

FINAL REPORT

Equal Justice America Disability Rights Clinic

John Jay Legal Services

Elisabeth Haub School of Law at Pace University

June 25, 2019

Introduction

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

The 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 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 Neighborhood Justice Clinic, the Immigration Justice Clinic, and the Food and Beverage Law 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.

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 2018-2019 academic year, the Clinic was again offered as a two-semester course. A total of five students participated in the Clinic, enrolled for a total of six credits each semester. All students participated in the seminar which provided two academic credits each semester. 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 local services agencies such as the Cancer Support Team; and the Surrogate's Court of Westchester County. 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.

A total of 38 matters were handled by students during the grant year.* Of these, 16 were new matters. Sixteen matters were concluded by the end of the grant year and 22 are remain open. The cases involved the following substantive areas:

<u>Area</u>	<u>Number of Clients</u>
Art. 17-A Guardianship	8

* During the summer of 2018, one student volunteered. During the summer of 2019, two students are working on a paid basis.

Special Needs Trusts	4
Pooled Trusts	7
Lifetime and Estate Planning	7
Estate Administration	5
Standby Guardianships	2
Consumer	1
Tax	1
Art. 17 Guardianship	2
Social Security Disability	1

Case Examples

We continued to work with families who wish to become guardians of their adult family members with developmental disabilities. Students worked on 8 such cases, including 1 petition for the appointment of new standby guardians in a previously-granted guardianship. 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 have been issued by the Surrogate in 2 cases. We are awaiting decisions in 4 cases. One client moved out of the jurisdiction and decided not to proceed in New York. A petition is being prepared in the remaining case.

We assisted two mothers facing terminal illness who wished to designate standby guardians for their minor children. One of these clients died and we are now representing the standby guardian in Family Court in her petition to become the child's guardian. In another case, the Family Court appointed our clients guardians of their three orphaned grandchildren.

Students worked on 7 cases in which the clients wished to engage in life-time and estate planning. Three clients signed wills, powers of attorney and health care proxies. The clients are reviewing documents in the remaining cases. One client decided not to proceed.

Students assisted 11 clients with special needs trusts. Six clients were assisted with establishing pooled trust accounts so that their excess income could remain available to meet their needs while receiving Medicaid home care benefits. Students drafted individual trusts for two clients who are under 65. We are awaiting Court approval for these trusts. We are also representing a client who is the co-guardian of her disabled son in a proceeding to establish a special needs trust. We remained involved with one who had previously established a pooled trust account for her disabled daughter, but continues to require assistance. We are also representing a trustee of a Special Needs Trust who wishes to resign and have his son appointed as successor trustee.

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. We are also assisting a client with settling a small estate without administration.

During the fall semester, two students conducted a hearing before an Administrative Law Judge challenging the denial of Social Security Disability and Supplemental Security Income benefits. The ALJ issued a fully favorable decision for our client, which restored her benefits. We have now challenged the Social Security Administration's determination concerning our

client's living situation. If we are successful, the client will receive another \$250 per month in benefits and additional retroactive benefits.

One tax matter and one consumer matter remain open.

Community Outreach

Clinic students and other law student volunteers participated in Westchester County's Senior Law Day in White Plains on October 16, 2018 and in Yonkers on June 1, 2019. 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 2019-2020

The Clinic will be offered as a one-semester course. Students who have participated in the fall semester will have the option of enrolling in the spring semester as advanced students. We have heard from students that they prefer one semester opportunities, and we will evaluate after the end of the year whether this experiment should be repeated. We anticipate handling mostly transactional matters and guardianship cases that can be completed during one semester. We will continue to assist low-income persons without other means of securing needed legal services and giving future lawyers the skills necessary to help this vulnerable population.