Grand Bay Miami Bridge, 2669 South
Bayshore Drive, Coconut Grove,
Florida 33131
Cost: Individual Seat - \$200
Silver Table of Ten - \$2000
Gold Patron Table of Ten - \$3000
Platinum Event Sponsorship - \$5000
RSVP: Margaret at (305) 636-3504 or
mross@miamibrIDGE.org
Attire: 1960's Far Out Frocks and
Groovy Glad Rags (preferred but not
mandatory)

**Dr. Paul George Walking Tour of
the Freedom Tower**

Monday, April 28, 2008, 5:00 p.m.
Freedom Tower (front steps) 600
Biscayne Boulevard, Miami, Florida
Call (305) 375-1619 for information
and registration
11th JCHS Members: \$20, Non-
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Advance reservations and payment
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For detailed information on the above
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Membership:

Membership in CABA is open to all lawyers in good standing with the Florida Bar and law students who have an interest in, and wish to contribute to, the purposes of the association. To join CABA, please fill out the membership form on the next page and return it along with your membership dues, as indicated.

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Student	\$30.00 _____
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Attorney (Over 5 years of practice)	\$90.00 _____
Tax Deductible Donation to Pro Bono Project (Please indicate amount)	\$ _____
Donation to the CABA Scholarship Fund*	\$ _____
Listing as Practicing Attorney in a particular area for one year on CABA's website	\$25.00 _____
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Please make checks for Membership payable to CABA, checks for Pro Bono Project Donations payable to CABA Pro Bono (tax deductible) and checks for the CABA Scholarship Fund payable to CABA Foundation.

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What you would like to see CABA doing?: _____

Or e-mail your ideas to vcuevas@broadandcassel.com or marlene.quintana@akerman.com

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BE AN ACTIVE PART OF CABA!

Another great way to take part in CABA is by volunteering to take case(s) under the Pro Bono Project. If you are interested in participating, please specify under which area(s) you can assist:

(1) _____ (2) _____

COMMITTEE SELECTION

IMPORTANT NOTE: IF YOU WERE ACTIVE ON A COMMITTEE LAST YEAR, YOU MUST SUBMIT A FORM TO BE RE-APPOINTED. ROSTERS ARE CLEARED EACH YEAR.

Please select committees in order of preference (i.e. 1=First Choice and 2= Second Choice). Every effort will be made to appoint you to the committee(s) you choose.

_____ Broward Liaison	_____ By-Laws	_____ CABA Briefs
_____ CABA on Cuba	_____ Coalition of Hispanic Bars	_____ Community Liaison
_____ Events	_____ Judiciary	_____ Law Firm Survey
_____ Legislative	_____ Membership	_____ Mentoring/Scholarship
_____ Website / QPC		

If you have any questions, please contact Vivian de las Cuevas-Diaz at (305) 373-9426 or via e-mail at vcuevas@broadandcassel.com.

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CABA in Action



THE VOLUNTARY BAR ASSOCIATION PRO BONO SERVICE AWARD*

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The purpose of the Voluntary Bar Association Pro Bono Service Award is to recognize, when appropriate, a voluntary bar which has demonstrated a significant contribution in the delivery of legal services to individuals or groups on a pro bono basis.

Cuban American Bar Association

Since its inception in 1974, the Cuban American Bar Association has sought to provide equal representation of minorities before the courts. In 1984, CABA established the CABA Pro Bono Project in response to the needs of indigent Spanish-speaking people in Miami-Dade County, many of whom were recent arrivals to the United States and who did not have access to Spanish-speaking lawyers and the courts. The project was recognized as a Point of Light by President George H. Bush in 1992.

CABA's Pro Bono Project, which is located in Little Havana, mainly serves low-income immigrants and refugees of Hispanic descent. During 2007, CABA had an intake of almost 1,000 cases. It was expected that by the end of 2007 they would have 125 volunteer attorneys.

CABA volunteers assist the poor in bankruptcy-related matters, consumer, immigration, family, criminal, housing and disability cases. The association's volunteer attorneys spent more than 400 hours in 2007 assisting the poor.

In late 2007, the project hired its first staff counsel and relocated its offices to better accommodate clients and staff. Additionally, the third annual for the project raised more than \$60,000, twice the amount raised in the previous year.

Over the years, CABA has made great strides with its pro bono and community service. From spending more than 5,000 hours representing detained Cuban rafters in 1994, to petitioning the Inter-American Commission on Human Rights on behalf of jailed dissidents, CABA is a shining example to other bar organizations of the good that can be accomplished.

The Cuban American Bar Association's stated mission is to give back to the community by providing legal assistance to the indigent Hispanic/Cuban American community. Through the CABA Pro Bono Project that mission has become a reality.

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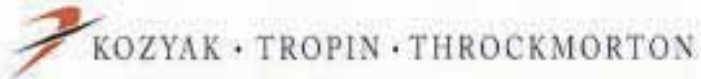
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