

# Law Services News



*Doing what's legally possible  
to create a just world*

## From the Desk of Jeffrey A. Seigel, Executive Director...

With the state budget process completed and Legal Services Corporation (LSC) federal funding essentially decided, the outcome will bring significant changes to Nassau Suffolk Law Services. Even with our strong, diversified funding structure, funding cuts at the federal and state and county levels will result in a shrinking of our program services and staff.

As our staff struggles with the disruption to program, services, and the personal aftermath of layoffs, there is also a focus on moving forward and adapting to a new funding landscape. Of course, we are not alone as many other community agencies are feeling the pinch which further affects services to our mutual clients. The next few months will bring its challenges.

To deal with these challenges, we have redoubled our efforts to seek new sources of funding. Furthermore, although direct legal representation is always preferable, we will explore all possible ways to deliver free civil legal services in our Long Island community. Meeting this goal may mean addressing legal needs with alternative services such as a greater dependence on volunteers and community advocates, and indirect legal services such as information, consultation and education. We appreciate the community's understanding as resources are reallocated and some services are reduced.

Thank you to our friends and supporters. Your [financial donations](#) and moral support are more important than ever as we rally to meet the legal needs of our community.

## Another Foreclosure Averted

**Rose Caputo**, attorney in the Senior Citizens Law Project, brought an action in Supreme Court to set aside a foreclosure sale on her client's co-op. The 79-year old client, on a fixed income of Social Security benefits, suffers from Alzheimer's Disease. In 2008, the defendant bank gave the plaintiff a mortgage with monthly payments that exceeded her income. Needless to say, she was not able to afford the payments. In November, 2009 she was admitted to a nursing home in the Dementia/Alzheimer Unit and stayed there until September 2010. While there, her son who had Power of Attorney, notified the bank about his mother's condition and nursing home admission. He requested that all communication about the co-op be sent to him directly. In addition,

the plaintiff's son visited the co-op unit on a weekly basis while she was in the nursing home and he never received any notice about a foreclosure sale until he was shown a post foreclosure "Notice to Quit" in September 2010 by the plaintiff's home health aide. After the Notice to Quit was served, the plaintiff then received a holdover petition commencing the eviction proceeding.

Prior to the return date of the holdover proceeding, Rose commenced an action by Order to Show Cause, staying the holdover proceeding. The holdover proceeding has been dismissed and a settlement is being worked out setting aside the foreclosure sale and allowing the plaintiff 120 days to sell the co-op. Congratulations on another great save!

MAY, 2011

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United Way of Long Island

## Law Services Fights Housing Discrimination

Housing discrimination is a reality that we often deal with at Law Services. Though laws exist to prohibit discrimination, lawyers and advocates are often required in order to enforce a client's housing rights. The federal Fair Housing Act (FHA) prohibits housing discrimination based on race, color, religion, national origin, sex, disability (mental and physical) and familial status (e.g. children in the household). New York State law adds to this protected list age, marital status, sexual orientation and military status. Though discrimination takes many forms, it may be as simple as not providing a disabled person with the information, tools, or additional assistance so that they may comply with bureaucratic requirements in order to gain equal access to a housing benefit or legal right.

We have used the FHA to ask for "reasonable accommodations" in many housing disputes. Our Suffolk Mental Health Law Project (MHLP) has had several recent cases where clients with a serious mental illness have required the assistance of our attorneys in order to maintain their housing. In one case where our client suffered from agoraphobia and major depression, she received a Section 8 termination notice. She had failed to submit the requested documents to the Section 8 agency regarding her child support. Although she informed the agency of her child support income, she was confused as to the documents she was required to submit. After repeatedly submitting incorrect documents, the client received a notice that her Section 8 housing subsidy was being terminated for noncompliance with the document request. The disabled client requested a hearing although it was very stressful for her to be in public or even to leave her home. She planned to use public transportation to attend the hearing and asked that the hearing be scheduled later in the day so that she would have enough time. Despite her request, it was scheduled early in the morning and she missed the hearing. As a result of her default, the client's Section 8 voucher was terminated. She then contacted Law Services.



*Farwah Raza, Esq.*

Farwah Raza, her MHLP attorney, made a reasonable accommodation request to the Section 8 agency to reschedule the hearing due to her agoraphobia and difficulty with public transportation. The agency granted her request and another hearing was scheduled. At the hearing her attorney demonstrated that the client, due to her disability, was not able to clearly comprehend the agency's request for documents but attempted to comply with the requests to the best of her ability. Although the Section 8 agency was aware of the client's mental disability, no assistance was provided to her in order to procure the required documents. The presiding administrative law judge determined that the client merely needed to submit the requested documents as soon as possible and that the agency should assist her by clarifying what these documents were and how to procure them.

