



July 1992

# C A B A

N E W S L E T T E R

PRESIDENT - J. RAUL COSIO

EDITOR - KATHY FERNANDEZ RUNDLE



## A MESSAGE FROM THE PRESIDENT

**C** Since its inception, hundreds of CABA members have taken part in CABA's pro bono program and served over 1,700 clients throughout the community. It should come as no surprise that the foresight leadership and devotion of Junior Garrido, and participating CABA members, is now being recognized. There is no doubt that CABA's pro bono program services as a model for other programs due to its significant and effective contribution to the less fortunate population of South Florida.

For years The Florida Bar and the local bar associations have been outspoken concerning the community's need for better and more encompassing pro bono legal services. As President of CABA, I had the distinct pleasure and privilege of accepting, on behalf of CABA, the acknowledgment and acclamation recently given to CABA's pro bono program, founded by Junior Garrido some eight years ago.

I take this opportunity to urge all of you to continue the commitment and effort generated over the past eight years and to further advocate for the ever present need for broader and more effective interaction between the legal community and those individuals who are unable to afford qualified and caring legal assistance.

It is impossible for me, in this message, to recognize all those members worthy of recognition, however, I once again ask you all to continue to build and guide CABA's efforts as a pioneer and leader in pro bono services.

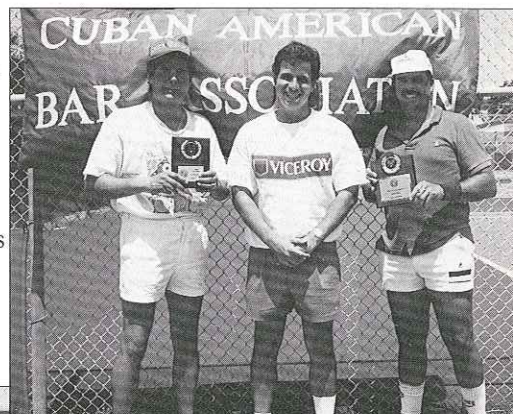
## CABA's Tennis Tournament

**C** ABA's renewed annual tennis tournament was held on Sunday, May 31, 1992 at the Airport Marriott Tennis and Racquet Club. There were thirty-six players participating in a combination singles and doubles format. Included among the participants were the following judges: Sidney B. Shapiro, Nancy J. Pollock, Mario P. Goderich, Jack Block, Peter S. Capua, Joel H. Brown.

The Singles winner was Luis A. Fors with runner-up honors going to Emilio Pastor. The doubles division produced Tomas Gamba and the Honorable Sidney Shapiro as winners with runner-up honors going to Raul Garcia-Vidal and Rene Murai.

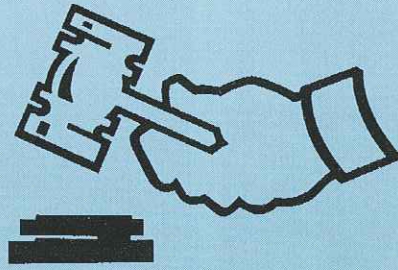
Once again, thanks to all who participated and assisted in making this event a success. Special thanks to the Airport Marriott for the use of their facilities and Mr. Manuel Portuondo of Eagle Brands, Inc. for his generous donation of beverages on a very hot and humid day.

(L-R) Emilio Pastor, Eddie Cosio, Luis Fors



(L-R) Judge Sidney Shapiro, Tom Gamba, Eddie Cosio, René Murai, Raul Garcia-Vidal.

# CALENDAR CALL



CABA's Conference of the Americas begins **Sunday, July 19** continuing through **July 22, 1992**. It will be held at the Hotel Intercontinental. For further information, please contact Tony Santos at (305) 371-2800.

CABA's Annual Judicial Luncheon is scheduled for **July 31, 1992** at the Sheraton Brickell Point. If further information is required, please contact Eddie Palmer at (305) 536-4031.

**August 28, 1992**, CABA will host an Ethics and Media Seminar to be held at Sheraton Brickell Point. Speakers include Tom Gamba, Honorable Mario Goderich and Roy Black. Contact Sergio Mendez at (305) 443-2291 or Ana Margarita Collado at (305) 444-1224 for further information.

