



# INTER ALIA

MARCH/APRIL 2015

NEWSLETTER OF THE MANATEE COUNTY BAR ASSOCIATION

## Clarify Before You Say Goodbye: The Initial Meeting and the Attorney-Client Relationship *By Jennifer Fowler-Hermes, Esq.*



The test in Florida to determine whether an attorney-client relationship exists, and therefore whether an attorney has an obligation to act with reasonable diligence and promptness as provided for in Bar Rule 4-1.3, turns on the client's reasonable subjective belief that he is consulting a lawyer in that capacity and his manifested intention is to seek professional legal advice. *See Bartholomew v. Bartholomew*, 611 So.2d 85, 86

(Fla. 2nd DCA 1992); *Keepsake, Inc., v. P.S.I. Industries, Inc., et al.*, 33 F.Supp.2d 1033, 1036 (M.D. 1999); and *The Florida Bar v. Beach*, 675 So.2d 106, 109 (Fla. 1996). The relevant case law regarding the existence of an attorney-client relationship focuses on the following distinction: "whether the meeting was essentially a 'job interview' which concerned only the lawyer's ability to serve as their counsel in the upcoming litigation . . . or also included discussion of the legal matters involved in the case, resulting in an attorney-client relationship and thus an irrefutable presumption that confidences were disclosed..." *Boca Investors Group, Inc. v. Potash*, 728 So.2d 825 (Fla 3rd DCA 1999). Most cases involving the application of this test focus on whether an attorney should be disqualified due to a prior attorney-client relationship. However, that is not always the case.

The threshold for the existence of an attorney-client relationship, as described above, appears to be relatively simple. However, confusion and problems still arise. For instance, in *The Florida Bar v. Gass*, --So.3d--, 2014 WL 7178926, (Fla. December 18, 2014), the Florida Supreme Court suspended an attorney for several violations of the Florida Bar Rules. One of the rules this attorney was found to have violated was Rule 4-1.3. This rule provides that a lawyer should act with reasonable diligence and promptness in representing a client. In this case, two of the failures cited by the Court in reaching its disciplinary decision occurred prior to the attorney formally entering a notice of appearance with the trial court.

In April 2010, the Respondent, Gass was hired to represent a husband and wife in several matters, including matters related to their business. When they met with the attorney a default judgment had already been entered in one of the matters against their business for an outstanding debt. During the initial meeting, the attorney was advised not only of the default, but also that both the husband

and wife had been subpoenaed to appear at a deposition in that case in May 2010. The attorney advised the husband and wife not to attend the deposition. Following the attorney's instructions, the husband and wife did not appear for their depositions. In June 2010, the Court issued an order to show cause and the depositions were rescheduled for later that month. The husband and wife appeared for their rescheduled depositions, the attorney did not. Only after these depositions, did the attorney enter a notice of appearance. *See Id.* at \*1.

The referee that heard the Bar complaint determined that even before he filed a notice of appearance in the case, the attorney was counsel for the husband and wife, and thus subject to Rule 4-1.3. The referee stated: "it is clear that Respondent was representing the [clients] prior to the Notice of Appearance and that Respondent should have been present at the [clients'] deposition. Respondent's failure to attend is a clear indication of a lack of diligence in representing the [clients]." *See Id.* at \*1.

The Florida Supreme Court approved the referee's recommendations as to the attorney's alleged violations of Rule 4.1-3, including the referee's citing the attorney for advising to his clients to not attend depositions scheduled in their civil case, and his failure to attend the rescheduled depositions after the court's order to show cause. *See Id.* at \*3. Although there were several additional, and more extreme, instances where this attorney failed to provide diligent representation to his clients, the conduct prior to the notice of appearance, did nothing to help this attorney's case. The Florida Supreme Court rejected the referee's recommendation of a 60 day suspension from the practice of law and imposed a one year rehabilitative suspension. *See Id.* \*5-6.

Although it is not discussed specifically in the opinion, it appears that this attorney did not believe that he had any representation obligations in that specific case against his clients due to the default that had already been entered while the husband and wife believed that he was serving as their counsel. This case is a reminder to all of us, that before concluding an initial meeting with a potential client, we need to affirm the client's expectations. If his expectations diverge from our own, clarify before you say goodbye.

