



NEW YORK WOMEN'S BAR ASSOCIATION

PRESIDENT'S MESSAGE

NOVEMBER 2017

Change. With the start of November, I usually have my mind on coming changes, like the eventual transition from fall to the start of colder, wintry weather. And I think of one of my favorite holidays, Thanksgiving, and being thankful. This year I have so much more on my mind.



Myra L. Freed

Elections. November 7th is Election Day. Women have fought, risked their lives, reputations and livelihoods, gone on hunger strikes, been force fed, and died for our right to vote. I hope that every woman, and all who care about democracy, will be sure to vote on Election Day. One of the most important issues on the ballot, though hidden on the back, and easy to miss, will be New York Proposal 1 (also known as The Con Con)—which addresses whether New York State should hold a Constitutional Convention. Though some groups are hopeful that this could be a chance to gain rights not currently protected in our New York State Constitution, many caution that the Convention could be hijacked by enemies of progressive issues including Women's Rights, Worker's Rights, Reproductive Rights, and Gay and Transgender Rights. Our friends at **NOW** oppose the Convention. Please get informed on this issue and discuss it with friends and colleagues so you will be prepared to vote.

I am very proud that our chapter, under the leadership of Immediate Past President **Deborah G. Rosenthal**, contributed to WBASNY receiving an award from the National Conference of Women Bar Associations, for its Voter Registration Project. Of the 1000 citizens WBASNY registered in our state, our Chapter, spearheaded by our Voter Registration Drive Co-Chairs, **Nidhi Shetye** and **Vanessa K. Kaster**, registered 461. I also thank our Judiciary Committee Co-Chairs **Magnolia D. Levy**, **Virginia A. LoPreto** and **Sabrina E. Morrissey** for all their hard work in interviewing judicial candidates.

Gratitude. As president, I am grateful to the Founders of our Association for their boldness and determination standing up to discrimination in starting our bar association. I am grateful to all my predecessors for their leadership and hard work in building our great organization. I am thankful to many of our recent past presidents and members of our Advisory Council for their friendship, generosity and advice and for being there to lend me their support and ease my burdens. I am grateful to all our Committee Chairs for the wonderful work they do, including thoughtful meetings and compelling CLE programs. I am thankful for our Newsletter Committee

(Continued on Page 2)

Don't Miss NYWBA's Exciting CLE Programs:

Matrimonial & Family Law Committee presents:

How to Prepare a Statement of Net Worth and the Usefulness of a Lifestyle Analysis for High Net Worth Clients

Wednesday, November 8, 2017

See page 3 for more information

Women's Health and Reproductive Rights Committee presents

The State of the Uterus: Defending Women's Health Clinics in New York City

Thursday, November 16, 2017

See page 4 for more information

Employment and Equal Opportunity for Women, Federal Practice, and Litigation Committees present a CLE Program:

Hiring and Firing: How to Avoid or Succeed in Court

Thursday, December 14, 2017

See page 6 for more information

Announcements & Calendar of Upcoming Events

- 11/1 – Program & Events Comm. Mtg. – p. 2
- 11/8 – CLE: *Preparing Net Worth Statements* – pp. 2, 3
 - 11/13 – Criminal Law Comm. Mtg. – p. 2
- 11/13 – Comm. To Advance the Status of Women Mtg. – p. 2
- 11/14 – International Women's Rights Comm. Mtg. – p. 2
 - 11/16 – Civil Courts Comm. Mtg. – p. 2
 - 11/16 - CLE: *State of the Uterus* - pp. 2, 4
- 11/18 – "*Scandalous Secrets of the Metropolitan Museum*" – pp. 2, 4
 - 11/20 – Legislation Comm. Mtg. – p. 2
- 12/7 - CLE: *Inner Workings of Part 36 for AFCs* - p. 2
 - 12/14 – CLE: *Hiring and Firing* – pp. 2, 6
 - 12/14 – Civil Courts Comm. Mtg. – p. 2
 - 12/18 – Legislation Comm. Mtg. – p. 2

Check www.nywba.org for more Meetings, Programs & Events.

