

CAPITAL REGION BANKRUPTCY BAR ASSOCIATION

NEWSLETTER

Published by:
C.R.B.B.A.

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2005 OFFICERS AND BOARD OF DIRECTORS

President	Paula M. Barbaruolo
President-Elect	Bonnie S. Baker
Vice President	Francis J. Brennan
Secretary	Brenda Lubrano-Birken
Treasurer	James E. Doern
Director	Barbara Whipple
Director	Anthony Arcodia
Director	Henry Collins
Director	William Sc hiller

PRESIDENT'S MESSAGE

I was pretty proud of myself during our Annual Meeting last December.

Each year our board debates over where, when, and how to present our annual meeting. After all, the annual meeting is pretty important. Our by-laws (yes, we have by-laws) state that the CRBBA shall have an annual meeting at which time the election of officers takes place, the Treasurer reports on the financial condition of the Association and the President-Elect reports on the plans for the upcoming year and entertains questions from members. Well, in previous years our member turnout was smaller than we would have liked and it seemed that the meeting was always frequented by the same "regulars" who attended in prior years.

How could we draw more members to such an important event for our Association? After pondering the question, we decided to hold the meeting in conjunction with one of our continuing legal education seminars offering an hour of ethics education. Oh yeah, and *free food and drink*. If you attended you already know that it was a success. We had many members in attendance. We welcomed some new members for 2005 and even attracted some non-members.

But that was not why I was proud of myself. Heck, the idea of a free ethics seminar with food and drink afterward was a collective effort created by all of the members of the CRBBA Board. Rather, I was proud of myself because my first "official" act as incoming

President was to open the bar *before* the seminar instead of after it; that decision was well-received by our members. So, to those of you who attended, thank you for making my first act a positive one.

Our organization does not run itself. It continues to serve its members and the public due in large part to the commitment of its board. I would like to describe some of the specific roles each board member plays: Bonnie Baker, President-Elect, arranges the CLE luncheons and legal assistants' luncheon; Frank Brennan, Vice President, is organizing the annual Cooperstown Bankruptcy Seminar; Brenda Lubrano-Birken, Secretary, handles our website (www.crbba.org), edits the CRBBA Newsletter, and takes the minutes at board meetings; and, James Doern is our Treasurer and is custodian of our accounts and financial records. Along with the officers, there are also four directors at large who make tremendous contributions: Barbara Whipple coordinates our CARE Program (Credit Abuse Resistance Education); Anthony Arcodia organizes our bi-monthly *pro bono* program; Henry Collins harmonizes all aspects of membership including collection of dues; and, Bill Schiller, our board's newest member, works with a subcommittee to review fee issues in Chapter 13 proceedings. Other members of the association who are not board members also assist with important issues. Mark Nizer has assumed the responsibilities associated with administering our CLE requirements and certifications, the same previously handled by Jill Smith, and Todd Ritschdorff assists Brenda Lubrano-Birken with the Newsletter.

This year's programs are already in full swing. We held one *pro bono* clinic and the next is already scheduled (and filling up fast). The Hon. Robert E. Littlefield again honored us by hosting our annual Hon. Justin J. Mahoney "Ask the Judge" scholarship luncheon, which occurred on February 16, 2005.

As Judge Littlefield explained, 2005 should prove momentous for the bankruptcy bar: There is new legislation on the horizon; there are appeals pending that could potentially reshape conversions to Chapter 13 from Chapter 7 proceedings; Andrea Celli, Chapter 13 Standing Trustee, has instituted a new debtor education program; motion calendars are changing to include Wednesdays and to reserve Thursdays for Chapter 13 matters; and, the association is looking into creating a mentoring program designed to assist lawyers new to practice in our Court.

So, stayed tuned and stay involved. The CRBBA is a wonderful organization—be an active part of it. Board meetings take place the second Wednesday of every month at 8:00 a.m. at my office at 12 Cornell Road, Latham. Remember, the meetings are open to all CRBBA members, an extension of our "open bar" policy! ■

*Paula M. Barbaruolo,
President*

CREDIT ABUSE RESISTANCE EDUCATION ("CARE") PRESENTATION EXPERIENCES

Guilderland High School

By: Richard L. Weisz, Esq.

