

FINAL REPORT

Equal Justice America Disability Rights Clinic

John Jay Legal Services

Pace University School of Law

June 30, 2010

Introduction

Completing its tenth year of operation, the Equal Justice America Disability Rights Clinic at Pace University School of Law continues its dual mission of training future lawyers and providing free legal services to low income disabled persons and their families

Pace Law School's clinical offerings, under the umbrella of John Jay Legal Services, enable students to gain proficiency in lawyering skills while representing clients pursuant to a Student Practice Order issued by the Appellate Division, Second Department of the New York State Supreme Court. Under supervision of full-time clinical faculty, students enrolled in clinical courses perform all lawyering functions normally reserved to lawyers admitted to practice. In addition to the Equal Justice America Disability Rights Clinic, John Jay Legal Services also provides representation to individuals by student attorneys enrolled in the Investor Rights Clinic (formerly the Securities Arbitration Clinic), the Criminal Justice Clinic and the Immigration Justice Clinic. In addition to these client representation clinics, field work in the non-profit legal arena is available to students through the Legal Services/Public Interest/Health Law Externship, the Family Court Externship, the Prosecution Externship, the Environmental Law Externship, and the Honors Prosecution Externship, a joint undertaking with the Westchester County District Attorney's Office.

The Equal Justice America Disability Rights Clinic provides students with the opportunity to learn and apply lawyering skills as well as the substantive law relating to the rights of disabled persons in a highly controlled and intensively supervised legal practice environment. For most students, it is their first experience with law as lawyers.

The Special Education Concentration

During 2009-10, students were again offered the opportunity to work exclusively on Special Education cases, supervised by Prof. Don Doernberg, a tenured member of the Pace Law Faculty. Prof. Doernberg's salary was covered fully by Law School funds.

The Seminar Component

In a weekly seminar, students learn and practice lawyering skills such as interviewing, counseling, negotiation, fact investigation, and conducting administrative hearings. The learning of these skills is integrated with relevant substantive law, including eligibility for the government benefit programs available to disabled persons (Social Security Disability, Supplemental Security Income, Medical Assistance) and the planning tools available to disabled persons and their families (guardianships, wills, special needs trusts). The seminar also provides the opportunity for students to present issues and choices from the cases they are working on and benefit from the critical reflection of their colleagues. Ethical issues are discussed as they arise in individual cases with particular emphasis on the complexities of working with clients of diminished mental capacity. Students learn how to read and interpret medical records and work with medical personnel to describe a client's medical condition using legally relevant terminology. Students also learn how to work with other helping professionals, such as social workers, doctors, nurses and advocates, to identify and meet clients' non-legal needs. Readings focused on learning lawyering skills are supplemented with readings directly relevant to disability law.

For the 2009-2010 academic year, the Clinic was again offered as a two-semester course. Three students worked exclusively on Special Education cases and received four credits each semester. Five students worked on the full range of clinic cases and were offered the option of

taking the course for either four or six credits each semester. One student was a part-time evening student; the rest were full-time day students. One student was a visiting student from Syracuse Law School. All students participated in the seminar which provided two academic credits each semester and each student's case load for the remaining clinical credits was tailored to his or her interests and time constraints. Students are expected to spend on average five hours per week per clinical credit on case-related work.

The Case Work Component

Clinic students, either individually or in teams, have primary responsibility for the conduct of their assigned cases. The student lawyer is responsible for planning each lawyering activity, reviewing the plan with the Clinic faculty supervisor, conducting the activity and finally, reflecting on the experience and the usefulness of the preparation. Throughout the year, each student engages in client interviewing and counseling, fact investigation and witness interviewing, legal research and analysis, and drafting a variety of legal documents and instruments. Most students have the opportunity to appear before a court or administrative tribunal.

The cases handled involved a variety of legal issues faced by disabled persons and their families. Clients were referred by several social service agencies with which we have formed alliances, including Mt. Vernon Board of Education, NAMI of Westchester, and UCP of Westchester, Taconic Innovations and Jowonio, case management agencies serving the developmentally disabled. Several clients were referred by other Clinic clients or self-referred. All of the clients are low income. They are unable to pay for the legal help they need and were unable to secure representation from other sources of free legal services. Several cases completed during the year were begun during previous years.

