



NEW YORK WOMEN'S BAR ASSOCIATION

The New York Women's Bar Association invites you to join us in honoring our special guests

The Newly Elected, Newly Re-Elected, and Newly Appointed Judges of New York County

at a **Cocktail Reception**

Thursday, February 2, 2012

6:00 pm to 8:00 pm

The Yale Club, 50 Vanderbilt Avenue, NYC

(at 44th St., across from west entrance to Grand Central)

Cost: **\$75 Members** (NYWBA & WBASNY), and **\$90 Non-Members** (paid in advance); **\$100 for all if paid at door** (space permitting)

Note: **No charge** for NY County Judges who are newly elected, newly re-elected, or newly appointed; and for Justices of the Appellate Division, First Dep't., or for NY Court of Appeals Judges.

We ask that all judges RSVP, even if they are honorees, so we account for all attendees.

RSVP: Space is limited, so RSVP promptly at www.nywba.org/JudgesReception

Sponsors: Law firms, companies and individuals are invited to make a donation to help support this event.

Sponsors will be entitled to admission to the Reception and will be acknowledged at the event, on our website, and in the NYWBA Newsletter.

See RSVP form online for details.

Info: For questions or info, email Executive Director Karen Lu at ED@nywba.org or call 212-490-8202.

Look inside for other February events and announcements, including:

Annual Mentoring Circles Reception - Feb. 7 - p. 9

Committee Meetings - p. 7 and 9

Annual Meeting & Elections - Notice to Members - p. 2

NYWBA Nominations Committee Report - p. 2

CLE-Bus. Valuation & Tax in Divorce - Feb. 7 - See Website

CLE-Collecting Attorney's Fees - Feb. 28 - See Website

PRESIDENT'S MESSAGE

A New Year

JANUARY 2012



Patricia Ann Grant

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Happy New Year to all our members! I hope your holiday season was a joyous one.

We have already had many excellent and exciting programs this year and look forward to many more.

Our annual summer program, co-sponsored by the New York City Bar, "What It's Really Like To Practice Law As a Woman," was particularly thrilling. It was absolutely invigorating to meet and speak with young women lawyers and law students. They were so receptive to the program and all of the benefits offered to them by NYWBA.

We are looking forward to our Annual Reception for Newly Elected, Re-Elected, and Re-Appointed Judges in New York County. It will be held on February 2nd at the Yale Club. You won't want to miss this event; it was a fabulous party last year at the same venue. The list of judges and justices who will be honored is impressive.

We are so proud that so many of the newly elected and appointed judges are members of the New York Women's Bar Association! I have been able to attend several of the judicial inductions, and it is always so inspiring to see our colleagues elevated to the bench.

There have been many other wonderful programs and events this year, including our annual Membership Reception, held on November 7, 2011. Membership Co-Chair Lauren Friend and I addressed the crowd, which included members across the legal spectrum, as well as prospective members who attended so they could learn more about the Association, our Committees, our Mentoring Circles program, and the many other benefits of membership. We thank Skadden, Arps, Slate, Meagher & Flom LLP for hosting this event, and kudos to event Chairs Jennifer P. Brown and Julie Hyman for organizing such a terrific evening.

We have a dream team co-chairing the Matrimonial and Family Law Committee this year - Hon. Lori Sattler, whom we are delighted to welcome to the Supreme Court Matrimonial Part, Michele Tortorelli, Esq., and Virginia LoPreto, Esq. The programs they have organized, and that are scheduled for future meetings, are cutting edge and a wonderful resource for our members.

(Continued on Page 2)

NYWBA NOMINATIONS COMMITTEE REPORT

At its November 29, 2011 meeting, the *NYWBA Committee on Nominations* nominated the following candidates to serve for the terms stated below. The elections will be held at the Association's Annual Membership Meeting in April 2012.

OFFICERS (2012-2013)

President: Hon. Jacqueline W. Silbermann
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NOTICE TO MEMBERS – ANNUAL MEETING & ELECTIONS

The **Annual Meeting** will be held in **April 2012**.

Article XIV, Section 1 of the By-Laws provides that only members who are in good standing and whose 2011-2012 dues were received by January 31, 2012 may vote at the Annual Meeting. If you have not yet joined or renewed your membership, please do so before that date.

Article XVII, Section 10 of the By-Laws provides that any fifty members eligible to vote at the Annual Meeting may, by a writing delivered to the Corresponding Secretary not less than forty days prior to the Annual Meeting, propose candidates for officer or director positions to be voted on at the Annual Meeting. Such petition must be sent to Corresponding Secretary Jennifer P. Brown, New York Women's Bar Association, 132 East 43rd Street, The Chrysler Building, # 716, New York, New York 10017-4019 and received by or before **March 12, 2012**.

