

FINAL REPORT

Equal Justice America Disability Rights Clinic

John Jay Legal Services

Pace University School of Law

June 30, 2014

## Introduction

Completing its fourteenth 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 Neighborhood 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

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 2013-2014 academic year, the Clinic was again offered as a two-semester course. Eight students participated in the Clinic, including one part-time student who graduated in January and therefore did not participate in the spring semester. The remaining were full-time day students who participated both semesters. 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 intellectual 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 38 matters were handled by students during the grant year.\* Of these, 11 were new matters. Fourteen 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	12
Standby Guardianship	1
Art. 17 Guardianship	1
Special Education	2
Lifetime and Estate Planning	7
Estate Administration	4
Benefits Issues	3
Special Needs Trusts	5
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 12 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 4 cases. We are awaiting a decision in 3 cases. Petitions are being prepared in the remaining cases.

---

\* During the summer of 2013, one student worked in the Clinic. During the summer of 2014, one student is working for credit and two students are working-part time on a paid basis. The students are paid with Federal work study funds and grants from two Clinic alumni.

Three clients were assisted with benefits matters. V.F. who was assisted last year to get his SSI benefits budgeted correctly is now being assisted with a Continuing Disability Review. Another client, B.D., has appealed the denial of Social Security Disability benefits. His hearing will be held in the fall. S.P.'s mother and guardian was represented at a Medicaid Fair Hearing, challenging the handling of her daughter's surplus income. The student successfully argued that the County Department of Social Services had incorrectly credited out of pocket medical expenses, resulting in a large balance owed to the home care agency. We are awaiting compliance by the County.

Five clients were assisted with special needs trusts. One client, an elderly woman who had been represented by the Pace Investor Rights Clinic, placed her modest recovery in a pooled trust. This preserves her eligibility for Medicaid benefits and ensures that these funds are available to her as she ages in the community. Through the efforts of the clinic, the mother and guardian of a young woman who lives in a group home was granted permission to place funds obtained through a personal injury lawsuit in a pooled trust. These funds had previously been held in joint control with the Clerk of the Surrogate's Court and had not been available to meet the supplemental needs of the client's daughter. Students also drafted a special needs trust for a client who wishes to make funds available to his children to visit and advocate for their brother who has been institutionalized for many years. In all of these cases, the amount available to the person with disabilities was too small to justify using any of the funds to pay for a lawyer to handle the legal work.

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 7 cases in which the clients wish to engage in life-time and estate planning. Two of these cases involve providing for a disabled child through a life-time or testamentary trust. In three cases, students drafted wills, powers of attorney and health care proxies for residents of Maple House, an enriched housing facility in Ossining, New York.

Students also assisted a terminally ill mother of two minor children with designating a standby guardian. The client has since died and a petition is being prepared to appoint the standby the children's guardian for their minority.

### Community Outreach

Clinic students and other law student volunteers participated in Westchester County's Senior Law Day on October 17, 2013. 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. Professor Flint made a presentation about wills and other life-time planning tools to the residents of Maple House, an enriched housing program in Ossining, New York. After the presentation, student interns from the clinic were assigned to the residents who asked for assistance.

### Plans for 2014-2015

In addition to offering the Clinic as a year-long course, the Clinic will be the placement site for Pace Law students participating in the Pro Bono Scholars Program. This initiative, developed by Chief Judge Jonathan Lippmann of the New York State Court of Appeals, permits

students in their final year of law school to sit for the February bar exam and in their final semester, provide legal services to persons who are poor and under-represented. 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.