



# THE Bulletin

“A Century of Service to Miami-Dade”

123 N.W. First Avenue Miami, Florida 33128 / [www.dadecountybar.org](http://www.dadecountybar.org) / January 2012

### DCBA Featured Events

(For additional information please visit our website at [www.dadecountybar.org](http://www.dadecountybar.org))

01/12	12:00 noon YLS Lunch with the Judges – The Law Office of The Public Defender
1/20	5:00 pm Membership Social Keg Party – Waxy O’Connors
02/18	9:00 am YLS Annual Co-ed Softball Tournament – Tropical Park

## PRESIDENT’S MESSAGE



Andrea S. Hartley

Twas the 95th year of the DCBA,  
The association is stirring from September through May;  
As the largest voluntary bar in the state,  
It is you, our members, that make the DCBA great;  
Our programs and luncheons are planned with great care,  
In hopes that you all soon will be there;  
The DCBA has over 30 committees to choose,  
Including Criminal, Real Property, Appellate, and Schools;  
Courts, Labor/Employment, Diversity, Securities Litigation,  
Business, Appellate, Membership, and Immigration;  
We produce near 200 programs a year,  
With hard work, dedication and lots of good cheer;  
Gain experience through lunchtime and full day CLE,  
Or borrow from our library a tape or cd;  
Is it smart phone, computer, or other gadget you adore,  
Tech Tuesdays will make you technologically challenged no more;  
Grow your practice through networking events and join LRS,  
We’ll provide the business development tools so you ease through the rest;  
Our Young Lawyers Section is always on the go,  
Their e-mentoring program helps new lawyers be in the know;  
The bar passage project tutors minority students to get a good score,  
Bids for Kids, public service, Judicial Reception, sports and much more;  
Follow the bar’s Code of Professionalism and Civility in every case,  
And your reputation is sure to come in first place;  
Give back through the bar to our community and profession,  
There are so many in need, due to the current recession;  
We are the association for all lawyers in Miami-Dade,  
Helping those in need through our own Legal Aid;  
Volunteer or donate to Put Something Back,  
A shortage of pro bono cases, we never lack;  
The need for adequate court funding we continue to fight;  
So that there’s equal justice for all, and for all a good night.

**WHAT?!? IT'S A KEG PARTY!**  
“BEER, CHICKEN WINGS, MUSIC AND MORE!”

**WHO? YOU AND THE DADE COUNTY BAR ASSOCIATION**

**WHEN? JANUARY 20, 2012 FROM 5P.M. TO 8P.M.**

**WHERE?!?**  
WAXY O'CONNOR'S MIAMI RIVER  
690 SW 1ST COURT  
MIAMI, FL 33130

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## JUDICIAL PROFILE: HONORABLE KATHLEEN M. WILLIAMS

By: Sabrina Puglisi



Smart, eloquent, loyal, supportive, witty, and fashionable are a few of the adjectives used by people to describe newly appointed Judge Williams. On August 4, 2011, after her appointment by President Barack Obama, Kathleen Mary Williams assumed the position of United States District Judge for the Southern District of Florida. Her official investiture took place on October 27, 2011, with a courtroom and overflow rooms packed with family, friends, former colleagues, and almost the entire Southern District bench. The excitement and relief that this day had finally arrived was apparent on the faces of everyone in attendance, as it has been a long wait for Judge Williams since her initial nomination by President Obama on July 21, 2010. However, no matter, because Judge Williams jumped into the job with her usual enthusiasm; and, with the help of her very capable staff, she is making sure that everyone who appears in her courtroom knows that their case is important to her and that they will have an opportunity to be heard.

Judge Williams was born in Derby, Connecticut to Mary Kathleen and William “Bill” Williams. When she was three years old, the family relocated to Lake Park, Florida, as a result of her father’s work building jet engines for Pratt Whitney. Having lost her mother at the young age of 12, Judge Williams had an extraordinarily close relationship with her father. Her accomplishments to date would have been no surprise to Bill Williams, as he always knew that his daughter was destined for greatness. In fact, it was his philosophy that there are no limits to what can be achieved if you work hard, get an education, and always do your best, a philosophy by which Judge Williams has lived her life.

Judge Williams attended what was, at the time, an all-girls Catholic school, Rosarian Academy. She excelled in school, earning the title of Valedictorian; she also participated in school plays, was student council president, and even engineered Senior skipday which to her disappointment was not a success due to the nuns discovering their plans. After high school, Judge Williams entered Duke University where she majored in history. Interestingly, Judge Williams always wanted to be a professor of history.

Dade County Bar Association

**THE Bulletin****DADE COUNTY BAR ASSOCIATION  
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**EX - OFFICIO**

Sookie Williams

**JUDGE KATHLEEN WILLIAMS** *from Page 1*

But, after taking a year off, during which time she worked on a project involving "The Diaries of George Washington," and waiting tables, she decided to attend law school, a longtime dream of her father.

Since graduating law school at the University of Miami, School of Law, Judge Williams has led a distinguished legal career in both the civil and criminal arenas. She started working with Fowler, White, Burnett, Hurley, Banick & Strickroot where she handled insurance defense matters. She was known fondly by many as the "depo queen." While she liked the work she was doing, she felt that she was destined to be a litigator, as she had always loved public speaking, moot court, and mock trial. It was her mentor, the late Judge Daniel Pearson, who encouraged her to apply to the United States Attorney's Office. Beginning in 1984, Judge Williams spent the next four years as an Assistant United States Attorney, prosecuting all types of crimes. The most significant aspect of her time at the United States Attorney's Office, however, was meeting her domestic partner of the last 28 years, Michael Mullaney, who worked as an IRS agent at the time. Another extremely accomplished individual, Michael Mullaney went to law school at night while working full time as an IRS agent; he graduated University of Miami School of Law with honors; then practiced as an Assistant United States Attorney; and, was Chief of Public Corruption in the Southern District prior to his current appointment as Chief of the Counterterrorism Section for the Department of Justice.