Many of us heard Judge Ninfo at the CRBBA/CNYBBA's Otesaga Conference describe his program to help keep students out of credit card troubles. The CRBBA and the CDWBA have agreed to partnership and present Judge Ninfo's program to local schools. On December 20, 2004, I spoke to the Business Law class at the Guilderland High School as a local representative on the CARE (Credit Abuse Resistance Education) program.

I took with me a copy of the December 19, 2004 *Times Union* classified pages and a credit card solicitation that my 17 year old son had received in the mail at Thanksgiving. After talking a little about how credit card companies make money (fees to merchants, interest, late fees, etc.), I began with the credit card solicitation. I explained the concept of treasury rates and introduced them to the "*" which qualifies every rate stated in the solicitation. We read over the back of the form. Hopefully, they understand that the promises of easy credit are not without conditions.

I also warned those who are going on to college that they will be offered sweatshirts, CD's and other "bonuses" if they sign up for the credit cards at college. I discussed credit scoring and the consequences they might face, in addition to high interest charges, if they do not act responsibly with credit cards.

We then turned to budgets. I asked for a guess as to what an apartment might cost. The response was \$500 and I reviewed the rental advertisements for such an

apartment. In the end we used \$700 a month as a fair estimate for a Guilderland apartment. I agreed to include light and heat in the number. We then worked through cable (the class voted for the HBO package over the basic package), cell phones, car insurance, car payments, taxes and social security, food, etc. (I used a Schedule "J", Monthly Expense Budget, from a bankruptcy petition). At the end, we concluded that \$30,000 as an annual income would not leave much for entertainment or credit card payments. We came to the conclusion that \$30,000 is a good starting salary in the Guilderland area after reviewing some of the employment advertisements I had brought.

The class was the last period of the day and I did not receive many questions. However, no one appeared to fall asleep and generally the students were looking at the budget as I filled it in on the chalkboard. There were about 20 kids in the class, but Ferris Buehler was not present (or at least did not introduce himself). I spoke for about an hour.

I think the CARE Program is important, and taking an hour or so out of our day is well worth the message and information we will be providing young men and women. I will continue to be a local representative and encourage others to do the same.

Queensbury High School

By: Joann Sternheimer, Esq.

On February 9, 2005, the Hon. Robert E. Littlefield, Jr. and I presented CARE Program materials to Queensbury High School Business Law and Accounting students, under the direction of Mrs. Tracey Bureau. Before delving into financial specifics, we spoke generally about the CARE program's origin and purpose. We then discussed specific examples showing how long it would take to pay off credit card expenditures if they pay only the monthly minimum. They were surprised to learn how quickly interest adds up and how slowly principal gets paid down. We also discussed generally debt prevention, student loans, financial management, and careers in law.

Next, Judge Littlefield provided the students with real life examples of people who have ended up in his court because of staggering credit card debt. The Judge explained that debtors may find themselves in bankruptcy court for a variety of reasons, including job loss, health issues, etc., but emphasized how often he sees credit card debt as a preventable reason behind bankruptcy filings.

The Judge's "war stories" really brought the message home to the students—this is a real problem and it can happen to you.

Mrs. Bureau noted that the information CARE provides is essential for her students, many of whom are preparing to attend college and will undoubtedly be bombarded with credit offers, but not with the information they need to use them responsibly. As bankruptcy practitioners, we have the ability to provide insight and information to these students and provide them with the tools necessary to avoid the pitfalls of consumer debt. Speaking about the CARE Program was indeed a rewarding experience, for the students as well as for the Judge and me.

Waterford-Halfmoon High School

By: Martin Mooney, Esq.

I presented CARE materials to a business law class in the Waterford-Halfmoon High School. The presentation lasted for one hour and centered on the focus of the credit industry on college-age borrowers, the practicalities of accruing interest, other liabilities such as student loans that often compound the concerns of these young adults and impact upon credit reporting and future borrowing. There was certainly a consensus that these students had not focused on compounding interest and fees as a lurking danger, and an appreciation for having been exposed to these ideas. I strongly encourage all to contact their local schools. The educators could not emphasize enough the need for practitioners to talk to these students as young adults about issues that can remain taboo in most households, yet impact them for the rest of their lives. ■

PROPOSED BANKRUPTCY LEGISLATION

By: Todd A. Ritschdorff, Esq.

