

# NYWBA

## NEW YORK WOMEN'S BAR ASSOCIATION

### New York Civil Court Express Lunch Series

#### **"CIVILITY IN CIVIL PRACTICE? - UPDATE ON THE RULES OF CIVILITY AND TIPS FOR DEALING WITH AN UNCIVIL ADVERSARY"**

*featuring distinguished speakers*

**Hon. Betty Weinberg Ellerin**

Of Counsel, Alston & Bird LLP  
(Former Presiding Justice, Appellate Div., 1st Dep't)

**Vincent Syracuse, Esq.**

Partner, Tannenbaum Helpert Syracuse & Hirschtritt LLP  
(Litigator & Mediator; Chair of New York State Bar  
Association Program on Ethics and Civility)

**Date:** Wednesday, January 16, 2013, 1:00-2:00 p.m.

**Place:** New York Civil Courthouse, 111 Centre St.,  
12th Floor Boardroom, NYC

**Cost:** Complementary for Members  
\$20 for Non-Members & Guests

**RSVP:** [CivilCourtsChairs@nywba.org](mailto:CivilCourtsChairs@nywba.org)

*Due to space limitations, advance registration is required.*

### PRESIDENT'S MESSAGE

#### **Happy New Year!**

JANUARY 2013



Hon. Jacqueline W.  
Silbermann

As we celebrate the start of a new year, I am pleased to take a moment to reflect on the impact of the Women's Bar. Every day, I see members striving to do extraordinary work in their professional lives, while also giving back to the profession and the community at large.

Just such an occasion arose when Superstorm Sandy ravaged so many, taking lives and impacting individuals at every economic level - from the poor, to dedicated police and fire fighters whose homes were destroyed, to "captains of industry" in lower Manhattan. After the hurricane, the Women's Bar, Network of Bar Leaders and other bar associations worked to identify ways to bring legal assistance to those who needed to file insurance and FEMA claims, to seek housing and benefits, and address other issues.

Under the leadership of Kathryn E. Salensky, NYWBA Board member and First Vice President of the Network of Bar Leaders, we and other organizations mobilized to identify volunteer attorneys, to train lawyers on the issues facing hurricane victims, and to set up clinics where assistance could be provided. Certain courses (including some for CLE credit) were recorded, so future volunteers can be trained by webcast. The need is still great. If you can volunteer, please email [SandyClaims@nywba.org](mailto:SandyClaims@nywba.org).

On a lighter note, I am pleased that our committees are offering a variety of programs of interest to our members (*see list below*). The Board voted for all CLE programs this year to be offered **free of charge** as a benefit of mem-

*(Continued on Page 2)*

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***

**Tuesday, February 5, 2013**

6:00 pm to 8:00 pm

**The Yale Club, 50 Vanderbilt Avenue, NYC**  
(at 44th St., across from west entrance of Grand Central)

*See full announcement on page 2*

#### **Look inside for other events and announcements, including:**

- 1/10 - Litigation Committee Meeting - p. 3
  - 1/16 - Civil Court Express Lunch - p.1
  - 1/16 - Working Parents Brown Bag Lunch - p. 9
  - 1/16 - "Matrimonial and Family Law Cocktail Reception" - pg. 7
  - 1/17 - Solo & Small Firm Practice Meeting - p. 3
  - 1/23 - Programs & Events Committee Meeting - p.3
  - 1/31 - "Trustees of Supp'l/Special Needs Trusts" - p.6
  - 2/5 - **"NYWBA Cocktail Reception for the Judiciary"** - p.2
  - 2/6 - CLE - "Exam of the Forensic Custody Expert" - p.10
  - Late Feb - "Jury Selection in Criminal Cases" - p.3
  - 3/14 - CLE - "What If Your Client is a Veteran?" - p. 11
  - 3/4 & 3/5 - CLE - Domestic Violence Conference - p.6
  - 3/28 - "Ethics Game Show - Matrimonial/Family Edition" - p. 4
- Check [www.nywba.org](http://www.nywba.org) for more Meetings, Programs & Events

**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**

**Tuesday, February 5, 2013**

6:00 pm to 8:00 pm

**The Yale Club, 50 Vanderbilt Avenue, NYC**

(at 44th St., across from west  
entrance of 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 and NY Court of  
Appeals Judges.

**RSVP:** Space is limited, so RSVP promptly at  
[www.nywba.org/JudgesReception](http://www.nywba.org/JudgesReception)  
*We ask that all judges RSVP*, even if they are  
honorees, so we can account for all attendees.

**Sponsorship:** Law firms, companies and individuals are  
invited to make a donation to help support  
this event at any of the following sponsor-  
ship levels:  
**Platinum (\$1,000) Gold (\$750) Silver (\$500)**

Sponsors will be entitled to free admission  
tickets (Platinum-3 complimentary tickets,  
Gold-2 tickets, Silver-1 ticket) and will be  
acknowledged at the event, on our website,  
and in the NYWBA Newsletter.

**Info:** For questions or info, email Executive  
Director Karen Lu at [ED@nywba.org](mailto:ED@nywba.org)  
or call 212-490-8202.

*President's Message (Continued from Page 1)*

bership. It is my hope that members will be able to fulfill their  
entire CLE requirement for the year at no cost.

Speaking of membership, we are also coming up on the deadline  
to certify our membership to the statewide Women's Bar. Every  
member as of January 31st counts towards the number of votes  
NYWBA has at WBASNY next year, so I ask anyone who has not  
yet renewed to please do so before the end of January.

Finally, I would be remiss if I did not congratulate the NYWBA  
members who have been elected, re-elected or newly appointed  
as members of the judiciary, including Past President Lisa  
Sokoloff. Please join us in honoring all of these jurists at our annu-  
al **Judiciary Reception** on February 5, 2013 (see announcement  
at left).



**NYWBA's Elder Law and Disabilities Committee  
Presents a CLE Program**

***"Why Your Client's Status as a Veteran is  
Important to Your Client & Practice"***

featuring

***Felicia Pasculli, Esq., Certified Elder Law Attorney***

Asking clients "Are you or your spouse a veteran?" can help you identify clients  
and family members who may be entitled to receive important veterans' benefits,  
such as prescription drugs, medical coverage, pension benefits, and burial rights,  
to name a few. (See article, pg.11).