In another case, our disabled client was being evicted after losing her appeal to maintain her subsidized housing. After she lost her case at an informal hearing held by the town housing authority, she then reached out to the MHLP for help in the subsequent eviction. Her attorney, Ms. Raza, learned that at the informal hearing, the client had been assigned a guardian ad litem who did not adequately protect her interest. Though the request for a reasonable accommodation to get another informal hearing was unsuccessful, the attorney did get a stay of the eviction proceeding in district court while she filed an appeal in Supreme Court to hear the guardian matter. Another accommodation request was made in Supreme Court to get our mentally ill client another Section 8 hearing. The Supreme Court held that the guardian had incompetently represented the client and a new temporary guardian was assigned for the purposes of her housing matter. The court also ordered the town to hold another informal hearing with the new temporary guardian.

These are just a couple of examples of the critical work done at Nassau Suffolk Law Services to insure equal access to housing on Long Island.

*Law Services' Mental Health Project is funded by the NYS Office of Mental Health in Nassau and Suffolk serving clients in the community with serious and persistent mental illness.*

## When Attorneys Join in Health Care Advocacy, Patients Win

Law Services' PLAN Project serves cancer patients who are dealing with a myriad of legal issues during an already traumatic time of their lives. Many of our referrals come from neighboring hospitals and treatment centers. Following the model of a *medical-legal partnership*, our legal team joins health care professionals in an interrelationship to help the client/patient with the landslide of crises affecting individuals and families touched by cancer. One of the common legal issues involves obtaining and paying for medical care.

A recent article, *Insurance-Related and Financial Challenges Reported by Managed Care Enrollees With Breast Cancer*,\* explored the challenges experienced by 14 women in dealing with managed care organizations (MCO) during cancer treatment and early follow up. Most of the women reported serious problems with their private insurance carriers leading to additional stresses. According to the article, "Associations between the lack of health insurance or inadequate insurance and lower rates of cancer survival are well established, but studies also have pointed to the substantial burdens and negative outcomes experienced by patients with cancer who are adequately insured. Some patients go bankrupt because of out of pocket costs, where others buckle under the stress of financial strains, insurance related administrative tasks, delayed or denied authorizations or fear of losing coverage." Though most of Law Services' clients are low income, we deal with many who have private insurance and are fighting similar battles.

The study found that most of the insurance related and financial challenges reported by participants during treatment and early follow up center around five tasks:

**Interacting with Managed Care Organizations** The women discussed experiences of feeling "penalized by MCOs despite sincere efforts to comply with MCO procedures." p 602. Not surprisingly, participants felt unable to keep up with the insurance tasks demanded by MCOs who were perceived to be insensitive to the challenges of cancer treatment.

**Understanding Written Information** "The language used in MCO written communications was seen as difficult to understand, ambiguous and often not specific to cancer." p. 602

**Obtaining Authorizations** The lengthy waiting periods and denials for authorization for certain treatments were

a common complaint. Furthermore, a few women felt that the MCOs influenced care decisions without an understanding of their health care needs.

### Paying Bills and Planning for the Costs of Care

Many patients were caught off guard by unpredictable out-of-pocket expenses based on variables such as random changes in coverage, copayment differentials between specialists and other providers, classifications of prescriptions, and the lack of clear information about costs prior to treatment. Also participants worried about the financial welfare of their families.

### Difficulty Obtaining Assistance With Insurance

**Related Tasks** The fatigue and burnout associated with illness makes it that much more difficult to advocate for oneself, especially when there's a feeling of bearing the responsibility alone. "Those that were able to obtain assistance with the tasks, expressed the tremendous relief they experience to have a bit of the burden lifted." P. 603.

It is precisely at times when one is most vulnerable that legal advocacy plays such a critical role. Having an attorney partner with the health care team or case managers is an effective way of dealing with matters such as insurance disputes, financial concerns, planning for the care of minor children, and wills and estate planning. Other Law Services programs serving clients affected by disabilities such as HIV and mental illness, are additional examples of this partnership which responds to the community's needs. This model is so successful, that with additional medical/legal partnership funding, in collaboration with LegalHealth (a division of NYLAG), the PLAN Project recently launched a new effort based at Stony Brook's Family Medicine Practice Clinic in East Setauket. We have similar collaborations with Stony Brook's Patchogue clinic and Good Samaritan's Dialysis Unit. Under this model, a Law Services attorney works together with the clinic staff to serve the patients and provide holistic services.