"Fairness in Bankruptcy Litigation Act of 2005"
109th Congress, 1st Session, S.314

On February 8, 2005, Senator John Cornyn (R-TX), a member of the Senate Judiciary and Small Business committees, proposed The Fairness in Bankruptcy

Litigation Act (the “Act”) to prevent forum shopping in commercial bankruptcy. The Act would amend federal law to require that a corporation file bankruptcy in the jurisdiction of its principal place of business or where its principal assets are located; currently, law allows debtor corporations to file for bankruptcy in their state of incorporation. Driven by a desire to avoid another Enron-type situation, the Act also implements the National Bankruptcy Review Commission’s recommendation of prohibiting parent companies from filing first through a subsidiary. To access the text of this legislation and other related information, visit <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:s.00314>.

“Bankruptcy Abuse Prevention and Consumer Protection Act of 2005”
109th Congress, 1st Session, S.256

On February 17, 2005 the Senate Judiciary Committee approved S.256—bankruptcy-reform legislation entitled the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” introduced by Senator Charles Grassley R-IA) on February 1, 2005—by a vote of 12-5, after adopting amendments related to medical costs, securities fraud, and inflation adjustments. Just like its predecessors, this legislation contains a “needs-based” formula, which requires consumers above a certain income level to repay their debts under Chapter 13 rather than utilize Chapter 7. To access the text of this legislation and other related information, visit <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:s.00256>. ■

**“ASK THE JUDGE” CLE LUNCHEON
FEBRUARY 16, 2005**

By: Bonnie S. Baker, Esq.

The first CRBBA CLE luncheon of 2005 was held on February 16, 2005 at Jack's Oyster House. Proceeds from this luncheon support the CRBBA's Hon. Joseph J. Mahoney Scholarship Fund. Hon. Robert E. Littlefield, Jr., our guest speaker, provided the group of approximately 50 attendees with insight into matters of interest to the Bar. Judge Littlefield discussed topics including 7004 service, sufficiency of pleadings, attorney fees and debtor representation and bankruptcy reform. An animated

discussion ensued with regard to the rights of a secured lender who holds a mortgage with a "due on sale" clause when a purchase offer has been submitted by a third party to the Chapter 7 Trustee. CLE credit was awarded to those who attended.

Special thanks to Judge Littlefield and Chambers’ staff for taking time from their busy schedules to address the questions raised by members of the CRBBA.

The next luncheon will be held in April or early May. We welcome suggestions for speakers and topics. Please submit suggestions to Bonnie S. Baker at bbaker@deilylawfirm.com or contact her at 475-0273. ■

**MINDFUL LAWYERING,
AWAKE AT WORK (PART I)**

*By: John Monterisi, Esq.**

Just for a moment, sit back and think about what you actually do as an attorney on a daily basis. Then, use a blank page from that legal pad on your desk to make a quick list of the stressors associated with your job. There are file and case assignments, deadlines, hearings and closings, a full calendar, your career track, a partner/associate/suitemate who makes demands on your energy and borrows books without returning them. Maybe you have hardware or software problems, concerns about spiraling office costs, you need a raise, or you are unsure of next year’s work or income source. You work with difficult clients, judges, arbitrators, and adversaries – all of whom have different interests which you must effectively address and sometimes satisfy. There are office personalities and politics, your secretary has just called in sick for the third time in two weeks, and it seems impossible to get a decent salad anywhere near your building.

Simply, the fact is that being an attorney is a particularly stressful job, and reasons like those set out above only begin to tell the story. Lean times for many businesses have forced cutbacks in spending for outside counsel, while the American Bar Association reports that the number of practicing attorneys has increased twenty-

five percent since 1989.¹ Competition among law firms fuels concern about job security and long working hours. Lawyers psychologically suffer from a lack of closure in their work. At the same time, our job is one of painstaking detail and minding the big picture; a job that routinely deals with major events in the lives of people and businesses, and determines in large part whether Client A will be incarcerated, whether Client B will lose custody of his child, or whether Client C will be forced to pay six figures in contract damages. Lest we ever forget—we never do—a lawyer’s work usually traffics in conflict of various types. And conflict is stressful by its very nature.