## CABA Receives U.S. Presidential Point of Light Award

President Bush recently recognized CABA's Pro Bono Legal Services Project with the 733rd "Daily Point of Light" award. He recently met with CABA President J. Raul Cosio, Jose "Junior" Garrido, founder of the project, Maria Medel, the devoted coordinator of the project, and Lourdes Metcalfe, who works tirelessly for the project.

On May 21, 1992, Junior Garrido was honored by his CABA friends and colleagues for his vision and commitment in founding this project in 1984. Lawyers Cesar Alvarez, Jose Rodriguez-Gomez and Maria Medel were also recognized for the hours of legal services they have contributed to the project. Needless to say, CABA is very proud of its project, which over the years has served thousands, and of its lawyers who made this recognition possible.

## JOB MARKET

The Value Adjustment Board of the Clerk's Office is seeking attorneys to serve as Special Masters. Write Frank Fernandez, Deputy Clerk, Metro-Dade Center, 111 NW 1st Street, Suite 1720, Miami, FL 33128 or phone (305) 375-5651.

Walt Disney World Co. has two openings for real estate attorneys with 6-7 years experience, preferably in time-sharing transactions. Competitive salary. They are seriously seeking Hispanic and other minority lawyers. Contact Pedro P. Saez, Esq., 799 Brickell Plaza, Suite 606, Miami, FL 33131.

THE WHITE HOUSE  
WASHINGTON  
MARCH 31, 1992

Dear Friends:

I was delighted to learn of your outstanding work in behalf of your community. Your generosity and willingness to serve others merit the highest praise, and I am pleased to recognize you as the 733rd "Daily Point of Light."

Since taking office as President, I have urged all Americans to make community service central to their lives and work. Judging by your active engagement in helping others, it is clear that you understand this obligation.

We must not allow ourselves to be measured by the sum of our possessions or the size of our bank accounts. The true measure of any individual is found in the way he or she treats others - and the person who regards others with love, respect, and charity holds a priceless treasure in his heart. With that in mind, I have often noted that, from now on in America, any definition of a successful life must include serving others. Your efforts provide a shining example of this standard.

Barbara joins me in congratulating you and in sending you our warm best wishes for the future. May God bless you always.

Sincerely,

Volunteers and Staff of  
Cuban American Bar Association  
Pro Bono Project



# Case Notes

BY OSCAR MARRERO and SERGIO MENDEZ

**C**ox Cable Corporation v. Gulf Power Company, 17 FLW S. 31 – Indemnity contracts which attempt to indemnify a party against its own wrongful conduct will be enforced “only if they express an intent to indemnify against the indemnitee’s own wrongful acts in clear an unequivocal terms.” Public policy requiring specific indemnification provisions applies with equal force to instances where the indemnitor and indemnitee are jointly liable. The rationale of **University Plaza Shopping Center v. Stuart**, 272 So.2d 507 (Fla. 1973) reaffirmed and extended to cases involving joint negligence.

**Fenelon v. State**, 17 FLW S. 101 – Evidence that a defendant was seen at the scene of a crime, leaving the scene or fleeing from the scene, in most instances, would be relevant to the question of the defendant’s guilt. The difficulty inherent in the flight instruction is in deciding when “leaving” or “fleeing” actually indicates consciousness of guilt. The better policy where evidence of flight has been properly admitted is to reserve comment to counsel, rather than using flight instruction.

**State of Florida v. E.D. “Bud” Dixon**, Section 61.181(5) – is constitutional because it does not

pledge public credit. Furthermore, even if a pledge of public credit had been involved, Section 61.181 (5) serves a strong public purpose. This statute requires the Clerk disburse funds representing payments made to the domestic relations depository account. The liability is non-existent since the Clerk collects a fee for handling and disbursing payments.