At this CLE program, **Felicia Pasculli, Esq.**, an elder law practitioner and expert  
on veterans' benefits, will share her expertise and discuss eligibility guidelines for  
veterans' benefits and other information you can use to enhance your practice  
and qualify you to be accredited to practice before the Veterans Administration.

**Date:** Thursday, March 14, 2013

**Time:** 6:00 p.m. to 9:00 p.m.

**Place:** Tarter Krinsky & Drogin LLP  
1350 Broadway (btw 35th and 36th), NYC  
*Host:* Amy Goldsmith

**Cost:** Free for NYWBA/WBASNY Members\*  
(\$50 for non-members)\*\* (The Committee thanks  
NYWBA for helping to underwrite this program.)

**CLE:** 3.0 MCLE Credits\*\*\* (Accreditation pending)

**RSVP:** [ElderLawChairsRSVP@nywba.org](mailto:ElderLawChairsRSVP@nywba.org)

*Due to space limitations, advance registration is required.*

\* **Membership:** If you are not a current member, it's easy to join or renew using  
our secure online membership form at [www.nywba.org/Membership](http://www.nywba.org/Membership).

\*\* **Financial Hardship Scholarships:** Full and partial scholarships are available  
based on financial need. For info, contact Amy B. Goldsmith, CLE Chair  
([CLE@nywba.org](mailto:CLE@nywba.org)). All requests are confidential.

\*\*\* **CLE:** NYWBA is a chapter of the Women's Bar Association of the State of  
New York, an accredited CLE provider. Approval of CLE credit is pending in  
accordance with the requirements of the NYS CLE Board for the above-listed  
credit hours for established attorneys and as transitional credit hours for newly  
admitted attorneys.

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## COMMITTEE NEWS

- The **Civil Courts Committee** will present a **Civil Court Express Lunch** on **January 16** at 1:00 p.m. (RSVP - [CivilCourtsChairs@nywba.org](mailto:CivilCourtsChairs@nywba.org); see announcement, p. 1).
- The **Criminal Law Committee** is planning a program on "**Jury Selection in Criminal Cases**" for late February, as well as programs on "**The Art of Cross-Examination**," "**The How to Guide to 440 Motions**" and "**The Changing Padilla Landscape**" for later in 2013. Email [CrimLawChairs@nywba.org](mailto:CrimLawChairs@nywba.org) or check the web for more info, to join the Committee, or to volunteer to work on these programs.
- NYWBA and the **Domestic Violence Committee** are proud co-sponsors of the **17th Annual Fordham Forum on Domestic Violence** (CLE Program), to be held on March 4 & 5 (see announcement, p. 6). This year's forum focuses on national laws and policies, including the Violence Against Women Act, the Defense of Marriage Act, among others.
- The **Elder Law & Disabilities Committee** will present a program on **January 31** on the "**Role and Responsibility of Trustees of Supplemental / Special Needs Trusts**" (see announcement p. 6). On **March 14**, the Committee will present a CLE program on "**Why Your Client's Status as a Veteran Can Be Important to Your Client and Your Practice**" (see announcement on p. 2 and article on page 11.) Members should consider making an application to practice before the Veterans' Administration in January, so the CLE credits earned at the March program will count towards your VA CLE accreditation. Planning is also underway for a CLE program in late April on "**The Basics of Medicaid Planning**." For details on these events or the Committee, email [ElderLawChairs@nywba.org](mailto:ElderLawChairs@nywba.org).
- The **Legislation Committee** is meeting on **January 8** at 6:00 p.m. at the Law Office of Amy Saltzman, 114 West 47th Street, 19th floor (between 6th and 7th), NYC. The Committee will review pending state and federal legislation and make recommendations to the NYWBA Board and WBASNY Legislative Committee on policy and legislative initiatives. RSVP - [Legislation@nywba.org](mailto:Legislation@nywba.org).
- The **Litigation Committee** will meet on **January 10** at 6:30 p.m. at Satterlee Stephens Burke LLP, 230 Park Avenue (between 45th & 46th), Suite 1130, NYC. The Committee will discuss plans for programs, events and activities in 2013. RSVP - [LitigationChairs@nywba.org](mailto:LitigationChairs@nywba.org).
- The **Matrimonial and Family Law Committee** will hold a free **Cocktail Reception** on **January 16** at 6:00 p.m. (see announcement, p. 7). The Committee's regular meetings are on the first Wednesday of each month at 6:00 p.m. at Blank Rome, LLP, 405 Lexington, NYC (at 42nd St.). RSVP - [MFrsvp@nywba.org](mailto:MFrsvp@nywba.org). On February 6, the Committee will present a CLE program on the "**Examination of the Custody Forensic Expert as Attorney for the Child**" (see announcement, p. 10). Other programs are being planned for March 6, April 3, May 1 and June 5.

## WELCOME NEW MEMBERS

Judith A. Ackerman	Robin LoGuidice
Elisheva Ackerman	Kashima A. Loney
Jennie S. Berman	Rena Malik
Elizabeth C. Berretta	Susan Mauro
Chelsea J. Beser	Sara Miller
Margo Blair	Lindsey Powers
Jeannine R. Cahill	Francine Prewitt
Anouk Danan	Kristen M. Ramos
Erin Dennis	Lauren A. Rieders
Kaitlin S. Doran	Carol R. Sharpe
Alexis M. Downs	Jasmine H. Silver
Catherine R. Fenoglio	Leslie A. Stroth
Shira Y. Galinsky	Gail Torodash
Diana M. Haladey	Lara E. Veblen
Alexandra Heicklen	Denille Wachtenheim
Jasmine C. Hernandez	

## 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.

Robin LoGuidice  
Hon. Leslie Crocker Snyder  
Andrea R. Ziegelman

## NOTES ON MEMBERS

Has something noteworthy happened to you or another member? Send your news to [Newsletter@nywba.org](mailto:Newsletter@nywba.org).