On reflection, it is no wonder that lawyers statistically suffer from higher rates of depression and anxiety, substance abuse, and divorce than either the general population or other professions.² Additionally, you may have noticed that many lawyers tend to be unhappy with their jobs.³

If these descriptions of a modern lawyer’s work do not resonate for you, I am certain that you can paint your own personal picture of work life and I am equally sure that stress will be a substantial part of it. Please note that we have not even attempted to describe or overlay the stress that comes with being a partner, a parent, a child of your own aging parents, a human with a body subject to age and disease, a neighbor, and a commuter or citizen in a complex and often irrationally cruel world full of uncertainty, and yes, terrorism.

Fortunately, we are far from helpless. I want to suggest that each of us can effectively function and even thrive while working and living under these conditions. We can care for ourselves in a way that nourishes our bodies, minds and spirits, and that builds a palpable inner resilience and “stress-hardiness.” We can develop poise and balance from the inside out, in a way that allows us listen and communicate better, address the real needs of our clients, and react thoughtfully while in the midst of the milieu we know as our professional lives. We can be happier, more effective and better lawyers, parents, partners, and human beings. The key to transforming our lives as professionals is mindfulness.

Mindfulness is the practice of paying close attention to whatever is happening in our lives moment-to-moment, and without judgment. By cultivating and strengthening the mind’s powers of concentration and awareness as a means of living in “real time,” mindfulness encourages the practitioner to be present for, examine and

consciously act in his work experience, relationships and home life. The idea is to be “awake” for our life as it unfolds before us. The actual work of cultivating and strengthening our ability to attend to what our life is like in the present moment can be accomplished, in part, through the discipline of meditation practice. Sitting in a relaxed but attentive posture and using our breathing as an anchor, we learn to “drop into” and attend to our experience. Mediators sit quietly on cushions or chairs, for twenty to forty-five minutes at a time, observing their breath, and watching their own bodily sensations and mind activity, using the same method developed by the Buddha over 2500 years ago. The breath is the perfect tool for quieting the mind of incessant chatter because it is always present and accessible. In addition to the “formal” practice of “sitting” in meditation, informal practices, such as yoga and body-scan, are used to consciously bring awareness into day-to-day life. Walking meditation is also used. Even brushing one’s teeth can be a useful means of bringing mindfulness into everyday life.

It is very important to note that reading and understanding mindfulness as an intellectual concept in no way conveys the experience of mindfulness or its effect when practiced over time. Teachers of mindfulness practice are always careful to distinguish between reading about and grasping the benefits of being present on the one hand and actually meditating and being present on the other—the former is really *thinking*, something at which we excel and even something in which we revel; the latter requires work and discipline, at least at first—and incorporating these practices into our lives as busy attorneys presents a challenge. The *doing* of this work, however, gradually produces an experiential change, an unmistakable difference in how we feel, how we use our minds, and how we view reality.⁴ Teachers say that this difference is akin to that of reading a menu only and tasting the food being described in that menu. Much like athletic training, you have to “just do it” to gain the benefit.

Changing Our Relationship to Stress

So, how does this mindfulness concept help us deal with the stress in our lives? Dr. Richard Lazarus, who studies psychological stress at the University of California at Berkeley, utilizes a transactional model as the best way to describe stress response. In essence, stress is the perception or appraisal by an individual that an environment is taxing or exceeding his or her available resources and endangering his or her well-being.⁵ Obviously, it is not possible to stop the parade of events

and conditions that bring stress into our personal and professional lives. The practice of mindfulness, however, can and does change the way we perceive and hold these events and therefore our perception of how much they tax our resources and endanger our well-being. It does this by encouraging us to examine the unadorned reality of these events and conditions, their changing and often insubstantial nature, and their full context. Additionally, mindfulness practice strengthens our personal “available resources,” including mental clarity, coherence, confidence, and balance, so that the same can stand against the many stressors that life presents without being taxed or exceeded. When combined, these two benefits create strength and suppleness in our psycho-emotional constitution.