After the U.S. Attorney's Office, Judge Williams spent two years practicing white collar criminal defense and labor law at Morgan, Lewis & Bockius. With the desire to do more litigation, she was offered the Assistant Chief position at the Federal Defender's Office for the Southern District of Florida in 1990 under then Federal Defender James Gailey. In 1995, Judge Williams was appointed the Federal Defender for the Southern District, where she remained until her appointment to the District Court. During her time as the Federal Defender, she managed and directed 48 Assistant Federal Defenders, 16 investigators, and over 50 support staff. She often travelled to Washington D.C. as the chairperson for the Federal Defender Advisory Group, and as a representative to the Defender Services Committee of the Judicial Conference. Her office became a national model for others, garnering the respect of attorneys and Judges from all

over the United States.

When a District Court opening was announced in 2009, several people mentioned to Judge Williams that she would make an excellent judge. After thinking about it, Judge Williams felt that she was at a point in her life where she had the unique combination of experience and perspective that would help make her a good judge and bring value to this district. It was this thought that led her to put her name in for consideration. The enormity of the appointment is not lost on Judge Williams. She understands the trust that has been bestowed on her and she feels that she is a "vehicle for due process and equal justice." Her goal is to manage a case load where litigants and attorneys feel that they have been heard. Her overriding desire is to ensure that everyone feels that the process has been fair. With already 300 cases assigned to her, she spends much of her days getting a handle on the types of cases she has, as well as in hearings and status conferences. Judge Williams will be the first to tell you that she could not do her job without the help of her law clerks, Andrew Jacobs, Andy Adler, Kate Weaver, and her courtroom deputy and court reporter, Anita Greer and Pat Sanders. Judge Williams understands that people go to court to get resolution and that it is her job to facilitate that. "It is a balancing act to move cases," she says, "but I can appreciate attorneys' schedules and the interests of the parties." It is her desire to hear from attorneys as to what works well, and what does not, because her goal is for people to have easier access to the court and to get a resolution.

Judge Kathleen Williams has had the unique ability as the former Federal Defender of the last 16 years to personally know all of the judges on the Southern District bench. She says that these judges are her mentors because they have given her insight, and she has borrowed behaviors and practices from each one. She is extremely honored by her appointment to the United States District Court. Having worked for Judge Williams as a former Assistant Federal Defender, I can without a (reasonable) doubt say that the honor will be for all of the attorneys, litigants, and defendants that will appear before her.

*Sabrina Puglisi practices in the area of criminal defense. She can be reached at (305) 403-8063, or by email at [sabrina@puglisilawfirm.com](mailto:sabrina@puglisilawfirm.com).*

**DADE COUNTY BAR ASSOCIATION  
CRIMINAL JUSTICE AWARD****CALL FOR NOMINATIONS**

The Criminal Courts Committee of the Dade County Bar Association is now accepting nominations for its annual Criminal Justice Award.

The Criminal Justice Award is presented each year to a person who has made an outstanding contribution to the criminal justice system in Miami-Dade County at either the state or federal level. The nominee may be a lawyer or a non-lawyer.

Previous recipients of this prestigious award include, but are not limited to, Hon. Gerald Kogan, Hon. Theodore Klein, Irwin Block, Roy Black, Janet Reno, Bennett H. Brummer and Katherine Fernandez Rundle.

Nominations must include a biographical sketch of the nominee, a clear and concise statement describing why the nominee is deserving of the Award and any other supporting material you believe would be helpful to the Criminal Courts Committee in making its evaluation and selection.

Nominations must be received on or before January 31, 2012 and must be submitted by either U.S. mail or email to William Aaron, Esquire, Chair of DCBA Criminal Courts Committee, c/o Matthew Ridgely, Dade County Bar Association,  
123 N.W. First Avenue,  
Miami, FL 33128;  
[mridgely@dadedcountybar.org](mailto:mridgely@dadedcountybar.org).

**SEEKING VOLUNTEER ARBITRATORS**

The Florida Bar's Grievance Mediation and Fee Arbitration program is seeking volunteer arbitrators and mediators.

This program is offered by The Florida Bar as a public service to our members, clients, and the court system and attempts to resolve disputes between attorneys and clients or between attorneys. There is no charge for parties to engage in our program.

Arbitrations and mediations are conducted throughout the state of Florida and are held in the geographical location of the parties. A panel of 3 arbitrators is assigned to hear fee disputes over \$75,000. If the parties elect mediation, then the case will be assigned to a sole mediator.

Florida Bar members who participate as volunteer arbitrators and/or mediators as part of this program are eligible for CLE credit for an hour-for-hour basis, with a maximum of five (5) credit hours in the area of ethics for the 3-year reporting period.

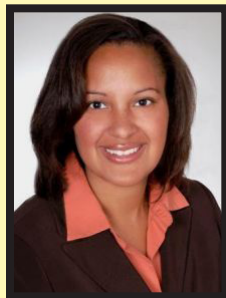
Please refer to Chapter 14 of The Rules Regulating The Florida Bar for complete information on this program.

Eligibility requirements for certification as program arbitrators and/or mediators can be found in the Procedural Rules of Chapter 14.

If you are interested in participating as a volunteer program arbitrator and/or mediator for the Florida Bar Grievance Mediation and Fee Arbitration Program, please contact:

Susan Austin, Program Administrator  
The Florida Bar  
651 E. Jefferson Street  
Tallahassee, FL 32399-2300  
(850) 561-5719  
[saustin@flabar.org](mailto:saustin@flabar.org)

**YLS PRESIDENT'S MESSAGE**



*Sorraya Solages*

Happy New Year!

Indeed, 2011 went past us in a flurry. With that in mind, we all need to slow down and appreciate the moments of the present as much as we plan for the future ahead. Although we know it is near impossible for Americans to live as the Europeans do, we should take a good look at the European way of life and model even small tidbits in order to preserve our day-to-day sanity while moving toward the "work to live" rather than "live to work" model. No doubt the latter can only lead to heightened stress and health concerns before we even get close to retirement age (and yes, for most of us young attorneys, that would be a retirement with no hopes of Social Security benefits).

That being said, what are your plans for 2012? Have you made any resolutions? Were they the superficial kind or resolutions with depth and long-range implications? If you have not made resolutions, it's not too late. Anytime is a good time to make a meaningful change for your life. Take time to reflect on the years past as you prepare for the upcoming year. My resolution for 2012—practice much more of what I preach.

