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EJI INK

ECONOMIC JUSTICE INSTITUTE

SPRING 2012

EJI Director's Welcome

Welcome to the spring edition of EJI Ink. As I write this, the lilacs are beginning to blossom (that's right – lilacs!!) and the students are on spring break. They return to a race-to-the finish of the semester on May 2. The spring semester always seems to fly by so much quicker than the fall semester. This year's very early spring seems to have jump started other activities around the U.W and EJI, including planning for our full time summer session that begins on May 29.

The Law School is currently engaged in a self-study process in anticipation of the ABA's reaccreditation process in 2013. I am a member of the clinical committee engaged in the study. We have been asked by Dean Raymond not only to prepare for the ABA site visit, but also to think deeply about the education delivered by the clinical programs and consider what we are doing well and where changes could be made, programs reorganized, or collaborations fostered. It is an interesting process and I am learning much about how the clinics have been structured but more importantly, how the faculty across the Law School views our clinics and our role in delivering a high quality legal education to our students. Our committee hopes to have its report complete by the end of May.

Continued on page 4

Dear Friend:

Please SAVE THE DATE for the the University of Wisconsin Law School's Economic Justice Institute's Ten Year Anniversary Celebration and a presentation of the first "Founder's Award" in honor of Louise Trubek, a major force in developing the Law School's public interest tradition.

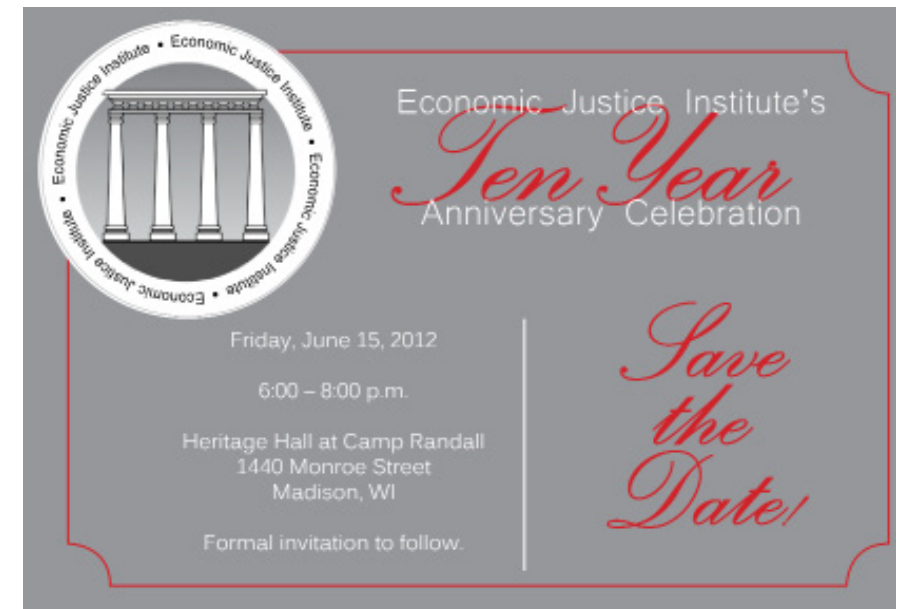
Please join us to celebrate on Friday, June 15, 2012, from 6:00 – 8:00 p.m. in Heritage Hall at Camp Randall located at 1440 Monroe Street in Madison.

You will receive a formal invitation with RSVP card and additional details on registering in a couple of weeks.

If you have any questions on this event, please contact Marsha Mansfield at (608) 262-9142 or by e-mail at mmmansfield@wisc.edu.

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ECONOMIC JUSTICE INSTITUTE





UW Law School Pro Bono Program Serves Veterans in Need

The Pro Bono Program, in partnership with the State Bar of Wisconsin, the Dane County Veterans Service Office, and Porchlight, Inc., is developing a new resource for local veterans in need of civil legal assistance: the Dane County Legal Assistance Clinic for Veterans. Across the United States military service members, veterans, and their families are facing a growing number of civil legal issues for which they do not have adequate representation. Lengthy overseas deployments contribute to a range of

reintegration challenges for service members returning from duty. Legal challenges include landlord-tenant matters, family law issues such as child custody disputes, credit and lending problems, and bankruptcy.