*Jennifer Fowler-Hermes, Esq.*  
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## Andrew R. Boyer Receives Florida Bar President's Pro Bono Service Award

MCBA member **Andrew R. Boyer**, shareholder with the firm of Boyer & Boyer, P.A., recently received the 2015 Florida Bar President's Pro Bono Service Award for the 12th Judicial Circuit during a ceremony at the Florida Supreme Court. Established in 1981, The Florida Bar President's Pro Bono Service Awards are intended to encourage lawyers to volunteer free legal services to the poor by recognizing those who make public service commitments and to raise public awareness of the substantial volunteer services provided by Florida lawyers to those who cannot afford legal fees. Florida Bar President Gregory W. Coleman presented the 2015 awards.

In 1994, when he was 10 years old, Andrew traveled to Tallahassee with his father, Edwin, who was to receive the same award. The Supreme Court justices let the boy sit on the bench, and his father explained the importance of helping those who cannot help themselves. The experience made an impression. Today, Andrew is the recipient of the same honor for his pro bono service. A graduate of the Stetson University College of Law who now practices with his father at Boyer and Boyer in Sarasota, Andrew was admitted to The Florida Bar in 2007 and has been volunteering for

Legal Aid of Manasota since 2008. He has donated more than 330 hours of pro bono service, taking on everything from the drafting of countless wills and advance directives for elderly clients and terminally ill patients to complex guardianship cases. Boyer's spirit of volunteerism extends beyond the courtroom. He was instrumental in organizing Florida's first "Wills for Heroes" event in 2010. Boyer

trained volunteer attorneys, drafted forms and acted as a troubleshooter at the event, which provided free wills for first responders, including police, deputies, firefighters and paramedics. "Wills for Heroes" inspired "Wills for Helping Hands," also organized with help from Boyer, which offered free wills to the front-line staff of nonprofit organizations, including case workers and receptionists. More than 300 wills were prepared at these events.

The awards recognize pro bono service in each of Florida's 20 judicial circuits as well as service by one Florida Bar member practicing outside the state of Florida. In the most recent 12 months reported, Florida lawyers provided nearly 1.9 million hours of pro bono services to those in need and gave \$4.9 million to legal aid organizations. (Andrew Boyer and his daughter Chloe with Chief Justice Jorge Labarga and Florida Bar President Greg Coleman.)



### A MESSAGE OF THANKS

*Dear Friends and Colleagues,*

*My family and I want to extend a heartfelt thanks to all who attended and contributed to my farewell party last month. What a great and humbling time it was! I will never forget it. It's been an honor and privilege to have known and worked with you all over the years, what a wonderful journey it's been, I've been truly blessed!*

*And now as I begin a new journey in life, I'll have more time for travel and other activities that a daily work schedule made difficult. We already have a trip to Las Vegas booked for April and Alaska for the end of May. And maybe I'll see some of you at the next Wailers concert!*

*Thank you, and my love to all!*

*Marc Gilner*



**NEWSfromthe  
FAMILYCOURT**

There is now a Family Court UMC docket twice a month for simple non-contested hearings. Available for scheduling through JACS on two different days per month, Judge Nicholas' time is at 8:30 am and Judge Dunnigan is 9:00 am. Hearing times are limited to 5 minutes in uncontested, non evidentiary matters only, and only when earlier time is unavailable on JACS.



## Walker Investiture

Circuit Judge Stephen M. Walker also recently joined the 12th Judicial Circuit Court. Among those in attendance to honor the judge and to represent their organizations were L to R: Dan Bailey, Esq. - Jeffrey S. Goethe, President - Manatee County Bar Association; Douglas Cherry, President - Sarasota County Bar Association; Laurie Zimmerman - American Board of Trial Advocates; Michele Stephan, Vice-President - Florida Association for Women Lawyers, Sarasota Chapter; Judge Stephen Walker; Ann Marie Rizzo - Florida Association Of Criminal Defense Lawyers and Robert T. Klingbeil, Jr., President - South County Division of the Sarasota County Bar Association.

