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OCTOBER 2011



Law Services News

www.nslawservices.org

Fighting for the Homeless

Within the past few months, Nassau Suffolk Law Services has represented numerous homeless families and individuals who were denied assistance by the Nassau County Department of Social Services (DSS) for various reasons that have no basis in the law or fact. We have had considerable success in having the DSS determinations reversed by fair hearing decisions issued by the New York State Office of Temporary and Disability Assistance. In an effort to dispel some of the misconceptions regarding the rights of homeless families, this article will review several of the most common reasons for DSS' denial of temporary housing:

You are not a county resident. There is no law that requires an applicant to reside in the county of application for any period of time in order to acquire residency. In order to be a resident, the applicant must be physically

in the county and express an intent to live in the county. In a recent case, the applicant had been residing in a temporary emergency shelter since June 2011 and enrolled her child in school for the Fall. The family was not placed by DSS nor was DSS paying for the placement. Prior to moving to Nassau, she was staying with her brother in Brooklyn but could no longer stay there. She was denied temporary housing based on the claim that she was not a Nassau resident. A fair hearing decision reversed DSS' denial of the application for emergency housing and determined she was in fact a resident. (FH# 5860975R)

You were not legally evicted, so you have available housing.

There is no requirement in the Social Services Law or the regulations that an applicant be "legally" evicted as a condition of eligibility for temporary housing. Recently, Nassau DSS denied temporary emer-

(cont'd on p. 3)

Details, Details...

Section 8 is a federal rent subsidy that provides critical assistance to many struggling Long Islanders. Retaining this benefit in the face of its many rules and requirements can be a challenge. Section 8 is administered by various townships and housing authorities who oversee the program and enforce its rules.

Sometimes our clients receive notices from the housing authorities which terminate the benefit due to allegations that they are no longer eligible for financial reasons, or due to an alleged failure to comply with program rules. The law requires the housing authority to issue a pre termination notice with certain specificity before the subsidy may be terminated. The recipient has a right to appeal the notice of termi-

nation. But it must be done quickly--within **10** business days.

In a recent case, our client, Ms. B. received a termination notice claiming the presence of an "unauthorized individual in your unit." The client promptly requested an informal hearing to dispute the violation. At the hearing, Ms. B., not having much to go on due to the vague allegations, stated that her "kids come to visit all the time because she is sick." She lost at the administrative hearing and Law Services sued the housing authority on her behalf in Federal Court.

In the Federal District Court litigation, her Law Services attorney, claimed that

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"Equal Justice Under Law"

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National Pro Bono Week!
October 24-28



United Way of Long Island

the termination notice was inadequate and that the documents and evidence used against the client were never made available to her. We argued that the notice did not identify who the person was, the period of time in question, and why the person was unauthorized, wrongly suggesting that she could lose her benefits for having a visitor.

The Federal District Court judge agreed that the “notice left her guessing as to which of her children supposedly resides with her and the period of time they so resided making in substantially more difficult and burdensome for her to build her defense...and effectively rebut the evidence.” Furthermore the hearing officer had merely concluded that the housing agency demonstrated the client violated Section 8 rules, without citing the details relied upon or offering any explanation. The order of the Federal Court directed that the appeal could proceed to trial, denying in significant part the housing authority’s motion to dismiss the complaint. Ultimately, the housing authority agreed to reinstate Ms. B. to the Section 8 Program and the Federal Court case was settled.

Administrative hearings require a standard of due process that includes sufficient detail in the notice. This is an important point to remember when advocating for clients in administrative hearings such as those presided over by Social Services, Social Security, and Section 8 housing authorities.

Mandatory Managed Care continues to bring changes to Medicaid recipients

- Effective October 1, 2011 Medicaid and Family Health Plus prescription coverage will be moved into the managed care package. The Plan formularies may be similar but not all drugs may be covered.
- Effective October 1, 2011, physical and occupational and speech therapy will be capped at 20 visits per year with no overrides (only exceptions are inpatient hospital, skilled nursing facilities, or facilities operated by the Office of Mental Health or Office for Persons with Developmental Disability)
- Other changes will be phased in during the months to come.

For more information go to: <http://www.empirejustice.org>

NY’s Fair Hearing Request Line: Your NYS Lottery Odds May Be Better



A recent FOIL (Freedom of Information Law) request to the NY State of Temporary and Disability Assistance revealed that during the four month period from February to May 2011, only 6.58% of calls to the Fair Hearing Request Line (1-800- 342-3334), were successfully placed during business hours 8 a.m to 5 p.m. The rest of the calls were not completed, usually because the lines were busy.

For those who have access to a fax, a much more satisfying method of requesting a fair hearing is to fax the request to: **518-473-6735**

Also, fair hearings may be requested [online](http://www.otda.state.ny.us/oah/oahformserequestform.asp). At www.otda.state.ny.us/oah/oahformserequestform.asp

Are Legal Resources Hard to Find?

Advocates Only: Law Services’ Legal Support Center for Advocates continues to provide critical technical support to Long Island advocates on a wide variety of legal issues. The helpline is for advocates only 631 232-2400 x 3324 or 3312.