President's Message (Continued from Page 1)

and all our contributors for the beautiful Association Newsletter they put together each month, which showcases all the great work we do and that of so many of our members. I am thankful for all our WBASNY representatives and committee chairs, who work with our statewide organization on important issues and legislation. I am grateful to our sponsors, supporters and sustaining members who help us carry out our important work. And I am grateful for our wonderful Executive Director, **Karen Lu**, who helps each of us all manage to do our best for all our members. Thank you all.

Anger. Despite everything I have to be thankful for, I find that I am angry these days. I am so angry at one more mass murder of our neighbors, this time in Las Vegas, carried out by a single person with automatic weaponry. I am tired of the pile up of thoughtless statements by public officials who will do nothing in response. I am tired of prayers, memorials and tears about all the beautiful lives lost of children, families and friends and nothing done. I decry the lie of the depraved commentator who tweeted after Las Vegas, that "this [gun violence] is the price of freedom." It is not. It need not be. Please read the beautiful piece by *New York Times* columnist John Branch from October 12, 2017, about what happened to the parents of his 12-year-old daughter's soccer teammate and how the small town of Novato, CA reacted. We shall organize a forum in the coming months on the Second Amendment and work together to challenge this deadly lie head on.

Rage. I am enraged at the continual attack on our rights and bodies. They don't want women to have access to birth control. They don't want us to have access to medical insurance. They don't want us to have choice or access to abortions. They don't want us to have access to health care clinics. Then, they claim to be "pro life," though obviously not ours. I am proud of the work being done by our Reproductive Rights and Health Committee, which is chaired by **Meghan E. Carey** and **Brittany K. Lazzaro**. Stay tuned for all of their upcoming programs and updates.

Outrage. Like you, I am appalled by ongoing revelations of the worst sort of sexual harassment, intimidation, assault, rape, and violence carried out by one of the most powerful men in a major industry over a period of decades. If it were by just one powerful man it would be sickening enough. But it is everywhere, in every industry, today in 2017, and not just by "those who came of age in the 60s and 70s." Seventy percent of harassment victims do not report their abusers, and most employees have little redress because of forced employment arbitration clauses. As members of the NYWBA, we are proud of the mentorship we have long provided to our members and colleagues. Let's continue to do so and to make sure our mentees are safe and work in safe environments. Let's make sure that when law students and lawyers alike go out on job interviews or are up for promotion, or are functioning in their everyday study and work environments, that they are treated fairly, appropriately, and with dignity at all times. Let's be a voice and support for them when that does not happen. Let us work with our male friends and allies to make this *their* issue, too.

Remember, we are stronger together.

Myra

COMMITTEE CALENDAR

Civil Courts Committee will host its monthly Express Lunch meetings on **Nov. 16** and **Dec. 14** from 1:00 – 2:00 p.m. in the 8th floor boardroom of the Civil Courthouse, 111 Centre St., NYC. RSVP CivilCourtsChairs@nywba.org.

Children's Right Committee will present a **CLE: Inner Workings of Part 36 for AFCs** on **Dec. 7** from 1:00 - 2:15 p.m. at New York County Family Court. Email ChildrensRights@nywba.org for info and to RSVP.

Committee to Advance the Status of Women in the Profession will meet **Nov. 13** at 6:00 p.m. at 71 Thomas Street, Room 103, New York, NY. Email AdvanceStatus@nywba.org for info and to RSVP.

Criminal Law Committee will meet **Nov. 13** at 6:15 p.m. at The Hoffinger Firm, 150 East 58th St., 16th Fl., NYC. For info and to RSVP, email CrimLawChairs@nywba.org.

Employment, Equal Opportunity for Women, Federal Practice, and Litigation Committees present a **CLE: Hiring and Firing - How to Avoid or Succeed in Court** on **Dec. 14** at 6:00 p.m. at Tarter Krinsky & Drogin LLP, 1350 Broadway, NYC. 1.5 Credits. Free for NYWBA members; \$35 for non-members. For more info email litigationchairs@nywba.org. See notice p. 6.

International Women's Rights Committee will meet **Nov. 14** at 6:30 p.m. at Liberty Mutual, One Battery Park Plaza, 29th Fl., NYC. RSVP IntlChairs@nywba.org.