- The **Programs & Events Committee** will meet on **January 23** at 6:00 p.m. at the Law Offices of Jennifer Brown, 570 Lexington Avenue (between 50th & 51st), Suite 1600, NYC, to make plans for additional 2013 events. RSVP - [Events@nywba.org](mailto:Events@nywba.org).
- The **Solo and Small Firm Practice Committee** will meet on **January 17** at 8:30 A.M. to continue their discussion on members' website bios and related marketing materials. Bring ten copies and get insights and ideas to enhance your practice. For details & RSVP - [SSFChairs@nywba.org](mailto:SSFChairs@nywba.org).
- The **Trusts and Estates Committee** is co-sponsoring a program on **January 31** with the Elder Law & Disabilities Committee on the "**Role and Responsibility of Trustees of Supplemental / Special Needs Trusts**" (see announcement, p. 6). For Committee info, email [TEChairs@nywba.org](mailto:TEChairs@nywba.org).
- The **Working Parents Committee** will host a brown bag lunch on **January 16** at 12:30 p.m. (see announcement p. 9), when members will discuss topics of interest and make plans for 2013. RSVP - [WPChairs@nywba.org](mailto:WPChairs@nywba.org).
- Check the **NYWBA Calendar** ([www.nywba.org/calendar](http://www.nywba.org/calendar)) for the latest info on Committee meetings, programs & events.

## MEMBERS LAUGH AND LEARN AT NYWBA "ETHICS GAME SHOW" CLE PROGRAM

*By Julie Hyman and Elizabeth A. Bryson*

Who knew that you could have so much fun while attending a CLE program on ethics? Members and guests found out at the terrific **"Ethics Game Show"** presented by the NYWBA on December 6, 2012.

Participants had the opportunity to hear about some of the craziest cases involving ethics issues from across the country. After each scenario was presented, they were shown multiple-choice answers and asked to ponder which of four possible choices best described the outcome of the case (or the consequences for the lawyer accused of wrongdoing, or the relevant professional responsibility principles that influenced the outcome, etc.).

While everyone had the opportunity to vote on the answer they thought was correct (with a show of hands), matters were made even more exciting because four audience members volunteered to actually "compete" for prizes by answering the questions in front of the whole crowd. Many thanks to audience members **Debra S. Cohen, Robert C. Epstein, Margo Blair** and **Diana M. Haladey** for being such good sports and showing exactly how challenging ethical decisions can be in these real-life scenarios.

The evening was organized and hosted by **Jeremy R. Feinberg, Esq.**, who is the Statewide Special Counsel for Ethics and the Commercial Division at New York's Office of Court Administration. He is a regular speaker on professional responsibility, is the Chair of the New York City Bar's Committee on Professional Ethics, and serves as an adjunct professor at Columbia Law School.

Mr. Feinberg was ably assisted by a distinguished panel of experts, including **Muriel Gennosa**, Appellate Division, Second Department; **Barbara Hamilton**, Legal Aid Society; **Nicole Hyland**, Frankfurt Kurnit Klein & Selz, PC; and NYWBA Board member **Catherine M. Foti**, Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C. The members of the panel took turns describing each scenario and then discussing the legal and ethical principles involved in each decision.

It was an amazing event, and everyone had a great time while learning important lessons. All participants also earned two CLE credit hours in Ethics.

Thanks to the NYWBA Board of Directors and a grant from the bequest given to the New York Women's Bar Association by our late Founder and Past President Hon. Florence Perlow Shientag, the program was *free* for members. (Non-members paid \$50.) Participants also had the opportunity to enjoy light refreshments and network among themselves and with the panelists before and after the program.

NYWBA thanks the distinguished panel for presenting such a stimulating and thought-provoking program. We also thank **Newman Ferrara LLP** for hosting this event in its conference center at the firm.

We are delighted to announce that Mr. Feinberg has agreed to present another edition of the **"Ethics Game Show"** for Women's Bar members later in 2013. Details will be published soon.

In the meantime, members may want to consider attending the **"Ethics Game Show: Matrimonial and Family Law Edition,"** which will be held on March 28, 2013 at the Practising Law Institute, or the **"Ethics Game Show: e-Discovery Edition,"** an "on demand" webcast that will be available from PLI on May 4, 2013. (For details, go to "[www.pli.edu](http://www.pli.edu).")

*Julie Hyman, Esq. is a Vice President of the NYWBA and has a solo matrimonial and family law practice, handling trials and appeals. Elizabeth A. Bryson, Esq. is litigator and appellate attorney and a Past President and current Director of the NYWBA.*



*Distinguished Panelists Muriel Gennosa, Barbara Hamilton, Jeremy Feinberg, Nicole Hyland, and Catherine M. Foti*



*Audience members, Game Show Contestants (front row), and CLE Chair Amy Goldsmith (at right)*

## MENTORING CIRCLES RECEPTION

*By Andrea Vacca and Elisheva Ackerman*

On November 29, 2012, approximately 45 members of the New York Women's Bar Association's Mentoring Circles met for their fourth annual reception, which was held at the offices of Covington & Burling, LLP in the *New York Times* building. The event featured a spirited discussion about women's experiences with discrimination in the workplace, led by **Lynn Povich**, author of *The Good Girls Revolt: How The Women of Newsweek Sued Their Bosses and Changed the Workplace*, and **Harriet S. Rabb**, who was one of the attorneys who represented the women in the *Newsweek* case. Ms. Rabb was also the first woman Dean at Columbia Law School and is currently the Vice President and General Counsel of Rockefeller University.

Ms. Povich opened the discussion by recounting the background of the 1970 *Newsweek* suit, including her own role in the suit and how she worked her way through the ranks of *Newsweek* to eventually become senior editor. Ms. Rabb followed by explaining the status of gender discrimination cases in and outside media organizations at the time.