President's Message (Continued from Page 1)

The response to one of the programs this Committee offered jointly with the Business Law, Taxation & Bankruptcy Committee chaired by Monique McClure (which was also a free CLE) -- "What Non-Tax Lawyers Should Know About the IRS: Tax Investigations, the Innocent Spouse Doctrine, the IRS Volunteer Disclosure Policy, the Potential Risks of Cash Transactions, and Related Topics" -- was sold out immediately! We also thank past President Lisa Sokoloff and Sills Cummis LLP for providing tax experts as speakers at the program. Watch for announcements about upcoming programs sponsored by all of our committees.

The NYWBA Matrimonial Pro Bono Law Project asks our practitioners to donate 25 hours annually to assist matrimonial litigants with the financial components of their matter. By participating, we can help those who are less fortunate resolve what may be, to them, a life-altering financial situation. This year, we have re-launched this pro bono program in conjunction with New York Law School. Those of you who attended the re-launch reception know what a great success this program was previously and, with the addition of New York Law School students and the School's participation, this program promises to be even more exciting and rewarding. We are so fortunate to have credentials that enable us to help those who are less fortunate.

If you haven't already signed up for the pro bono program, and you practice family law, you should. Once you take one of these cases, you will understand why the program is so compelling and equally rewarding for you, the lawyer, for the law student, and for the litigant. Kudos to Hon. Laura Drager, Judith White, Esq. and Patricia Ann Fersch, Esq., as well as Professor Carlin Meyer of New York Law School (who is also the Director of the Diane Abbey Law Center for Children and Families) for working so hard to re-launch the pro bono program. Thanks to a grant from the Hon. Betty Weinberg Ellerin Fellowships of the NYWBA Foundation, the program now has a law student administrator, which will make the re-launch even more successful. It portends wonderful things for our organization and the law students who will be mentored by working with attorneys on actual cases, as well as for the litigants we are able to assist.

Finally, my congratulations to the nominees for Officer and Director positions for next year (see column at left). I know the NYWBA will continue to be a strong voice under their leadership.

~ R E M I N D E R ~

Don't forget to RENEW your membership for 2011-2012!

It's easy ...

If you haven't renewed already, go to www.nywba.org and click on "Membership" to access our secure online membership form or contact our Executive Director (ED@nywba.org or 212-490-8202) to have a renewal form sent to you.

The Loss Mitigation Program Procedures for the Southern District of New York Bankruptcy Court

By Hon. Cecelia G. Morris

The Hon. Cecelia G. Morris, United States Bankruptcy Judge of the Southern District of New York, and Mary K. Guccion discuss the history of the Loss Mitigation Program, its legal basis, and the scope of its success in *The Loss Mitigation Program Procedures for the United States Bankruptcy Court for the Southern District of New York*, 19 AM. BANKR. INST. L. REV. 1 (2011). For a complete set of the Loss Mitigation Program Procedures and forms, visit www.nysb.uscourts.gov.

In recent years, the Court has seen a dramatic increase in bankruptcy cases filed to prevent the loss of the family home to foreclosure. The increase in bankruptcy cases led to an increase in motions for relief from the stay, as well as contested confirmations in chapter 13 cases and other bankruptcy litigation.

The Court investigated some of these legal activities and discovered a mind-boggling structure of lenders, loan servicers, attorneys and other agents, which proved unresponsive to debtors' efforts to discuss alternatives to foreclosure, and inhibited compliance with fundamental bankruptcy requirements such as deference to the automatic stay and documentary support for proofs of claim.

As a response to the increase in filings and bankruptcy litigation, the Court adopted the Loss Mitigation Program Procedures. The Loss Mitigation Program promotes the consensual resolution of lift-stay motions, claims objections, and contested confirmations, by requiring the parties to appoint representatives with authority to discuss options for the modification of a home loan. The Loss Mitigation Program aids the Court and the Clerk's Office in case management by reducing the volume of motion practice and the need for evidentiary and disciplinary hearings, and by expediting the confirmation process in chapter 13 cases and preserving the assets of the bankruptcy estate.

History of the Loss Mitigation Program

The Court perceived a new trend in consumer debtors: employed, middle-class, struggling to make the mortgage payment. This new debtor advised the Court of futile attempts to contact the holder of the home loan and discuss options for a loan modification. At the same time, the Court learned of creditor practices that violated bankruptcy law, such as seeking relief from the stay without a showing of cause, and filing a proof of claim without a comprehensible summary of the claim or adequate supporting documentation. These practices compounded the work of the Court and all parties involved, undermined the bankruptcy system, and depleted the assets of the debtor's estate. A creditor's law firm advised the Court that its clients wished to offer voluntary loan modifications to some borrowers. The Court had several meetings with attorneys from both the creditors' and debtors' bars, and adopted the Loss Mitigation Program in 2008.