In the second half of this Bar year, the YLS will continue to host a number of member events as well as give back to the community through our various public service committees. To date, the YLS events have had amazing turnouts and we look forward to providing YLS members with a phenomenal next few months. You can look forward to more socials, CLEs and events

from the YLS, including the upcoming sports tournaments, the Judicial Reception, Superlawyers CLE, and Law Week.

On that note, the American Bar Association's 2012 Law Day theme is: "No Courts, No Justice, No Freedom." As current ABA President, William T. Robinson III states: "The ongoing economic crisis has resulted in additional cuts in funding for our already underfunded state courts. This threatens the very viability of our entire justice system in America and puts at risk the third co-equal branch of government."

As we all should be aware, there is a crisis affecting the court system. Our judiciary is under attack. The very entity charged with righting injustices is undergoing its own injustice. This crisis affects attorneys, but more importantly impairs the public's access to the courts. Our third branch of government must be safeguarded. In the words of John Adams: "The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, and both should be checks upon that." It behooves the profession to stand up in defense of our courts. It is essential that we speak out for the administration of justice.

The YLS will do its part and strive to explore this Law Day theme during our Law Week in May. However, there is no reason for young attorneys to wait to act. Reach out to the public to impress upon them the value and necessity of our third branch of government. Utilize your connections. Make contact with the Florida Legislature to ensure that the judiciary maintains intact and appropriately funded. The future of the court system implores us.

**Dade County Bar Association Young Lawyers Section  
11th Annual Co-ed Softball Tournament**



Tropical Park  
7900 SW 40<sup>th</sup> Street, Miami, FL 33155  
Saturday, February 18, 2012

to benefit the Children's Charitable Committees of the DCBA/YLS

**ENTRY FEE: \$500 PER TEAM**

Entry fee includes food and drinks  
Space is limited  
Double elimination

First round of games begins at 9:00 a.m.

Please complete the form below and make checks payable to:

The Miami Foundation  
123 NW First Avenue, Suite 214  
Miami, Florida 33128

The Miami Foundation complies with the solicitation and contribution act. Contributions are deductible to the extent of the law. "A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE (1-800-435-7352) WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE."

**YLS Sports Committee Chairs: Josh Wintle at [jwintle@panterlaw.com](mailto:jwintle@panterlaw.com) or  
Bradley Kaplan at [bkaplan@kaplanfreedman.com](mailto:bkaplan@kaplanfreedman.com)**

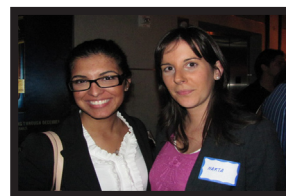
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Team Name: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

**YLS SOCIAL MIXER**

The Young Lawyers Section of the DCBA hosted a social event along with FICPA's Young Certified Public Accountants and the Dade County Medical Association on November 10, 2011 at Kyma Lounge. More than 100 members and guests enjoyed a beautiful evening and were able to enjoy an open bar and hors D'oeuvres.



*Schuyler Smith, Director YLS, Larry Ross, Sorraya Solages, YLS President and Monica Ospina*



*Carol Schirm and Marta Colomar Garcia*



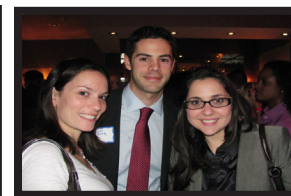
*Lakiasha Cannon and Nydia Streets*



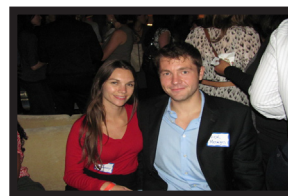
*Kasha Leese, Zak Hammond and Chris Budlong*



*Eric Hernandez, YLS Director and Mike Thakur*



*Lisa Landy, Russel Landy and Sara Paris*



*Jaime McSweeney and Nick Mermiges*



*Mark Brown, Senior Staff Attorney Legal Aid Society, Nadia Mishal and Stephanie Grosman, Staff Attorney Legal Aid Society*

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## A PRIMER ON VESSEL ARRESTS AND IN REM PROCEEDINGS IN ADMIRALTY

By: Michelle Otero Valdes



Michelle Otero Valdes

Due to the historically transient nature of the maritime shipping industry and vessels themselves, U.S. law provides for a procedure by which a party alleging a tort or contract sounding in admiralty can arrest an offending vessel, subsequently bringing their claim(s) against the vessel itself through an *in rem* action. This arrest can occur in any jurisdiction in which the vessel, irrespective of the presence and/or citizenship of the owner or operator, can be located and seized. Under U.S. law, this *in rem* proceeding is one of the few remaining vestiges of pre-hearing and no-notice government-backed deprivation of property. While still considered controversial for this reason, the vessel arrest procedures under U.S. law remain an exceptional tool in helping injured parties obtain relief for bad debts held or torts committed against them by vessels and ship owners which sound in admiralty.

### Procedure

A party having a recognized, maritime lien or claim against a vessel first files a petition in the federal judicial district where the vessel can be located to have it arrested. Typically a judge or magistrate must review and sign off on the request to arrest a ship, thereby ordering the clerk of court to issue a warrant for the vessel's arrest. In certain exigent circumstances, the clerk can issue the warrant without a judge or magistrate's review. Up to this point, the process occurs without any notice or process afforded directly to the vessel or its owner/operator, and is governed by the Federal Rules of Civil Procedure, supplemented by the local rules in the applicable federal district.

In an admiralty *in rem* proceeding, the vessel itself is named as the defendant, and unless an *in personam* claim against the owners/operators is added to the complaint, the to-be-determined value of the vessel and its appurtenances provides the upper-limit for relief. Following the arrest of the vessel, notice is provided to

the public that the vessel has been seized and that any and all parties with ownership or possessory (including other recognized lien holders) interests in the vessel should file claims of their respective interests in the vessel. Subsequent to the arrest of the vessel, a party with an ownership or possessory interest in the vessel may post a security bond or letter of undertaking to secure the vessel's release from the custody of the U.S. Marshal's Service. If no action is taken to secure the vessel's release, it will remain in the Marshal's or court-appointed substitute custodian hands, incurring daily storage and other costs that must eventually be paid out of a judgment or sale of the vessel.