The number of veterans confronting such issues will continue to increase in the next year as the U.S. Army reduces the number of service members overseas by 80,000. In the Madison area, a number of veterans' service providers have recognized a gap in resources available to low-income veterans confronting these challenges. The UW Law School Pro Bono Program, housed in the Economic Justice Institute has begun

taking steps to fill this gap.

The Dane County Legal Assistance Clinic for Veterans will serve low-income veterans and their families on a walk-in basis at Madison's City-County Building, providing information on a variety of civil legal needs as well as information about available resources for veterans. The clinic will operate two times per month with local attorneys and UW law student volunteers providing information and referrals to veterans. Staff from the Dane County Veterans Service Office will also provide information about non-legal resources available to veterans. The clinic's format is being modeled after the successful Marquette Volunteer Legal Clinic for Veterans.

With the help of a \$5,000 grant from the State Bar of Wisconsin's Pro Bono Initiative, the Pro Bono Program plans to launch the clinic in October 2012 with a special event held in conjunction with Veterans' Day. Leading up to the clinic's opening day, the Pro

Veterans (continued on page 4)

Unconventional Problem Solving Through Mediation

It's no surprise to most people that when a dispute is resolved in litigation, in the end there is usually a winner and a loser. The traditional court model is designed for a standardized process, not for creative problem solving. However, when parties are amenable to collaboration, there are infinite solutions to any conflict. Processing conflict through mediation rather than litigation allows for "out of the box" solutions where both parties can have their needs met, and neither party has to lose. The Mediation Clinic strives to facilitate a negotiation process where parties can work collaboratively to creatively resolve conflict.

a car accident. Both parties came to the table expecting that a resolution would not be reached. Although they were willing to participate in voluntary mediation, each party seemed to view mediation as a futile exercise before the real legal process began in court. However, because both parties were willing to bend slightly, they created a solution that met their needs, and left mediation with the weight of a frustrating ordeal off their shoulders.

The suit arose out of plain bad luck. The defendant didn't yield at an intersection because a street sign was blocked from view by a tree branch. By failing to yield, she hit the plaintiff's car, and damaged it beyond drivability. The defendant's car, on the other hand, was able to limp

home in an operational state. Neither woman had adequate insurance to repair her own car or the other party's car, much less the means to replace the damaged vehicle. Without her car, and with November looming, the plaintiff and her daughter were facing a long, cold winter riding public transportation to get to work or school. The defendant, on the other hand, feared the court would order her to pay more in damages than she could afford and cause her financial hardship. The plaintiff needed a car, and the defendant needed a solution she could afford. Both women needed to put this difficult ordeal behind them.

Mediation (continued on page 7)

Produced by:
Economic Justice Institute Clinical Programs
(Marsha M. Mansfield, Director)
Design: Kimberly Frank/Brenda Balch, Editor
For more information: www.law.wisc.edu/fjr/eji

Mediation (continued on page 7)

As realistic negotiators do, both came to mediation with monetary figures in mind. The plaintiff wanted an amount of money to replace her damaged vehicle and the defendant was able to give an amount of money without risking her own financial stability. Naturally, these dollar amounts did not match. The mediation plodded on, each party inching closer to her opponent's ideal dollar amount. Kelly Blue Books were examined; car values and repair costs were debated. An impasse seemed likely as each woman reluctantly adjusted the offer to the lowest or highest amount for which each was willing to settle.

Sensing the parties' frustration, the mediators called for individual caucuses. In caucus, the defendant was visibly upset, tears in her eyes. She didn't dispute her liability for the accident, and wanted to do what she felt was right and pay for the damage. However, because of the accident she had been subject to a number of fines and her finances were suffering. She feared going to court because the commissioner could award the plaintiff her full judgment, an amount the defendant could not afford. At the same time, she felt like mediation was going nowhere and she was ready to end the session.

The mediators brought the parties back together after the caucuses to see if any final agreement could be reached or if the mediation should be ended. Back in joint session, the defendant, probably not even certain herself that the idea was viable because of its unconventionality, uncertainly said, "I could just give you my car." The mediators picked up on the defendant's idea, asking her if she was serious about her offer as this idea had the potential to overcome the parties' impasse, while discussing monetary payment amounts could not. While this solution was unconventional, and not one that would likely be offered in a courtroom, a major component of a successful mediation is party self-determination. If the defendant was

willing to offer her car in trade, an effective mediator could work with the party to cultivate her idea. As the mediators discussed this creative resolution with the defendant, she grew more confident in her idea. She had come to mediation expecting to pay some amount of money, and here was a solution completely outside of that narrow result. While she didn't have enough money to replace the plaintiff's car, she could meet the plaintiff's needs in another way.