Ms. Povich and Ms. Rabb then opened the floor to questions and comments from the audience. The in-depth conversation followed the general theme of covert discrimination in the workplace, and how such discrimination has shifted from the 1970's to the present. The audience and moderators discussed the many ways in which opportunities for and treatment of women in the workplace have improved over the years, and noted the areas that still need improvement, including the importance of erasing the stigma of parenting from the workplace. Members of the audience suggested that to create a more positive attitude on the part of employers toward a flexible work-home balance, men - as well as women - should be encouraged to prioritize familial obligations. The ideal result would be that demanding a fulfilling family life in addition to a productive work life would become the norm across the board, rather than a negative factor associated primarily with female employees. As Ms. Povich noted, the work-family balance should be a co-ed issue rather than a women's issue. An additional way to even the playing field between men and women in the workplace, according to Ms. Povich, would be to encourage a flat fee structure in firms. Not only is the flat fee preferred by clients, it would also eliminate the traditional race to partnership based on billable hours. As a result, both women and men would have more flexibility in balancing their jobs and families.

Audience members also discussed their own experiences with discrimination in the workplace. Experiences ranged from denials of pay increases and promotions due to a high-earning spouse, to comments from co-workers on a woman's decision to change her name after marriage and eventually have children. Those who experienced these types of gender discrimination responded by actively changing their circumstances and often leaving their firms in favor of other venues that provided more flexibility for a healthier work-life balance. Ms. Rabb encouraged all women experiencing gender discrimination in the workplace to change the environments in which they work instead of remaining in jobs where they feel discriminated or leaving the practice of law altogether. The legal profession is a great one,

Ms. Rabb said, so women should find a way to do it without compromising their standards.

The Mentoring Circles Committee thanks Lynn Povich and Harriet Rabb for graciously providing their time; Covington & Burling, LLP for providing us with a beautiful meeting space in which to hold the reception; the New York Women's Bar Association Foundation for generously providing a grant that helped cover a significant portion of the costs of the program; and the NYWBA Board for underwriting other program costs. As a result of all this generosity, our Mentoring Circles program is off to a great start for the year, and our members are continuing to build what will be the foundation for many fulfilling professional and personal relationships.

*Andrea Vacca is Co-Chair of the Mentoring Circles Committee and a member of the NYWBA Board of Directors. Ms. Vacca practices matrimonial and family law and works to achieve amicable resolutions through the use of settlement, collaborative law, and mediation.*

*Elisheva ("Ellie") Ackerman is a member of the NYWBA and the Mentoring Circles Program. She graduated from Fordham University School of Law in 2012 and is awaiting admission to the bar. She is an associate at Andrea Vacca, P.C.*



*Mentoring Committee Co-Chair Randy Shapiro chats with speaker Lynn Povich (l-r)*



*Member Susan Jill Hochberg, NYWBA Director Myra L. Freed, and member Judith Rifkin (l-r)*



*NYWBA Director & Committee Chair Deborah G. Rosenthal, Committee Chair Kim F. Trigoboff, and member Dena Ebright (l-r)*

**"Criminal Law 101: A TO V (Arraignment to Verdict)"**

*By Amanda Ambrose*

On November 20, 2012, the NYWBA's Criminal Law Committee, the Committee on Cooperation Among Bar Associations, and the Students and New Lawyer's Committee hosted a criminal law program titled *"Criminal Law 101: A to V - Arraignment to Verdict."* The program was organized by Kathryn Salensky, Co-Chair of the Criminal Law Committee, and Amanda Ambrose, a Committee member.

We had a great turnout at Newman Ferrara, LLP, which provided a gorgeous view of Manhattan and wonderful food for our guests. The three panelists, *Kerry O'Connell*, *Justine Olderman* and *Julia Kuan*, engaged in a lively discussion, and each was excited and eager to share the best approaches to practicing criminal law.

As a fairly new attorney, I was excited to help organize this event and to meet our panelists, each whom has handled high profile press cases. The panel took a step-by-step approach to guiding attendees through the process a criminal case undergoes from beginning to end. The panelists provided instruction and inspiration for new lawyers like myself, with their personal accounts of how criminal court works. They also provided insights on ways to work with clients and witnesses.

In law school, we all learned the law, but few learned what to say at an arraignment proceeding. The speakers filled in the gap between law school and real-world practice and unveiled the mysteries of what happens when a case comes across your desk.

The panelists' backgrounds were also impressive:

- *Kerry O'Connell* began working at the Manhattan District Attorney's Office in the Sex Crimes Bureau, and became the Chief of the Family Violence and Child Abuse Bureau. She has handled numerous high-profile cases and currently serves as the Bureau Chief in the Manhattan District Attorney's Trial Division.
- *Justine Olderman* is currently the Managing Attorney of the criminal defense practice of Bronx Defenders. Her holistic approach to criminal defense has gained her national attention.
- *Julia Kuan* began working as a staff attorney at the Legal Aid Society in the Criminal Defense Division. She later worked at the Appellate Division, First Department and the New York Court of Appeals. In 2000, she became a supervising attorney at Bronx Defenders. She has since started her own firm, Romano & Kuan, PLLC, where she concentrates her practice on criminal and §1983 civil rights litigation.

The panelists drew from specific cases to exemplify what their practice was like as they worked on cases from start to finish. Ms. O'Connell discussed seeking justice for victims and their families. She described the look on the victim's face when a guilty verdict is handed down, and the motivating effect it has on her to continue to advocate for the victims of crimes. She also discussed some of her high profile cases, including the first-degree murder conviction of a defendant charged with killing a police officer in the line of duty.

Ms. Olderman described the way she prepares defense cases for indigent clients, and the challenges presented to an attorney when a client does not have money to pay for even the most basic aspects of a case. She described how something as simple

*(Continued on Page 10)*

**NYWBA Elder Law & Disabilities Committee  
and Trusts & Estates Committee present:**

***"Role and Responsibilities of Trustees of  
Supplemental / Special Needs Trusts"***

*featuring*

***Sylvia Di Pietro, Esq.***

*Distinguished Guardianship and Trusts & Estates Litigator*

Ms. Di Pietro will discuss the responsibilities of trustees of Supplemental/Special Needs Trusts ("SNTs"), both with respect to SNTs established under Article 81 or Article 17A guardianships, and to SNTs established pursuant to an infant compromise order. Please bring your questions!

