



You're Invited to the

# BBQ at the BAR

SAVE THE DATE!

Thursday, Sept. 8, 2016 • 5:30 - 7:30 p.m.  
(rain or shine)

For NCBA members  
and  
prospective members



## Narcan Training: Opioid Overdose Prevention

Thursday, June 30, 2016  
5:30 P.M. @ NCBA

Heroin and prescription opioid pain pills like morphine, codeine, oxycodone and vicodin are being abused in epidemic proportions on Long Island. Narcan is a highly effective prescription antidote used to reverse the effects of opioid overdose.



NCBA's Lawyer Assistance Program is sponsoring a one hour Narcan training by a LICADD professional which will qualify participants in the proper administration of Narcan.

**Limited spots available.**

**To register please contact  
Beth Eckhardt at (516)512-2618**

### Health Care

# The Evolution of the Common-Law Doctrine of Medical Necessaries: A Gender-Neutral Remedy

In 2016, according to the United States Department of Labor, 57% of women participate in the labor force.<sup>1</sup>



Melanie I. Wiener

By comparison, in 1970, only 38% of women participated in the labor force.<sup>2</sup> This significant increase has affected our country in numerous social, political and economic aspects, including the fact that certain women now earn enough income and have sufficient assets to support their spouses.

The woman's breadwinning status in the household has now made the once gender-specific common-law doctrine of medical necessities gender neutral. In New York State, the creditor's remedy of medical necessities has long required a husband to support his wife in conformity with his means, and to provide her with such "necessaries" as food, clothing, shelter and medical care.<sup>3</sup> It was once a cause of action only against a husband, which made him liable to third parties for essential goods and services provided to his wife. This strict interpretation was determined to violate the Equal Protection Clause in 1992 and the Second Department found that its unconstitutionality should be remedied by extending the common-law rule to both spouses.<sup>4</sup>

Creditors can now look to recover from either spouse for the necessary expenses of the other spouse. Liability under the doctrine of necessities is never automatic and the creditor still retains the burden of demonstrating that necessities were furnished on the non-debtor spouse's credit.<sup>5</sup>

For example, a husband is admitted to a nursing home for rehabilitation services after sustaining injuries in a motorcycle accident. The resident's wife is with him at admission. The wife does not sign any contract or Admission Agreement as his Designated Representative, which would make her liable for his debt to the extent she has access to his income and assets via Power of Attorney or joint bank account.<sup>6</sup> However, she does advise the employees of the nursing home that although her husband lost his job and he does not have insurance coverage, she has a full-time job and the parties own a home together. This is key information, as the responsibility to pay for a spouse's debts must remain limited by the non-debtor spouse's ability to do so.<sup>7</sup> In this situation, the non-debtor wife has the ability to pay for the debtor husband's

debt through her own income and ownership of a house.

Yet, the New York courts have agreed with other jurisdictions that before a creditor may seek payment from a spouse, the creditor must first pursue collection from the person who received the necessary goods or services.<sup>8</sup> The other spouse may be liable only if the spouse who received the benefits has insufficient resources to satisfy the debt.<sup>9</sup> This approach treats the creditor fairly while protecting the non-debtor spouse.

Therefore, in the situation with the injured husband in the nursing home, since he did not have any of his own income or insurance coverage, the nursing home creditor was allowed to pursue the wife for her husband's debt under a cause of action for medical necessities.

How does a creditor first prove to the court that the husband debtor is unable to pay his own debt before the creditor pursues the non-debtor wife? The creditor can provide a copy of the husband's community or institutional care Medicaid Budget which evidences that the husband debtor's assets and income are insufficient to pay the debt. If the husband has passed away, the creditor can provide a copy of the husband's estate petition, which lists insufficient assets to pay the debt. The creditor can then provide the court with evidence regarding the

*Today, a married woman has financial equality and the right to own property. Financial parity between the genders now carries financial responsibility.*

non-debtor wife's assets, such as equity in ownership of real property, rental income from ownership of a building or employment income.<sup>10</sup> Even if the creditor does not establish the non-debtor wife's assets are sufficient to cover the debt, if the Defendant does not rebut the initial prima facie case, the non-debtor wife can be held liable.<sup>11</sup>

In 2011, the legislature adopted the Marriage Equality Act (the "Act"), which permits same-sex couples to marry in New York. Domestic Relations Law section 10-a is the central provision to the Act, providing, in subdivision 1, that a marriage will be held valid regardless of whether the parties to it are of the same or different sex. Subdivision 2 makes it plain that a same-sex marriage is to be accorded the same legal treatment as an opposite-sex marriage. It is interesting to note that the New York courts

## DEDICATION ...

Continued From Page 1

to assist her in overseeing the ongoing construction and renovations of the NCBA building in Mineola.