A total of 40 matters were handled by students during the grant year.* Of these, 19 were new matters. Fifteen matters were concluded by the end of the grant year and 25 are pending.

The cases involved the following substantive areas:

<u>Area</u>	<u>Number of Clients</u>
Art. 17-A Guardianship	10
Special Education	8
Lifetime and Estate Planning	5
Estate Administration	5
Benefits Issues	5
Special Needs Trusts	3
Human Rights	2
Art. 17 Guardianship	1
Tax	1

Case Examples

Last year we described L.S.'s age discrimination case before the Westchester Human Rights Commission. The Administrative Law Judge found that respondents had discriminated against LS when she was forced to retire at age 72, two years before she was eligible for a full pension. L.S. was awarded two years' back pay and the difference between her reduced pension and full pension. The respondents appealed the ALJ's decision. When the appeal was dismissed, the respondents appealed to the Appellate Division, 2d Department.

* During the summer of 2009, with Federal work study funds and a grant from a Clinic alumnus, three students were hired to assist with on-going and new matters. During the summer of 2010, three students are working in the Clinic.

Since our last report, we also settled an age discrimination case brought by a *pro se* plaintiff in Federal District Court. Following discovery, the case was settled on terms extremely favorable to the plaintiff.

We continued to work with families who wish to become guardians of their adult disabled children. Students worked with 10 such clients during the year. All clients have been counseled about the guardianship process and assisted in identifying standby guardians and obtaining necessary certifications from doctors and psychologists. One client who had already been appointed her son's guardian was assisted in closing the guardianship account, enabling her son to become eligible for Medicaid. The decision is pending in one case involving developmentally disabled twins. Two clients decided not to proceed. Petitions are being prepared in the remaining cases.

We also represented H.B., who wished to become the guardian of her grandchild. The child's parents are both disabled and the grandmother had become the guardian of her son, the baby's father in one of the first cases handled by the Clinic. We expect that Letters of Guardianship will be issued shortly.

Five clients were assisted with the preparation and signing of wills, health care proxies and powers of attorneys. These clients are parents or grandparents of disabled children and needed to create estate plans that provided for their children without jeopardizing their government benefits. While these estates are modest in size, even a small inheritance would disqualify a disabled person from essential government benefits.

Three clients were assisted with special needs trusts. We are preparing an accounting for one client, the trustee of a client who died. We obtained permission of the Surrogate's Court to establish a Special Needs Trust for the son of one client and are in the process of doing the same

for another. In addition to drafting the trust, obtaining the consent of the Department of Social Services and drafting the documents to obtain Court permission, the students extensively counseled each client to ensure that only appropriate expenditures are made by the trustee. In addition, the clients are assisted in developing a record-keeping system and filing yearly accountings with the Court.

We are involved in five cases requiring the administration of modest estates in Surrogate's Court. Each of these cases involved extensive investigation – in one, the student located 14 potential heirs who live in the Caribbean – or challenging family relations. During the year, one estate was settled, our clients have been appointed the fiduciary in three cases, the decision in another is pending and work has just begun on another, involving twelve siblings and many nieces and nephews. These cases provide excellent experience for the students and a service to the clients who would otherwise see their modest inheritances spent on investigators and lawyers.

Community Outreach

Clinic students and other law student volunteers participated in Westchester County's Senior Law Day on October 15, 2009. After audience members heard a presentation about health care proxies, the law student volunteers assisted them with completing health care proxies and answered their individual questions. On February 1, 2010, Prof. Flint spoke at the White Plains Senior Center and a clinic student assisted members who wished to complete health care proxies.

Prof. Flint spoke with members of Hope House, a self-help organization for the disabled in Port Chester, New York. The audience was interested in learning how returning to work

would affect their Social Security Disability and Supplemental Security Income benefits and how to avoid incurring overpayment of benefits.

Plans for 2010-2011

The Clinic is being offered again next year as a year-long course. We anticipate handling a similar mix of litigation and transaction matters. The special education caseload will be integrated into the general caseload and each student will handle a mix of cases. Prof. Doernberg will be available to consult on special education cases. To meet the needs of parents of adult children with developmental disabilities, we plan to recruit, train and supervise volunteer attorneys to represent parents in Art. 17-A guardianship proceedings in Surrogate's Court. Pace Law School's Continuing Education Department will assist organizing this venture.