Purpose of the Loss Mitigation Program

The Program provides a forum for debtors and lenders to reach a consensual resolution when the debtor's home is at risk of foreclosure. As a result, fewer claims objections and motions for relief from the stay are filed, and prospects for confirmation and substantial payment to unsecured creditors improve.

"This Court must ensure that if these Debtors, and all debtors that come before the Court, do what is required of them, they will have a chance at a fresh start, including all of the rights and benefits to which they are entitled under the Bankruptcy Code."

— *In re Schuessler*, 386 B.R. 458, 491 (Bankr. S.D.N.Y. 2008)

Loss Mitigation Procedure

A party, usually the debtor, requests loss mitigation by filing a request for loss mitigation and serving it on the creditor. The creditor has the opportunity to oppose loss mitigation. If no opposition is received, or if the Court overrules the creditor's objection, the Court will enter the Loss Mitigation Order, which sets deadlines for the appointment of representatives with settlement authority and the exchange of information. The parties engage in a process of determining whether a voluntary loan modification is possible, and report to the Court for status conferences.

The Loss Mitigation Program is authorized by the Court's inherent power to control its docket, as well as 11 U.S.C. §§ 105(a) and (d), and the federal rules of procedure that promote alternative dispute resolution.

Preparing for the Long-Term Future of a Business

By Michael B. Salmon

Here's an important question for busy business owners - what's next for your company? Not just tomorrow or even in the months ahead, but when the time comes that you or one of your key employees retires or leaves the organization unexpectedly?

At a time when many baby boomers are thinking about retirement, those who own a business need to plan not just for their life after work, but for the future of the firm they've committed so much of their lives to. In a small- or mid-sized business, the owner and perhaps other key personnel play such a vital role that special planning is required to prepare for circumstances in which any of these individuals is no longer part of the organization. If your business doesn't have a succession plan in place, it is an issue that needs prompt attention.

There are a number of questions to consider in helping prepare for the period of transition a company inevitably faces. They include:

Question 1 - Who is in line to follow the principals of the firm?

The most fundamental aspect of a succession plan is to have a replacement (or replacements) in line. In many cases, a family business will move from one generation to the next. In other situations, a trusted employee or group of employees may need to be groomed and prepared to assume control of the company in the future.

Question 2 - How will control of the business be transferred?

Once successors are identified, there is a variety of ways that control of the business can be transferred to them. This usually works best when the current business owner and potential successors can establish an agreement in advance for an orderly transfer of ownership. This may occur in a number of ways. Among the options are:

- An outright sale to the new owner, either in a one-time transaction or an installment sale (with payments made by the buyer over a number of years). It may be possible to establish an annuity that will make payments to the owner over a period of years as a way to fund the sale.
- The use of a trust vehicle, such as a grantor retained annuity trust (GRAT) or a grantor retained unitrust (GRUT). GRAT/GRUTs are irrevocable trusts to which you transfer appreciating assets while retaining an income payment for a set period of time. At either the end of the payment period or your death, the assets in the trust pass to the other trust beneficiaries (the remainder beneficiaries). The value of the retained income is subtracted from the value of the property transferred to the trust (i.e., a share of the business), so if you live beyond the specified income period, the business may be ultimately transferred to the next generation at a reduced value for estate tax or gift tax purposes.

There are other options to consider as well. An important consideration in the decision-making process is the potential tax ramifications, particularly for the seller. There are tools available to help reduce the potential impact of capital gains, estate and gift taxes when a sale occurs. Good planning plays a critical role in making sure that both the seller and the buyer achieve the most favorable results.

Question 3 - What forms of protection are in place in case an unexpected event occurs?

The need to implement a succession plan can sometimes strike without notice. It is important to have protection solutions in place in the event of the sudden death or disability of the business owner or a key individual in the organization.

Businesses that involve partners or likely successors, for example, may benefit from having a buy-sell agreement in place. A buy-sell agreement lets you keep control of your interest until the occurrence of an event that the agreement specifies, such as your retirement, disability, or death. Other events like divorce can also be included as triggering events under a buy-sell agreement. When the triggering event occurs, the buyer is obligated to buy your interest from you or your estate at the fair market value. The buyer can be a person, a group (such as co-owners), or the business itself. Price and sale terms are prearranged, which eliminates the need for a fire sale if you become ill or when you die.

Remember, you are bound under a buy-sell agreement: You can't sell or give your business to anyone except the buyer named in the agreement without the buyer's consent. This could restrict your ability to reduce the size of your estate through lifetime gifts of your business interest, unless you carefully coordinate your estate planning goals with the terms of your buy-sell agreement.