Legislation Committee will meet **Nov. 20** and **Dec. 18** at 6:15 p.m. at Cardi & Edgar LLP, 2 Park Ave, 19th Fl., NYC. For conference call info or to RSVP contact Joseph Caputo at (212) 481-7770 or email jcaputo@cardiedgarlaw.com.

Matrimonial and Family Law Committee present a **CLE: How to Prepare a Statement of Net Worth and the Usefulness of a Lifestyle Analysis for High Net Worth Clients** on **Nov. 8** at 6:00 p.m. at 451 Park Avenue South, 10th Floor, NYC. 2 Professional Practice Credits. Free for NYWBA members; \$50 for non-members. For more info email MFChairs@nywba.org. See notice p. 3.

Program & Events Committee will meet **Nov. 1** at 6:00 p.m. at the offices of Kirkland & Ellis, 601 Lexington Ave. (@53rd St.). For more info and to RSVP email Events@nywba.org. Join the Committee for "**Scandalous Secrets of the Metropolitan Museum**," a women's history tour, on **Nov. 18** from 10:00 a.m. – 12:00 p.m. \$50 for members and non-members; \$44 for members and non-members age 65+. RSVP to ed@nywba.org. See notice p. 6.

Women's Health and Reproductive Rights Committee presents a **CLE Event: The State of the Uterus: Defending Women's Health Clinics in New York City**, **Nov. 16** at 6:00 p.m. at Blank Rome LLP, The Chrysler Building, 405 Lexington Ave., NYC. This event is first come, first served and will be capped at 40 people. For Info. and to RSVP, email ReproductiveRights@nywba.org.

NYWBA wishes to acknowledge the generous gift from

FOUNDER AND PAST PRESIDENT HON. FLORENCE PERLOW SHIENTAG (1908-2009)

Her financial bequest has helped to underwrite the cost of this Newsletter and many of our CLE programs.

NOTES ON MEMBERS

The NYWBA wishes to recognize Association past President **Teresa Schiller**, who was a featured speaker at a Rotary Club meeting in Waco, Texas, where she now lives. She gave a presentation about some of her personal pro bono work supporting families of 9/11 victims in NYC.

Congratulations to **Lisa M. Courtney**, co-chair of the ADR Committee, on her promotion to Statewide ADR Coordinator of the NYS Unified Court System.

Has something noteworthy happened to you or another member? Send your news to Newsletter@nywba.org.

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.

- Jennifer L. Garber
- Adam B. Gilbert
- Madelyn Jaye
- Susan M. Moss
- Angela G. Tese-Milner

WELCOME NEW MEMBERS

- Namrata Alla
- Alyssa E. Bain
- Olivia T. Blasi
- Maisa Chiang
- James G. Clynes
- Francis Galvez
- Kathleen M. Hardy
- Hannah L. Khier
- Linyan Leng
- Sara Mandelbaum
- Nisha Menon

- Sara T. Murphy
- Brooke L. Nitti
- Mariana Olenko
- Rebecka Palm
- Maria Pergolizzi-Krug
- Nicole A. Rowlands
- Julia Rozenberg
- Nicole Sorrentino
- Elizabeth M. Walker

as of 10/20/17

SUPPORT THE NYWBA FOUNDATION, INC.

The New York Women's Bar Association Foundation's goals are: (1) to eliminate gender bias and other forms of discrimination from the legal system and legal profession, (2) to promote the social and economic equality, safety and well being of women and children, and (3) to address the unmet legal needs of women and children. It is a 501(c)(3) not-for-profit charitable organization which supports and funds charitable and philanthropic programs to aid women and children throughout Manhattan and beyond.

NYWBAF initiatives are made possible through the financial contributions of members of the New York Women's Bar Association, colleagues and friends. Donations are tax-deductible as charitable contributions.

Help us advance our mission to aid women and children in NY and beyond by giving to the Foundation. Please go to <http://nywbaf.org/donate> to make a contribution.

NYWBA's Matrimonial & Family Law Committee

present the following CLE Program:

How to Prepare a Statement of Net Worth and the Usefulness of a Lifestyle Analysis for High Net Worth Clients

Speakers:

Jennifer H. Sundt, Esq., Bender & Rosenthal LLP
Stacey Statkus, Senior Vice President at MPI

Date: Wednesday, November 8, 2017

Time: 6:00 p.m. - 8:00 p.m.