For clients: An important resource for clients is [LawHelp](http://www.lawhelp.org/ny/) which provides an online service to low and moderate income people and answers to questions about their legal rights.

With access to a computer, **LawHelp** offers comprehensive, understandable legal information on many legal issues that affect your clients. There is also a Live Chat feature where a client can talk with a LawHelp/NY specialist by typing a question. The question is sent immediately to the specialist, and the specialist quickly sends you the location of the information you’re looking for, if available. <http://www.lawhelp.org/ny/>

(contd from p. 1)

gency housing assistance to a 40 year old single disabled woman who had been living with her brother. However, her brother required her to leave and she went to live temporarily with friends and then in motels. After a week, her money ran out and she applied for temporary emergency housing at DSS. She was denied on the spot because she was not “legally” evicted and it was determined that she should return to live with her brother. A fair hearing was requested and the decision reversed the DSS’ denial of the application, directing DSS to place her in temporary emergency housing. (FH# 5871736J).

3. You caused your own homelessness due to the inability to pay your rent. Recently, a 36 year old man, who had been evicted for non-payment of rent was denied emergency housing assistance by DSS because he caused his own homelessness. The notice of denial did not cite any authority for its action. The applicant was not able to pay his rent because he only received \$60 per week in unemployment insurance benefits. At the fair hearing, the DSS representative cited a regulation that was irrelevant to the need for emergency housing. The fair hearing decision held that the denial was incorrect and that there was no basis to deny temporary emergency housing. (FH# 5846387P).

4. You have friends or relatives with whom you can stay. If friends or relatives are willing and able to assist a homeless family with housing, that resource must be used before DSS is required to provide temporary housing assistance. However, the mere assumption that the homeless household has available housing with relatives is not sufficient to support a denial. In June 2011, the appellant and her children came to Nassau County from South Carolina and temporarily stayed with her brother who was a superintendent of a building. However, his employer would not allow her to stay with him as she was not a spouse or a child. She then stayed with her sister and nephew in their Section 8 apartment, but she could not continue to reside there because it was jeopardizing her sister’s Section 8 subsidy. After she left her sister’s house, she and her children slept in an abandoned car for a short time before finding shelter through a referral from the Salvation Army. Meanwhile, DSS denied her request for temporary emergency housing because she had available housing with a sibling. In

reversing the DSS determination, the fair hearing decision found that DSS made no attempt to contact the appellant’s siblings to confirm whether temporary housing was still available with either of them, nor did it require the appellant to submit verification that the housing was no longer available. (FH# 5842925H).

5. No notice is required before DSS transfers a homeless household from one temporary emergency housing placement to another. Although Nassau DSS requires homeless families and individuals to sign an Independent Living Plan that states that transfers may be made without notice, in fact the law requires DSS to provide a written notice regarding a transfer, although it is not required to occur prior to the transfer, and there are no aid to continue rights.* Administrative Directive 94 ADM-20 provides that “whenever a homeless person is transferred from any temporary housing accommodation to another, Department regulation 18 NYCRR 358-3.6(e) provides that timely notice generally is not required. As long as the shelter need is being met in some form, it is not necessary to provide timely notice and a **pre-transfer** hearing. However, each time a person is moved among temporary accommodations, adequate written notice and an opportunity for a fair hearing to challenge the adequacy of the new accommodation must be provided for the person.” In a fair hearing decision, dated May 9, 2011, the Commissioner of the Office of Temporary and Disability Assistance held that Nassau DSS improperly transferred the appellant, who suffered from Crohn’s Disease, and her three children from a motel to a shelter without any notice and also discontinued the shelter payments without notice. Consequently, the Agency was directed to continue to provide emergency housing at the motel and restore the payment. (FH# 5560789K).

Special Note: A 2004 settlement in the case of National Law Center on Homelessness & Poverty v. State of N.Y. brought in **Suffolk County, minimizes the number of days that a homeless child can miss school due to emergency housing placements or transfers. The order addresses notice and school transportation planning in the case of homeless families with children, which effectively restricts shelter transfers. See p. 8 for information on upcoming **McKinney Vento** training.*

WE CELEBRATE PRO BONO WEEK OCTOBER 24-28, 2011

In partnership with the Bar Associations

Nassau Residents Invited to Pro Bono Legal FAIR (Free Assistance, Information and Referral) Thursday, October 27

Sponsored by Nassau County Bar Association & Nassau Suffolk Law Services

As part of its ongoing tradition of pro bono and community legal assistance, the Nassau County Bar Association along with Nassau Suffolk Law Services is inviting all Nassau County residents to a free legal Pro Bono FAIR (Free Assistance, Information and Referral) to be held on **Thursday, October 27**, in celebration of **national Pro Bono Week**. Any Nassau resident is invited to come to the Bar Association's headquarters at the corner of 15th and West Streets in Mineola, between 3 - 7 p.m. with a question and meet with an attorney one-on-one for legal guidance.