**Date:** Thursday, January 31, 2013

**Time:** 6:00 p.m. to 7:30 p.m.

**Place:** TBA (check website for details)

**Cost:** No Charge for NYWBA members

*Light refreshments will be served.*

**RSVP:** Email *ElderLawRSVP@nywba.org*

*(Space is limited, so register ASAP)*

*NYWBA and its Domestic Violence  
Committee are proud sponsors of*

**The 17th Annual Fordham Forum on  
Domestic Violence (CLE Program)**

***"Beyond the Big Apple - Responding  
to National Laws and Policies"***

**Monday & Tuesday, March 4 & 5, 2013**

9:00 a.m. to 5:00 p.m. (12 CLE Credits)

**Fordham University School of Law**

140 West 62nd Street, NYC

(between Columbus & Amsterdam Avenues)

**Keynote Speaker**

***Honorable Susan B. Carbon***

Justice of the New Hampshire Circuit Court

(Former Director, Office of Violence Against

Women, United States Department of Justice)

Topics will include the Violence Against Women Act, Defense of Marriage Act, Americans with Disabilities Act, Technology, and New Community Responses, among many other issues.

**Cost:** \$165 - Full conference (both days)

\$110 - One conference day

**CLE:** This program is appropriate for newly admitted and experienced attorneys and is approved for up to 12 transitional and non-transitional credit hours. Fordham's financial aid policy for accredited CLE programs applies.

**RSVP:** For details and to register, go to the NYWBA website at [http://www.nywba.org/calendar/calendar.cgi?month=3&year=2013&view=Event&event\\_id=666](http://www.nywba.org/calendar/calendar.cgi?month=3&year=2013&view=Event&event_id=666).

## Estate Planning Issues for Unmarried Couples

By Michael Salmon

According to the U.S. Census Bureau, there were 7.7 million unmarried partners living in the same households in 2010. Yet there are several laws that are potentially beneficial to married couples that are not available to unmarried partners, especially when it comes to estate planning. That's why it's important to recognize the risks faced by unmarried partners and some potential ways to help mitigate these risks.

**Wills or trusts** - All states have probate laws that provide some protections for the surviving spouse, but generally no such protections exist for a surviving domestic partner. Therefore, it's vitally important for live-in partners to prepare estate planning documents, including wills and, in some cases, trusts. Through wills and trusts, you can provide for the financial support of your surviving partner after your death.

**Titling assets** - How your assets are titled can determine their disposition upon your death. For example, if you want your partner to receive your home at your death, you could title it in both names as joint tenants with rights of survivorship. However, retitling your home in this manner gives your partner ownership rights in the property. Also, depending on the value of the home, there may be gift tax and estate tax implications, and the home may be exposed to claims of your partner's creditors.

While you could simply leave your home to your partner through your will or trust, you may want other family members to ultimately receive the home after your partner dies. In this case, you could create a life estate for your partner, allowing him or her the right to remain in the home for life, while naming other beneficiaries to receive title to the property at the death of your partner.

**Beneficiary designations** - Certain types of assets allow for their transfer at death through beneficiary designations. IRAs, life insurance, annuities, and 401(k) accounts are some examples. However, it's important to remember that generally, the beneficiaries named in these assets will receive them at your death, even if you make other provisions in your will or trust. So be sure your beneficiary designations are current and comply with your wishes.

**Power of attorney and health-care documents** - A durable power of attorney is a legal document that allows you to authorize someone to carry on your financial affairs and protect your property if you are unable to do so during a period of incapacity. Without this type of authorization, the courts may appoint one or more persons to act on your behalf. This proceeding can be expensive and time consuming, and you may not have any control over the person(s) appointed by the court. More importantly, your partner may not have access to needed financial support through your assets.

A health-care power of attorney or health-care proxy is a legal document in which you give your appointed agent the right to make certain health-care decisions on your behalf if you are unable to do so. Without this document, doctors and hospitals often rely on family members to make health-care decisions for

### Matrimonial & Family Law Committee COCKTAIL RECEPTION

The Matrimonial & Family Law Committee is hosting a cocktail reception for new and long-standing committee members to meet, share experiences, and informally discuss current trends in the field. Representatives from the *Matrimonial Pro Bono Project* and the *Association of Family and Conciliation Courts* ("AFCC") will be on hand to share information with members.

**Date:** Wednesday, January 16, 2013, 6:00 p.m.

**Place:** Blank Rome LLP, 405 Lexington Avenue  
The Chrysler Building at 42nd Street, NYC

**Cost:** Complementary for Committee Members  
(Note - This event is for 2012-2013 members only)

**RSVP:** MFrsvp@nywba.org

*Due to space limitations, advance registration is required.*

Check out job postings on the NYWBA website:

[http://new.nywba.org/job\\_postings/](http://new.nywba.org/job_postings/).

To post a job opening, please contact [info@nywba.org](mailto:info@nywba.org).

someone who's incapacitated. Often state law does not recognize unmarried couples as family, so if you want your partner to be able to make these decisions on your behalf, you should name your partner as your health-care agent.

**Domestic partnership agreement** - Generally, the law does not always spell out the financial rights and responsibilities of domestic partners. To address these issues, live-in partners can use a domestic partnership agreement (if recognized in their state), which is a contract that addresses the sharing of income, expenses, and property.

In sum, unmarried couples face several potential estate planning and tax pitfalls, and state laws vary, so it's important to consult an attorney or advisor who is familiar with the state and federal laws that affect unmarried couples.



**Michael Salmon** is a Senior Financial Advisor with Ameriprise Financial, specializing in Financial Planning, Investment Portfolio Management, Retirement Planning Strategies, Estate Planning Strategies, and Saving for Education. He is an active public speaker and financial columnist. He is licensed and registered to conduct business in NY. Based on licenses and registrations he holds, he may also conduct business in MI, MA, OR, FL, PA, NM, NC, CA, RI, CT, KY, NJ, and LA. You can reach him at 646-964-9470 or [michael.b.salmon@ampf.com](mailto:michael.b.salmon@ampf.com).