### Priority Ranking of Claims

Following notice of the arrest and seizure of the vessel, additional parties with potential liens or debt-based interests in the vessel must be given notice and can subsequently join the proceedings to assert their eligible claims. The statutory and the general maritime law provides a priority ranking order for the various types of interests held against a vessel and within the various classes of lien; priorities are established with newer liens having priority over older liens. Generally speaking, expenses of justice during the custody of the vessel are not regarded as a lien, but are given first priority. These expenses are followed by seaman's wage liens, claims for maintenance and cure and wages for longshoremen directly employed by the vessel; salvage and general average liens; tort liens, including personal injuries and death; pre-mortgage maritime liens for necessities; preferred ship mortgage liens; liens for necessities under 46 U.S.C. §31301(4), 31341 and 31342; state-created liens of a maritime nature; liens for penalties and forfeitures for violations of federal statutes; preferred non-maritime liens; attachment liens; and finally ending with maritime liens in bankruptcy.

### Sale of the Res

The disposition or sale of a vessel in an *in rem* proceeding is completed in one of two ways; the sale is either undertaken after a final judgment against

the vessel has been entered (and assuming no security bond or similar release has been obtained), or alternatively a party can move for an interlocutory sale of the vessel before the merits of the case have been fully addressed. In order to have a court grant an interlocutory sale of the vessel, the moving party seeking the sale must demonstrate that the vessel's storage costs will soon outweigh its value, or the vessel in its current state is perishable and/or will deteriorate before the proceedings have concluded.

This latter method of interlocutory sale, while admittedly designed to serve as an exception in certain circumstances, has actually become the rule in many cases where the value of the property arrested is marginal compared to the recognized maritime liens against it in a particular proceeding. The sale of the vessel is generally conducted by the U.S. Marshal's Office in an auction format. Upon approval by the court, a successful claimant against a vessel can seek to credit-bid its judgment against the cost of the vessel at auction, relieving it from the requirements to have the 10% down in cash at the auction and the remaining amount due closely thereafter.

### After Sale, There's Still More To Do

The sale of the vessel at auction does not end the proceedings. The sale of the vessel is not final until it is approved by the court. If a higher bid is received within three days by the court, it has the option of voiding the sale and ordering a new auction. Once the court approves the sale, the winning bidder receives free and clear title to the vessel and all existing liens or debts against the vessel are extinguished. Unlike the federal government customs, drug, or other seizure process, where a seized vessel sold at auction becomes "U.S. Built" for purposes of U.S. port-to-port trading, a vessel purchased at a judicial sale stemming from an *in rem* proceeding does not gain the benefit of that same legal status.

*Michelle Otero Valdes is an Admiralty and Maritime lawyer at Houck Anderson and can be reached by phone at 305.372.9044 or email at motero@houckanderson.com*

## The Dade County Bar Association ADR/Mediation Committee

Marva Wiley, Esq. Chair

***"Great Expectations: Succeeding in Mediation  
and Avoiding the Grievance Committee"***

### Speaker

**Honorable Rodney Smith**  
*County Court Judge- Miami Beach and Chairperson  
of the Mediation Qualifications Board*

**Tuesday, January 17<sup>th</sup>, 2012**  
**Registration Begins at 11:45 a.m.**  
**Seminar: 12:00- 1:30 p.m.**

### Cost:

\$25.00 -Members of DCBA  
\$30.00- Non-Members of DCBA

### Location:

Miami Beach Courthouse  
1130 Washington Avenue  
Miami Beach, FL 33139

Deadline for early registration is January 13<sup>th</sup>, 2012

Spacing is extremely limited. Please make your reservations early  
Register online: [www.dadecountybar.org](http://www.dadecountybar.org), or by calling (305) 371-2220.  
1.5 hours CLE Pending Approval with the Florida Bar.

**This course is eligible for up to 1.5 CME hours. Mediators are required to self report those hours applicable to their areas of certification at the time of their renewal. For more information on the CME requirement, visit, [www.flcourts.org](http://www.flcourts.org), select Alternative Dispute Resolution/Mediation.**

## The Dade County Bar Association Real Property Committee

James A. Marx, Esq. Chair

***The Ethics of Lawyering As a  
Real Estate Lawyer in 2012***

### Speaker

**Brian L. Tannebaum, Esq.**  
*Managing Partner of Tannebaum Weiss*

**Wednesday, January 18<sup>th</sup>, 2012**  
**Registration Begins at 11:45 a.m.**  
**Seminar: 12:00- 1:00 p.m.**

### Cost:

\$35.00 -Members of DCBA  
\$45.00- Non-Members of DCBA  
\$50.00 at Door if space permits

### Location:

Banker's Club  
One Biscayne Tower, 14<sup>th</sup> Floor  
Miami, FL 33131

Deadline for early registration is January 16<sup>th</sup>, 2012

### Parking Notice:

**The Bankers Club will offer guests valet parking at a special day rate of \$7.00 per car. The valet is located at Mia's across the street from One Biscayne Tower on Flagler Street. Please bring the valet parking ticket with you to the club and we will stamp it for you. You may also self-park in the public parking garage across the One Biscayne Tower on SE 1st Street. Parking at the Bankers Club will not be validated.**

Please make your reservations early  
Register online: [www.dadecountybar.org](http://www.dadecountybar.org),  
or by calling (305) 371-2220.

1.0 hours of CLE Pending Approval from The Florida Bar

## 2012 DYER PROFESSIONALISM AWARD

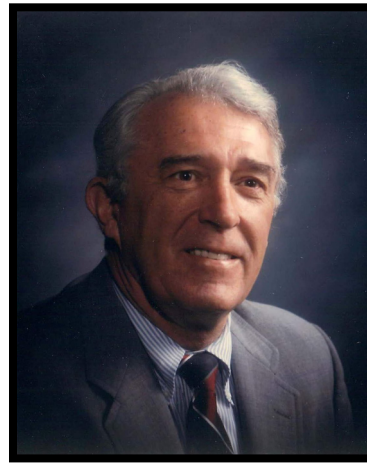
The Dade County Bar Association (DCBA) is accepting nominations of Dade County lawyers or judges for the David W. Dyer Professionalism Award. The deadline to submit nominations to the DCBA office is **February 15, 2012**, without exception. The Award will be given at the DCBA's Annual Installation Ceremony.