Question 4 - If a plan is in place, are you keeping it up to date?

Like anything related to personal finance, no plan is a final plan. Things change in the lives of business owners and in the structure of the business. It is important to review a plan regularly and make appropriate adjustments to it.

Business succession is a complex matter. It involves close work with a financial advisor, tax specialist and an attorney experienced in these types of matters to structure a solution that is most suitable for your business and potential successors. It is a critical matter to address to assure that the rewards for years of hard work in building a successful business are realized long after you are no longer part of the day-to-day operations of the organization.



Michael Salmon is a Senior Financial Advisor with Ameriprise Financial in Midtown Manhattan. Michael specializes in Financial Planning, Investment Portfolio Management, Retirement Planning Strategies, Estate Planning Strategies, Saving for Education. Michael is an active public speaker and financial columnist. You can reach Michael at (646) 964-9470 or email michael.b.salmon@ampf.com.

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Report by Andrea Vasquez, New York Women's Bar Association Foundation Fellow at the Feerick Center

From September of 2010 to May of 2011, during my second year of law school, I served as a New York Women's Bar Association Foundation Fellow at Fordham Law School's Feerick Center for Social Justice. During the fellowship, my co-fellow, Donella Green, and I had the opportunity to work primarily on the Feerick Center's Domestic Violence and Consumer Law Project. Through our work, we both learned about consumer debt issues in New York (and across the country) and the critical importance of economic stability for domestic violence survivors.

In New York City, debt collectors filed over 200,000 cases in 2010.¹ A majority the consumer debt cases are not brought by original creditors, but by third-party debt buyers.² Debt buyers purchase portfolios of debt from original creditors for pennies on the dollar and attempt to collect debts in a variety of ways, ranging from telephone calls to lawsuits.³ In 2010, nearly three in five or 58% of these lawsuits resulted in default judgments because the person sued did not appear in court.⁴ "Sewer service" - the practice of failing to serve court papers and filing false affidavits - often contributes to this shocking default rate. Of those consumers who do receive notice of their cases, most do not appear with legal representation. Court statistics show that only about 1% of people sued by creditors have legal counsel.⁵

I. CLARO

The Civil Legal Advice and Resource Office ("CLARO") is currently one of the programs attempting to address the significant gap in legal services for New Yorkers experiencing debt collection. CLARO is a limited, legal advice project for unrepresented debtor-defendants and operates under the auspices of the New York State Courts Access to Justice Program in the New York City Civil Courts in all five boroughs - the Bronx, Brooklyn, Manhattan, Queens and Staten Island. The Feerick Center for Social Justice co-sponsors the Bronx and Manhattan CLARO programs and helps support Staten Island CLARO. All of the CLARO Programs involve collaborations among the courts, bar associations, academic institutions, and legal services providers. For example, the Staten Island CLARO Program is co-sponsored by the Richmond County Bar Association, the Staten Island Women's Bar Association, and Wagner College.

Volunteer attorneys at CLARO respond to the needs of unrepresented debtors in consumer credit cases in New York City Civil Court by advising litigants on self-representation strategies. Volunteer students provide administrative and programmatic support and help administer the sessions. As New York Women's Bar Association Foundation Fellows, both Donella and I became actively involved with CLARO and volunteered at sessions in both the Bronx and Manhattan. We were both then asked to join the board of Fordham's Consumer Law Advocates and continue our work with CLARO this year. Part of my involvement with the CLARO Program included research into debt settlement scams, which target financially distressed consumers with the promise of a "debt free" future, take exorbitant fees, and too infrequently result in financial ruin for working poor and low-income New Yorkers.

II. DV CLARO Pilot Project

As NYWBAF Fellows, Donella and I worked primarily on the Feerick Center's Domestic Violence and Consumer Law Project, which focused on an array of issues raised by financial control and economic abuse of domestic violence survivors. Economic abuse can include, for example, identity theft, limiting access to money, interfering with employment, damaging credit, and running up consumer debt.⁶ Economic abuse is both a barrier to leaving an abusive relationship and to remaining independent post separation. A recent Michigan State University study found that 99% of domestic violence victims interviewed had experienced some form of economic abuse during their relationship.⁷ Although it is so prevalent, economic abuse is one of the least understood forms of domestic abuse.⁸

