



DADE COUNTY BAR ASSOCIATION

# THE Bulletin

"A Century of Service to Miami-Dade"

123 N.W. First Avenue Miami, Florida 33128 / [www.dadecountybar.org](http://www.dadecountybar.org) / October 2010

## DCBA FEATURED EVENTS

(For more information go to [www.dadecountybar.org](http://www.dadecountybar.org))

10/07	6:00 pm – 8:00 pm Solo/Firm Committee CLE Seminar – Sabadell United
10/19	5:30pm – 8:00 pm Legal Aid 60th Birthday Celebration – Miami City Club
10/21	6:00 pm – 8:00 pm YLS Professionalism/Membership Mentoring Mixer – Grazianos Brickell
10/30	YLS Kickball Tournament – Tropical Park



STEVEN W. DAVIS

*Life is made up of constant calls to action, and we seldom have time for more than hastily contrived answers.*

### Learned Hand

#### Have you heard the call?

The world provides an endless number of calls to action from helping victims of natural disasters, serving the poor, and to helping protect the justice system. DCBA Presidents have been blessed with involved, concerned and dedicated members willing to answer calls. While Judge Hand was correct that we seldom have time for more than hastily contrived answers I can tell you we try to add the words "thoughtful and effective" to Judge Hand's quote.

For example in 1947, DCBA President Melbourne Martin made a specific recommendation to air condition the Civil Court of Record courtroom. It is hard to imagine there was much dissent to that position but a call to action was presented and met.

More significantly President Martin also supported unification of The Florida Bar. Before the integrated bar was established in 1950, the DCBA could actually disbar and prevent attorneys from practicing in Dade County. The argument for unification of the bar was, according to the Florida bar website, that:

only through a unified organization could all Florida lawyers receive uniform education on changes in the law and legal procedures. An integrated Bar organization would also pave the way for a uniform discipline system, capable of weeding out unethical lawyers and assuring the public that only those with high standards would be allowed to practice.

## PRESIDENT'S MESSAGE

Looking back unification seems like a "no-brainer" facilitating the Supreme Court's supervision of Florida lawyers. State wide licensing and regulation of Florida lawyers is a much more effective way to protect the public over each county's bar association.

Unfortunately today we have some circuits going back to the pre-1950 era of local rule in an area the Florida Supreme Court controls- the mediation of residential foreclosure cases. This past January the Florida Supreme Court established a mandatory mediation for homestead properties before a lender could obtain summary judgment (adopting the state-wide task force recommendation that was chaired by Judge Jennifer Bailey- a former DCBA Young Lawyer Section President). This program was established to address Florida courts overwhelming number of foreclosure cases. The Supreme Court left to the Chief Judge of each circuit the duty to implement the program. As you might expect our circuit, was a leader in getting the mediation program started and Chief Judge Brown and Administrative Judge Jennifer Bailey, got the Collins Center up and running these meditations allowing Florida Supreme Court Certified Mediators from anywhere in Florida to mediate cases in Miami Dade County. Unfortunately our circuit is in the minority in this practice. As of September 1, 14 of Florida's 20 circuits are closed circuits- meaning if a mediator does not live in or have an office in the circuit, they are not allowed to mediate cases in that circuit. Is that fair to the several hundred Certified Residential Mortgage Foreclosure Mediators who live and practice in Miami-Dade County who cannot mediate foreclosure cases in many Florida circuits – while attorneys from these other circuits can mediate here? So in a call to action, I ask that you join me and write the Director of the Florida Dispute Resolution Center in the Office of the State Courts Administrator and ask the Florida Supreme Court to step in and stop this unfair practice. If the Florida Supreme Court certifies an attorney as a mediator in residential mortgage foreclosures, that mediator should be allowed to mediate cases state wide.

SEE "president..." PAGE 2



WILFREDO FERRER

## NOVEMBER GENERAL MEMBERSHIP LUNCHEON

### Special Guest Speaker

**Wilfredo Ferrer, U.S Attorney for the Southern District of Florida**

**Friday, November 9, 2010**  
11:30 am to 1:30 pm  
Hyatt Regency Miami Hotel  
400 SE 2nd Avenue  
Miami, Florida



## HORIZONS COMMITTEE CROSSES NEW HORIZONS WITH ADDITION OF BOYS' PROGRAM

By Carly Hammond, Esq., Lott & Friedland, P.A.

For over five years, members of the Dade County Bar Association Young Lawyers Division Horizons Committee have been charged with mentoring teenage girls and serving as positive role models for them. Programming is typically divided into three areas. The first is focused on getting students interested in college, and, once that interest is piqued, helping them apply for admission and financial aid. Each fall, the Horizons Committee has exposed its students to a number of college campuses and the diversity of educational opportunities and social and cultural activities they offer: for example, Horizons students have sat in on a Sociology class at Miami-Dade College, participated in an impromptu a capella concert in the dorms at Florida Memorial University, had lunch with University of Miami students and recorded a public service announcement at the student-run radio station WVUM.