The David W. Dyer Professionalism Award is the most important award given by the DCBA. It recognizes a lawyer or judge whose conduct reflects and honors the integrity, humility, compassion, and professionalism of Judge Dyer himself.

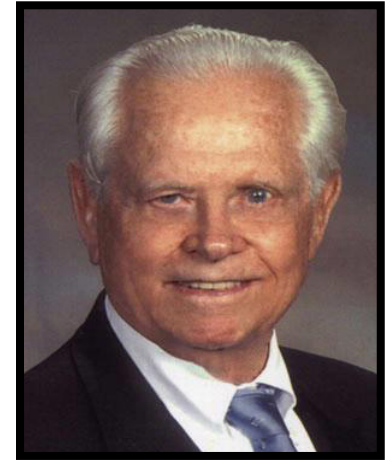
Judge David W. Dyer, for whom the historic downtown Miami post office and current federal court is named, was nominated to the United States District Court for the Southern District of Florida in 1961 by President John F. Kennedy. Judge Dyer became Chief Judge in 1962. In 1966, Judge Dyer was elevated to the United States Court of Appeals for the Eleventh Circuit. There, Judge Dyer presided over important civil rights and voting rights cases, including a ruling in 1967 to reapportion Florida on the "one-man, one-vote" principle.

Nominating Ballots are available on the Association's website, [www.dadecountybar.org](http://www.dadecountybar.org) or contact the DCBA offices at (305) 371-2220.

## IN MEMORIAM



**Roland W. Payne, Esq.**  
1936-2011



**J.B. Spence, Esq.**  
1921-2011  
President – DCBA 1978-79'

## BUSINESS MATTERS : THE BOTTOM-LINE ON DISCOUNTING FEES AND ERODING MARGINS

By: Paula Black



Paula Black

Whether you charge your clients by the hour, a flat fee or some combination of the two, chances are that those numbers have eroded over the past few years. Sometimes you are caught between a rock and a hard place. You need the work, but if you don't discount your fee, you may not get the work. Likewise, if you don't discount your client's bill, you may not get any repeat business from that client.

Clearly the answer depends on the nature of the engagement, the attorney's relationship with the client and the attorney's ability to accurately estimate the cost of completing the engagement. From a client's perspective, an engagement fee is usually preferred because the client can reasonably estimate the cost and see the potential benefit. If accurately estimated, an engagement fee may reduce the need to discount fees.

It is imperative for an attorney to have the tools (systems/processes) to accurately project the cost of an engagement. Adequate budgeting and forecasting software are essential in addition to assessing the inherent risks and contingencies in the engagement. A detailed cost accounting system is also essential to accurately determine the costs-to-date during an engagement and upon completion of an engagement. Additionally, the law firm must be able to account for the firm's overhead costs (office, utilities, insurance, etc.) and allocate these overhead costs to each client or engagement to properly evaluate the profitability and profit margins for an engagement or overall client relationship. The law firm must also account for the direct costs (attorney time, expenses, etc.) applicable to the engagement or overall client relationship to properly determine profitability or profit margins.

Peter concluded that accurate profit margins coupled with the ability to estimate and account for overall client profitability are certainly better goals than discounting fees.

### Get into the numbers...

I also had the opportunity to speak with Jody Johnson - a certified master coach, and president and co-owner of ActionCOACH Business Coaching firm. She explained: "We say discounting is a dirty word. We say this because many attorneys we work with don't truly understand the impact of discounting on their business or what to do about it. The first thing to understand is that every dollar you discount comes straight out of your profit margin."

According to Jody, in 2011, the average margin for law firms in the State of Florida with revenues of a million dollars averaged 9.3% in net profit margins before taxes. After taxes, net income averaged 6.69%. What does this mean to you? If you have a million dollar practice you get to keep \$93,000 before taxes and \$66,900 after taxes. Every dollar you discount comes out of that. Sobering isn't it? Indeed, chances are you have no idea how much you've discounted from your profits each month. Start tracking it, and you'll be shocked at how much money you're giving away.

Jody suggested that you should divide your current and past clients into four categories: "A" "B", "C" and "D". Then, set criteria for each category. For example, "A" grade clients are clear that they want to work with you, they invest in your professional advice, they never complain about the rates, they pay on time, they refer you clients, and they offer repeat work. "D" grade clients, on the other hand, complain about everything. You have to chase them for payment, they require enormous amounts of hand holding and drive the office staff crazy. Once you categorize your clients, you will have clarity on your ideal client and a sword of discernment when you're interviewing prospective clients.

Jody further suggested that you review your client list through the prism of the Pareto Principle, which states that 80% of your revenues come from 20% of your client base ("A" grade). Conversely, 80% of your leaks in productivity and headaches come from 20% of your client base ("D" grade). Eliminate the clients that eat up your time and keep you from obtaining and servicing "A" grade clients.

Finally, Jody recommended that you obtain a business check up and get advice on how to improve your business performance and financial health. You must have the processes in place to service your ideal clients.

### Know your value...

In his Forbes Magazine article entitled "If You Don't Know Your Own Value - Who Will?", contributor Andrew Klausner notes: "Few... attorneys lower their fees - why should you? If you are confident in your ability to add value to your clients, then the fee discussion should be easy. Take control of the fee issue - and don't discount your own worth! After all, if you don't know your own value, you certainly can't expect someone else to know it."

This is sound advice that you should take to heart! **The message is clear: focus on your margins, look for opportunities to become more efficient, and recognize your value. These are all objectives to consider going into 2012.**

*Paula Black has helped firms of all sizes - from one attorney to one thousand - to separate themselves from their competitors and achieve the growth they desire through powerful branding, consulting, one-on-one coaching and her award-winning books. She has delivered seminars, speeches and panel discussions for DCBA, ABA, FAWL, LMA and ALA among others.*

### What are the questions that need to be answered?

If you charge by the hour, the questions are: Are you really getting your standard rate? Are you cutting the rate at the beginning of the assignment? Are you cutting the bill at the end when a client complains about it?