The plaintiff was somewhat hesitant to accept the offer as this wasn't the solution she had in mind when she filed her small claims action. However, she knew that regardless of whether a resolution came through mediation or court, given the defendant's financial situation, it was likely that any damages would be paid to her in installments, if at all. It could be months or years before she had accumulated enough payments to buy a car. Here, in contrast, she could be driving again within the week. The plaintiff had brought along her teenage daughter as a witness. Perhaps because of her youthful perspective, the plaintiff's daughter was immediately on board with the car trade solution and encouraged her mother to give it thought. Mother and daughter knew that the defendant's car wasn't the newest or nicest car, but it was operational. They agreed was an acceptable replacement for the car they had lost. The plaintiff accepted the offer, and the parties hammered out the logistics of the car trade.

Both the mediators and the parties often come to the table with an arbitrarily limited set of solutions in mind, and the notion that its better to "have their day in court" because this is what they have been taught to aim for. However, trained mediators are often drawn to mediation because of the shortcomings they see in the traditional litigation model, namely that remedies in civil suits are usually limited to monetary awards and that often, there is a winning and a losing party. Therefore, lawyer-mediators should be willing to think outside of the winner/loser framework as well, and encourage parties to do the same. Mediators can encourage ingenuity by explaining mediation's potential for creative problem solving, and by cultivating not discounting inventive solutions when they arise. It is said that a good mediation is one where both parties leave unhappy. Perhaps a better way to define a successful mediation is one in which each party has her underlying needs met, even if those needs aren't met in the way she anticipated when initially agreeing to mediate her dispute.

- Meghan Roed (3L)



Davis Ciotola presenting at a family law workshop



.FCC Students Amy Collins and Katy Young

Setting Boundaries

Clinical law students in the Domestic Violence Immigration Clinic (DVIC) provide pro bono legal services to undocumented immigrant victims of domestic abuse, and other violent crimes, seeking a path to citizenship. At DVIC, our clients not only struggle with victimization, but they often have a variety of needs and concerns that may or may not directly relate to our legal representation. Many of our clients struggle with issues associated with poverty and the lack of community resources available to undocumented persons.

Lawyers perform various roles when representing clients, including advisor, advocate, and counselor. Lawyers must ensure that clients have an informed understanding of their legal rights and obligations.

Due to the nature of the legal services we provide at DVIC, many of our clients suffer from trauma associated with abuse. This is because a person must be a victim of a qualifying crime and suffered substantial harm in order to qualify for a U Visa or VAWA remedy under immigration law. Therefore, it is especially important to establish rapport with clients, showing empathy and sensitivity during interviews, to further understand our clients' stories.

In June 2011, I was assigned a case where my client, an 18-year-old teen mom ("Maria"), was severely abused and neglected by her biological mother ("Angela") when she was seven years old. After Maria missed the school bus one day, Angela's boyfriend

punched her in the face, giving Maria a black eye. Angela stopped sending Maria to school and she and her boyfriend began treating Maria like a slave. Angela's boyfriend regularly beat Maria with a belt, causing her to bleed. Maria's body was often covered with cuts, welts, bruising and other marks. When law enforcement finally rescued Maria, she was happy they took her away from an abusive situation. Child welfare placed Maria in foster care and sought mental health services for her. Angela and her boyfriend were convicted of child abuse and sentenced to prison.

United States Citizenship and Immigration Services (USCIS) requires that U Visa and VAWA petitioners submit affidavits concerning their victimization. This requires that clients recall painful events (which they often would rather forget) and write about these events, knowing that other people will read what they wrote. Maria found it impossible to write an affidavit due to the emotional flashbacks concerning her traumatic childhood.

As a social worker, I primarily worked with victims of child abuse and their families, so I am not only familiar with interviewing clients, but I also understand the importance of rapport-building and developing trust. Additionally, I am familiar with a variety of family support services available in the community. Therefore, I relied on these skills to build a trusting relationship with Maria.