One of the main focuses of the Domestic Violence and Consumer Law Project is the DV-CLARO Pilot Project. The DV-CLARO Pilot Project took the CLARO model and adapted it to the specific needs of survivors of domestic violence. This involved a more confidential setting than the typical CLARO session, with a consumer law attorney and a family law attorney simultaneously providing advice to the survivor on a consumer debt issue. During our time at the Feerick Center, Donella and I were able to help plan, administer, and participate in two DV-CLARO sessions that were done in collaboration with the Brooklyn Family Justice Center. During one session I was able to observe, the combination of the consumer debt crisis and economic abuse was immediately apparent. The visitor signed up to attend a DV-CLARO session because she knew she had poor credit, but was unsure of any particular problems. After pulling her court file for a case she did not know existed, it was discovered that she had a \$16,000 default judgment against her. This visitor had clearly been a victim of sewer service; the affidavit of service alleged to have served her, but listed a description that looked nothing like her. She had also only known about \$2,000 of debt on this credit card, the rest had accrued from her former abuser forging her signature on convenience checks sent by the credit card company. With the assistance of the attorneys in the DV-CLARO session and a follow up trip to Brooklyn CLARO the visitor was able to work to clear the default judgment.

III. Conclusion

Entering law school I knew I wanted to work in the field public interest law after graduation. Although I was unsure of the type of law that I wanted to focus on, I have always been drawn to experiences where I work to improve the lives of women and children. During my fellowship I witnessed the intrinsic link between finances and the ability to live an independent life away from an abuser. Because of this experience I chose to continue my work with survivors this summer at Legal Services NYC - Bronx in the Family Law Unit. My experiences have made me determined to raise awareness regarding this aspect of domestic abuse and to develop strategies to help clients attain economic stability. This fall I am applying for public interest postgrad-

(Continued on Page 6)

Interview of a Past President: Marcia C. Goldstein

By Susan L. Pollet



Q: When you were President of the NYWBA, what were the issues that you focused on?

A: During my 1978 - 1979 term as president of the NYWBA, the principal concern was the formation of a statewide organization of women attorneys. Many of us traveled the State with past President Joan L. Ellenbogen, the moving force of the concept, with a view to form chapters in the various areas or to encourage those that existed to join us. Of particular interest was the fact that the charter of the NYWBA provided that it could have chapters, and it was the intent that NYWBA would be the umbrella group. However, that concept ran into fierce opposition from the Queens and the Brooklyn Women's bar groups, as they had been around as long as we had, and there was no way they would be a chapter of NYWBA. Thus was born the idea of a new umbrella organization, WBASNY, with the idea that NYWBA and others would be chapters. That idea ran into fierce opposition in our own bar association. It was quite a "fight," but in the end we agreed and the business of creating WBASNY and its By-Laws began.

Of course, as always, we were trying to increase our membership. In those days, more women had begun working at larger law firms. We had great difficulty getting them to join. I believe their view was that they had made it so they did not need a women's bar association.

Q: Tell us about your career and how you came to be involved in matrimonial law?

A: At the time of my presidency, I was working at an investment banking firm, then called Lehman Brothers Kuhn Loeb. I had worked at Kuhn Loeb since 1971, and it merged with Lehman Brothers in 1977. Lehman was in reality the surviving firm (how ironic), and I had a bit of adjusting to do as the structure was quite different. Adjust I did. However, I had been fairly senior at the time of the merger (being the only woman officer) and the change in authority did not sit well with me. So, in early 1979, I asked the powers that be at Lehman whether I might ever become a partner. The answer was "no," as I was not an income producer. I then had a decision to make: whether to be a small fish in a big pond or vice versa. I chose the latter.

I decided that I would become a partner with Joan L. Ellenbogen, who, at that time, was practicing mostly matrimonial law, with a view to my doing business law. Such was not to be. In 1980, the Equitable Distribution Law came into being. With my background in corporate finance, accounting and business law, I was in the right place at the right time. And there I stayed, enjoying all the aspects of asset valuation.

Q: You mentioned to me that you are involved in other pursuits today. What are those?

A: After Joan died in 2001, I closed our law practice and did a bit of mediation and pre-nuptials. No more court for

me. Around that time, I became friendly with Hon. Virginia E. Yancey, who was then sitting in the matrimonial part in Kings County. It was a very difficult time for me, and she was there. I had not known at the time that she had planned that when she retired from the bench, she would open an animal sanctuary (her second love after caring for the many children with whom she dealt). With her husband, she had bought land upstate. When she retired in 2005, she moved there and built Love and Hope Animal Sanctuary, Inc. It's a remarkable place. See it at www.loveandhopeforanimals.org. That's where I am spending much of my time now.

Q: What changes have you seen for women lawyers over time?