The PLAN Project is funded by a New York State Department of Health grant and the Greater NYC Affiliate of Susan G Komen for the Cure®

**\*Insurance-Related and Financial Challenges Reported by Managed Care Enrollees with Breast Cancer**

Authored by Rachel Klimmek, **Denise Snow**, and Jennifer Wenzel, *Clinical Journal of Oncology Nursing* October 2010 Volume 14, Number 5



Denise Snow, Esq.

## What's New at Law Services

*In this time of serious funding cuts, Law Services continues to be proactive in finding new ways to provide services to our Long Island community:*

### We're Back! Suffolk County Steps Up to Help Victims of Domestic Violence

In recent months we have reintroduced a limited service to the **domestic violence** community in Suffolk. After losing funding for the [Domestic Violence Project](#) in 2009, we never gave up and persevered in the quest for funding. With the support of the Suffolk domestic violence service agencies and the leadership of **Presiding Officer Bill Lindsay** and **Legislator Jack Eddington** of the Suffolk County legislature, we received a small grant for 2011 and additional support from **Legislator Vivian Vilorio-Fisher**, to provide limited legal representation for Suffolk domestic violence victims in family law matters, including orders of protection, child support, custody and visitation. Individuals who are not eligible for representation through Legal Aid or the 18B panel will be eligible for assistance. Referrals must come through a domestic violence agency.

In addition, thanks to HUD funding, we are currently serving domestic violence victims who are residing in a shelter, or who are otherwise **homeless** as a result of fleeing from domestic abuse. Immigration status is not a factor. These clients do not require a referral and may also be eligible for Legal Aid or 18B. Please call 631 232-2400 with referrals or for more information.

### Medical/Legal Partnership Expansion

Most recently, Law Services' collaboration with the New York Legal Assistance Group (NYLAG) has made it possible for our **PLAN Project** to expand its medical legal partnership effort to the Stony Brook Family Medical Group in East Setauket. This is a full service, free-standing clinic which provides medical care, nutritional counseling, and social services. The legal component of the team includes a Law Services attorney who is referred clients by the clinic's doctors, nurse practitioners, and social workers. Legal services are also provided to referred patients of Stony Brook's Primary Care clinic in Patchogue and Good Samaritan's Dialysis Unit.

#### A Great Resource!

Cornell's Employment and Disability Institute has developed an online guide to the Medicaid Buy In Program for Working Persons with Disabilities (MBI-WPD): <http://www.ilr.cornell.edu/edi/mbi-wpd/index.cfm>.

The Empire Justice Center is offering free monthly webinars on the first Friday of every month. These sessions include current information on preventing foreclosures. <http://support.empirejustice.org/site/Calendar/22727764?>

Effective June 1, 2011 the public assistance earned income disregard for public assistance receipts will be decreased to 48%.

## The Good Ol' Days

Among our many services, Nassau Suffolk Law Services operates units in both counties that primarily practice landlord/tenant eviction defense. In Suffolk County, our Civil Unit attorneys rotate through most of the courts where prospective clients can meet with the attorney in court to have their cases evaluated for representation. In some cases (on the East End, and in certain smaller courts) prior arrangements for representation must be made by the client. The attorneys represent well over a thousand clients a year in their very busy practice.

This service is critical for many Suffolk County residents. What would things look like without free civil legal services? Well, there was a time when funding issues for Law Services were even more dire than they are now. For example, although our landlord tenant services have existed since our beginnings, during an especially tough period in the 80's we struggled with only one attorney in the unit. As a result, in Suffolk County we were forced to turn to alternative means of service such as pro se (self representation) advice ONLY. Our landlord tenant unit only represented in appeals, which meant that most people went to court initially unrepresented.



Some of the stories were horrendous.

In one nonpayment proceeding, where the tenant allegedly owed a month's rent, the landlord commenced the eviction proceeding. This is an excerpt of the transcript from the 1988 "hearing":

Mr. C. *I owe the money, my witness could not come here. I have a Dept of Health witness who came to my house three times and disputed this case three times. I have written to them and have not even gotten...*

**Court: So what?**

Mr. C. *I would like to dispute this. I would like to have it put over for five days, if possible*

**Court: No, no.**

Mr. C. *My witness is not here*

**Court: Your witness to what, that you paid?**

Mr. C. *To the damages that are in the house, how the kitchen floor is falling apart...*

**Court: You should not be here.**

Mr. C. *We are fighting to try to get them to make repairs*

**Court: They don't have to.**

Mr. C. *The deck collapsed and one of my kids was almost hurt.*

**Court: They don't have to do it, now what do you want to do?**

Mr. C. *I rented the house with a deck, it collapsed, I rented it with a bathroom floor and everything collapsed and the kitchen floor collapsed and the window moved and fell out.*