When Maria told me she could not write her affidavit due to the flashbacks she was experiencing, I offered to assist her by tape-recording her statements and transcribing what she told me. Maria was visibly upset throughout our meeting, and several times she broke down crying as she told me about the horrific abuse she endured. Here, my "counseling" of Maria seemed more like psychotherapy than legal counseling.

Due to Maria's young age and minimal life skills, I provided additional assistance and support in order to further our representation. Through my work with her, I learned the importance of setting boundaries with our clients. My social work background and knowledge about community resources, or lack thereof, often left me feeling more like a case manager, helping clients access these services. There were several times when Maria asked for assistance with a variety of issues, such as securing housing, employment, education, and child care, but due to our limited scope of representation, I could not allocate my time to these non-legal tasks. This taught me that I must be able to divide my limited availability among several clients who often have similar needs. Although I listened to Maria's concerns and made referrals when necessary, when she asked for assistance with non-legal matters, I set boundaries by reminding her of DVIC's limited representation for U visa purposes, and suggested issues she might discuss with her social worker regarding her concerns.

Inevitably, some clients will be needier than others and I am learning the importance of setting boundaries with our clients by reinforcing the scope of our representation and referring our clients to community resources when necessary. I understand that high caseloads in public interest law demand that we set sufficient boundaries to ensure that all of our clients are served to the best of our ability with the limited resources we have at our disposal.

-Jennifer Miller (2L)

Collaborative Efforts Underway in the Neighborhood Law Clinic

In addition to the typical rental housing, employment, and benefits cases handled at the Neighborhood Law Clinic (NLC), this semester students have engaged in several collaborative projects involving legislative advocacy, utility regulations, and organizing cooperative manufactured home communities.

The first project involved analyzing, writing summaries, and testifying before the legislature about proposed changes to Wisconsin's landlord tenant law. Both the State Senate and Assembly introduced bills (SB466 and AB561) that sought to make dozens of changes to long-standing housing protections. The Senate Bill (which was eventually passed) was introduced on February 13, 2012, and with its introduction came notice that the only public hearing would be held 48 hours later. The NLC worked collaboratively with other advocates including the Tenant Resource Center, Legal Action of Wisconsin, The State Bar of Wisconsin's Public Interest Law Section, the Wisconsin Coalition Against Domestic Violence and private attorneys. In just over a day, there was an incredible flurry of emails circulating among the advocates. Analyses of the bill text were generated, letters drafted, oral testimony outlined and then presented during a lengthy hearing that began in the morning and did not conclude until the evening.

The bill was clearly rushed and not well thought through as even the bill's sponsors admitted that multiple changes to the legislation were necessary. Unfortunately, rather than study the issues or even consult with housing experts, the bill's sponsors made several amendments and then quickly brought the legislation back up for a vote in both houses where it passed on a party-line vote. The new law makes many changes from the current statute including allowing

landlords to throw away or sell for a profit, any property a tenant leaves behind. Previously, a landlord would have to notify a tenant before disposing of or selling any property a tenant left behind and if the property went unclaimed and was later sold, then the landlord could deduct their expenses but had to donate any profits to the state's affordable housing fund. Under the new law, if a tenant leaves their car behind on the last day of their lease because they are driving a moving truck that day, then the landlord can sell that vehicle, pocketing the profits for his own financial gain. The law even explicitly allows sales without respect for other lien holders. While our quick collaborative response was unable to stop all of the negative aspects of this legislation, our efforts did lead to many amendments that blunted some of the initial legislation's worst provisions.

The second collaborative effort grew out of a listening session with area social workers, particularly the hard-working staff of Joining Forces for Families (JFF). The workers at JFF identified that area residents had concerns, questions and an overall lack of key information about utility services and payment options. In certain circumstances the lack of information could result in residents living in unsafe conditions without utility service or overpaying for services. NLC student Theresa Ringo researched the information that was being provided to utility customers and confirmed that it did not comply with Public Service Commission regulations. Ms. Ringo has summarized her findings and suggested that local utility companies provide the required information so that low-income customers can obtain and maintain vitally important basic utility services.