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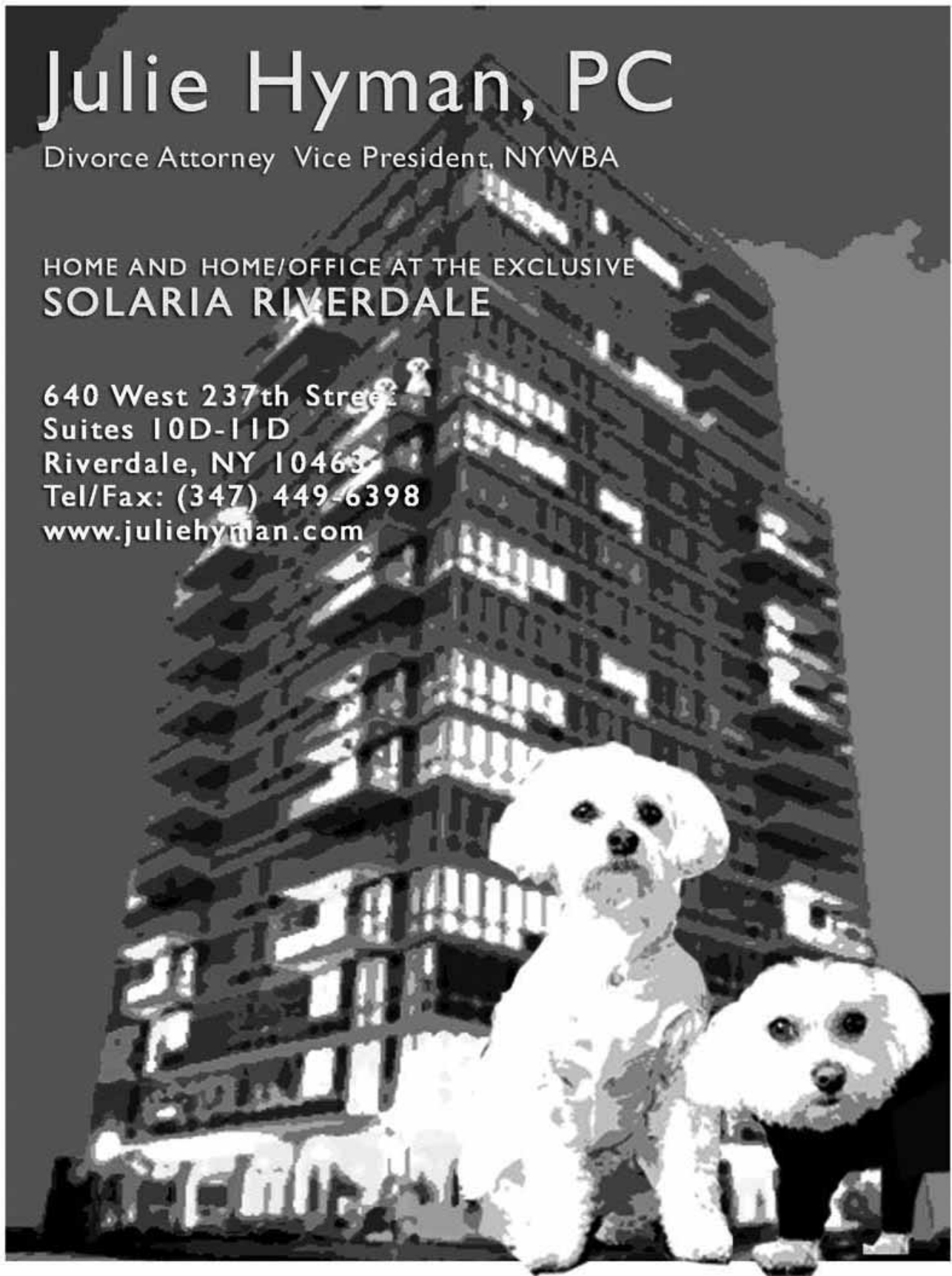
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## The Prenuptial Agreement from Creation to Destruction *By Magnolia D. Levy*

Prenuptial agreements - What is your strategy? Every attorney who has prepared or litigated a prenuptial agreement has one. On December 5, 2012, members of the Matrimonial and Family Law Committee gathered at the offices of Blank Rome, LLP for a lively and engaging discussion on "***The Art of The Prenuptial Agreement: Construction & Destruction.***"

The program featured **Hon. Laura E. Drager**, one of New York County's Matrimonial Part Justices; **Eric Wrubel**, a partner in the Matrimonial Department of McLaughlin & Stern, LLP; and **Laurie S. Ruckel**, a partner in the Trusts and Estates Department at Loeb & Loeb, LLP. Each panelist brought a different perspective to the table, and the program evolved into a spirited roundtable discussion among the panelists and audience. **Magnolia D. Levy**, a partner in the Matrimonial Department at McLaughlin & Stern, LLP, moderated the evening.

The discussion opened with a question directed to Ms. Ruckel, the lone trusts and estates practitioner in a room packed with matrimonial lawyers. When asked to give her top objectives for a prenuptial agreement, Ms. Ruckel noted that for many clients and T&E attorneys, an important goal is to avoid litigation. This immediately sparked debate. While staying out of a courtroom may be the goal, some seasoned practitioners noted that they have had clients, who, blinded by love, are prepared to accept a deal that is less than fair.

What to do when the intractability of a spouse (or your adversary) results in a one-sided agreement? While your initial goal may be to tie down the language, if the parties are unable to agree to terms, sometimes leaving it more ambiguous might be helpful. This way, if divorce follows, your client's divorce counsel has leverage with which to negotiate a more favorable deal, rather than just accepting the relatively unfavorable terms in the prenuptial agreement. From the court's perspective however, the existence of a prenuptial agreement (ambiguous or not) is often a welcome sight, since it significantly limits issues to be litigated. This topic fostered a fair amount of debate among members of the audience, who were invited to participate in the discussion and pose questions to the panelists.

The panelists also discussed how to proceed when a client expresses a desire to sign an agreement notwithstanding your legal counsel to the contrary. Virtually every attorney in the room agreed that they have discussed with clients the wisdom of marrying someone who insists on a one-sided agreement. Notably however, almost no one had represented a client who refused to walk down the aisle based solely on the attorney's advice. For those practitioners who choose to continue with the representation in this situation, it is essential that they write a letter to the client identifying the problematic areas and confirming that the agreement is being signed against the advice of counsel. In many cases, this letter will prompt the client to reflect on what is important to them and lead them to reassess their position. The letter also has the added benefit of ensuring that there are no memory lapses later (either by the client or the attorney).

