

FINAL REPORT

Equal Justice America Disability Rights Clinic

John Jay Legal Services

Elisabeth Haub School of Law at Pace University

June 25, 2020

Introduction

Completing its twentieth year of operation, the Equal Justice America Disability Rights Clinic at the Elisabeth Haub School of Law at Pace University continued 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 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 2019-2020 academic year, the Clinic was offered as a one-semester course. In the fall 2019 semester a total of five students participated in the Clinic. In the spring, 2020 semester, four students enrolled in the clinic. These students received a total of six credits each semester and participated in the seminar which provided two academic credits. Two of the students from the fall continued casework for 2 credits in the spring. 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 semester, 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.

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 36 matters were handled by students during the grant year.* Of these, 13 were new matters. Twelve matters were concluded by the end of the grant year and 24 are remain open. The cases involved the following substantive areas:

<u>Area</u>	<u>Number of Clients</u>
Lifetime and Estate Planning	9
Art. 17-A Guardianship	7

* During the summer of 2019, two students worked in the Clinic on a paid basis. During the summer of 2020, one student is receiving credit through the Legal Services Externship.

Special Needs Trusts	7
Estate Administration	6
Pooled Trusts	3
Consumer	1
Tax	1
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 7 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 3 cases. Two cases are pending in Surrogate's Court. Petitions are being prepared in the remaining 2 cases.

We represented a standby guardian in Family Court in her petition to become the child's guardian. The petition was granted after a hearing conducted by the student and this child now has stability in his life with his mother's life-long friend.

Students worked on 9 cases in which the clients wished to engage in life-time and estate planning. Three couples signed wills, powers of attorney and health care proxies. Three clients are reviewing documents. One client has been too ill to proceed, but we are keeping her case open, hoping that her condition will improve enough to enable her to continue with her planning.

Sadly, one client died before she was able to complete her planning. We are seeing with the clients referred by the Cancer Support Team that many are waiting until they are very ill to ask for assistance.

Students assisted 10 clients with special needs trusts. Three 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 7 clients who are under 65. Court approval was obtained for one of these trusts. 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 six cases requiring the administration of modest estates. Four of these cases are pending 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 and assisting a client obtain funds deposited with the New York State Comptroller's Office.

We were able to resolve all issues for our client who was awarded Social Security benefits after a hearing. Our students successfully advocated that she should be regarded as "living with others" rather than "living in the household of another," resulting in a monthly increase of \$250 in Supplemental Security Income.

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 September 10, 2019. After audience members heard a presentation about health care proxies and other ways to plan for health care decision-making, the law student volunteers assisted seniors with completing health care proxies and answered their individual questions. On September 16, 2019, the Clinic director spoke at a meeting of the consumer advisory board of Care Design, a case management agency working with adults with intellectual disabilities. The participants had many questions about special needs trusts and planning for the future of their adult children with intellectual disabilities.

Effect of the Coronavirus Pandemic

Along with the rest of the state, the Law School's activities were handled remotely, beginning in mid-March. Remote work presented special challenges for the Clinic's clients, many of whom do not use technology other than telephones. While Governor Cuomo has issued a series of Executive Orders permitting remote witnessing and notarization of legal documents, most clients elected to wait until face to face meetings are permitted to sign legal documents. We did supervise the remote witnessing of wills for two clients, one of whom is seriously ill. These clients borrowed a neighbor's cell phone so that they could sign while on video conference. Other clients were not able to arrange for appointments with medical providers to obtain needed certifications for guardianship proceedings. The courts were closed for all but emergency matters, and it is unclear when routine matters will be entertained. The students responded to the challenges with aplomb and did their best to meet their clients' needs with all the limitations. I am hopeful that the remaining open cases can be completed over the summer,

as restrictions are eased, although, I remain mindful that our clients and their families are at high risk for serious complications if they contract the virus.

Respectfully submitted,

Gretchen Flint

Margaret M. Flint