**Court: Move out, the remedy is to find a better place for your family, you should be ashamed of yourself letting your family live there.**

*(Continued on page 6)*

Mr. C. *I didn't look like it when we moved in.*

**Court: Pay the rent and get out**

Mr. C. *How about I find out where my \$1800 security is?*

**Court: You'll get that back when you move out**

Mr. C. *According to (the landlord) it is mental anguish on her part.*

**Court: You will sue her in small claims court for your security. You have to get yourself a lawyer, is that clear?**

Mr. C. *She is right and I am wrong, is that it?*

**Court: That is about it. You have to move out. That is if you cannot live in that dump, you have**

**That is if you cannot live in that dump, you have a nice family.**

Mr. C. *I'm trying to move out and fighting with them.*

**Court: how much time are you going to need?**

Mr. C. *I have seven kids*

**Court: Well...**

Mr. C. *There is no way I can get my family out in seven to ten days*

**Court: I cannot give more time than that. It's impossible**

Mr. C. *I have a sick son.*

**Court: Do you have the money you owe?**

Mr. C. *I'm not giving her nothing*

**Court: Judgment and possession and a judgment for \$1,000.**

...Let's hope we never have to go back to those days!

Since those days, with a routine presence of our attorneys in court, the tenor of the proceedings became generally more professional and enlightened. We are again faced with a reduced presence in landlord/tenant court as a result of funding cuts. Lest our memories of the past begin to fade, we must remember that there is no substitute for direct legal representation in order to advance the legal arguments in our courts and create a record for appeal.

Don't forget to visit our **newly designed website** at [www.nslawservices.org](http://www.nslawservices.org).

And sign up to get this newsletter by email and to receive our monthly e-news, *Legal Lessons*



## Working it Out

Contrary to popular belief, Law Services' work on behalf of our clients does not always involve litigation. In fact, our strategy often favors advocating for a compromise or persuading our adversaries that avoiding litigation may lead to a more favorable resolution for all the parties involved. We also try to utilize the services of various community advocates whose efforts are critical in achieving positive results. This strategy proved successful in several recent cases where our **Nassau County Mental Health Law Project** (MHLP) was able to obtain or retain rent-subsidized housing through the cooperation of housing authorities, elected officials, case-management, Adult Protective Services, and private law firms. With affordable housing at such a premium, these successes are critically important to our clients.

*Jane Reinhardt, Esq.*

Susan K., whose entire family suffers from psychiatric impairments, lost her rent subsidy in 2007 after her landlady refused to cooperate with Nassau County Section 8. As a result, she was unable to timely use the voucher. Then the landlady's house was foreclosed and the foreclosing bank brought the client to court to evict her. Law Services represented her in the post-foreclosure eviction action, but the bank was awarded a judgment of possession against her nevertheless.

The client and her Law Services attorney then turned to Nassau County Section 8 to persuade the agency to give the client a new voucher so she could find and afford alternative housing. Our pleas were joined by Congresswoman McCarthy, and Nassau County responded by giving the client a new voucher and recently approving an increase in the payment standard for their family size, due to the family's disabilities. The law firm representing the foreclosing bank, Joseph Colasurdo & Associates, from the Bronx, agreed to defer removal of the family by the Sheriff through the end of the year. The client has finally found a new home for her family and is hoping to move in soon. Thanks are due to Nassau County Section 8, Congresswoman McCarthy, and Attorney Colasurdo!

Sam R., a client whose housing has been extremely unstable over the past year, was rejected by the Freeport Housing Authority (FHA) for disabled/senior housing and he filed an appeal. At the informal hearing, the housing authority insisted on reviewing the client's medical records in connection with reconsidering its decision. The client was reluctant to give the FHA his records and his Law Services attorney advised him that case law supports the prohibition of such an intrusion into private materials. However, instead of bringing suit against the housing authority, Law Services reviewed the client's records and advised him that submitting the records to the FHA for review would not be detrimental to him. After the FHA's law firm (White, Cirrito, and Nally of Hempstead) had reviewed the medical records, it advised the FHA to admit our client to housing. Using Service Dollars, FECS case management helped him pay some of the start-up costs for the tenancy, which were demanded on the day after the FHA agreed to house our client. Thanks are due to the Freeport Housing Authority, Attorney Michael Cirrito, and FECS case management! Our client is now residing in his own, affordable apartment in Freeport.