New York Women's Bar Association  
Working Parents Committee

### ***"Brown Bag Lunch Meeting"***

Under the leadership of Co-Chairs **Christine Harman, Melanie Chieu** and **Victoria Turchetti**, the Committee will discuss topics of interest to members and make further plans for 2013. All NYWBA members and prospective members are welcome.

Date: **Wednesday, January 16, 2012, 12:30 p.m.**  
Place: **Berkman Bottger Newman & Rodd, LLP**  
521 Fifth Avenue, 31st fl (at 43rd Street), NYC  
RSVP: **WPChairs@nywba.org**

If you cannot attend but are interested in joining the Committee, send your contact info and any ideas for future programs and events to the Co-Chairs at [WPChairs@nywba.org](mailto:WPChairs@nywba.org).

The Committee thanks **Berkman Bottger  
Newman & Rodd, LLP** for hosting.

The panelists also highlighted the apparent contradiction between the decisions in Barocas v. Barocas, 94 A.D.3d 551, 942 N.Y.S.2d 491 (1st Dep. 2012) on the one hand, and E.C.-P.v. P.P., 33 Misc.3d 1233(A); 2011 WL 6155727 at \*1 (N.Y. Sup. Dec. 12, 2011) and A.N. v. E.N., 37 Misc.3d 1201(A), 2012 WL 4335245 at \*1 (N.Y. Sup. Sept. 18, 2012), on the other. Though the Court in Barocas reaffirmed the difficulty of setting aside prenuptial agreements, the decisions in E.C.-P. v. P.P. and A.N. v. E.N. both found enough evidence to set agreements aside. (Note that E.C.-P. v. P.P. is on appeal. The Second Department issued a stay, and oral argument is expected in January 2013.)

Barocas is an important decision for practitioners for another reason. There, the First Department found that a spousal support waiver must be both fair and reasonable at the time the agreement is executed, as well as at the time of the divorce. From a drafter's perspective therefore, counsel should be mindful of the potential pitfalls of a spousal support waiver. It was suggested by one panelist that, where such a waiver exists, perhaps a more generous distributive award might help to avoid this issue. Alternatively, omitting spousal support from the agreement might be the more prudent path.

The unique format of this well-attended program provided attendees with an opportunity to participate in a high level, academic colloquy. Kudos to the NYWBA Matrimonial & Family Law Committee, and many thanks to the panelists and to Blank Rome LLP for hosting and providing refreshments.

*Magnolia D. Levy is a partner at McLaughlin & Stern, LLP and advises clients in all aspects of matrimonial and family law including pre- and post-nuptial agreements, divorce negotiation and litigation, equitable distribution, spousal support, custody and visitation issues. She is a member of the Matrimonial and Family Law Committee.*

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### NYWBA Matrimonial & Family Law Committee CLE Program "Crafting an Examination of the Custody Forensic Expert as the Attorney for the Child"

This CLE program will feature speakers *Susan Bender, Esq.*, distinguished matrimonial & family law attorney and partner at Bender Rosenthal Isaacs & Richter LLP, and *Hon. Debra Kaplan*, Justice of the Supreme Court, New York County. Planning for this program is underway and additional details will be available soon.

**Date:** Wednesday, February 6, 2013  
**Time:** 6:00 p.m. (No one will be admitted after 6:30 p.m.)  
**Place:** Blank Rome LLP, 405 Lexington Avenue  
The Chrysler Building at 42nd Street, NYC  
**CLE:** Credits TBA\* (accreditation pending)  
**Cost:** Free for members\*\*  
(You must be a member to attend)  
**RSVP:** MFrsvp@nywba.org (Due to space limitations,  
advance registration is required)

The Committee thanks *Blank Rome LLP* for hosting & refreshments.

\* **CLE:** NYWBA is a chapter of the Women's Bar Association of the State of New York, an accredited CLE provider. Approval of CLE credit is pending in accordance with the requirements of the NYS CLE Board for the above-listed credit hours for established attorneys and as transitional credit hours for newly admitted attorneys.

\*\* **Membership:** If you are not a current member, it's easy to join or renew using our secure online membership form at [www.nywba.org/Membership](http://www.nywba.org/Membership).

### Criminal Law 101 (Continued from Page 6)

as the matter of bail can be hugely prejudicial to her clients. She also spoke about how she tirelessly investigates each case to uncover the true facts of the crime needed to prove her client's innocence.

Ms. Kuan enjoys the freedom to work through the varying aspects of a case as a private practitioner. She can dive deeper into a case when the defendant has a possible civil claim, such as in the case of prisoners who have been abused by guards. She also discussed her success in obtaining a reversal in a case in which an innocent man was imprisoned for four years due to the government's failure to turn over exculpatory evidence.

Finally, the panelists discussed how to approach a case during each stage of its life, and how navigate through facts that support your case at arraignment, during bail applications, hearings, and trials.

This program was a great introduction to criminal law and provided fresh insights on case progression, advocacy, and courtroom demeanor. All of the panelists offered practical advice, and the discussion was energetic and interesting. Audience members walked away with deeper understanding of the real-world process a case undergoes during each stage from arraignment to verdict.

Many thanks to the panelists for their participation, and to the Committees for their support.

*Amanda Ambrose graduated from Pace University School of Law in 2009. She has served as a Law Fellow for Judge William McGuire, Deputy Administrative Judge of the Bronx Criminal Court, and is dedicated to practicing criminal law.*

## What Do Veterans' Benefits Have to do with Your Practice?

*By Antonia J. Martinez*

During client interviews, do you ask whether your client or a family member served in the armed forces? You should. Regardless of your area of specialization, you will distinguish yourself and your practice if you know what benefits may be available to veterans and their family members. Members of the public who served in our armed forces are often unaware they may be entitled to benefits, and they may not even know to ask you about possible benefits or how their status as a veteran may affect their rights. Enhancing your knowledge in this area can benefit your clients, as well as your practice.