## Maulucci Investiture

The Honorable Susan B. Maulucci was recently sworn in as one of our newest circuit court judges. Representatives of our local legal community and friends were on hand for presentations and remarks for the new judge. Pictured L to R: Jeff Goethe, President – Manatee County Bar Association; Robert Klingbell, Jr., President – South County Division Sarasota County Bar Association; Rabbi Barbara Aiello; George McClain – American Board of Trial Advocates; Judge Susan Maulucci; Chief Judge Andrew Owens; Hunter Carroll, President Elect – Sarasota County Bar Association; Terri Cromley, President – Manatee Chapter Florida Assn. for Women Lawyers and Pat Crauwels, President – Sarasota Chapter Florida Assn. for Women Lawyers.



## Bar-Wide Community Service Project

**Saturday – April 11 – 10:00 AM**

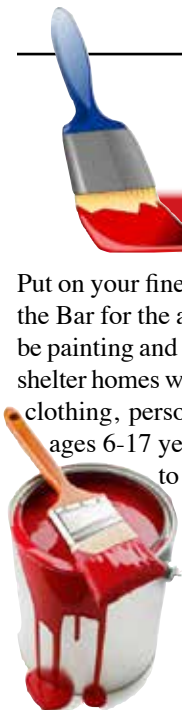
**Manatee Childrens Services Group Home And Shelter**

Put on your finest painting pants & shirt and join your friends from the Bar for the annual MCBA community service project. We will be painting and sprucing up one of the Manatee Children's Services shelter homes which provides immediate assistance, safety, housing, clothing, personal hygiene items, and transportation to children ages 6-17 years, who have been removed from their homes due to abuse, abandonment, and/or neglect.

In addition to the hands-on project, the shelter home is always in need of donations of the following items:

*Travel size toothbrushes, toothpaste, shampoo, conditioner, deodorant, body spray (male and female), combs, and body wash.* Please bring your donated items to the March 25th Bar luncheon meeting.

Sign up for the project at the March 25th Bar luncheon or by e-mailing Sue in the Bar Office. The address of the shelter will be provided to those members who volunteer.



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## Immunity Added to Code for Resolving Professionalism Complaints

On January 29, 2015, the Florida Supreme Court amended the Code for Resolving Professionalism Complaints ("Code") originally adopted by the Court in June 2013. *See In re Code for Resolving Professionalism Complaints*, 116 So. 3d 280 (Fla. 2013). The Code established a process for resolving complaints of unprofessional behavior by lawyers on an informal basis at the local level through the creation of Local Professionalism Panels. Following the Supreme Court's directive, the Twelfth Circuit established its Local Professionalism Panel in Administrative Order 2014-8.2 on April 10, 2014. This Administrative Order may be viewed on the Twelfth Circuit's website at [www.jud12.flcourts.org](http://www.jud12.flcourts.org).

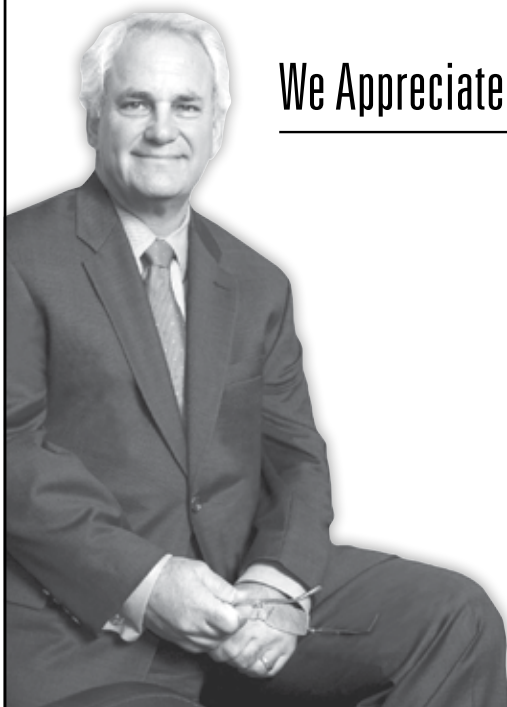
The latest Court opinion adds the following immunity provision as Section 4 of the Code as follows:

### Section 4. Immunity

**4.1 Local Professionalism Panels and Circuit Committees on Professionalism:** The members of the local Professionalism Panels, staff persons assisting those panels, members of the Circuit Committees on Professionalism, and staff persons assisting those committees, shall have absolute immunity from civil liability for all acts in the course and scope of their official duties.