Donna P., a MHLP client who is also battling advanced lung cancer, has been a Section 8 participant for more than 20 years. Hoarding is a significant manifestation of her mental illness, and as a result, her apartment could not be inspected in connection with annual recertification for Section 8. The problem caught up with her this year and the Town of Hempstead began to pursue charges for violation of the Property Maintenance Code. Additionally, the Hempstead Department of Urban Renewal cut off her Section 8 subsidy, and after an informal hearing, the judge agreed with the housing authority's decision to terminate. In the meantime, with the help of Adult Protective Services (APS) workers, the client worked on clearing the clutter from her apartment. In early November, Law Services asked the housing authority to reinstate the client to Section 8 and after another inspection, the apartment passed and the subsidy was then quickly reinstated, despite the termination decision in its favor. Law Services continues to negotiate a resolution of the housing-code-violation case. Thanks are due to Hempstead's Department of Urban Renewal and APS!

*Law Services' **Mental Health Law Project** provides free legal assistance to persons who are diagnosed with serious and persistent mental illness. Most of the cases involve advocating for basic needs like benefits, housing, medical care, etc. The Project operates units in Suffolk and Nassau and is funded by the NYS Office of Mental Health.*



## Volunteer Attorneys Recognized for Their Work



*By Rhoda Selvin*

### Suffolk

In March 2006, although **Joshua P. Blumberg** had been in practice for only five years, he was one of the attorneys featured when his firm, Blumberg, Cherkoss, FitzGibbons & Blumberg, LLP, were Pro Bono Attorneys of the Month. Since then he has devoted more than 135 hours to eight Pro Bono Project matrimonial cases, enough to be named Pro Bono Attorney of the Month for February 2011 on his own.

“Under my general, unwritten policy,” he said, “I try to have one pro bono case at any time.” He added that they have all been standard matrimonial cases, essentially concerned with “how two families will survive in Long Island in two separate households.”

A 1997 graduate of the University of Michigan, Mr. Blumberg earned his Juris Doctorate from Tulane University in 2000. In the same year he was admitted to the New York State bar and joined his father’s law firm--which had been founded circa 1935 by his grandfather. He is a member of the Suffolk County Bar Association and the New York State Bar Association. Outside of his professional affiliations his memberships in the Peconic River Sportsman’s Club and the National Parks Conservation Association reflect his keen interest in the outdoor life.

The Pro Bono Project is delighted to name Joshua P. Blumberg Pro Bono Attorney of the Month for his commitment to representing Suffolk County's indigent citizens.

### Nassau

**Evelyn Kalenscher**, Pro Bono Attorney of the Month for April 2011, derives great satisfaction from her work with the Volunteer Lawyers Project’s Landlord/Tenant Attorney of the Day Program to which she has devoted 121 hours since she joined last year. Except for summers, Ms. Kalenscher regularly comes to the Landlord/Tenant Part of the Nassau County District Court twice a week to aid unrepresented poor people facing eviction. Speaking of the advantages of this volunteer service, she said, “I work with a great group of people—all dedicated. Opposing attorneys understand what we do, and we work together. Both are looking out for the best interests of our clients and understand the limits on this commitment.” Speaking of the cases she handles, she added, “Everyone of them is interesting and unique. Many poor people who don’t have any idea what their rights are get taken advantage of by landlords. They are grateful that our organization is there to help them.”

Ms. Kalenscher received a B.A. from Hofstra University in 1966 and a J.D. from Hofstra Law School in 1989. Having taken time out to raise a family, her career as a paid attorney was relatively short. It ended in 1995, with her retirement from her partnership in the firm of Genoa, Kalenscher & Noto, P.C. where the majority of her practice was in matrimonial and real estate law. A member of the Nassau County Bar Association, she chairs its Ethics Committee. She is also a member of the New York State Bar Association and its Real Property Committee; the Theodore Roosevelt American Inn of Court; and a board member of Yashar, the attorneys’ and judges’ chapter of Hadassah.

Community service is an important part of Ms. Kalenscher’s life. She has been a member of the Board of Managers in her condominium community for the past nine years and its president for the past three years. When the local government in upstate New York where she has a vacation home began reevaluating properties in her community, she helped her neighbors retain an attorney to assure that the process was done properly, and then organized a group lawsuit to compel the town to comply with the law. She continues to help monitor this action, which has been ongoing for the past five years.

It was a happy day for Nassau County’s indigent citizens and Evelyn Kalenscher’s colleagues in the profession when she decided to come out of retirement and volunteer at the Landlord/Tenant Attorney of the Day Project. The Volunteer Lawyers Project is pleased to honor her as Pro Bono Attorney of the Month.