Place: 451 Park Avenue South, 10th Floor, NYC

CLE: 2.0 Professional Practice Credits

Cost: Free – NYWBA Members**
\$50 - Non-members

RSVP: <http://bit.ly/2ye5DDX>

Info: Email MFChairs@NYWBA.org

Space is limited to the first 40 people to sign up.
Beverages and Light Snacks Will Be Served

*CLE Credits: (2.0 Professional Practice): The New York Women's Bar Association is 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

** Free NYWBA members, \$50, non-member: Full and partial scholarships based on financial need are available. For info on the guidelines and to apply, contact CLE Co-Chairs Amy B. Goldsmith or Ariel Chesler at cle@nywba.org or 212-216-1135. All requests are confidential.



NYWBA President **Myra L. Freed** and **Hon. J. Mabelle Sweeting** wearing NYWBA's new T-shirt previewed at our **Membership Reception** on Sept. 11, 2017.

Celebrating Women's Business Breakthroughs Portrayed in the Broadway Musical "War Paint"
 By Nidhi Shetye

On September 14, members of the NYWBA and their guests attended the Broadway musical "War Paint," organized by the **NYWBA Programs & Events Committee** as part of its ongoing mission to bring outstanding cultural experiences to NYWBA's members. The show was followed by a backstage tour, a real treat.



"War Paint" is based on the lives of America's first major successful women entrepreneurs, Elizabeth Arden and Helena Rubenstein (played by Christine Ebersole and Patti Lupone, respectively), ruthless rivals who reputedly never actually met. The show covers three decades in the lives of these first beauty mavens who dominated the cosmetics business during the first half of the 20th century, and highlighted the peaks and troughs in the careers of two ambitious women. The story is loosely based on real events, and portrays the tough situations that these women experienced in a light and enjoyable manner.

Each protagonist had a distinct personality, which was reflected in the set designs. The stage was transformed for each of the women to bring out her individual character. For Ms. Arden, the set took on her signature feminine aesthetics by incorporating various shades of pink and floral motifs. In contrast, clean and clear lines of wood and metal defined Madame Rubenstein's more technical and scientific approach to her work.

Though the main characters viewed each other with open hostility, the musical ended with a heart-warming scene in which they shared an intimate moment by temporarily setting aside their differences and acknowledging each other's strengths.

"War Paint" was a memorable event, fitting for the members and guests of the NYWBA because it brought to the forefront the struggles and sacrifices made by the protagonists on their paths to success. Many career-driven women experience the same struggles even today.

The musical was the perfect mix of culture and women's issues – one of the primary reasons I joined the NYWBA.

Nidhi Shetye is a litigation associate at Griffin Hamersky, LLP, and focuses her practice on bankruptcy litigation.

NYWBA's Women's Health and Reproductive Rights Committee

presents the following CLE Program

The State of the Uterus: Defending Women's Health Clinics in NYC

Date: Thursday, November 16, 2017, 6:00 p.m.

Place: Blank Rome LLP, The Chrysler Building
 405 Lexington Avenue, NYC

Cost: Free – NYWBA Members*
 \$35 – Non-members**

Info & RSVP: Email ReproductiveRights@nywba.org

This event is first come, first served and will be capped at 40 people.

*Membership: Members attend CLE programs for free. If you are not a member, go to www.nywba.org/Membership to join or renew using our secure online membership form.

** Financial Hardship SCHOLARSHIPS: Full and partial scholarships based on financial need are available. For info on the guidelines and to apply, contact CLE Co-Chairs Amy. B. Goldsmith and Ariel Chesler at CLE@nywba.org or 212-216-1135. All requests are confidential.

"Scandalous Secrets of the Metropolitan Museum"

November 18, 2017

Please join the NYWBA Events Committee for a private tour: "Scandalous Secrets of the Metropolitan Museum" - a women's history tour led by tour guide Andrew Lear of Shady Ladies Tours, the tour company that "puts the fun back into history and art"!