"The contractors love working with Kevin, even though he is firm in ensuring that everything is done properly, within budget and on time," Krisel said. "He was a great help to me, taking this huge project that was so important to President Steve Eisman off my plate with the many new issues I had to address. I deeply appreciate his efforts."

A long-time active NCBA member, McDonough has served as Co-Chair of the Real Property Law Committee and was elected a Board Director last year. He is also a Village Justice for the Village of Rockville Centre.

McDonough chairs the higher education practice at Cullen and Dykman LLP, Garden City, and focuses his practice on not-for-profit and education law and related litigation, real estate, zoning and land use matters. He served four years on active duty in the US Army, attaining the rank of Captain, before earning his law degree from Fordham University School of Law.

The first Directors' Award honoree, **Mary Ann Aiello**, was this year's Dean of the Nassau Academy of Law, the leading accredited provider of CLE classes on Long Island. During her term, she guided the presentation of more than 200 innovative CLE seminars and worked with 18 committees to educate more than 3,000 attorneys. She was at the forefront of presenting the legal impact on current events, such as marijuana law, same sex marriage, Deflategate, new maintenance guidelines, human trafficking and social media issues in the courtroom. To meet the needs of the members, she launched two popular series, an ethics series and series on practical aspects. More than 250 attended the hugely popular Another Evening with the Surrogates.

"Mary Ann did an incredible job this year, expanding and broadening the appeal of our CLE, offering a whole host of programs we never had before. She well exceeded what we expect for the Dean of our Academy," said Hon. Sondra Pardes, NAL Past Dean and Board Director, who nominated Aiello.

A family law attorney, Aiello is a member of NCBA's Matrimonial Law Committee. In addition, she serves as President of the New York Family Law



**LEFT: Martha Krisel presents the 2016 President's Award to Kevin McDonough.**

**ABOVE: (l to r) Presenting the Directors Awards at the Annual Meeting are then NCBA Vice President Steven Leventhal, Treasurer Elena Karabatos, Awardees Michael Markowitz and Mary Ann Aiello, President Martha Krisel, then Secretary Rick Collins, and Immediate Past President John McEntee.**

(Photos by Hector Herrera)

American Inns of Court and a Trustee for the American Family Law Inns of Court, Second Circuit. She is also the Past President of the Nassau County Women's Bar Association, where she received the Rona Seider Esq. Award. She has served as a delegate and co-chair of the Women's Bar Association of the State of New York Matrimonial Committee and chaired the Children's Rights Committee.

Aiello is a principal of the law firm Mary Ann Aiello, P.C. in Garden City and earned her law degree at St. John's University School of Law.

Over his 25 years as a member, the second Directors' Award recipient, **Michael Markowitz**, has been a leader in supporting the Bar Association in

numerous capacities, including Chair of the Community Relations and Public Education Committee. His comprehensive knowledge and experience culminated this year when he was elected to the Board of Directors, appointed to chair the Financial Oversight Committee, and appointed to the Non-Dues Revenue Task Force. He regularly volunteers to provide pro bono guidance for the community, and has been honored for his pro bono contributions by the Access to Justice Committee two years in a row.

Past President Susan Katz Richman noted, "In addition to being a sole practitioner of the highest integrity and caliber, Mike has consistently worked to protect and serve our Association. His contributions to the Strategic Planning Committee, which I chaired from 2013-2014, were outstanding, particularly in the area of Domus' structural soundness and our technology center. It comes as no surprise that Mike was then appointed Chair of the NCBA Financial Oversight Committee for 2014 - 2016 and has served in that all-encompassing capacity with distinction. He is also an extremely productive member of NCBA's Non-Dues Revenue Task Force, sharing his creative ideas for the implementation of programs, strategies and initiatives that will bring new dollars and faces to Domus."