Attorneys knowledgeable in many areas of law will be available to meet with residents to provide information and refer them for more assistance if needed. Attorneys will not provide legal representation. Residents are invited to bring their questions about:

- bankruptcy and consumer debt
- divorce and family issues
- education and special education
- health and disabilities
- immigration
- mortgage foreclosure and housing matters
- senior citizen issues

Registration is required by calling 516-747-4070. In addition, in its efforts to reach all communities on Long Island, bi-lingual attorneys fluent in Spanish, Russian, Haitian Creole, Korean, Chinese, Hindi and many other languages will be present at the Pro Bono FAIR **upon request** when calling to register.



THE SUFFOLK COUNTY BAR PRO BONO FOUNDATION TO HOST A FREE PRO BONO FORECLOSURE CLINIC

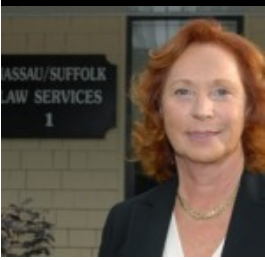
In celebration of National Pro Bono Week, a free Foreclosure Clinic will be held on Thursday, October 27, 2011, 1:00 p.m. - 2:30 p.m. in the Great Hall of the Bar Center, 560 Wheeler Road, Hauppauge, NY. The invitation is on a limited, first come, first served basis and the Association will accept the first sixty participants to register. The participants must be a resident of Suffolk County and own and live in the homestead. Participants must be delinquent in his/her monthly mortgage payments and must not be a listed member in the Pro Bono Foreclosure Project. If the person already has a court appearance with regard to a foreclosure before October 27, they cannot participate in this program.

In addition, the program will be **webcast** to members of the public who meet the above criteria and who cannot attend the program in person. The webcast will be limited to the first 50 persons. Webcast



participants must have cable or FIOS Internet access and a computer with Internet Explorer or Firefox. Please note there are no income guidelines to attend this clinic program.

The Suffolk County Bar Association's Pro Bono Project was founded in 1981 and is sponsored by the Association and Nassau/Suffolk Law Services, Inc. The Project's volunteer lawyers provide free legal services to indigent persons through the voluntary efforts of members of the private bar. For more information about this program, call the Bar Association at (631) 234-5511.



PRO BONO LEADERS IN OUR COMMUNITY

Congratulations to our own Carole Burns, [NYLJ's](#) Lawyers who Lead by Example

We're very proud of the recent honor bestowed on Carole Burns who has been selected as one of the *Lawyers who Lead by Example* by the New York Law Journal. For Carole Burns, the Pro Bono spirit has many different expressions. Whether she is participating in Nassau Suffolk Law Services' pro bono effort, taking a leadership role in Law Services' fundraising projects, or serving on our Advisory Council, Ms. Burns has exemplified selfless service to her community and has been a critical member of Nassau Suffolk Law Services' Pro Bono team for many years.

Although Ms. Burns has dedicated much of her retirement time to pro bono, her commitment to public service began much earlier when she was still attending law school. As a law student she volunteered at The Legal Aid Society and at Queens Legal Services where her interest in doing the "public good" was piqued. After graduating from Fordham Law School in 1972, Ms. Burns pursued a career in commercial and tort litigation and, in 1991, opened her own practice. That firm, now known as Burns, Russo, Tamigi & Reardon, Garden City, New York, became an active participant in the work of Law Services. Ms. Burns and her firm were twice honored by Law Services with the *Pro Bono Attorney of the Month Award* for outstanding leadership and example in pro bono by taking on the representation of indigent clients.

In 2005, Ms. Burns started her work within our Nassau Volunteer Lawyers Project as an in-house volunteer attorney screening cases to be referred to other pro bono attorneys, as well as accepting pro bono cases herself. She was an integral volunteer member of the Volunteer Lawyers staff for several years before moving to Suffolk in 2009. She then began to work in Law Services' Suffolk Pro Bono Project, interviewing clients, screening them for pro bono matrimonial and other legal services, and herself providing pro bono representation in appropriate cases.

After the unfortunate demise of our Consumer Debt Law Project which lost its funding last year, Ms. Burns stepped in. With so many Long Island residents out of work and facing mounting debt, and the related stresses and hardships, Ms. Burns has championed this critical effort, interviewing and representing defendants in consumer debt cases. As a result she has developed a special expertise and has become our resident expert on defenses in medical/hospital and credit card debt cases. These situations are especially compelling since unrepresented families with valid defenses nevertheless often face liens that can materially affect their credit and even threaten their family homes. Credit card debt, exasperated by collection practices such as improper or insufficient service of process, or lack of standing on the part of the plaintiff, has also been of special interest to Ms. Burns and forms the basis for many of the cases which she is handling for Law Services.

In one such case, the low income client did not seek legal assistance until a default judgment for more than \$16,000 had been entered against her. After investigating the facts and circumstances, Ms. Burns determined that the plaintiff hospital was not entitled to pursue the client for collection. She was successful in persuading the plaintiff's attorney to voluntarily vacate the default judgment and dismiss the complaint with prejudice. A very appreciative client was relieved from an incredibly burdensome debt and was able to resume her daily activities without continued anxiety.