Date: Saturday, November 18, 2017

Time: 10:00 a.m. - 12:00 p.m.

Place: Metropolitan Museum

5th Avenue and 82nd Street

Meet in the main lobby (to the right of the central information desk).

Tour departs promptly at 10 a.m.

Cost: \$50 - Members and non-members

\$44 - Members and non-members age 65+

CREDIT CARDS ONLY

The price includes museum admission and guided tour. (Note to Met Museum members: You must pay the entire cost and cannot use your membership card to defray entry fee.)

RSVP: Email your name and telephone number to ed@nywba.org. Your RSVP will be confirmed upon payment. Space is limited.

Is “Too Cute” Too Cute? Gender Discrimination and the Limits of Attractiveness By Onya Brinson

In August 2017, the Appellate Division, First Department, in *Edwards v. Nicolai* [153 A.D.3d 440 (1st Dept. 2017)] reversed a trial court’s decision granting summary judgment and dismissing an employment discrimination case. The Appellate Division found that if the reason defendant’s wife requested that plaintiff’s employment be terminated was due to the fact that she was an attractive female, and that was linked to her termination, then there could be a cognizable gender discrimination claim. The trial court found that the case was not, as plaintiff alleged, about gender discrimination, but about “spousal jealousy” since defendant was concerned that his wife might become jealous of the yoga and massage therapist employed by his chiropractic and wellness facility because she was “too cute.”

What is so remarkable about this case? While it could have been a simple gender discrimination matter, the plaintiff used an expansive definition of gender under the New York City Human Rights Law in support of her argument.

This article will explore how sexual harassment, spousal jealousy and “gender plus” discrimination claims have fared in similar cases, and will address some of the challenges that are presented as the *Edwards* matter makes it way back to the trial court.

Quid Pro Quo Sexual Harassment

The First Department wrote that sexual harassment is “one species of sex- or gender based discrimination” (*Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 75 [1st Dept. 2009], *lv denied*, 13 N.Y.3d 702 [2009]; see also *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 [1998]; *King v. Board of Regents of Univ. of Wis. Sys.*, 898 F.2d 533, 539 [7th Cir. 1990]).

The category of sexual harassment cases which involve consensual relationships are usually referred to as quid pro quo sexual harassment cases. One form of quid pro quo occurs if the plaintiff is involved in a consensual relationship with a supervisor, and suffers an adverse employment action because he/she ends the relationship.

In *Mandel v. Rolfe*, 2012 U.S. Dist. LEXIS 103692, the Southern District of New York ruled that there was a triable issue of fact as to whether there was quid pro quo sexual harassment when an employer terminated an employee after the employee broke off a consensual relationship. The court also stated that Title VII’s protections “ought not be withdrawn merely upon a showing that the victim of harassment had in the past entered a consensual sexual relationship with the perpetrator.” *Babcock v. Frank*,

729 F. Supp. 279, 287-88 (S.D.N.Y. 1990) (“An employer who threatens a penalty if the employee will not continue the physical relationship... commits illegal sex-based discrimination.”); see also *Karibian v. Columbia Univ.*, 14 F.3d 773, 778 (2nd Cir. 1994); *Hazeldine v. Beverage Media, Ltd.*, 954 F. Supp. 697, 709 (S.D.N.Y. 1997).

In *Shrader v. E.G. & G*, 953 F. Supp. 1160, the District Court of Colorado denied defendant’s summary judgment motion in part because the plaintiff presented sufficient evidence to create a genuine issue as to whether he was discharged because he would not continue his relationship with his supervisor. The court concluded that his “prior, consensual relationship with [his supervisor] does not change the analysis under Title VII.” *Id.*, 953 F. Supp. 1160.

Certainly, if the plaintiff in *Edwards v. Nicolai* made the claim of a consensual relationship between herself and defendant, she could have a quid pro quo sexual harassment claim. However, the one thing both parties agree upon is that they never had anything but a professional relationship, and there were no consensual or non-consensual advances by either party.

Why, then, did the First Department find that plaintiff made a cognizable gender discrimination claim? Perhaps the First Department was attempting to make the causal connection between plaintiff’s termination, the “attractiveness” theory, and the ever-expanding New York City Human Rights Law. However, it can be unequivocally stated that no sexual harassment allegations were raised by the plaintiff.