**Congratulations to Leah Belfort** who was recently awarded the NYS Bar Associations Presidents Pro Bono Award for the 10th Judicial District! Leah has been a devoted in-house volunteer and provides pro bono consultation to clients in our Hempstead office. Law Services is very grateful to her and our office has grown very dependent on her valuable service to the community. The clients she serves have similarly expressed their gratitude and we are proud to join in this well deserved acknowledgment!

## Summer 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](mailto: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. Space is limited so register early.**

**Landlord Tenant Law** Our experienced housing attorneys will discuss basic landlord/tenant procedure (holdovers and non-payments) including defenses to evictions, illegal evictions, and what can be accomplished with orders to show cause. Other issues will include warranty of habitability claims, post foreclosure evictions, and mobile home evictions. **Monday June 6, 2011 1:30-4:30 P.M. Islandia office.**

**Access to Health Care** - A review of the most common problems affecting clients who are in need of health care. The discussion will include the a review of the Affordable Care Act, Medicaid, and some practical and legal solutions to problems faced by the uninsured, the acutely ill, the elderly, disabled persons, and Medicaid-eligible clients. **Wed. June 22, 1011 9:30-12:30 Islandia office**

**What Benefits is my Client Eligible For?** In hard times what benefit programs are available for your clients? Are they eligible? An overview for the new advocate and a refresher for more experienced advocates, this training will review the eligibility criteria for various benefits programs. This will include programs administered by the Department of Social Services including cash assistance programs, Medicaid, and food stamps; Supplemental Security Income (SSI) administered by the Social Security Administration, and Section 8 housing subsidies administered by housing authorities. The seminar will also recap how the income-based programs interrelate with each other and how they are impacted by changes in household composition, disability status, and other income (earned income, pensions and lump sum awards.) **Thursday, July 14, 2011 9:30-12:30 Islandia office**

### 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](mailto: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](mailto: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!



In December, 2010, **Sheila Johnson**, Director of Development and Government Affairs, attended a "Day of Holiday Giving" hosted by **Nassau County Legislator Kevan Abrams** held at the Uniondale Firehouse. Law Services sponsored an information table and distributed brochures regarding the many types of legal services Law Services provides.



In February of 2011 Sheila also attended the following events:

- The Martin Luther King Jr. Holiday Celebration at the Bethel A.M.E. Church, in Copiague
- Touro's Reception for Alumnae Elected Officials as an alumna.
- Touro's Public Interest Fair where she distributed Law Services brochures to prospective student interns. **Rob Briglio**, staff attorney also attended this event.

Law Services participated in Congressman Tim Bishop's Housing and Mortgage Assistance Workshop. Touro Law student Intern **Tillie Mirman** staffed our information table here hundreds of constituents turned up at the Coram Fire House to get information and assistance with financial issues and mortgage questions.



Left to right: Shervon Miller, paralegal, Keiko Cervantes-Ospina, Esq, Michael Wigutow, Sr. Staff Attorney

In April, 2011, Law Services' Foreclosure Unit led by **Keiko Cervantes-Ospina, Esq.**, conducted a training at the **Queen of the Most Holy Rosary Parish** in Roosevelt, N.Y. The topic was Foreclosure and the presentation sought to familiarize the participants with foreclosure proceedings and the options available to them (e.g. settlements, modifications, etc).

**Steve Agunzo**, paralegal intern, and **Michelle Eduardo**, student intern, attended **Suffolk County's Veterans Stand-down** on April 29, 2011 at the Brentwood campus of Suffolk Community College. Hundreds of veterans received information and referral about our services and other available legal services.

On February 10, 2011, Law Services staff attended the Long Island Coalition for the Homeless' **Candle-light Vigil**. This annual event is an inspiring experience where homeless families gather with community groups, advocates, and neighbors to raise awareness for the homeless and distribute donated items to the families and shelter agencies in attendance.



Law Services attorney, **Keiko Cervantes-Ospina**, thrills one of the children with a manicure at the Homeless Vigil.

Law Services sponsored an information table and our staff volunteered at the event.

Staff Attorneys, **Ellen Krakow** and **Lynn Iacona** along with paralegal, **Marcia Vogel**, attended a conference held on April 3, 2011 called *Issues in Independent Living for Adolescents and Adults on the Autism Spectrum* sponsored by The Aspergers Syndrome & High Functioning Autism Association. They distributed brochures and provided information regarding the many types of legal services Law Services provides.

The staff also attended Nassau County's "Light Up in Blue" event held on April 1, 2011. The event is held to bring awareness to the prevalence of Autism in our communities, as well as creating opportunities for families touched by Autism to gather, share information and support each other. At this event, **Nassau County Executive Edward Mangano** presented a proclamation to our legal staff for their dedicated work in our **Protection and Advocacy Projects**



which provides legal assistance to developmentally disabled individuals (PADD) as well as legal assistance in equal opportunity and discrimination cases to physically disabled individuals (PAIR).