The third collaborative effort involved helping low-income residents obtain ownership of their Manufactured Home Communities (MHCs). Note that MHCs are often incorrectly called Mobile Home (or trailer) Parks (all such parks are technically Manufactured Home Communities). Northcountry Cooperative Foundation

(NCF) has successfully worked with residents who have gained ownership of their MHCs in Minnesota. The process is too complex to describe in detail here, but at a very basic level, NCF provides assistance that includes helping the residents incorporate, form a cooperative, secure funding, and then buy and manage the community as a cooperative. When residents purchase their community they gain ownership and stability. Having cooperative ownership and stability avoids having dozens of families lose their homes which often occurs when a park is closed or sold to a developer. The NLC worked with NCF, local attorney David Sparer, and the UW Center for Cooperatives in researching, reviewing, drafting, and revising more than a dozen key legal documents that will allow NCF to introduce the resident ownership model as an option to MHCs throughout Wisconsin.

Students in the NLC are always working on individual client cases; however, this semester's collaborative efforts have provided the students with a broader range of valuable legal experiences than usual, while still providing services to the our client community.

We are also engaged in the party planning process! That's right. About ten years ago the Economic Justice Institute came into being. As most of you know, EJI developed from the Center for Public Representation. Louise Trubek founded the Center in 1974 and, after successfully playing a role in advocacy and policy development, it evolved into EJI in 2002. We are celebrating the 10 year anniversary by honoring Louise at a party on Friday, June 15 at Heritage Hall in Camp Randall Stadium. You should have received a "Save the Date" invite by now with formal invitations to follow. Two members of the EJI Board, Kelly Noyes, and Beth Bucaida, are working with Rosa Frazier, Director of the Domestic Violence Immigration Law Clinic, to plan this special event. You may be getting a call from one of the EJI Board members, asking your firm to sponsor this special event. Please put this date on your calendar and plan to celebrate EJI, its founder, and its accomplishments when we see you in June.

As always, I am pleased to present a picture of EJI's work.

- Marsha Mansfield
Director, Economic Justice Institute

Arbitration (continued from page 5)

and they advanced compelling and convincing arguments on Mr. Gubrud's behalf. I'm sure it's an experience they won't soon forget.

- Sarah Orr, Director, CLC

New Names, New Clinic, and Revised Mission Statement

This year the Family Court Assistance Project and the Neighborhood Law Project both changed their names to be more consistent with EJI's other clinical programs. We are now called the "Family Court Clinic" and the "Neighborhood Law Clinic." Both clinics, as well as our other EJI clinics, are still dedicated to serving low income and other under-represented clients in a variety of civil matters, with the goals of enhancing access to justice and promoting economic security.

Last year EJI was fortunate to obtain funding to initiate a Mediation Clinic. Due to the hard work by the Clinic's Director, Donna Erez-Navot, the Clinic received a Morgridge Match Grant. The Law School agreed to match the funds received through the grant, thereby ensuring continuation of the Clinic for another year. Donna has established a successful small claims mediation program at the Dane County Courthouse and has worked across the University to collaborate on ways to instill mediation as an option to reach successful resolution of disputes between tenants, students, and others around campus. She is seeking ways to collaborate with others in our community as well. We are pleased that we can continue to offer such a relevant educational experience to our students.

At the March 13 EJI, Inc. Board meeting, the Board unanimously adopted the following mission statement for EJI:

The Economic Justice Institute's mission is to educate law students by providing them with real world experience in the legal system while they, in turn, provide information, advocacy, and methods of alternative dispute resolution to their clients and to the community, thus empowering them to resolve conflict.

We hope that our clinics fulfill this mission so our students have the tools to successfully develop their legal careers when they complete their legal education.

Veterans (continued from page 2)

Bono Program will recruit volunteer attorneys and law students to staff the clinic. Recruitment efforts among both groups have proven promising thus far. For example, the Pro Bono Program has reached out specifically to student veterans at the law school to initiate student recruitment. Many have expressed interest in supporting the project. Some of these students have similarly expressed an interest in forming a student organization at the law school for student veterans and veteran supporters. This early enthusiasm from students will be an asset to the Dane County Legal Clinic for Veterans over the next several years.

In addition to developing this importance resource for Dane County veterans, the Pro Bono Program continues its partnerships with non-profit organizations, law firms, and law student organizations providing pro bono services to individuals in need. By connecting law students with such pro bono opportunities, the program provides much-needed legal services in the community while instilling the importance of pro bono work in participating student volunteers. For more information about the Pro Bono Program or the Dane County Legal Assistance Clinic for Veterans, contact probonoprogram@law.wisc.edu.