Ms. Burns has served as an active member of the Advisory Council of Nassau Suffolk Law Services as Chair of the Development Committee and currently is Chair of the Council. Her successful fundraising initiatives and determined leadership on the Development Committee have brought Law Services some very needed private donations which support the important work of the agency. Her pro bono involvement has also extended to her valuable participation on Law Services' steering committee for Strategic Planning. Her Professional Associations round out her community involvement: New York State Bar Association, member of the Executive Committee of the Senior Lawyers Section and Chair of the Section's Program and CLE Committee; New York State Trial Lawyers Association; Nassau County Bar Association; and Suffolk County Bar Association.

Carole Burns continues to work tirelessly as a pro bono attorney and a fundraiser for Law Services and we are so grateful for her generous commitment!

Nassau Pro Bono Attorney of the Month

Andrew "Drew" Mollica

By Nancy Zukowski

There are no better proponents for the satisfaction of doing pro bono work than the attorneys who have been directly involved in representing clients in need. As an active participant in the Volunteer Lawyer Project's Attorney of the Day, Andrew Mollica volunteers in Landlord/ Tenant Court in Hempstead on a regular basis. He works closely with Roberta Scoll, a Nassau Suffolk Law Services staff attorney, and other pro bono attorneys to serve clients who are facing eviction and the loss of their housing.

Commenting that his pro bono work is the most rewarding aspect of his career, he observes, "Every day at Landlord/Tenant Court is an experience worth its weight in gold because you learn practical things that are not taught in law school." His most gratifying case involved helping a woman who was charged excessive back rent. He was ultimately successful in correcting the inflated charges for a very grateful client.

Mr. Mollica volunteers his valuable time two days per week, even as his practice continues to grow. "If necessary, I will cut back to one day, but if I do, I can assure you that the one day will be the most rewarding day of the week." He asserts that the most fulfilling part about Pro Bono work is "giving voice to people who have no voice."

In 2005, after a sudden "epiphany," he realized that the time had finally come to make a change. In his forties, Drew took the LSATs and entered the evening program at Hofstra Law School so he could go to school by night and work during the day to support his family.

Throughout his years of study he received the strong support of his wife, Joy, who is a professor of Italian at Hofstra University, and his two children. His daughter Kathleen is now a student at SUNY Purchase and his son Gabriel, is a sophomore at Hamilton College. Drew believes that his whole family went through the law school experience together and survived the Bar Exam along with him. Not an easy task. Ultimately Mollica feels these experiences have made them all stronger and provided him the opportunity to be a strong role model.

Since graduating Hofstra Law School in May 2010, Drew was admitted to practice law in both New Jersey and New York. Combining his law degree with the experience of his prior profession, he practices in the field of Equine Law which includes a wide variety of civil issues and minor criminal matters. His office is located in Garden City, NY.

When asked how he would encourage others to do pro bono work he said, "Everybody has a few hours to give. You've got to give back to the people in blue jeans and work shoes. It's not the people in the suits and black robes who make the pro bono experience worthwhile it's the real people who need the help that make pro bono work so rewarding. I realize making money is important but it's the pro bono work that touches your heart and feeds your soul. Being a professional means giving back both to those in need of legal advice and shepherding and mentoring newly admitted attorneys. In my opinion that's what being a good member of the legal community means. Lord knows, lots of my friends have helped me get started and in that spirit I want to do the same."

For his outstanding enthusiasm and commitment to the pro bono effort in his community, it is a great honor to name Andrew Mollica Pro Bono Attorney of the Month.

Suffolk Pro Bono Attorney of the Month

Tarsha C. Smith, Esq.

By Nancy Zukowski

The satisfaction of performing pro bono work combined with the opportunity to serve as a role model to her children are what motivate Tarsha C. Smith to volunteer her time to Nassau Suffolk Law Services' Pro Bono Project. For her outstanding commitment to this important work while juggling so many other personal and professional responsibilities, Ms. Smith has been selected as the Pro Bono Attorney of the Month.

Ms. Smith serves as Assistant Town Attorney for the Town of Babylon and as Special Assistant District Attorney while maintaining a successful private practice and raising a family of six children from ages two to thirteen. Ms. Smith's pro bono work is concentrated in representing clients in bankruptcies and assisting in guardianship matters. Apparently, there's always time for Pro Bono!

In 1995 she earned her Juris Doctor from the New England School of Law in Boston and soon opened her solo practice in Medford, New York. In addition to being a member of the Suffolk County Bar Association, she is one of the founding members of the Amistad Suffolk County Black Bar Association. She is currently working to establish Maranatha Community Legal Services, Inc., a not-for-profit organization to further serve the legal needs of indigent in the community. In 1996 she married Christopher L. Hawkins who works as a Public Security Officer. Together they are raising six children, Malik, Kia, Makeda and Isaiah, Alayna and Jada.

Explaining how her pro bono work enhances everything she does, Tarsha says "Every case is different and helps enhance my knowledge of the law in that area. You fill a need that is out there and there is always something to learn. Doing pro bono work is an excellent way to sharpen your skills in an area of law that may be out of the regular scope of your practice. Inez Lopez, the Project's paralegal, and the other staff in the Project are very helpful in getting you any forms or information you need. They all have the same mindset about helping needy clients."