If you charge a flat fee, on the other hand, the questions are very different: How much time are you investing into the case? Are you even keeping accurate records of time spent? Are you as efficient as you can be?

To get answers to these questions, I asked some experts to shed a little light on how they would recommend handling the issue of discounting fees and eroding margins.

### Consider this...

Peter Kleinerman is a CPA and the president and founder of Jadan Capital Corp., which provides operational, financial and strategic advisory services to firms that desire growth or require turnaround. I asked Peter for his thoughts on the subject of discounting fees.

He suggested that professionals should not discount fees despite the fact that clients and prospective clients broach the topic frequently, especially in today's challenging economy. Although discounting fees is sometimes necessary to satisfy an existing client or to obtain a new client, doing so should be a last resort.

Peter further suggested that professionals should focus on overall client profitability and profit margins. Does the attorney have the necessary information and tools (systems/processes) to determine profitability and profit margins during an engagement/case, upon completion of an engagement or for the overall client relationship? Profitability is defined as revenues/fees minus direct costs and allocated overhead costs. Has the attorney established a reasonable profit margin percentage for an engagement and client relationship? Are attorneys better off charging hourly fees or an engagement/project fee?

## PUBBELLY CRAWL

By: *Melanie Damian Kenneth Murena and Casandra Perez*



Melanie E. Damian

On a Friday night in late 2011, three Damian & Valori attorneys went on a pub-crawl through a budding gastronomic empire at the northwest corner of South Beach. We are proud to report that the neighborhood has finally joined the gourmet scene that Design District diners have been enjoying for several years. 20th Street, between Purdy Avenue and Bay Road, now boasts three edgy gourmet restaurants that

give our favorites from Michael Schwartz and Michelle Bernstein a run for their money: Pubblelly Sushi, on the Purdy Ave. corner, the original Pubblelly, immediately next door, and Barcelonetta Spanish Bistro & Mercat, two doors down on the Bay Road-side. The tapas-style portions at all three restaurants are ideal for group dining and sampling a variety of classic and reinvented dishes, made with ingredients either locally grown or imported from Europe. The creative selection of beer, wine and sake compliment the cutting-edge cuisines (you can also bring your own for a \$25 corkage fee). The specials and the music, graffitied on blackboards covering the walls, change nightly. These restaurants are the perfect stops on a foodie pub crawl. Just be prepared to eat some unconventional food, and to lose your voice.

We had our first course at Pubblelly Sushi, which serves an interesting blend of Japanese and American favorites, both as sushi and off the robata grill. This was our favorite stop of the night. The service was terrific. Our server was knowledgeable about the menu and about which foods complimented one another. She was opinionated in a good way and made helpful suggestions of dishes we relished. The menu had so many amazing dishes that we nearly forgot that we had to save room for the next two stops on the crawl. The spicy tuna on top of crispy rice, and the "fried



Kenneth Murena

clam roll," which was something like a mini New England-style roll on the most delicious soft sweet bread you've ever eaten, are each reason enough to come here. We also loved the tostones topped with Hamachi ceviche. The short ribs off the robata grill were also very tasty, but the portion was disappointingly small.

Next, we strolled next door to the original Pubblelly: an Asian-inspired Gastro Pub. This restaurant is loud and cramped, and there is always a wait for a table. (They don't take reservations.) But the food is oh-so-worth-it! We were awed by those who brought us pork and scallion dumplings, and chorizo-stuffed, bacon-wrapped dates with a dollop of goat cheese. The menu is the most eclectic of the three restaurants and, for at least one of us, the best in South Florida. (Sorry Michael and Michelle, but these guys created something pretty special here.)

Finally, we waddled over to Barcelonetta Spanish Bistro & Mercat, serving Catalan cuisine with a subtle French influence. Getting a seat at Barcelonetta at 11 PM on a Friday night was only slightly more difficult than scheduling a hearing on a foreclosure motion calendar. This place was even louder than the other two, but what an amazing looking space! We felt transported to Barcelona. There we ate charcuteria y quesos, while standing at the bar yelling at each other over the noise of the music and the crowd. We washed down the imported meats and cheeses with a sweet and tart red sangria. It truly was like being on vacation in Spain. Aside from the raucous pub/bistro atmosphere, one reason to come here is the gambas con chocolate. What an amazing sweet and savory flavor they had; nothing like shrimp in hot fudge sauce. Maybe we were stuffed, maybe we could not stand the noise, or maybe it was just late and our ambitious culinary crawl had



Casandra Perez

taken its toll, but we found the food at Barcelonetta delicious, albeit less impressive than the other two Pubblelly stops. Nevertheless, the atmosphere, the sangria and the tasty bites make it worth a visit.

For atmosphere and food, we rated all three restaurants 4.5 out of 5 stars. More surprising, for service, we rated Pubblelly Sushi and Pubblelly a surprising (for Miami) 5 stars. Barcelonetta's service was a more typical 2 out of 5 stars for service, by comparison to other Miami restaurants. Thank you, Pubblelly, for showing Miami that South Beach still has its groove on.

**Melanie E. Damian** is a Co-Founder and Partner of Damian & Valori LLP. She represents companies and individuals in a variety of complex business and securities litigation, serves as a Court appointed Receiver and Distribution Agent in Securities matters and state court matters, as well as, serving as counsel to Receivers serving in both state and federal court.

**Kenneth Dante Murena** is a partner at Damian & Valori, LLP. He represents Federal and State Court-appointed Receivers in securities litigation, government enforcement actions and corporate and real property disputes, Bankruptcy Trustees and creditors in Bankruptcy cases and adversary proceedings, and companies and individuals in complex business and fraud litigation matters.

**Casandra Perez Murena** is Of Counsel to Damian & Valori, LLP. She represents Federal and State Court-appointed Receivers in securities litigation, government enforcement actions and corporate and real property disputes, corporate debtors and creditors in Chapter 11 reorganizations, and companies and individuals in a variety of complex commercial litigation matters.