Research in the last several decades reveals that people that practice meditation regularly, especially when combined with exercise and other healthy habits, are more resilient to stressors. Studies by Doctors Coleman and Schwartz at Harvard University in the 1970s tested a group of Mediators against a control group using movies showing graphic industrial accidents and found that Mediators reacted with heightened sensitivity and emotional involvement, but also recovered their physical and mental equilibrium more quickly afterward.⁶ More recently, in a study conducted at The University of Massachusetts Medical School’s Center for Mindfulness by Doctor Jon Kabat-Zinn in 1990, 526 persons who did an eight-week program in mindfulness experienced a forty-percent reduction in psychological distress, as measured by a “General Severity Index” that includes dimensions of anxiety, depression, hostility, and interpersonal sensitivity, among others.⁷ Mindfulness is a proven, natural, and easily accessible means of caring for ourselves and building up resilience from stressors. But in terms of potential benefit, stress relief is only the beginning.

* John Monterisi has been an attorney for 25 years and is a partner at Deily, Mooney & Glastetter, LLP. He has practiced mindfulness meditation for the last eight years. In the Summer of 2004 he participated in an eight-week teaching practicum including a clinic at the Center for Mindfulness at University of Massachusetts Medical School.

¹ See Tony Lee, *Disgruntled Lawyers Make a Good Case For Changing Careers*, Career Journal, Asia, THE WALL STREET JOURNAL, EXECUTIVE CAREER SITE, at http://www.careerjournalasia.com/job_hunting/change/19980111-savpol.html (last visited January 10, 2005).

² See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 64 AM. U. L. REV. 1337, 1375–85 (1997), as cited by Leonard L. Riskin, *The*

Contemplative Lawyer: On the Potential Contributions in Mindfulness Meditation to Lawyers, Law Students and their Clients, HARV. NEGOT. L. REV., Vol. 7:1, 2002 (hereinafter Riskin, *The Contemplative Lawyer*).

³ See Deborah L. Rhode, *The Profession and Its Discontents*, 61 Ohio St. L.J., 1335 (2000), as cited by Riskin, *The Contemplative Lawyer*, *supra* note 2. I recently indicated that the seminar “300 Ways to Use Your Law Degree” was advertised by the Massachusetts Bar Association as “one of [its] most popular seminars.”

⁴ These differences are now being documented and explored by neuroscientists. Buddhist monks, who are experienced Mediators, show “extremely large” increases in brain gamma activity which suggests that “mental training can bring the brain to a greater level of consciousness.” See Sharon Begley, *Scans of Monks’ Brains Show Meditation Alters Structure, Functioning*, WALL ST. J. Nov. 5, 2004, at B1.

⁵ See JON KABAT-ZINN, *FULL CATASTROPHE LIVING* 239 (1990).

⁶ See *id.* at 272.

⁷ See JON KABAT-ZINN, *Mindfulness Meditation: What It Is, What It Isn’t, And Its Role in Health Care and Medicine*, in HARUKI Y. AND SUZUKI M., *COMPARATIVE AND PSYCHOLOGICAL STUDY ON MEDITATION* (1996).

TO BE CONTINUED IN THE SPRING/SUMMER 2005 CRBBA NEWSLETTER. ■

CALL TO CARE

FROM 1994 THROUGH 2004, BANKRUPTCY FILINGS AMONG YOUNG PEOPLE UNDER THE AGE OF 25 INCREASED 96%!

To address this alarming situation, the Capital Region Bankruptcy Bar Association and the Capital District Women’s Bar Association have introduced the Credit Abuse Resistance Education Program (“CARE”) to our community. Many of you heard Chief Bankruptcy Judge John C. Ninfo II, Western District of New York, speak about the CARE program at our annual Bankruptcy Conference in Cooperstown, New York. The program educates high school and junior college students about the responsible use of credit, stressing the consequences of uninformed and/or irresponsible use of credit cards and credit debt. Under Judge Ninfo’s guidance, this program has had wonderful results in the Western District. We hope to build on that success in the Capital Region.

**COULD YOUR CHILD'S SCHOOL BENEFIT
FROM CARE?**

We have contacted many area schools, some of whom have expressed interest in offering CARE to their students, but we want to do more. Please advise your school district's teachers, PTA and school board of this educational opportunity.