Tarsha's most satisfying pro bono case involved assisting a single mother who survived breast cancer and supported her family working at McDonalds. The client's debts mounted resulting in a lien being placed against her bank account which prevented her from accessing her money. Tarsha assisted the very grateful client to gain access to the money in the account so she could buy food and pay other bills. Another meaningful case involved a guardianship for an autistic child whose family was unable to afford legal assistance. The gratitude of her pro bono clients is clearly more than enough payment for Tarsha, however, she believes there are other benefits that attorneys gain from doing pro bono work. "Pro bono work has sensitized me to the needs of regular people. It also helps your children to see you give something back to the community and it encourages them to do the same."

As a final statement to further encourage attorneys to become involved in pro bono work Tarsha adds, "There is always the possibility that doing pro bono work could lead to referrals because you are meeting people. But I'm not doing this for the money. Not everything is about the money. Whatever you give out, God blesses it and when you are in your hour of need someone will help you."

For her outstanding dedication, enthusiasm and example to the community, it is a great honor to name Tarsha Cassandra Smith Pro Bono Attorney of the Month.

WHEN TENANTS GET A BAD RAP...

Will Friedman, an attorney in Law Services' Civil Unit in Hempstead, received a favorable decision in an Article 78 proceeding challenging the Public Housing Authority (PHA)'s termination of our client's participation in the Section 8 Housing Choice Voucher Program.

The PHA based its termination on a letter it received from the juvenile facility that our client's son was living in north of New York City. The letter revealed that our client's son was placed in the facility due to a charge of criminal trespass and violation of parole and went on to describe her son's behavior at the facility as unsatisfactory. The PHA relied on this letter as a basis to terminate Section 8 due to violent criminal activity.

The client had been represented at the informal hearing by a non-household family member, who is an attorney. Will took on the appeal in an Article 78 proceeding, arguing that there was no evidence of violent criminal activity, that the sole reliance on an uncorroborated letter from the facility was hearsay and insufficient to meet the preponderance of the evidence standard, and that the hearing officer's decision lacked any reason for the conclusion affirming the PHA determination. The Court agreed, holding that the PHA failed to meet its burden of persuasion, i.e., preponderance of the evidence, noting that the only criminal behavior alleged was for trespass and violation of parole, neither of a violent nature.

Since that time the Section 8 voucher has been restored and the landlord has been paid the rent arrears.

Congratulations, Will!



Marissa Luchs Kindler, an attorney in the Islandia Civil Unit, was involved in a recent case, reported in the New York Law Journal,* where the threshold issue was whether the District Court in Suffolk County had authority to conduct a de novo review of a lease termination.

The landlord was a non profit corporation from whom the tenant entered into a standard HUD-approved housing lease in 2005. In 2009, the tenant's son pled guilty to 7th degree criminal possession of a controlled substance and had since moved out of the apartment. Later that year, the local Housing Authority terminated the tenant's lease and thereby the rent subsidy, as a result of the son's drug conviction. The respondent requested an administrative hearing before the Housing Authority and lost. The request for lease reinstatement and further housing subsidies were denied.

In a protracted, complicated chain of events, the landlord sporadically brought several unsuccessful eviction proceedings and the tenant continued to pay her rent. The Housing Authority also sent her another notice terminating the tenancy for the same reasons as stated in their previous termination notice. Predictably, the tenant lost the Housing Authority hearing on the same grounds as before, and then the landlord commenced yet another summary holdover eviction proceeding several months later.

In the latest eviction proceeding, in which Ms. Luchs-Kindler represented the tenant, the Court held that the tenant was entitled to a full de novo review (new hearing). However, the Court held that even in the presence of a finding of "drug related criminal activity", a HUD subsidized lease may not be terminated without a "substantial inquiry and compelling evidence that evicting a person is necessary." The Court noted that the respondent's son had been permanently excluded from the premises and held that there would be little governmental interest served by evicting the innocent mother.

Congratulations Marissa!

*(Millenium Hills Housing Development Fund Corp., v. Janette Davis, HULT 666-10). New York Law Journal, August 30, 2011

The Justice Network at the Nassau County Bar Association

Cordially invites community service agencies to a Forum and Networking Event for community groups, not-for-profits, law school clinics and pro bono/reduced-fee legal service providers serving residents of Nassau County on November 17, 2011 3:00 - 6:00 p.m.

In this tough economy, learn how to maximize Nassau County residents' access to free and reduced-fee services. Meet with the agencies and organizations devoted to serving the underserved, and make connections that can help fulfill our shared goal of providing access to equal justice.

Exhibitors Welcome: If your organization provides direct legal services through the use of paid staff, outside counsel or volunteer lawyers and you would like to showcase your organization at an informational table at this event, please register in advance.

To register for an informational table or to learn more about this event, contact Caryle Katz at (516) 747-4070 or ckatz@nassaubar.org.

There is no charge to attend this event or for promoting your program at this event.

Susan G. Komen Race for the Cure of Greater New York City® highlights Law Services' PLAN Project in its [Grantee Profile](#).

The Permanency Legal Assistance Needs Project (PLAN) provides legal assistance to individuals and families affected by every type of cancer to cope with legal, financial and medical issues, including permanency planning. The Project includes a focus on clients with breast cancer.