Spousal Jealousy

The plaintiff in *Edwards* alleged that her employment was terminated by defendant, because the defendant claimed that his wife “might become jealous” because she was “too cute.” According to the plaintiff, four months after he made his initial comment, defendant’s wife sent plaintiff a text message stating, “You are NOT welcome any longer...., DO NOT even step foot in there again and stay the [expletive] away from my husband and family!!!!!! And remember I warned you.” The plaintiff claimed that a few hours later, defendant terminated plaintiff’s employment.

In general, gender discrimination claims that contain a spousal jealousy component have not fared well. While the First Department’s decision in *Edwards v. Nicolai* distinguished between “spousal jealousy” cases that were dismissed where the plaintiff and defendant had a consensual relationship, the decision curiously did not cite any cases analogous to

the *Edwards* facts, i.e. where spousal jealousy was involved but there was no relationship between the plaintiff and defendant and/or supervisor.

Even in gender discrimination claims where there is no consensual relationship, courts have been reluctant to recognize a cognizable claim. For example, in *Falconer v. Papco, Inc.*, 2008 WL 2486128, W.D. Pa., June 17, 2008, the plaintiff’s claim that her precipitous and unexpected termination was the product of jealousy and the rumor of an affair was insufficient to support a Title VII gender discrimination claim.

In *Nelson v. James H. Knight DDS, P.C.*, 834 N.W.2d 64 (Iowa 2013), the Supreme Court of Iowa dismissed a plaintiff’s gender discrimination claim in which “[plaintiff’s] employer had terminated her due to [defendant’s] wife’s concerns about his lustful feelings towards the plaintiff.”

In each of the two above cases, there is an element of potential gender bias because the plaintiffs are female and the defendants are male. However, when the primary reason for termination is a jealous spouse, courts have been reluctant to determine that gender discrimination is afoot.

However, there are times when disparate treatment on the basis of gender has been found when spousal jealousy is involved. In *Sztroin v. PennWest Indus. Truck, LLC*, 2017 U.S. Dist. LEXIS 162123, the Western District of Pennsylvania found that a plaintiff had sufficiently pled a disparate treatment claim based on one very important factor—the defendant’s wife’s jealousy of women as a whole, not just the plaintiff. In that case, the defendant replaced the plaintiff with a male employee. The court noted, “when read in the light most favorable to the Plaintiff, the salient facts provide, “Clemence [PennWest’s Vice President of Sales and Services] said that [defendant’s wife] did not want her husband to look or talk to other women, and the fact that [Plaintiff] was “a woman who worked closely with her husband made [defendant’s wife] crazy.” *Id.*

There is no evidence in *Edwards* that defendant’s wife did not want him working with any female employee, but that she specifically had a problem with Ms. Edwards. Furthermore, there is no evidence that defendant replaced plaintiff with a male employee. The absence of these elements could present an uphill battle for plaintiff in the event the matter goes to trial.

Gender-Plus Discrimination

A final category of claims is “gender-plus” discrimination claims, which are actionable under Title VII,
 (Continued on Page 6)

Gender Discrimination (Continued from Page 5)

New York State Human Rights Law, and the New York City Human Rights Law. “Gender-plus” discrimination claims are defined as an employer discriminating against an employee because of gender, and also because of another characteristic that does not have to be a protected class. In these cases, the question that is litigated is “whether the employer took an adverse employment action at least in part because of an employee’s sex.” *Bailey v. New York State Div. of Human Rights*, 38 Misc.3d 756 (Sup. Ct., NY Co. 2012).

Gender-plus discrimination claims can include everything from a plaintiff who alleged gender-plus discrimination because she was a mother with small children (*Timothy v. Our Lady of Mercy Med. Ctr.*, 233 Fed Appx. 17, 19 [2nd Cir. 2007]) to gender-plus discrimination against women who were overweight (*Marks v. National Commus., Ass’n*, 72 F.Supp.2d 322) to gender-plus discrimination on the basis of height (*Coffman v. Indianapolis Fire Dep’t*, 619 F.Supp. 2d 582).