The Elder Law & Disabilities Committee has arranged for a terrific CLE program on Veterans' Benefits to be held on March 14, 2013. Entitled "*Why Your Client's Status as a Veteran Can Be Important to Your Client & Practice*," the program will feature distinguished speaker *Felicia Pasculli, Esq.*, a Certified Elder Law Attorney and an expert on veterans' benefits. For details about this CLE, see the announcement on page 2.

Why should you attend the CLE program? Your client's status as a veteran can affect the advice that should be given in various fields of law. Your client may be entitled to health care benefits, prescription drugs, medical exams, residence in a Veterans' home, burial rights, and other financial benefits. If your client is purchasing real estate, veteran status is relevant for determining whose name should be on the deed or ownership papers. If they are starting a small business, their status can affect their ability to obtain a business or home loan.

If a matrimonial attorney advising a client contemplating divorce does not know the spouse is a veteran, the attorney will not know what rights and benefits may be forfeited that normally inure to a non-veteran spouse. Practitioners in the matrimonial and trusts & estates fields should also know whether a veteran's surviving or divorced spouse is entitled to survivor benefits, and whether those benefits terminate upon remarriage. Surviving parents of deceased veterans should similarly be advised if they qualify for entitlements.

In elder law and disabilities practices, practitioners should know that a different set of eligibility rules and transfer provisions apply to veterans under Medicaid, as compared to benefits provided by the Veterans Administration ("VA").

For example, assume that Sally, a veteran, receives monthly income of \$3,000, consisting of \$2,500 Social Security and \$500 dividend income. Each month, she spends \$200 on prescriptions and \$2,000 on an aide to provide home assistance. For normal Medicaid purposes, she has \$3,000 of monthly income, but under VA rules, Sally has only \$800 of monthly income (\$3,000 less the \$2,200 total cost of home care and prescription drugs). Sally may be entitled to benefits because her annual income under the VA calculations is only \$9,600 (\$800 monthly x 12 months). As a result, she may also qualify for Aid & Attendance, an added monthly source under the VA pension program, for veterans and their spouses who require the aid of another to perform the activities of daily living. (While this is available to the veteran's current spouse, it is not available to a divorced spouse of a veteran.)

There are a myriad of other examples where the veteran status of a client, or the client's wife or heirs, impacts their benefits, rights and obligations, such as:

### *Expand Your Practice!* Apply in January 2013 to Represent Clients before the VA, and Use NYWBA's March 14 CLE to Meet VA CLE Requirements!

As noted in Antonia Martinez's accompanying article, veterans are often entitled to different rights and benefits than non-veterans. Some of those rights can be asserted in court proceedings, but others must be adjudicated before the Veterans Administration (VA).

**Attorney Certification** - Attorneys must be certified to practice before the VA. (See application instructions, below).

**VA CLE Requirements** - Lawyers seeking certification must have attended at least three CLE hours on veterans' rights and benefits.

**NYWBA CLE on Veterans Benefits** - On March 14, NYWBA will present a 3-credit CLE program that qualifies participants for VA accreditation.

**VA Attorney Practice Application Procedure** -

- Go to [www.va.gov](http://www.va.gov), click on "About VA", then "Organizations," then "General Counsel," and select "Accreditation." Complete VA Form 21a, and respond to all questions, including providing references.
- Email a PDF of completed form to [ogcaccrreditationmailbox@va.gov](mailto:ogcaccrreditationmailbox@va.gov), fax it to 202-495-5457, or mail it to U.S. Veterans Administration, Office of General Counsel (022D), 810 Vermont Ave., NW, Washington, DC 20420.
- Initial accreditation takes about 30 days. Notice of approval (or rejection) is sent in writing, with an accreditation number. To verify you are correctly listed go to [www.va.gov/ogc/apps/accreditation/index.html](http://www.va.gov/ogc/apps/accreditation/index.html).
- You need **3.0 total CLE credits** from coursework relating to veterans' benefits to complete accreditation.
- To have CLE credits earned at the NYWBA's March 14 CLE program on Veterans' Benefits count toward your VA CLE accreditation, you must apply for VA certification in advance (at least a month before the program). *Therefore, you should submit your application to the VA as soon as possible, and no later than the end of January.*

- For a spouse of a veteran to qualify for a pension, the veteran must be deceased.
- Many "presumptive" illnesses may automatically result in a "service-connected disability status."
- A person with 70% or more of a service-connected disability is entitled to long term care coverage by the VA.
- There are special protections provided to returning service persons concerning regaining their former employment.

These issues and more will be discussed at our upcoming CLE. We hope to see you there.

We also hope that you will consider applying to represent clients before the Veterans Administration. (See inset above for details on how to apply and how to have the CLE program in March count towards the VA's CLE accreditation requirements.)

**Antonia J. Martinez** ([elderlawtimes@yahoo.com](mailto:elderlawtimes@yahoo.com)) devotes her professional time to trusts & estates and elder law matters. She serves as Co-Chair of the NYWBA Elder Law & Disabilities Committee and is a member of the Executive Committee of the NYSBA Elder Law Section, serving as Vice Chair of its Veterans' Affairs and Mediation Committees. She is a graduate of Harvard Law School.

## NYWBA Membership Information

We thank our current members for their continued support and involvement, and we look forward to welcoming new and renewing members. Take advantage of our many member benefits - join committees, network, participate in mentoring circles, attend our signature events, and get CLE credits at our innovative and compelling programs at a significantly reduced cost. It's easy to join or renew - go to [www.nywba.org/Membership](http://www.nywba.org/Membership) to access our secure online membership form.

Current members should send updated address and contact information to [ED@nywba.org](mailto:ED@nywba.org). This will help us keep you informed about our programs, events and other benefits of membership.

## Newsletter and Advertising Information

Submissions must be sent to the Newsletter Committee by the **10th** of the month for publication in the following month's Newsletter. Please submit articles, announcements, upcoming event programming, photos, committee news, member news and ads to [newsletter@nywba.org](mailto:newsletter@nywba.org). Submissions should be proofed and cite-checked, and NYWBA retains the usual editorial discretion to omit or edit all contributions. Please send an email to [newsletter@nywba.org](mailto:newsletter@nywba.org) if you have questions or are interested in joining the Newsletter Committee.

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