Rights of Homeless Students

Free Workshop sponsored by NYS TEACHS

Tuesday Oct 25, 2011 8:00 am to 1:00 p.m. Melville Marriot

- Homeless students rights to school transportation
- What does the McKinney Vento Law require?
- Youth Panel with formerly homeless students

Call 800-388-2014 to register.

Prominent Law Firm Gives us a "Loan"

By Nancy Zukowski

For three months this summer Nassau Suffolk Law Services had the privilege of utilizing the services of **Michael Weiner**, an associate with the international law firm of **Milbank, Tweed, Hadley & McCloy**. At Milbank Tweed the normal scope of Michael's work was defending mutual funds, but he found his work with Law Services' Attorney of the Day Project to be an enlightening experience. This Project utilizes pro bono attorneys in Nassau County to provide representation to low income persons with housing problems, including eviction proceedings, Section 8 subsidies, and other public housing issues. He was attracted to this project because it was an opportunity to serve the community, but in the end he feels he gained just as much.

Michael expresses how impressed he was by the high volume of cases that are handled in Nassau Housing Court and admired how Judge Scott Fairgreive, his clerk, Brenda Hayden, and Roberta Scoll, the supervisor for the Attorney of the Day Project, were able to manage the overwhelming docket. He was certainly touched that he "could help people save or improve their housing situation" and observed that he grew as a lawyer by working with the Volunteer Lawyers Project. He was proud when Ms. Scoll referred to him as a newly minted "street lawyer" and is sure he returned to Milbank Tweed "as twice the lawyer I was previously." Finally Michael was appreciative of the entire Law Services organization for welcoming him with open arms and for making his fellowship so rewarding. Roberta Scoll commented that she is thankful to Milbank Tweed for this wonderful experience for both their associate and the Volunteer Lawyers Project.

Michael Weiner is a 2007 graduate of Vanderbilt Law School and is a member of the New York State Bar. Milbank Tweed gives its Associates the opportunity to take on new challenges and to advance public interest by "loaning" their associates to numerous pro bono organizations through this type of partnership. We are grateful, along with the clients he served, to be able to make use of his talents and to give him the opportunity to grow as a lawyer.

Commitment to Justice Wine Tasting

Law Services would like to take this opportunity to say thank you to all of our very generous sponsors:



We gratefully acknowledge featured wines courtesy of
Palm Bay International and David Taub
Wine Instruction by *James Dunne of Vino U.*



Pinot Noir



Cabernet Sauvignon



Carole and Jim Burns

Chianti

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Jeanette Grabie, Grabie & Grabie, LLP
Meyer, Suozzi, English & Klein, P.C.
Elizabeth Pollina Donlon, Esq.
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Lois Schwaeber, Esq.
Susan West

We also wish to acknowledge the special support of:
The Carlton, Hector Herrera & Robert Lepley

— *A Great Night at the Carltun!*



We had it all: Entertainment, food, wine tasting, raffle baskets, hard working colleagues, and loyal supporters and friends! Thanks to all for their generosity!

Student Loans Can be Waived for Some Disabled Debtors

By Jonathan Warner, Law Graduate

Student loans are an intractable source of debt and not usually dischargeable in bankruptcy. Borrowers who find themselves unable to work due to a very severe disability have an exceptional hardship. In an effort to remedy this dilemma, the Department of Education has offered the "Disability Discharge" - a complete discharge of FFEL, Perkins, PLUS, and Direct student loan debt - to borrowers that are unable to work due to a "total and permanent disability."

Until recently, few borrowers benefited from the disability discharge program due to the stringent eligibility requirements. Fortunately, in July 2010, the Department of Education amended the definition of a "total and permanent disability," which is the standard for waiving the student loan obligation. So even though the disability discharge remains hard to obtain, it is something you should consider if you suffer from a severe disability.

Under the new rules, a borrower is eligible for a disability discharge if she is unable to earn money due to a condition: (1) that is expected to be fatal, (2) has continuously lasted for at least 60 months, *or* (3) can be expected to last for a period of at least 60 continuous months. Veterans may also qualify for a disability discharge if they can furnish V.A. records that indicate they are unemployable due to a service-connected disability.

The Department may reinstate the borrower's loan within three [3] years after initially granting the discharge if the borrower: (1) begins to earn a level of income that ex-

ceeds 100% of the poverty line for a family of two, (2) receives a new TEACH grant or federal student loan, *or* (3) fails to return any disbursement, received prior to the disability discharge, within 120 days after the discharge. Should the Department decide to reinstate your loan, know that they are legally obligated to provide you with notice, their reason(s) for the reinstatement, as well as how to contact the Department if the borrower desires to appeal the decision.

There are some important things to remember about obtaining a disability discharge. A borrower must be completely unable to work, not just unable to work within her field of training, in order to initially qualify for a disability discharge. Further, a borrower may apply for a disability discharge again if his previous application was denied. If you are granted a disability discharge, remember that the Department may reinstate your loan if you begin to earn more than 100% of the Federal Poverty Level for a family of two. Also, even *after* the three [3] years following the disability discharge, a borrower will have to furnish a doctor's note (certifying her ability to work) if she desires to take out a new federal loan.