Dade County Bar Association Young Lawyers Section  
Presents

**LUNCH WITH THE JUDGES**  
A Members-Only Event

Sorraya M. Solages, President  
DCBA Young Lawyers Section

Bradley Kaplan, Chair  
Eric Hernandez, Vice-Chair  
Judicial Outreach Committee

An informal gathering to promote communication among the legal community and the judges.

**Lunch with the Judges of the Eleventh Judicial Circuit of Florida  
Criminal Court Division**

**Judge Milton Hirsch  
Judge Nushin Sayfie  
and**

**Judge Migna Sanchez-Llorens**

**Thursday, January 12, 2012 from 12:00 p.m. to 1:15 p.m.**

New location for January  
**The Law Office of the Public Defender**  
1320 N.W. 14<sup>th</sup> Street, Miami, Florida

Admission is Free  
Please bring - Brown Bag Lunch

This luncheon is open to DCBA/YLS members and is limited to the first 30 members whose reservation form is received. Seats fill up quickly, so please make reservations early. Please complete the reservation form below and mail it. Or RSVP on line at: <https://www.dadecountybar.org/011212ylslwtj.php>

For additional information, contact the DCBA offices at (305) 371-2220

1/12/2012 YLS Lunch with the Judges

Dade County Bar Association  
123 N.W. First Avenue #214  
Miami, Florida 33128

Please print or type name

Office Telephone Number

Facsimile Number

Florida Bar Number

# FUNDamentals of Family Law in a Changed World

## The 20th Annual "Nuts & Bolts" of Family Law

Presented by

### DCBA Family Courts Committee & Dade Legal Aid

**FACULTY:**

Honorable Sandy Karlan, Administrative Judge  
Honorable Maria Espinosa Dennis, Honorable Victoria Del Pino  
Robert C. Josefsberg, Esq., Maurice J. Kutner, Esq., Matthew Lundy, Esq.

**TOPICS:**

Initial Client Interview, "QDROs", Ethics, Domestic Violence, Attorney's Fees  
Disestablishment of Paternity Statute and Alimony Statute

**\*\*SPECIAL PRESENTATION TO HONORABLE SANDY KARLAN\*\*  
FOR 20 YEARS OF SERVICE TO DADE LEGAL AID**

**WHEN:** Friday, January 13, 2012

**WHERE:** Dade County Courthouse  
Courtroom 6-2

**TIME:** Registration: 8:30 – 9:00 a.m.  
Seminar: 9:00 – 12:30 p.m.

73 W. Flagler Street  
Miami, FL 33130

**CLE:** 4.0 credits, including 3.0 certification and .5 ethics, applied for.

**COST:** **FREE** for all attorneys who agree to accept at least one pro bono family law case; otherwise, the cost is \$90.00 in advance (\$100.00 at the door).

-----Cut-Along-Dotted-Line-----

Name \_\_\_\_\_ Bar Number \_\_\_\_\_  
Address \_\_\_\_\_ Email \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Firm \_\_\_\_\_ Telephone \_\_\_\_\_

I will attend and accept at least a pro bono family law case from Dade Legal Aid.  
 Enclosed is my check for \$ \_\_\_\_\_ (\$90.00) payable to Dade Legal Aid.

Return to: Dade Legal Aid, 123 N.W. 1 Ave., First Floor, Miami, FL 33128  
Ph: (305) 579-5733 Ext. 2252 Fax: (305) 372-7693  
Email: [psb@dadelegalaid.org](mailto:psb@dadelegalaid.org)

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(as of 12/1/11)

## INVESTITURE OF JUDGE IVAN FERNANDEZ

On November 4, 2011 The Honorable Ivan F. Fernandez was invested as judge, Third District Court of Appeal, before a crowd of friends and family.



Judge Ivan Fernandez is sworn in by Judge Leslie Rothenberg with wife Tricia Fernandez



Judge Ivan Fernandez and wife Tricia Fernandez



Omar Fernandez, Tricia Fernandez, Emilia Fernandez, Judge Ivan Fernandez, Esther Montero, Lauren D. Fernandez, Meredith L. Naron and Jorge Fernandez



Mayor Carlos A. Gimenez, Lourdes Gimenez, Tricia Fernandez and Judge Ivan Fernandez



Judge Mario Goderich, Judge Ivan Fernandez, Xavier Suarez and Judge Gerald Cope



Mercy Sarria-Sanchez, Judge Ivan Fernandez, Ana M. Gonzalez and Monsy Bond



Mary Cay Blanks, Judge Ivan Fernandez, and Alan Sadowski, 3rd DCA Marshall



Chief Judge Linda Ann Wells and Judge Rodney Smith



William Aaron, Past President DCBA, Judge Alan Schwartz (retired) and Herman J. Russomanno, Past President DCBA



Judge Richard Suarez, Kathryn Ciano and Claudia Murray



Lauri Waldman Ross, and Raoul Cantero



Michael Davis, Judge Richard Suarez and Martin E. Leach



John Shubin, Chief Judge Linda Ann Wells and Elaine Walter



Stephanie Varela, Kerri McNulty and Christopher Carbot



Judge Samantha Ruiz-Cohen, and Carlos Martinez, Miami Dade Public Defender



Daniel Dolan, Garrett Biondo, President-Elect DCBA and Jeffrey Bass



Aileen Fernandez, Judge Rosa Figarola, and Stewart Williams



Laura Gonzalez, Lawrence Horsburgh and Enrique Lopez



Philip Freidin, and Judge Leon Firtel



Stephanie Kwan, Jennifer Herkowitz and Lauren Davis



Christine Hernandez and Lissette Carreras



Robert Boyers and Cary Lubetsky



Bonnie Riley, Warren Schwartz, Christine Hernandez and Melissa Acosta-Rodriguez



Tim Thomas, Jay Silver and Keri Joseph

## CONGRATULATIONS

Ivan F. Fernandez

On Your Investiture As Judge Of The Third District Court of Appeal

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Graphic and enlargement provided by **TRIAL GRAPHIX**.

