

FINAL REPORT

Equal Justice America Disability Rights Clinic

John Jay Legal Services

Pace University School of Law

June 30, 2009

Introduction

Completing its ninth 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 2008-09, students were 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 2008-2009 academic year, the Clinic was again offered as a two-semester course. Four students worked exclusively on Special Education cases and received four credits each semester. Seven 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. Two students enrolled for four credits for each semester, for a total of eight credits. Four students enrolled for six credits each semester for a total of twelve credits. One student was a part-time evening student; the rest were full-time day students. 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, Westchester Residential Opportunities, and Taconic Innovations and Jowonio, case management agencies serving the developmentally disabled. Several clients were referred by other Clinic clients or self-referred. We were asked by a Federal Magistrate Judge to represent a *pro se* plaintiff in an age discrimination case. 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 the previous year.

A total of 47 matters were handled by students during the grant year.* Of these, 23 were new matters. Eighteen matters were concluded by the end of the grant year and 29 are pending.

The cases involved the following substantive areas:

<u>Area</u>	<u>Number of Clients</u>
Lifetime and Estate Planning	5
Special Needs Trusts	2
Estate Administration	4
Benefits Issues	8
Art. 17-A Guardianship	14
Human Rights	3
Special Education	11

Case Examples

Clinic students represented L.S. in a hearing before the Westchester Human Rights Commission. Ms. S. had filed a complaint, alleging that she was forced to retire at the age of 72, just two years before she would have been eligible for a full pension. Two clinic students represented Ms. S. in a three-day administrative hearing, conducting direct examinations of the complainant and her witness and cross-examining the respondents' witnesses. Following the hearing, the students submitted a closing memorandum of law. A decision in the case has not yet been issued.

* During the summer of 2008, with Federal work study funds and a grant from a Clinic alumnus, two students were hired to assist with on-going and new matters. During the summer of 2009, three students are working in the Clinic.

A Federal Magistrate Judge asked the Clinic to represent a *pro se* plaintiff in an age discrimination in employment case before her. During the spring semester, the students interviewed and counseled the Plaintiff, propounded interrogatories and document requests, answered the Defendants' discovery requests, and handled conferences with the presiding Magistrate Judge. In the last month, the summer students defended the Plaintiff's deposition and conducted the deposition of one of the Defendants. Settlement discussions have just begun.

The Clinic represented G.D., an elderly woman who needed to have a ramp installed in order to be able to enter and leave her apartment. Until the Clinic became involved, the Condominium Association had refused to permit the installation of the ramp, in spite of pressure from HUD and a local fair housing agency. After the intervention of the Clinic, the ramp was installed and the case settled on terms very favorable to the client.

A Clinic student represented G.N., a disabled woman who had a New York State tax debt. The student negotiated a settlement of the debt with the New York State Department of Taxation. Under the terms of the settlement, the amount of the debt was reduced significantly and the client is able to afford the required monthly payment.

In a special education case involving a severely disabled pre-school child, following a meeting with the students representing the parents, the school district agreed to extend the child's program from half-day to full day, provide compensatory home instruction hours to compensate for the district's failure to provide appropriate home services for the child, and to send copies of the student's records to seven private schools to see whether any of them had an appropriate program and space.

We continued to work with families who wish to become guardians of their adult disabled children. Students worked with 14 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. Letters of guardianship were issued in five cases. The decision is pending in one case. Petitions are being prepared in the remaining cases.

Community Outreach

Prof. Flint was the keynote speaker at a Special Needs Seminar for parents and professionals sponsored by the New York City Church of Christ and held at Bell Park Jewish Center in Queens Village. Her talk covered guardianship and special needs trusts for disabled adults.

Prof. Flint was a panelist on a program cosponsored by the Committee on Issues Affecting People with Disabilities and the Trusts and Estates Law Section at the New York State Bar Associations 2009 Annual Meeting. Her talk covered the rights of nursing home residents to be free from unnecessary transfer and discharge.

On June 11 and 12, the Clinic cosponsored with NAMI of Westchester, a two-day training on Social Security Disability and SSI. Over 150 non-profit agency personnel, consumers and family members attended the training, which was very well received.

Plans for 2009-20010

The Clinic is being offered again next year as a year-long course. We anticipate handling a similar mix of litigation and transaction matters. Once again, Prof. Flint will be joined by Prof. Don Doernberg who will supervise students who will work exclusively on special education cases. We will also strengthen our collaborative relationships with social services and legal services providers, in an effort to fill some of the gaps in service in Westchester and Bronx Counties.