Pictured above Ellen Krakow, Nassau County Executive Edward Mangano, Marcia Vogel and Lynn Iacona

## Keeping It Honest:

Judge Holds Opposing Counsel to professional standards in recent post foreclosure eviction case.

Rudy DeWinter of our Nassau Volunteer Lawyers Project, recently represented a client in a post foreclosure holdover proceeding in which he prevailed in the case. The court imposed monetary sanctions which included a sizeable attorneys fees award and ordered opposing counsel to pay into the Lawyers' Fund for Client Protection.



Rudy DeWinter, Esq.

In recent months there has been considerable discussion about creditors and banks selling account information to *debt buyers* that is unverified and fraught with errors. At Law Services we have been seeing the effects of this sloppy and often fraudulent record keeping on the part of creditors and their attorneys. See *Beware of Debt Buyers* June/July 2010 Law Services News p. 2. [http://www.nslawservices.org/newsletter\\_docs/junejuly2010.pdf](http://www.nslawservices.org/newsletter_docs/junejuly2010.pdf)

The trend in foreclosures is similar where mortgage loans are sold to other banks or entities and the related financial paperwork is often incomplete or incorrect as it is passed on from lender to lender. Ultimately in the collection litigation, the plaintiffs often lack the essential information required to prove their claims. Court rules require that anyone submitting an affidavit to a court against a debtor must have proof of the claim along with the documentation.

In the case at hand, the attorney for Federal Home Loan Mortgage Corp (FHLMC) falsely alleged that his client was the actual lender, when in fact the predecessor, Wells Fargo was the original lender to the owner/occupant of the premises. The post foreclosure eviction proceeding was presided over by Justice Fairgrieve, 1st District Court, Nassau County. He found that given the importance of every statement in the petition being material to a determination, "the misrepresentation of the material statements here was outrageous. If not for the false statements, this case could have been dismissed more easily for lack of standing." The petitioner's attorney "has not convinced this court that they have acted professionally responsible either in submitting truthful documents or

accepting accountability for their mistakes." The judge echoed a recent statement by Chief Judge Jonathan Lippman in regard to the verity of foreclosure papers, "We feel we have an obligation to make sure the attorneys do their due diligence and come to us with credible papers because the consequences are so great." (Keshner, Andrew, "New Court Rule Says Attorneys Must Verify Foreclosure Papers," *NYLJ*, October 21, 2010).

The court concluded that the opposing counsel, "has been professionally irresponsible which impeded the proper administration of justice" and awarded sanctions. The attorneys fees award will also greatly help to support Law Services pro bono services to the community.

Congratulations Rudy on a job well done!

## New Law Exempts Tax Refunds in Financial Eligibility Rules

Under a new law passed in December 2010, all Federal tax refunds, not only Earned Income Tax Credits (EITC), are excluded from countable income for purposes of federally funded benefit programs. The "Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010" (JCA) applies to programs such as Supplemental Security Income (SSI), Medicaid, TANF assistance, Food Stamps and subsidized child care. Federal tax refunds are also excluded from these programs' applicable resources limits for 12 months and commingled assets are not a problem.



# Legal Services and Pro Bono Lawyers Team Up to Address Foreclosure Crisis

With the current foreclosure crisis on Long Island, many homeowners who are facing the loss of their homes turn to companies that seem legitimate but are actually scam artists. These companies take advantage of the homeowner and often leave them in a deeper hole than they originally were in. In response to this trend, the prestigious law firm of Davis Polk & Wardwell, along with the pro bono organization Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee), has commenced a class action pro bono lawsuit in Nassau County against for-profit loan modification companies.

These seemingly legitimate companies operate a scheme often referred to as a loan modification scam. The mechanics of the scam are simple: an employee of a loan modification company claims to be a loan specialist and convinces the homeowner that he or she knows how to work within the system to lower the homeowner's monthly mortgage payments. The company then requires an upfront fee from the homeowner before beginning the process of lowering monthly payments and tells the homeowner to cease any payments towards the loan. The homeowner follows the "advice" of the "specialist" and neglects the loan, thinking the company is helping him, but in actuality the company simply does nothing. Though simple in operation, the scam can have a devastating effect on an already beleaguered victim. Not only does the homeowner lose the frequently high upfront fee paid to the company, but usually is subject to high bank fees and penalties, damaged credit scores and, more importantly, potential foreclosure.