The addition is patterned after two Florida Bar Rules, cited in the opinion, which provide absolute immunity from civil liability to committee members, staff members and voluntary counsel who investigate the unlicensed practice of law, as well as committee members, mediators, arbitrators, Florida Bar staff, and appointed voluntary counsel involved in the bar grievance mediation process.

The amendment is a welcome addition to the Code and acknowledges the contribution undertaken by those willing to serve on Florida's Local Professionalism Panels. The Court recognizes, as should our fellow members of the Bar, that those willing to shoulder the responsibility of addressing the professionalism of their peers should be able to exercise their independent judgment about the merits of a particular complaint without fear of being sued by a dissatisfied or unsatisfied participant in the process. The Twelfth Circuit will be amending its Administrative Order to include this immunity provision.



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## GILNER RETIREMENT



*Presenters and hosts: MCBA President Jeff Goethe, Judge Gilbert Smith, Colleen Glenn, SCBA President Doug Cherry, Judge Thomas Krug, Judge Gilner, Ed Sobel, Mickey Palmer and Master of Ceremonies Judge Peter Dubensky. Not pictured: Chris Pratt*



*Chris Pratt and JA Lisa Fritz*



*John Harllee and Judge Diana Moreland*



*Karen and Matt Martell*



*Scott Westheimer, Kim Bald, Aaron Crittenden and James Lynch*



*Mickey Palmer & Judge Gilner*



*Paul and Jennifer Grondahl with Adam Mohammadbhoy*



*Mark Nelson and Greg Hagopian*

Surrounded by his colleagues on the bench, his family and friends, Judge Marc Gilner was recently honored by the members of the Manatee Bar Association on the occasion of his retirement from the 12th Judicial Circuit Court.



*Judge Peter Dubensky unveils Judge Gilner's official portrait, which is now on display on the 6th floor of the Judicial Center.*



*Cindy Barry, Judge Gilner and Judge Scott Brownell*



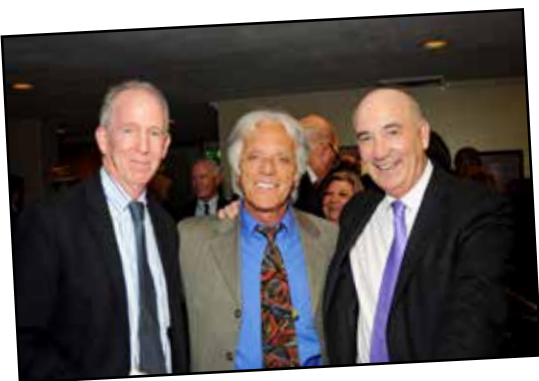
*Judge Gilner and his wife Sandi with their children and family*



*Judge Krug and Judge Smith present some interesting parting gifts*



*Scott Rieth, Ernie Lisch and Judge Durand Adams*



*Walt Smith, Vinny Lucente and Judge John Lakin*



*Judge Gilner and his loyal assistant Cindy Chin*



*Ed Mulock, Alix St. Paul and Judge Nicholas*

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## JUDICIAL ASSISTANTS HONORED

The Manatee Chapter of FAWL (Florida Association for Women Lawyers) recently held their annual JA Appreciation Luncheon at the Bradenton Country Club.



**Front row:** Nicole Cabrera (Magistrate Hudson), Marianne Makar (Judge Nicholas), Debbie Trusz (Judge Henderson), Petrina Lanza (Judge Singer)

**Standing:** Cathy Reed (Judge Lakin), Donna McCammond (Judge Smith), Vicki Shawva (Judge Brownell), Gail Elliott (Judge Moreland), Tess Luli (Judge Maulucci), Debbie Grund (Hearing Officer Hoffman), Laurie McClure (Magistrate Inman), Carla Neal (Judge Economou), Ruth Taylor (Judge Sniffen), Lisa Fritz (Judge Dubensky), Kelly Zoellner (Judge Farrance) and Cindy Chin (Judge Dunnigan).

### Welcome New Members

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**TRENT D. MILLER** - B.A. - Syracuse University (1991); J.D. – Widener Law (1997). Admitted to The Florida Bar in 1997. Mr. Miller is a solo practitioner in Miller & Miller, P.A. and practices in the area of Workers' Compensation.

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