A: I became a member of the NYWBA in 1967. The changes have been extraordinary. The 1970's were the years of growing awareness of women. Since then it has been a steady progression of remarkable women helping other remarkable women as they strive for their place and their empowerment. In the 1980's I found that many women who thought they had made it did not really understand what it took to make it in a man's world, which they had to do if they were to succeed. It was enough that they had become lawyers. Today, there is far more equality. However, it continues to be necessary for there to be a women's bar. Support systems are always essential for continued growth. I have met so many remarkable women; so many who want to help others; so many who continue to strive for a better place for all of us. That is the special ability of women and NYWBA.

Susan L. Pollet is the Chair of the NYWBA Archive & History Committee. Ms. Pollet works for the Westchester County District Attorney's Office. Look for more of Ms. Pollet's archival interviews of NYWBA Past Presidents, Officers, and Directors in future Newsletters and on our website (www.nywba.org/History).



Andrea Vasquez (Continued from Page 5)

uate fellowships focused on economic justice for domestic violence survivors to continue this important work.

ENDNOTES:

1. New York City Civil Court Statistics (on file with author).
2. ANIKA SINGH, URBAN JUSTICE CENTER, DEBT WEIGHT: THE CONSUMER CREDIT CRISIS IN NEW YORK CITY AND ITS IMPACT ON THE WORKING POOR 14 (Oct. 2007), *available at* http://www.urbanjustice.org/pdf/publications/CDP_Debt_Weight.pdf.
3. NEIGHBORHOOD ECONOMIC DEVELOPMENT ADVOCACY PROJECT (NEDAP), DEBT DECEPTION: HOW DEBT BUYERS ABUSE THE LEGAL SYSTEM TO PREY ON LOW-INCOME NEW YORKERS 3 (May 2010), *available at* <http://nedap.org/resources/reports.html>.
4. New York City Civil Court Statistics (on file with author).
5. NEDAP, *supra* note 3, at 7.
6. NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, *ECONOMIC ABUSE* http://www.uncfsp.org/projects/userfiles/File/DC_E-STOP_NOW/NCADV_Economic_Abuse_Fact_Sheet.pdf.
7. Adrienne E. Adams et al, *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 571 (May 2008).
8. *Id.* at 564.

WELCOME NEW MEMBERS

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 Elyse Patterson
 Carlos Perez-Hall
 Shivani Poddar
 Kristen M. Ramos
 Deidre L. Robokos
 Francesca A. Sabbatino
 Mackenzie Saverine
 Serena L. Scott-Ram
 Brittiny Latrell Sessions
 Mandy M. Sheridan
 Elizabeth P. Siegel
 Judith Simms

(Continued at right)

SUSTAINING MEMBERS

With their generous contributions, our sustaining members make it possible for us to accomplish so much more. We honor and thank them for their support.

Erica Bell	Loretta A. Ippolito
Susan L. Bender	Sophie Jacobi
Laurie Berke-Weiss	Robert M. Kaufman
Margaret M. Brady	Eileen S. King
Elizabeth A. Bryson	Helaine J. Knickerbocker
Hon. Karen S. Burstein	Susan J. Kohlmann
Dawn M. Cardi	Harold A. Mayerson
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COMMITTEE NOTES

The **Elder Law Committee** will meet on February 14th at 6 pm at the Law Offices of Miriam Davidson, 156 West 56th Street, NYC. Members should RSVP to ElderLawRSVP@nywba.org.

The **Matrimonial and Family Law Committee** will meet Tuesday, February 28th and will explore the topic of what to do when ACS/Police are in your client's life. Future meeting dates: March 20th, April 17th, and May 15th. Meetings are held at the offices of Blank Rome, LLP (The Chrysler Bldg., 405 Lexington Avenue, NYC). Meetings start at 6 pm, and no one will be admitted after 6:30 pm. Committee members should RSVP to MFRsvp@nywba.org to confirm their attendance. Committee Co-Chairs Virginia LoPreto,

(Continued on Page 9)

Report by Donella Green, New York Women's Bar Association Foundation Fellow at the Feerick Center

As a New York Women's Bar Association Foundation Fellow at Fordham Law School during the 2010-2011 academic year, I was able to work with the Feerick Center for Social Justice. Andrea Vasquez, the second Fellow, and I worked specifically with the Domestic Violence and Consumer Law Project. The Center works with consumer law and domestic violence advocates and services providers on a range of efforts, including organizing training programs and conducting research. Andrea and I were involved in a number of programs. In particular, we were able to organize and present at a program that focused on consumer credit reporting and domestic violence survivors. About 40 practitioners attended the event. Andrea and I were also able to conduct legal research regarding utilities law and special protections for domestic violence survivors. Through our work, we were able to explore and understand the importance of credit and utilities advocacy for domestic violence survivors.