## Dade County Bar Association

Criminal Courts Committee

Present

# Bench and Bar Mixer

Thursday February 16<sup>th</sup>, 2012  
5:30p.m.-7:30p.m.

Tobacco Road  
626 South Miami Avenue  
Miami, FL 33130

Drink Specials along with Complimentary Appetizers will be served

## This Month's Featured Member Benefit Regal Cinemas: Premiere Super Saver Movie Ticket

Save \$3.00 on a regular adult movie ticket for all movies and show times!

All Dade County Bar Association members have the opportunity to save \$3.00 on a regular adult movie ticket for all movies and show times! Tickets are available at a reduced price of \$7.50 each and have no expiration date. This benefit was initiated to provide you with enjoyable incentives and the opportunity to enjoy a movie and save money at the same time.

How can you start receiving this wonderful benefit today? To purchase discounted movie tickets contact the DCBA at [info@dadecountybar.org](mailto:info@dadecountybar.org) and type in Movie Ticket Discount in your email subject line or call (305) 371-2220 and we will be happy to provide sales information.

## The Dade County Bar Association Real Property Committee

James A. Marx, Esq. Chair

### ***Tips on Buying Debt and Judgments***

#### **Speaker**

**Lisa B. Markofsky**  
*Associate Proskauer Rose LLP*

**Stuart T. Kapp**  
*Partner Proskauer Rose LLP*

**Wednesday, February 8<sup>th</sup>, 2012**  
**Registration Begins at 11:45 a.m.**  
**Seminar: 12:00- 1:00 p.m.**

#### **Cost:**

\$35.00 -Members of DCBA  
\$45.00- Non-Members of DCBA  
\$50.00 at Door if space permits

#### **Location:**

Banker's Club  
One Biscayne Tower, 14<sup>th</sup> Floor  
Miami, FL 33131

Deadline for early registration is February 6th, 2012

#### **Parking Notice:**

The Bankers Club will offer guests valet parking at a special day rate of \$7.00 per car. The valet is located at Mia's across the street from One Biscayne Tower on Flagler Street. Please bring the valet parking ticket with you to the club and we will stamp it for you. You may also self-park in the public parking garage across the One Biscayne Tower on SE 1st Street. Parking at the Bankers Club will not be validated.

Please make your reservations early

Register online: [www.dadecountybar.org](http://www.dadecountybar.org), or  
by calling (305) 371-2220.

1.0 hours of CLE Pending Approval from The Florida Bar

### **Dade County Bar Association Criminal Court Committee & Appellate Court Committee Presents Lunchtime CLE Seminar**

David Alschuler, Chair- Criminal Court Committee

Jack R. Reiter, Chair- Appellate Court Committee

#### **Topics:**

- Belated Criminal Appeals
- Ineffective Assistance of Appellate Counsel
- Duties of Trial Lawyer before Withdrawing Where Appeal Planned

#### **Guest Speakers:**

Roy D. Wasson  
*Wasson & Associates Chartered*

David Alschuler  
*David Alschuler, P.A.*

Judge TBA

#### **Date & Time**

Wednesday, January 11<sup>th</sup>, 2012  
12:00p.m. - 1:30p.m.

#### **Location:**

Richard E. Gerstein Justice Building  
1351 N.W. 12<sup>th</sup> Street, Courtroom 4-1  
Miami, Florida 33125

#### **Cost:**

\$15.00 Members/ \$25.00 Non-Members  
\$25.00 at door if space permits

#### **CLE:**

1.5 CLE Pending Approval

## DCBA CALENDAR

COMPLETE EVENT DETAILS AVAILABLE AT [WWW.DADECOUNTYBAR.ORG](http://WWW.DADECOUNTYBAR.ORG)

### January 2012

- 01/03 6:30 pm Young Lawyers Section Board Meeting –  
Dade County Bar Association
- 01/10 12:00 noon Professionalism Committee Meeting –  
Dade County Bar Association
- 01/11 12:00 noon Business Law Committee Seminar –  
Akerman Senterfitt
- 01/11 12:00 noon Criminal Court and Appellate Court Committee  
Seminar – Richard E. Gerstein Justice Building
- 01/11 4:00 pm DCBA Board of Directors Meeting –  
Dade County Bar Association
- 01/12 12:00 noon YLS Lunch with the Judges –  
The Law Office of The Public Defender
- 01/13 8:30 am Legal Aid and Family Courts Family Law Seminar –  
County Courthouse
- 01/16 DCBA Closed in Observance of Martin Luther King Day
- 01/17 12:00 noon ADR Mediation Committee Seminar –  
Miami Beach Courthouse
- 01/18 12:00 noon Real Property Committee Seminar –  
The Bankers Club
- 01/18 6:00 pm YLS Reading Day – Chapman Center
- 01/19 12:15 Family Court Committee Meeting – Via Conference Call
- 01/19 4:30 pm Criminal Court Committee Meeting –  
Dade County Bar Association
- 01/20 5:00 pm Membership Social Keg Party –  
Waxy O'Conner's Irish Pub Restaurant

### February 2012

- 02/07 6:30 pm Young Lawyers Section Board Meeting –  
Dade County Bar Association
- 02/07 12:00 noon Professionalism Committee Meeting –  
Dade County Bar Association
- 02/08 12:00 noon Real Property Committee Seminar – Bankers Club
- 02/08 12:00 noon Business Law Committee Seminar –  
Akerman Senterfitt
- 02/09 12:00 noon YLS Lunch with the Judges – Bankers Club
- 02/10 12:00 noon Family Court Committee Seminar –  
The Bankers Club
- 02/11 9:00 am YLS Crafts of Love – Location TBA
- 02/15 4:00 pm DCBA Board of Directors Meeting –  
Dade County Bar Association
- 02/16 12:15 pm Family Court Committee Meeting – Via Conference Call
- 02/16 5:30 Criminal Court Committee Bench and Bar Mixer –  
Tobacco Road
- 02/18 9:00 am YLS Annual Co-ed Softball Tournament – Tropical Park
- 02/23 4:30 pm Criminal Court Committee Meeting –  
Dade County Bar Association

### March 2012

- 03/09 Bench and Bar Conference – Hyatt Regency Miami Hotel –  
SAVE THE DATE