The student loan discharge is a valuable option for persons with disability and should be seriously considered. Though Law Services is unable to assist with the application except for persons with HIV/AIDS served by our David Project, a self help packet is available on our website. For more information:

Disability Discharge Self-Help Packet:

www.studentloanborrowerassistance.org/uploads/File/selfpackets/disability.pdf

Current Disability Discharge Application Form:

<http://www.ifap.ed.gov/dpcletters/GEN1015Attach.html>

Poverty Index: <http://aspe.hhs.gov/poverty/index.shtml>

HEAP NEWS: (And it's not Good)

- Regular HEAP season is opening later (11/15).
- Emergency HEAP is not scheduled to open until January 3rd
- Benefit amounts are lower than last year ... (Example of the reduction in amount -- last year an SSI recipient with an oil furnace got a \$700 regular HEAP benefit. Looks like this year it will be \$500.)

For further details as the HEAP season progresses, see the HEAP state plan:

<http://www.otda.ny.gov/programs/heap/stateplan.asp>



Fall 2011 Training Schedule

We will be conducting trainings at our Suffolk site: 1757 Veterans Hwy, Suite 50, Islandia To pre-register, please call the Training Line at 631 232-2400 Ext 3357 or you may e-mail Cathy Lucidi at clucidi@wnylc.com. The fee is \$30 per person per training session and is payable to "Nassau Suffolk Law Services". To confirm your phone reservation or e-mail reservation please mail your payment in advance of the training date with the registration form below. If inclement weather, please contact the training line the morning of to make sure the training will still be held. Space is limited so register early.

Consumer Debt Seminar: *A review of the most common debt situations experienced by our clients with some suggestions for debt relief, asserting debtor's rights, and curing defaults. There will also be discussion on: student loans, cease dunning letters, frozen bank accounts, bankruptcy, hospital debts and exempt income. Tuesday November 22, 2011 9:30- 12:30.*

Social Security Training: *The seminar will review the essential elements of a Social Security application, appeal, and continuing eligibility. Included will be an overview of the disability criteria, financial eligibility where applicable, and how to maintain eligibility. The role of the non attorney advocate in the process will be emphasized. Wednesday December 14, 2011 9:30-12:30*

Training Registration Form

Name _____

Agency Affiliation _____

Phone Number _____ Email address _____

Title of Training(s) _____

Amount Enclosed _____

Or Will be sent at a later date or on the date of the Training

Please fax this registration form to Cathy Lucidi at 631 232-2489 , or register by email to clucidi@wnylc.com or mail to: Attn: Cathy at Nassau Suffolk Law Services. 1757 Veterans Highway, Suite 50, Islandia, NY. 11749

Suggestions for training topics? Please email Maria Dosso at mdosso@wnylc.com

LAW SERVICES IN OUR COMMUNITY



Law Services continues its strong ties within the community in an effort to collaborate with various agencies and insure that low income Long Islanders receive the services they so desperately need. If you happen to see any of our Law Services' staff at a community event, please stop by to introduce yourself and say hello. We'd love to meet you, and as always we thank you for your support!



Rose Caputo, Staff Attorney in the Senior Citizens Project attended The Project Independence Open House at the Sid Jacobson JCC in East Hills, New York held on June 24, 2011. The Town of North Hempstead Department of Services for the Aging sponsored this event. Rose talked to participants and provided valuable handouts regarding legal issues faced by many seniors along with our Senior Citizens Project brochures.

Stephanie Tanzi, student intern, staffed an information table at Congressman Bishop's Senior Expo held at the VFW Hall in Centereach on June 17, 2011.

She distributed information about Law Services and answered seniors' questions about our services.



On September 15, **Jane Reinhardt**, Senior Staff Attorney in the Mental Health Law Project, gave a presentation about Law Services to a parent advocacy group of the N.A.M.I. Long Island Regional Council. The group consisted of parents and relatives of people diagnosed with schizophrenia and bipolar disorders and was held at North Shore Univ. Hosp. of Plainview .

On August 3, 2011, **Kim Ritchie**, Social Worker in the Islandia Office, attended the "Stand Up For the Homeless" Day at St. Joseph's College sponsored by Suffolk County. She staffed an information table and distributed valuable handouts that pertained to the many issues faced by homeless individuals and their families.

CLE: Landlord-Tenant Practice (LIVE & BY WEBCAST)

Marissa Luchs Kindler and **Victor Ambrose**, staff Attorneys in our Suffolk Civil Unit, will be presenters at a Continuing Legal Education seminar given by the Suffolk County Bar Association entitled *Landlord-Tenant Practice* to be held on November 3, 2011 from 6-9 in the evening. This presentation is a must-attend for attorneys who represent tenants. An in-depth discussion of law and procedure will focus on affirmative defenses to eviction proceedings. For more information or to register please visit the Suffolk County Bar Association's website at <http://www.scba.org/> and click on Calendar.

Dan Okrent, Staff Attorney in the Nassau Senior Citizens Project recently participated in many events throughout Long Island including:

On August 12, he staffed an information table at the Bi-County Empowerment Conference for people with mental illness at the Melville Marriott.