In New York City, the credit crisis has drastically affected women and low-income communities. More particularly, the ramifications of damaged credit have been a set-back to low-income women who are domestic violence survivors. The credit crisis proves to be yet another barrier in a domestic violence survivor's attempt to flee from her abuser. This additional barrier makes it harder for domestic violence victims to keep from becoming homeless. "Nearly 50% of homeless women and children are homeless because of domestic violence."¹

I. CREDIT

"[A] consumer's credit report can have a huge impact on a consumer's life."² A bad credit report can deny a consumer access to a variety of essential services. Credit history determines access to and the cost of credit, loans, and even insurance.³ It has also become an important factor in employers' hiring decisions and in landlords' decisions⁴ to accept applications for apartments. *Id.* (at 58).

A. What is a Credit Report?

A credit report "is a record of how a consumer has borrowed and repaid debts."⁵ Credit reports typically include a consumer's Social Security number, birth date, current and former addresses, and employers. *Id.* The credit score is determined by information from the credit report. "A credit score is a number that is supposed to measure how likely you are to repay a loan."⁶ Credit scores typically range between 300 and 850. *Id.*

The credit report also contains information about the consumer's credit accounts, typically including the date the consumer opened the account; the type of the account; the status of the account; the monthly payment; whether the account is currently open or closed; the monthly maximum credit limit; the account activity; the current balance; and any amounts past due.⁷ This information is collected from "court records, banks, credit card companies, finance companies, department stores, cellular phone companies ..., and many other companies issuing credit."⁸ There are three major credit reporting agencies: Experian, Equifax and TransUnion.

B. The Impact of Credit Reporting Errors

Despite the importance of credit reports, advocates have frequently criticized them because they often contain inaccurate information. "An online survey by Zogby Interactive found that 37% of consumers who ordered their credit report discovered an error, and 50% of those were not easily able to correct the error."⁹ Another survey found that 79% of credit reports contained a mistake of some kind.¹⁰

One common credit reporting error is the mixing of files. "Mixed or mismerged files occur when credit information relating to one consumer is placed in the file of another, thus creating a false description of both consumers' credit histories." *Id.* "One study found that 44% of credit reporting complaints to the FTC involved mismerged files. Of these complaints, 64% had total strangers' files mixed in, while 36% involved information belonging to relatives or former spouses." *Id.*

C. Credit and Domestic Violence Survivors

A crucial factor in a domestic violence survivor's ability to flee her abuser is her financial independence. "Many domestic violence survivors, in addition to facing physical and emotional concerns, face serious financial concerns after separating from an abuser."¹¹ "Managing credit and financial problems can be an overwhelming challenge for victims of domestic violence, especially if they have had little if any control over their finances in the past and are fleeing an abusive situation." *Id.* In situations where the survivor had little control over her finances, it is likely she was a victim of economic abuse, which occurs when "batterers control victims' finances to prevent them from accessing resources, working or maintaining control of earnings, achieving self-sufficiency, and gaining financial independence."¹² Abusers often force their victims to obtain credit, then "ruin[] the victim's credit rating or future ability to obtain credit." *Id.*

II. UTILITIES

Domestic violence survivors sometimes face obstacles to obtaining and maintaining access to critical utility services, such as gas, electricity, and telephone. Survivors need these essential services when establishing households independent of their abusers. Utilities arrears often prove to be a barrier in a domestic violence victim's attempt to escape her abuser. However, utilities law is complex, and New York's only legal service organization dedicated to utilities law no longer operates. As a result, the number of resources in this area is in short supply.

"Utilities are necessary for individuals, but getting set up and kept current can be particularly difficult for domestic violence survivors."¹³ For example, "[t]he utility company may try to hold a survivor responsible for delinquent utility bills on an account managed by the abuser." *Id.* Currently, in New York, there are no special provisions in utilities law for domestic violence survivors.¹⁴

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Marilyn B. Kunstler Receives The Prestigious American Inns of Court Professionalism Award

By Annie M. Ugurlayan

On September 21, 2011, Marilyn B. Kunstler, a Director of the NYWBA Foundation, Inc., was one of three recipients of the Tenth Annual American Inns of Court Professionalism Award in the Second Circuit. Chief Judge Dennis Jacobs, U.S. Court of Appeals for the Second Circuit, and Malinda Dunn, Executive Director of the American Inns of Court, presented the award at the Daniel Patrick Moynihan U.S. Courthouse in New York City, with a number of state and federal judges in attendance.

The American Inns of Court is an association of judges, lawyers, law professors and law students who organize programs relating to issues of ethics, skills and professionalism. The American Inns of Court Professionalism Awards are awarded each year, in each Federal Circuit, to a lawyer or judge whose life and practice are of unquestioned integrity and character and who has upheld the highest standards of the legal profession and the rule of law. Ms. Kunstler, along with the other recipients, was also recognized at the American Inns of Court Celebration of Excellence, hosted this year by Supreme Court Justice Sonia Sotomayor, at the Supreme Court of the United States in Washington, DC, on November 4, 2011.