The second area is personal development, which includes seminars on teamwork and leadership, financial planning and budgeting, and dating and domestic violence. The third is meant to help students navigate career choices and get them started on the right track. Each spring, students prepare resumes, participate in mock interviews, and hear from a career panel representing various occupations. At the close of the school year, participating students receive a summer internship in which they can practice the skills of a young professional. Horizons students have interned with and learned from judges, architects, chiropractors, and lawyers, among others.

This year marks the Horizons Committee's fifth year partnering with Urgent, Inc., and its third year partnering with Hands 2 Help, two extraordinary non-profit organizations dedicated to the advancement and empower-

ment of young people. This year also brings new challenges and adventures: for the first time, the Horizons Committee will be working with teenage boys as well. In addition, the Committee has planned new types of events to expand its programming: for example, on September 25 the Girls group participated in the Coastal Cleanup service project in Dade County.

The Horizons Committee is always looking for more folks to join the fun! If you would like to participate in or help plan any Horizons Committee events, please contact the following persons:

**Horizons Girls Tentative Fall Calendar**  
October 23 – Visit Miami Dade College – Event Coordinator: Jackie Ledon, [jledon@lsgmi.org](mailto:jledon@lsgmi.org), 305-438-2401  
November 6 – Visit Florida Memorial University – Event Coordinator: Ysabel Hernandez, [ysadan@me.com](mailto:ysadan@me.com), 305-324-1944  
December 4 or 9 – Visit St. Thomas University – Event Coordinator: Joanna Thomson, [jthomson@wsh-law.com](mailto:jthomson@wsh-law.com), 305-854-0800

Or feel free to contact Jackie Ledon, Chair, Joanna Thomson, Vice-Chair, or Carly Hammond, Member, [chammond@lott-friedland.com](mailto:chammond@lott-friedland.com), 305-448-7089, with any questions.

**Horizons Boys Tentative Fall Calendar**  
October (date TBA) - Welcome Event  
November 6 – Visit Florida International University  
December 4 or 9 – Visit Miami Dade Community College  
January (date TBA) – Visit University of Miami

Contact Darlene Corey, Chair, [dcexplorer@aol.com](mailto:dcexplorer@aol.com), 305-781-1936, or René García, Vice-Chair, [rene@gapllaw.com](mailto:rene@gapllaw.com), 305-860-1008 for more information or with any questions.

## ANNOUNCING THE DCBA LAWYER REFERRAL SERVICE

The Dade County Bar Association commenced operation of the DCBA Lawyer Referral Service for Miami-Dade County on October 1, 2010. The Florida Bar previously handled LRS for Miami-Dade County and discontinued service on September 30. Applications and the Rules Governing the DCBA Lawyer Referral Service are available on the Association's website [www.dadecountybar.org](http://www.dadecountybar.org).

If you have any questions please contact the DCBA offices at (305) 371-2646, or email at [LRS@dadecountybar.org](mailto:LRS@dadecountybar.org).

The DCBA Lawyer Referral Service will compliment the Association's member benefits and public service.

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**GROUP FOUR**



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Carla M. Barrow  
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Joseph Raia  
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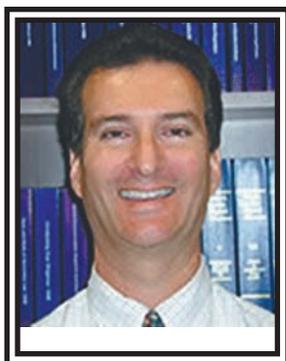
**GROUP FIVE**



Michael R. Band  
Adorno & Yoss P A



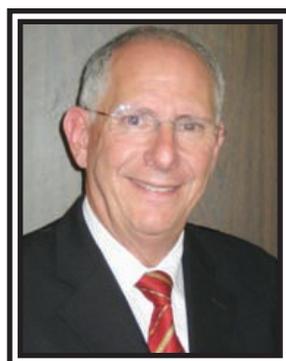
Paul Morris  
Law Offices of Paul Morris PA



Jeffrey Rynor  
Mitrani, Rynor, Adamsky & Toland, P.A.



Jacquelyn Needelman  
The Florida Bar



Leonard Elias  
Miami-Dade Consumer Advocate

**CONSTRUCTION LAW COMMITTEE SEMINAR LUNCHEON**

On Friday, July 30, the Construction Law Committee hosted a Chinese Drywall Litigation Seminar Luncheon at Fleming's Prime Steakhouse & Wine Bar. The guest speaker was Ervin A. Gonzalez, a partner with Colson Hicks Eidson. Mr. Gonzalez discussed the unique legal, factual and evidentiary issues he encountered as he tried Florida's first Chinese Drywall case.