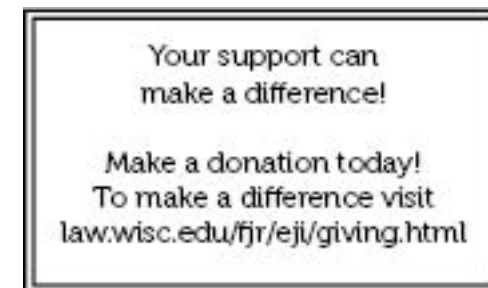


Photo By: Mike Hall



Sarah Orr presenting at the Madison Civics Club

The Consumer Law Clinic Defeats Mandatory Binding Arbitration

The CLC recently blocked the attempted enforcement of a mandatory binding arbitration clause in *Gubrud v. StoresOnline, Inc.*, (Case No. 11-CV-376, U. S. District Court for the Western District of Wisconsin). Headquartered in Utah, StoresOnline sells e-commerce products and services around the country principally through seminars held at hotels and other venues. Mr. Gubrud attended a StoresOnline seminar after receiving a personal invitation and signed a finance agreement to purchase a website development software package for \$5,998.00.

Represented by the CLC, Mr. Gubrud filed suit based on violations of the Truth in Lending Act, the Electronic Funds Transfer Act, the Wisconsin Consumer Act and the Wisconsin de-

Foreclosure Answer Clinic Update

In our last newsletter, we told you how the Foreclosure Answer Clinic is making a difference in the lives of Dane County residents. The Clinic is a free, drop-in legal clinic designed to assist homeowners respond to the foreclosure lawsuit and access additional resources such as mediation and financial counseling services. Volunteer attorneys from the community along with CLC students have staffed the clinic since it opened

ceptive trade practices statute.

StoresOnline filed a motion to require arbitration on the grounds that the Federal Arbitration Act preempted Mr. Gubrud's claims and defenses to the contract and thereby dictated arbitration.

One feature of the StoresOnline arbitration clause was that it required the arbitrator to "exclusively apply Utah law to the dispute, regardless of or without giving any consideration to choice of law principles." The Wisconsin Consumer Act (WCA) declares contractual choice-of-law provisions invalid with respect to transactions covered by the WCA. The WCA further provides that a customer cannot waive or forego any rights or benefits under the WCA. CLC students Paul Borovay and Blythe Kennedy helped write the brief in opposition to StoresOnline's motion. Among other points, the CLC argued that the choice-of-law provision rendered the arbitration clause unenforceable. Magistrate

in July 2010. Homeowners who do file an Answer can participate in the legal process and have an opportunity to inform the judges and the plaintiffs about their situations.

We want to share with you some of the updated data obtained by CLC student, Blythe Kennedy.

Since the clinic opened in July 2010, 199 homeowners have accessed the clinic. Over 100 attended in 2011, showing a slight increase in attendance. The 2011 data from CCAP reflects that in 68 of those cases,

Judge Steven Crocker agreed. The court denied StoresOnline's motion to compel arbitration, finding that "the arbitration clause in the agreement contained an unlawful choice-of-law provision that contravenes Wisconsin law and stripped Mr. Gubrud of his ability to vindicate his statutory rights under the WCA." The WCA applied and it prohibited the choice-of-law provision.

The Court's decision is significant in light of the powerful case law trends in favor of mandatory arbitration of consumer disputes, including the U.S. Supreme Court's recent opinion in *AT&T Mobility v. Concepción*. The District Court's decision also highlights the WCA's continued relevance and importance in protecting Wisconsin consumers like Mr. Gubrud.

This case is important to the CLC because it provided the students with a tremendous clinical experience. They learned how the pace and procedures in federal court are different than in state court, they grappled with the complicated and timely issue of consumers' rights to resist mandatory arbitration, and they advanced compelling and convincing arguments on Mr. Gubrud's behalf. I'm sure it's an experience they won't soon forget.

Arbitration (continued on page 4)

there was a pending foreclosure action. In 23 of the 68 cases where the homeowner filed an answer, the judgment was vacated and/or the case was dismissed. Since the number of foreclosures continued to mount in 2011, we are encouraged that a small number of homeowners have benefitted from the assistance provided by the Answer Clinic. Our goal is to get more homeowners to access this terrific service so that they too can do all they can to protect themselves from the consequences of losing their homes.