The New York Women's Bar Association Foundation, for which Ms. Kunstler also provided many years of dedicated service as Treasurer, was honored to support her nomination. Her unparalleled exemplary work in private practice, as well her leadership on the Foundation Board and in numerous bar associations, serve as an example for all lawyers. Heartfelt congratulations to Ms. Kunstler on this well-deserved honor!

Annie Ugurlayan is a Senior Staff Attorney at the National Advertising Division and a member of the NYWBA Foundation Board of Directors.

Donella Green (Continued from Page 8)

III. CONCLUSION

My experience with the Feerick Center exposed me to important areas of law and to issues that plague communities that I'll serve as a public defender. During the fellowship, I joined the board of Fordham Law School's Consumer Law Advocates in order to continue my work with consumer law issues and CLARO.

ENDNOTES:

1. SafeHorizon, Domestic Violence: The Facts, <http://www.safehorizon.org/index/what-we-do-2/domestic-violence--abuse-53/domestic-violence-the-facts-195.html> (last visited Oct. 5, 2011).
2. NATIONAL CONSUMER LAW CENTER, AUTOMATED INJUSTICE: HOW A MECHANIZED DISPUTE SYSTEM FRUSTRATES CONSUMERS SEEKING TO FIX ERRORS IN THEIR CREDIT REPORTS 3 (2009), http://www.nclc.org/images/pdf/credit_reports/credit_reports_automated_injustice_report.pdf.
3. See, e.g., FEDERAL TRADE COMMISSION, CREDIT-BASED INSURANCE SCORES: ARE THEY FAIR? (2007) available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:39902.pdf; NATIONAL CONSUMER LAW CENTER, FAIR CREDIT REPORTING 1 (6th ed. 2006).
4. See, e.g., NATIONAL CONSUMER LAW CENTER, *supra* note 3, at 69.
5. AUTOMATED INJUSTICE, *supra* note 2, at 4.
6. NEDAP, Credit Reports and Credit Scores, <http://nedap.org/hotline/creditmain.html> (last visited Oct. 5, 2011).
7. See AUTOMATED INJUSTICE, *supra* note 2, at 4.

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The evening will also feature a presentation by Ivy Slater, of Slater Success Coaching, on the topic of goal setting and leadership.

If you are not yet part of a mentoring circle but would like to be, send an email to mentoring@nywba.org.

RSVP at www.nywba.org/MentoringCircles

COMMITTEE NOTES *(con't from p. 7)*

Michele Tortorelli, and Hon. Lori Sattler can be contacted at MF@nywba.org.

The **Students & New Lawyers Committee** will meet on Saturday, February 11th (location to be determined). The meeting promises to be both unique and informative. For more information, to join the committee, or to RSVP, email Committee Chair Stephanie Adduci at SNL@nywba.org.

8. MyFaircredit.com, Correcting Your Credit, <http://www.myfaircredit.com/s/correcting-your-credit> (last visited Oct. 5, 2011).
9. AUTOMATED INJUSTICE, *supra* note 2, at 5, citing ZOGBY INTERACTIVE, *Most Americans Fear Identity Theft*, Zogby's American Consumer, Apr. 2007, at 3.
10. ALISON CASSIDY & EDMUND MIERZWINSKI, U.S. PIRG, MISTAKES DO HAPPEN: A LOOK AT ERRORS IN CONSUMER CREDIT REPORTS 13 (June 2004) available at <http://cdn.publicinterestnetwork.org/assets/BEevuv19a3KzsATRbZMZlw/MistakesDoHappen2004.pdf>.
11. NACA, Consumer Rights for Domestic Violence Survivors, <http://www.naca.net/issues/domestic-violence> (last visited Oct. 5, 2011).
12. NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, ECONOMIC ABUSE 1 (n.d.), http://www.unfcsp.org/projects/userfiles/File/DCE-STOP_NOW/NCADV_Economic_Abuse_Fact_Sheet.pdf
13. *Consumer Rights for Domestic Violence Survivors*, *supra* note 15.
14. The Public Service Law was recently amended to include a specific protection for domestic violence survivors with regard to telephone service. Every telephone corporation must allow a survivor of domestic violence to either use a modified or alternate name for their telephone directory listing or waive the fee for an unlisted telephone number. N.Y. Pub. Serv. Law § 91(7) (2011). To qualify, the survivor must provide the telephone company with any order of protection, other than a temporary order. *Id.* The fee waiver will apply for the duration of the order of protection. *Id.*

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