Markowitz is a member of the New York State Bar Association and the Nassau County Jewish Lawyers Association. His law practice is located in Hewlett. He earned his J.D. from Touro College, Jacob D. Fuchsberg Law Center.

## GENDER NEUTRAL ...

Continued From Page 6

have not yet addressed this specific issue regarding medical necessities and no precedent has been set with regard to same-sex marriage. With this recent change in the law, one might argue that the common law doctrine of medical necessities may be completely gender blind now.

Historically, women were under legal disabilities that prevented them from managing their own financial affairs. Today, a married woman has financial equality and the right to own property. Financial parity between the genders now carries financial responsibility.

**Melanie I. Wiener, Esq. is the Director of the Nursing Home Litigation Department at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Wolf, LLP.**

1. Women's Bureau, U.S. Department of Labor, *Latest Annual Data: Women of Working Age*, www.dol.gov.
2. Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily: Women in the Labor Force, 1970-2009*, www.bls.gov.
3. See *Med. Bus. Assocs., Inc. v. Steiner*, 183 A.D.2d 86 (2d Dept. 1992).
4. *Id.*
5. *Id.*
6. See *Sunshine Care Corp. v. Warrick*, 100 A.D.3d 981 (2d Dept. 2012).
7. See *Our Lady of Lourdes Mem'l Hosp., Inc. v. Frey*, 183 A.D.2d 994 (3d Dept. 1992).
8. See *id.*
9. See, e.g., *St. Francis Reg'l Med. Ctr., Inc. v. Bowles*, 836 P.2d 1123 (Kan. 1992); *Hulse v. Warren*, 777 S.W.2d 319 (Mo. Ct. App. 1989); *Mem'l Hosp. v. Hahaj*, 430 N.E.2d 412 (Ind. Ct. App. 1982).
10. See *Elmhurst Care Ctr., Inc. v. Wyatt*, No. 638/2015 (Sup. Ct., Queens Co. 2015).
11. See *Mem'l Sloan-Kettering Cancer Ctr. v. Piserchia*, 2010 N.Y. Slip Op. 32621(U) (Sup. Ct., N.Y. Co. 2010).

## PRESIDENT KRISEL ...

Continued From Page 1

by New York Law Journal's *Lawyers Who Lead by Example*.

### Service as a Municipal Attorney

Martha Krisel has practiced law for 35 years, focusing on municipal law exclusively since 1993. She has been consulting with New York State on its post-Superstorm Sandy infrastructure rebuild since September of 2014.

Previously, she served as Chief Deputy County Attorney for Special Projects at the Office of the Nassau County Attorney (2006-2014), where she was responsible for fair housing issues, attorney and law student recruitment and professional development, and training and compliance issues for Nassau County agencies. She also served as Counsel to the Nassau County Planning Commission, the Nassau County Human Rights Commission and the Nassau County Office of Consumer Affairs. Prior to joining the Office of the Nassau County Attorney, Krisel served as Village Attorney for the Incorporated Village of Rockville Centre (1996-2006) and currently chairs the Village's Board of Ethics. In addition, she has served on the Nassau County Board of Ethics and the New York State Bar Association Committee on Attorneys in Public Service. She regularly lectures and writes on land use, fair housing and labor and employment issues. She received her J.D. degree from SUNY Buffalo in 1981.

## LAW OFFICES OF HOWARD R. BRILL, P.C.

COUNSEL TO THE PROFESSION

### • IMMIGRATION LAW •

- DEPORTATION
- EXCLUSION
- REMOVAL
- APPEALS
- EMPLOYER SANCTIONS
- NEW LAWS
- POLITICAL ASYLUM
- WORK PERMITS
- VISAS
- "GREEN CARDS"
- CITIZENSHIP
- NEW OPPORTUNITIES

NATIONWIDE PRACTICE

250 Fulton Avenue, Suite 200 • Hempstead • NY 11550

(516) 489-8786 • FAX (516) 486-4933

hrbrillesq@aol.com • www.brillimmigrationlaw.com

Member: American Immigration Lawyers Association

Lecturer & Panelist: Nassau County, Suffolk County and American Bar Associations



Spanish Spoken