

FINAL REPORT

Equal Justice America Disability Rights Clinic

John Jay Legal Services

Elisabeth Haub School of Law at Pace University

June 29, 2018

Introduction

Completing its eighteenth 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 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 2017-2018 academic year, the Clinic was again offered as a two-semester course. A total of six students participated in the Clinic, including one student participating in the Pro Bono Scholars Program, an initiative of former Chief Judge Jonathan Lippman, designed to increase access to legal services by the underserved. The Pro Bono Scholar worked full-time in the Clinic in the spring semester, having taken (and passed) the New York Bar Exam in February. The remaining were full-time students who were 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 including the Veteran's Administration long-term care facility in Montrose, New York, 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 48 matters were handled by students during the grant year.* Of these, 15 were new matters. Twenty-seven matters were concluded by the end of the grant year and 21 are pending. The cases involved the following substantive areas:

<u>Area</u>	<u>Number of Clients</u>
Art. 17-A Guardianship	14
Special Needs Trusts	8
Lifetime and Estate Planning	7
Estate Administration	7
Standby Guardianships	3
Consumer	3
Special Education	2
Tax	2
Housing Discrimination	2
Art. 17 Guardianship	1
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 14 such cases, including 3 petitions for modifications of previously-granted guardianships. All clients have been counseled about the guardianship process and assisted in identifying standby guardians and obtaining

* During the summer of 2017, one student worked on a paid basis and one student volunteered. During the summer of 2018, one student is volunteering.

necessary certifications from doctors and psychologists. Letters of guardianship have been issued by the Surrogate in 8 cases. We are awaiting decisions in 3 cases. Two clients decided not to proceed. A petition is being prepared in the remaining case.

We are also representing grandparents who petitioned the Family Court for guardianship of their three orphaned grandchildren. The petition was granted after a hearing and we are awaiting the signed order.

We have assisted three mothers facing surgery or terminal illness who wished to designate standby guardians for their minor children. Each of these clients has now put in place a plan for the care of her children in the event of her death or incapacity.

Students also worked on 7 cases in which the clients wished to engage in life-time and estate planning. Eight clients (two cases involved married couples) signed wills, powers of attorney and health care proxies that student interns drafted. The remaining case is pending.

Students assisted 8 clients with special needs trusts. Four 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 an individual trust for one client who is under 65. We remained involved with two clients who had previously established pooled trust accounts but needed additional assistance. One client and his family were counselled extensively about the advantages and disadvantages of establishing an individual special needs trust. After considering his options, the client decided to retain control of his funds.

We are involved in seven 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. Three of these estates have been closed and 4 are pending.

We are waiting for a hearing to be scheduled by the Social Security Administration for a client who is appealing the denial of Social Security Disability and Supplemental Security Income benefits.

Students have assisted 3 clients with a variety of consumer issues. Two clients were assisted with tax matters.

Community Outreach

Clinic students and other law student volunteers participated in Westchester County's Senior Law Day in White Plains on September 17, 2017 and in Yonkers on June 6, 2018. 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 2018-2019

The Clinic will again be offered as a year-long course. 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.