In order to establish a prima facie claim under “gender-plus discrimination,” a plaintiff must prove that the employer’s adverse employment action is linked to gender discrimination. For example, the Southern District of New York dismissed the gender-plus discrimination claim in *Marks* because the plaintiff seemed to take issue more with the fact that she had been fired because of her weight, and not because of her gender. The Southern District thus concluded that “there was nothing in [Marks’s] protests that could reasonably have led [NCA] to understand that [gender] was the nature of her objections.” *Id.*

Similarly, in *Coffman*, the plaintiff firefighter alleged gender-plus discrimination based on the fact that she was forced to undergo a driving evaluation because of her height, something she alleged that male firefighters did not have to do. However, the court dismissed the claim because where “plaintiff [was] unable to identify any specific male firefighters who are short and were not required to undergo a driving position evaluation, Plaintiff fail[ed] to carry her burden of demonstrating a prima facie case of disparate treatment.” The decision in *Coffman* was later affirmed by the 7th Circuit Court of Appeals.

To succeed in gender-plus discrimination claims, plaintiffs must establish the core elements of gender discrimination. Thus the *Edwards* plaintiff must take care to ensure that the issue of gender discrimination does not get lost or overtaken by the “attractiveness” component of her claim, especially since the lower court noted that she did not make the argument that is usually the nexus between gender discrimination claims and an adverse employment action: that male employees were treated better than she was because she is a female.

New York City Human Rights Law

The New York City Human Rights Law’s broad definition of gender has often been used for transgender and gender non-conforming employees who have felt the sting of discrimination because of gender-based stereotypes. However, the *Edwards* case could signal a new dawn for gender discrimination cases. If the term “appearance” or “self image” can now be interpreted as gauging the attractiveness of men and women in gender discrimination claims, could an argument be made that an employee suffered an adverse employment action because she had a dowdy or a perky self-image? One thing is for sure, many plaintiffs’ employment attorneys will take full advantage of these broader interpretations. Nevertheless, if prior jurisprudence is any indication, the *Edwards* plaintiff should prepare for a tough battle in the courts.

Onya Brinson, Esq. is an attorney with the New York City Department of Education Office of Equal Opportunity and Diversity Management Office. As an EO Investigator, Onya investigates discrimination matters involving employees and students.

NYWBA’s Employment and Equal Opportunity for Women, Federal Practice, and Litigation Committees present a CLE Program:

Hiring and Firing: How to Avoid or Succeed in Court

Speakers:

Magistrate Andrew J. Peck, U.S. District Court, Southern District of New York
Ann Clarke, Vladeck, Raskin & Clark, P.C.
Zoë Jasper, Jasper & Jasper, PLLC

Date: Thursday, December 14, 2017, 6:00 p.m.
Place: Tarter Krinsky & Drogin LLP
1350 Broadway, NYC
CLE: 1.5 Credits
Cost: Free – NYWBA Members*
\$35 – Non-members**

Info & RSVP: Email litigationchairs@nywba.org

***Membership:** Members attend CLE programs for free. If you are not a member, go to www.nywba.org/Membership to join or renew using our secure online membership form.

****Financial Hardship SCHOLARSHIPS:** Full and partial scholarships based on financial need are available. For info on the guidelines and to apply, contact CLE Co-Chairs Amy B. Goldsmith and Ariel Chesler at CLE@nywba.org or 212-216-1135. All requests are confidential.



October 22, 2017, the NYWBA Cycle Team participated in a 30 mile bike race around Manhattan to raise money for MS. Pictured (l. to r.): Marty Barr, WBASNY President Amy Baldwin Littman, David Duggan, Dana E. Heitz, Michele A. Katz, Marilyn B. Chinitz, Jennifer H. Sundt and Susan L. Bender.

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A Founding Chapter of THE WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK

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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 membership 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 to access our secure online membership form.

Current members should send updated address and contact information to 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 (Chairs **Alexandra Campbell** and **Jessica Cygler Wagner**) 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 newsletternywba@gmail.com. Submissions should be proofed and cite-checked, and NYWBA retains the usual editorial discretion to omit or edit all contributions. Send an email to newsletternywba@gmail.com if you have questions or are interested in joining the Newsletter Committee.

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