**IF YOUR CHILD'S SCHOOL IS INTERESTED
IN
OFFERING CARE TO ITS STUDENTS, PLEASE
CONTACT:**

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Thank you. ■

Articles for publication in the newsletter are welcome and should be submitted to: **Brenda Lubrano-Birken or Todd A. Ritschdorff, Honen & Wood, P.C., 126 State Street, 5th Floor, Albany, New York 12207, email: bbirken@honenwood.com or tritschdorff@honenwood.com**

Please send address change and email information and/or membership issues to: **Henry Collins, Esq., Cooper, Erving & Savage, 39 North Pearl Street, 4th Floor, Albany, New York 12207, Email: hcollins@coopererving.com**

CRBBA BOARD MEETINGS

2005 Board Meetings start at 8:00 a.m. and are held on the **2nd Wednesday of each month** at:

Orlando & Barbaruolo
12 Cornell Road
Latham, New York 12110

All members are welcome.

NOTICE

2005 Motion dates for Judge Gerling are set forth below.

PLEASE NOTE: The first Syracuse day each month will be for Chapter 7 and 11 motions only. The second Syracuse day each month will be reserved for Chapter 13 motions at 10:00 a.m. and Chapter 13 Confirmation Hearings at 2:00 p.m. Also, please note the time changes for Binghamton and Utica.

Syracuse Cases:

March 1, April 5, May 3, May 31

10:00 a.m. Motions in Chapters 7 & 11
2:00 p.m. Pretrials/Chapter 11 Status Conferences
(Scheduled by Court)

March 22, April 19, May 17, June 14

10:00 a.m. Motions in Chapters 12 & 13
2:00 p.m. Chapter 13 Confirmation Hearings

Binghamton:

March 8, April 12, May 10, June 7

10:00 a.m. Motions in Chapters 12 & 13
2:00 p.m. Chapter 13 Confirmation Hearings

March 31, April 28, May 26, June 23

10:00 a.m. Motions in Chapters 7 & 11 and
Motions in the Bennett Funding Case
2:00 p.m. Pretrials/Status Conferences (Scheduled
by Court)

Utica:

March 29, April 26, May 24, June 21

10:00 a.m. Motions in all Chapters
2:00 p.m. Chapter 13 Confirmation Hearings
2:00 p.m. Pretrials/Chapter 11 Status Conferences
(Scheduled by Court)

NOTICE

2005 Motion dates for Judge Littlefield are set forth below.

IMPORTANT CHANGE- PLEASE NOTE:

Albany Will Now Have Two Motion Days Starting in April:

Chapter 12 and Chapter 13 will still be heard on Thursdays: All Chapter 12 and any Trustee Swimelar matters at 11:00am; Chapter 13 motions at 9:00am; and confirmation hearings at 1:00pm. Trustee dismissal and claim motions will be scheduled at the same time they are currently scheduled (12:15pm and 12:30pm).

Chapter 7 and Chapter 11 will be heard on Wednesdays; hearing times will stay the same.

- (A) Motions in Chapter 7 shall be scheduled at 9:00 a.m.
- (B) Motions in Chapter 11 shall be scheduled at 10:30 a.m.
- (C) Motions in Chapter 12 shall be scheduled at 11:00 a.m.
- (D) Motions in Chapter 13 shall be scheduled at 9:00 a.m.
- (E) All requests for pretrials, trials, hearings on Chapter 11 Disclosure Statements and Confirmations, as well as matters related to Chapter 11 Confirmations should still be sent to the Court for Scheduling.
- (F) File motions with an affidavit of service electronically. Please submit proposed orders conventionally with the ECF Case-Chambers copy or under separate cover.
- (G) Please file the Court's ECF Case-Chambers copy of motions and related pleadings pursuant to the Court's Administrative Order No. 02-03.

Albany Cases:

March 3, March 10, March 24, March 31

Chapter 7 and Chapter 11 (Wednesday's)

April 6, April 27, May 5, May 18, May 25
June 1, June 8, June 22, June 29
July 6, July 20, July 27

Chapter 12 and Chapter 13 (Thursday's)

April 7, April 14, April 28
May 5, May 19, May 26
June 2, June 9, June 23, June 30
July 7, July 21, July 28

Judge Littlefield's motion calendar schedule will be posted on the Court's website (www.nynbuscourts.gov), at the Courtroom and the Clerk's Office. You are responsible for checking this Schedule prior to serving your motions.