**Shuster v. South Broward Hospital District Physicians Professional Liability Insurance Trust**, 17 FLW S. 5 – an insured cannot maintain an action against his insurer for bad faith where the insurer has settled a cause of action against the insured within policy limits of the insurance contract where contract provides the insurer may settle the claim as it deems expedient, and the insured is not exposed to an excess judgment. The Court denying a cause of action despite the fact that the settlement might have caused other damages. In **Shuster**, the physician claimed he could no longer obtain malpractice insurance as a direct result of the settlement made against his order.

**Marie Y. Bidon v. Department of Professional Regulation**, 17 FLW S. 199 – Recovery from the Fla. Real Estate Recovery Fund of an unsatisfied judgment against a real estate broker does not include

recovery of attorney’s fees and costs as actual or compensatory damages. The general rule is that attorney’s fees incurred while prosecuting or defending a claim are not recoverable in the absence of a statute or contractual agreement authorizing their recovery. Section 475.482(1) intended to preclude the recovery of attorney’s fees from the Fund.

**Rhonda McCoy v. State of Florida**, 17 FLW S. 263 – Pending adoption of a permanent rule, the following shall be the appropriate procedure governing plea agreements. First, the terms of the plea agreement that are the subject of non-compliance must be expressly made a part of the plea entered into in open court. Second, the State, in moving to vacate the plea agreement on grounds of non-compliance, must file the Motion seeking vacation of the plea and sentence within sixty (60) days of defendant’s non-compliance. Third, the defendant must have a full opportunity to be heard at an evidentiary hearing on the issue. Fourth, to vacate the plea and sentence, the Court must find that there has been substantial non-compliance with the expressed plea agreement. Finally, upon vacating the plea, the cause must be set for trial within ninety (90) days of the Order vacating the plea.



(L-R) Past Pres. Roberto Flietas, Judge Hank Harnage, Past Pres. Manny Morales, Past Pres. Kathy Fernandez Rundle, Judge Gene Fierro, Judge Norman Gerstein and Pedro Martel.



(L-R) Eddie Cosio, Jackie Gonzalez, Junior Garrido, Judge Margarita Esquiroz, V.P. Fernando Aran.



(L-R) Eddie Cosio, Judge Gene Fierro, Judge Allen Kornblum, Past-Pres. Kathy Fernandez Rundle, Judge Fred Moreno, Cristina Moreno.



(L-R) Project Coordinator Maria Medel, Pres. Elect Tony Marin.

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### Note from the Editorial Board:

Katherine Fernandez Rundle (editor), Javier Perez-Abreu, Oscar Marrero and Sergio L. Mendez: The views expressed herein are those of the authors and the editorial board and do not necessarily reflect the opinion of CABA's Board of Directors. As hopefully you can see, a coordi-

nated effort has been made to change our newsletter presentation. We need your help and feedback, though, to be successful. Please help us by providing articles or news of interest. We encourage your participation and want to know your opinions. Please contact any of the editorial board members.

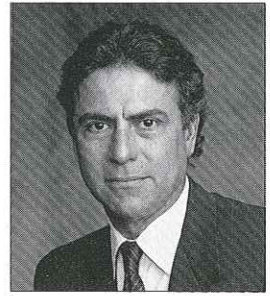
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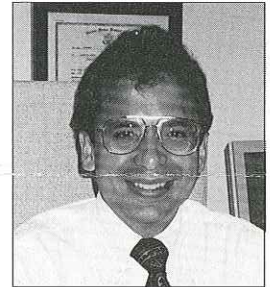
## Members on the Move

**R**oberto Martinez, a respected long-standing member of CABA, was recently selected by the White House to become the first Cuban American to serve as South Florida's U.S. Attorney. This exceptional individual and lawyer left a lucrative practice to return to the public office he had previously served. CABA is proud of this selection as is the legal community as a whole.



Roberto Martinez

Oscar E. Marrero was recently honored by the Dade County Bar Association for his countless hours of pro bono legal services to the "Children First" program. Oscar has been a member of CABA for over 10 years and is on the CABA newsletter editorial board.



Oscar E. Marrero

**1 out of 315  
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falling off a  
ladder.  
1 out of 5  
involves  
someone  
climbing up.**

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# CABA

NEWSLETTER

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To Jose Garrido  
With best wishes,

Q. T. Bark