On September 12, 2011 he was at the Town of North Hempstead the Senior Fair "FunDay Monday" Health Education Fair at Hempstead Beach Park. Dan distributed information pertaining to health-related legal issues sometimes experienced by many senior citizen along with our Senior Citizen Project brochures.

On September 22, he gave a talk to a diabetes group at Nassau University Medical Center. Topics included health care proxies

Maria Dosso presented on *Advocating with the Department of Social Services* to Catholic Charities parish outreach workers on September 29, 2011 at Christ the King parish. The Parish Social Ministry program provides crucial community services to people in need throughout Long Island and benefited from the information seminar regarding DSS programs for their clients.



Don't forget to share a copy of this newsletter with your colleagues!

Nassau/Suffolk Law Services Committee, Inc.

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(631) 232-2400

313 W. Main St., Riverhead, N.Y. 11901
(631) 369-1112



*“Equal Justice
Under Law”*

We're on the Web
www.nslawservices.org



Nassau Suffolk Law Services said goodbye to Miriam Pismeny, Managing Attorney for Nassau's Volunteer Lawyers Project (VLP) and Suffolk's Pro Bono Project (PBP), who retired after over 25 years of service.

Starting as a volunteer at Law Services in 1985, she soon graduated to Managing Attorney for VLP in 1990, coordinating the pro bono effort in concert with the Nassau County Bar Association. It wasn't long before she also began coordinating Suffolk's pro bono effort in 1994 with the active cooperation of the Suffolk County Bar Association. She also served as President of the Nassau County Women's Bar in 1996-7. During her long tenure, the pro

bono effort on Long Island has grown to include an active matrimonial effort, bankruptcy clinics, and in Nassau, an Attorney of the Day Project representing thousands of clients in landlord tenant matters. Though the pro bono effort has experienced its share of challenges and obstacles, under Miriam's leadership it has become among the most respected in New York State.

Since the inception of the VLP and PBP projects, Miriam's name has become synonymous with the term "pro bono" on Long Island, and she became a familiar face at the Bars' functions and activities. Jeffrey A. Seigel, Nassau Suffolk Law Services' Executive Director, describes Ms. Pismeny as, "the driving force behind the face of the Pro Bono effort on Long Island since the early 90's. We will continue the effort in her absence, but she can really never be replaced." Good luck to you, Miriam, and thank you for all your work over the years.

Don't forget to visit our **website** at www.nslawservices.org. And sign up to get this newsletter by email and to receive our monthly e-news, *Legal Lessons*



If you're not on our email list, you're not receiving regular issues of *Legal Lessons*. This e-news feature will keep you posted on the latest developments while you wait for the next issue of our newsletter. So sign up today by going to: www.nslawservices.org and look for the "Sign up for our newsletter" tab. Tell your friends and colleagues!

We Need Your Support More Than Ever!

Please consider a donation to help Law Services restore critical services that have been jeopardized by recent cuts in funding. We count on our supporters to insure the provision of free legal services and community legal education to Long Islanders. Thank you!

Name _____

Address _____ email address _____

Amount enclosed _____

Please mail your donation to Nassau Suffolk Law Services, 1 Helen Keller Way 5th Floor, Hempstead, N.Y. 11550 Attn: Maureen

Or go to: www.nslawservices.org to make your donation online



Jeffrey A. Seigel, Executive Director: We recently provided testimony before the Task Force to Expand Access to Civil Legal Services to provide information on the continuing critical need for civil legal assistance for families and individuals on Long Island who need legal help to maintain the basic necessities of human life.

With the current economic downturn and the increase in the number of Long Islanders living in poverty, the need is greater than ever before. The high cost of housing has led to serious problems of evictions and homelessness. Long Island is the region which has been hit hardest in New York State by the foreclosure crisis. The crisis has affected not only homeowners, but also tenants residing in single- or two-family rentals where the landlord is in foreclosure. In 2009, the City (Long Beach and

Glen Cove) and District courts in Nassau and the District Courts in Suffolk handled a total of 18,057 eviction cases, according to the New York State Uniform Court System Annual Report for that year, and we have every reason to believe that the numbers for 2010 and 2011 will be comparable or even higher. All of Law Services projects combined provided legal assistance in 2,551 landlord-tenant matters last year, and provided legal representation in court on 1,475 of them.

This financial crisis is wreaking havoc in the lives of low income New Yorkers and once middle class New Yorkers, who are the new poor. Everyday at Law Services we experience their desperation. While they struggle and with no immediate economic recovery in sight, the need for civil legal services is increasing exponentially. A year ago, the Task Force to Expand Access to Civil Legal Services convened by Chief Judge Jonathan Lippman recommended that \$100,000,000 would ultimately be needed to meet the need in New York State, and we fully concur. In fact, since other long-term sources of government funding have been drying up, even more may be needed.

Chief Judge Jonathan Lippman's continuing leadership in convening these hearings in each of the four departments, appointing a Task Force to make recommendations to meet the unmet need for civil legal assistance, and committing scarce resources to civil legal services, is the leadership we need for our current realities. Thousands of individuals are representing themselves in court proceedings. This development is unconscionable and undermining the core values of our judicial system. Supreme Court Justice Lewis F. Powell Jr. said, equal justice "is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status."