The lawsuit filed by Davis Polk & Wardwell and the Lawyers' Committee, Rush v. Save My Home Corp., is seeking to put a permanent end to what they term "an elaborate network of companies". In addition to the class action suit, Davis Polk & Wardwell and the Lawyers' Committee is providing, free of charge, legal assistance on an individual basis to other victims of loan modification scams in an attempt to mitigate damage already caused by the scam. Those who would like to report a complaint against the entities named in Rush v. Save My Home should email [scam.intake@davispolk.com](mailto:scam.intake@davispolk.com). The Lawyers' Committee and Davis Polk are representing victims free of charge.



They are drafting demand letters to the alleged scammers, filing individual actions, and offering representation to victims who have already commenced litigation. Nassau Suffolk Law Services, along with various other not-for-profit agencies, has, and will continue to, refer victims of these tactics to Davis Polk & Wardwell and the Lawyers' Committee.

In addition to referring clients to Davis Polk & Wardwell and the Lawyers' Committee, Nassau Suffolk Law Services continues to provide services to defendants in foreclosure actions. The Foreclosure Prevention Project works with homeowners, especially those with subprime or nontraditional loans, to avoid foreclosure and keep their homes. While the foreclosure scam litigation attempts to draw attention to those who have been exploited and provide them a remedy, Law Services' Foreclosure Prevention Project works to prevent this type of exploitation in the first instance. Together these legal intervention efforts attempt to make a dent in addressing the local foreclosure crisis.

Law Services' Foreclosure Prevention Project is currently funded by the Department of Housing and Community Renewal (DHCR), NYS Banking Dept., and Long Island Community Foundation. We are sad to report that foreclosure prevention funding was not included in the most recent state budget, and subsequent attempts by Assembly Democrats to restore a small fraction of the funding was vetoed by Governor Cuomo. The timing couldn't be worse with Long Island accounting for over 25% of all New York State foreclosure notices (33,400). We expect the Project will be forced to wind down services in the coming months, along with advocacy services provided by local housing counseling agencies.

## Settlement in Class Action: Application Delays in Nassau

Author: [Linda Hassberg](#)

The Empire Justice Center, with co-counsel National Center for Law and Economic Justice, reached a settlement agreement with Nassau County on February 28, 2011, that will ensure the timely processing of all food stamps, Medicaid, and cash public assistance applications by the Department of Social Services. The class action, entitled *Dowdell et al. v. Imhof*, was filed in federal court in the Eastern District of New York on March 24, 2010. In their complaint, the plaintiffs alleged that Nassau County Department of Social Services violated federal and state laws and regulations by failing to determine their eligibility and the eligibility of the class members for benefits in a timely fashion, depriving applicants of food, medical care and other basic needs.

The settlement agreement, issued as an order by District Judge Sandra Feuerstein on March 2, 2011, obligates the defendant to process all applications within the prescribed time limits by February, 2012. The order also provides plaintiffs with reports and other information sufficient to monitor the county's compliance until February 2014 and establishes a mechanism for expedited informal review of individual cases of delay. Please contact Linda Hassberg @ 631-650-2305 or Tedde Tasheff @ 212-633-6967 for more information.

*Editors Note: EJC filed a similar lawsuit in Suffolk County and pursuant to a 2009 settlement, is interested in hearing from Suffolk County applicants and advocates who are still experiencing difficulties in getting food stamps or Medicaid applications processed within the legally mandated time frames. Please contact Linda Hassberg at 631 650-2305.*

## Education Advocacy: Changes in Diploma Requirements

Under current Regulations of the Commissioner of Education, 8 NYCRR Section 100.5 (b)(7)(vi), students with disabilities who entered grade 9 in or after September 2001, and who failed one or more of the required Regents examinations, could earn a local diploma either by (a) passing the corresponding RCT; or (b) achieving a passing score of 55-64 on any Regents examination required for graduation. Although students with this profile may continue to earn a local diploma through the 55-64 pass score option, the RCT safety net option is being discontinued as of the commencement of the next academic school year. Thus students with disabilities who enter grade 9 in September 2011, who fail one or more of the required Regents exams, will no longer be able to take the RCTs in order to earn a local diploma. Of course, students with IEPs will still have the IEP certificate option.

It has come to our attention that not every school district may be attuned to the fact that the RCT option will be discontinued. As a result, students may not have sufficient support to pass the five Regents examinations with a 55 or better. We encourage all families and advocates to address this issue at upcoming annual reviews. The PADD Unit is available to answer questions parents have regarding both the new graduation requirements and how to advocate for additional supports. Please call Marcia Vogel at (516) 292-8100 or Ellen Krakow at (631) 232-2400.



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**A "Taste" of Prior Years' Festivities**



**Photos courtesy of Andrew James Photography**

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