

FINAL REPORT

Equal Justice America Disability Rights Clinic

John Jay Legal Services

Pace University School of Law

June 28, 2013

Introduction

Completing its thirteenth 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 persons with disabilities 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 legal interns enrolled in the Investor Rights Clinic, the Barbara C. Salken Criminal Justice Clinic, the Post-Conviction 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

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 persons with disabilities in a highly controlled and intensively supervised legal practice environment. For most students, it is their first experience with law as lawyers.

For the 2012-2013 academic year, the Clinic was again offered as a two-semester course. Seven students participated in the Clinic. One student was enrolled in the part-time evening division. The rest were full-time day students. The students were enrolled for either a total of four or six credits each semester, depending on their other commitments. 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 her interests and time constraints. Students are expected to spend on average five hours per week per clinical credit on case-related work.

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 persons with disabilities (Social Security Disability, Supplemental Security Income, Medical Assistance, special education services) 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.

The Case Work Component

Clinic students, either individually or in teams, have primary responsibility for the conduct of their assigned cases. The student 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 persons with disabilities and their families. Clients were referred by several social service agencies with which we have formed alliances, including Catholic Charities, the Westchester County Commission of Human Right, Westchester Residential Opportunities, Mt. Vernon Board of Education, NAMI of Westchester, and UCP of Westchester, Taconic Innovations and Jowonio, case management agencies serving persons with developmental disabilities. 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 32 matters were handled by students during the grant year.* Of these, 7 were new matters. Eight matters were concluded by the end of the grant year and 24 are pending. The cases involved the following substantive areas:

<u>Area</u>	<u>Number of Clients</u>
Art. 17-A Guardianship	11
Special Education	2
Lifetime and Estate Planning	4
Estate Administration	4
Benefits Issues	4
Special Needs Trusts	4
Human Rights	2
Consumer	1

Case Examples

We continued to work with families who wish to become guardians of their adult children with developmental disabilities. Students worked with 11 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 by the Surrogate in 3 cases. One client decided not to proceed. We are awaiting a decision in two cases. Petitions are being prepared in the remaining cases.

Three clients were assisted with benefits matters. Clinic students assisted V. F., a young man with disabilities obtain the SSI benefits he was entitled to. Case law in the Second Circuit requires that individuals who pay a set amount for room and board be budgeted at a higher rate

* During the summer of 2012, three students worked in the Clinic, two for pay and one as a volunteer. During the summer of 2013, one student is working in the Clinic. The students are paid with Federal work study funds and grants from two Clinic alumni.

than those who share expenses with others or do not contribute towards room and board. Although V.F. had been paying his parents for room and board for several years and was correctly budgeted for some of that time, the Social Security Administration charged him with an overpayment and claimed he was entitled to benefits as if he were being supported by his parents. The student assigned to Mr. F. persuaded the local office to budget him correctly. Mr. F. has received the first of two large back payments for the benefits improperly withheld and has been receiving benefits at the higher rate. A student successfully advocated for J.S. who receives Social Security benefits on his later father's record. Because Mr. S. had received SSI benefits, he is entitled to receive Medicaid without a spend-down. Mr. S.'s Medicaid record did not reflect the source of his income and he had been erroneously charged a spend-down, which had accumulated to over \$5,000. The student assigned to his case obtained the necessary records from Social Security and successfully advocated with the Medicaid worker and the home care agency and the arrears were cleared from his account.

Four clients were assisted with special needs trusts. Last year we assisted Ms. P., to become the guardian of her daughter, S. S. receives Social Security Survivor's benefits on her father's record. Because S. never received SSI, she is subject to a spend-down in order to receive Medicaid. The student assigned to Ms. P. drafted a special needs trust to which the spend-down is deposited each month. In that way, all of S.'s income is available to meet her needs.

We are involved in four cases requiring the administration of modest estates in Surrogate's Court. Each of these cases involved extensive investigation or challenging family relations. 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.

In each of the two Special Education cases, the students attended Committee on Special Education (CSE) meetings with the parents and secured needed services for the children.

Students also worked on 4 cases in which the clients wish to engage in life-time and estate planning. Three of these cases involve providing for a disabled child through a life-time or testamentary trust. One case was closed when a conflict developed between the parents.

Finally, we have filed an Art. 78 petition appealing the decision of the Westchester Human Rights Commission that our client was not entitled to have a comfort dog as a reasonable accommodation for his disabilities in a building with a “no pet” policy. The students worked on the appeal during the spring semester and the papers were filed in early June.

Community Outreach

Clinic students and other law student volunteers participated in Westchester County’s Senior Law Day on October 18, 2012. 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.

Plans for 2013-2014

The Clinic is being offered again next year as a year-long course. Eight students are enrolled. We anticipate handling a similar mix of litigation and transactional matters, assisting low income persons without other means of securing needed legal services and giving future lawyers the skills necessary to help this vulnerable population.