Chad E. Cron, Peckar & Abramson, Ervin A. Gonzalez, DCBA Past President, Colson Hicks Eidson and Rafael A. Perez, McArdle & Perez, P.A.

**IS THERE A FINDER IN THE HOUSE?**

The distinction between a finder and a person who is required to be registered as a broker-dealer may have grown narrower as consequence of the recent SEC no action letter, *Brumberg, Mackay & Wall, P.L.C.* (available May 17, 2010). A broker-dealer is generally defined as a person who is engaged in the business of effectuating transactions in securities for compensation. Finders, who are persons not registered as broker-dealers, rely typically on prior no-action letters which seemed to indicate that if a finder does nothing more than make introductions, the finder does not have to register as a broker-dealer. In practical terms, this distinction may have been a distinction in theory only; since it is hard to imagine that a finder would sit idly by and do nothing to try to facilitate a transaction, especially if the finder only received compensation upon consummation of the transaction.



ALAN H. ARONSON

In *Brumberg*, the SEC would not grant a law firm no action relief from the broker-dealer registration requirements, where the firm was introducing potential investors to an issuer. The SEC indicated that "[a] person's receipt of transaction-based compensation in connection with these activities is a hallmark of broker-dealer activity." The SEC went on to say that the law firm had a salesman's stake" in the proposed transactions and such stake would heighten the firm's incentive to engage in sales efforts. The Staff indicated that in introducing the issuer to a limited number of persons, the firm was in effect pre-screening potential investors and pre-selling the securities to gauge investor interest.

The ramifications of having a finder in a deal, go way beyond compliance with the broker-dealer registration requirements. In many states, including Florida, the availability of the private placement exemption is conditioned upon payment of compensation, directly or indirectly, only to registered broker-dealers in the state where the investor resides. Loss of a private placement exemption would render a seemingly compliant securities issuance, into a violation of the registration requirements imposed under applicable law and regulation. Moreover, the revised Form D, required to be filed with the SEC and certain states (exclusive of Florida), requires disclosure of any commissions paid; and such disclosure requires identifying the name of the broker-dealer, the name of the salesman and their respective CRD license numbers. Indeed, if there is a finder in the house, the house may be in reality a house of cards, crashing down on the unlicensed person, as well as the issuer, resulting in potentially severe consequences for all.

*The opinions expressed are those of the author and do not necessarily reflect the views of any other person, including the law firm of which the author is affiliated.*

**UNAUTHORIZED PRACTICE OF LAW**

by Linda McGrath Cruz, FRP, CP

Have you ever committed a 3rd degree felony? You might be surprised. We've all been there... its late on Friday afternoon and you're in a hurry to get started on your weekend, but, you have a pleading which needs to get out and your paralegal hasn't finished revising it yet... Rather than waiting for your paralegal to put the finishing touches on it for your signature, its tempting to just tell her to print it, sign it on your behalf, and send it in... Or, you are out of the office and your newest client is impatiently waiting for your retainer agreement – do you make him wait, or ask your paralegal to sign it and send it over? It may be even more tempting if you've worked together for a long time – but does that make it right?

In the past, a paralegal's involvement with clients and cases was probably more limited. But in our current economy, paralegals and other non lawyers are finding themselves in expanded roles and are handling more than ever. Most of us are familiar with "UPL" or unauthorized practice of law, but how does it apply to your practice? Simply put, UPL is something that happens when a person who is not a licensed attorney engages in the practice of law. This may include accepting cases, giving legal advice, setting fees, signing pleadings, and more. Unauthorized practice of law rules are put into place to protect the general public from the fraudulent practice of law by people who are not qualified to prac-

tice law. A licensed attorney receives specialized education and is held to a specific set of rules of discipline, rules of professional conduct, and other specific regulations.

Attorneys are ultimately responsible for preventing unauthorized practice of law in their practice. This requires proper supervision of non-lawyer employees, including paralegals. However, as professionals, paralegals must take responsibility for their own actions as well by educating themselves and ensuring that they do not cross the line. We must work together as a team to ensure that we follow the rules set in place, and remove ourselves from situations which urge us to break the rules.

Through the Florida Constitution, the Florida Supreme Court gives The Florida Bar the responsibility to investigate and deal with matters relating to the unlicensed practice of law and the prosecution of these acts. Each judicial circuit in Florida has its own committee to oversee this important issue

On October 21, the DCBA FRP Committee will be hosting Jacquelyn Needelman of the unauthorized practice of law division of The Florida Bar. Ms. Needelman will be discussing UPL in more detail, including who can use the title "paralegal", pitfalls for paralegals to avoid and what happens when an unlicensed practice of law complaint is filed. We hope you will join us for this informative and important discussion.

Linda McGrath Cruz is a Florida Registered Paralegal with the law firm of Pardo & Gainsburg, LLP. She can be reached at 305-753-2443 or lmc@miamifrp.com.