Urban Law Clinic Students Score Another Victory with $110,000 Settlement

Urban Law Clinic students Charlene Barker 2L and Stephanie Torre 3L successfully negotiated a $110,000 settlement before Judge Debra Freeman for the Southern District of New York (SDNY) in an employment disability discrimination case. The case was assigned to the students after Judge Shira Scheindlin, District Court Judge for the SDNY, referred the case for a settlement conference and specifically requested that the Urban Law Clinic represent the plaintiff.

The students represented Cynthia, a permanently disabled woman who was wrongfully terminated by her employer, a major New York City law firm, after it refused to provide her with an accommodation as mandated by the Americans with Disabilities Act. Throughout Cynthia’s employment she was continually subjected to harsh fumes and sprays from the firm’s incessant use of propellant irritants in her work area. The fumes caused Cynthia such severe bronchial spasms that she was often forced to seek emergency room treatment. In 2001, Cynthia was diagnosed as having irritant-induced asthma; she promptly notified her supervisors, provided medical documentation, and requested an accommodation. Despite receiving repeated documented requests over the course of five years her employer failed to make a good faith attempt to accommodate her disability. Cynthia ultimately developed nerve damage, thoracic and lumbar disc herniation, and lumbar radiculopathy as a result of the firm’s purposeful failure to accommodate her breathing condition. Adding insult to injury, the firm ultimately placed her on unpaid leave and later terminated her employment after she had worked for the firm for 13 years.

Prior to being represented by the students in the settlement conference, Cynthia and her former employer attempted to resolve the case through mediation but were unable to achieve a mutually agreeable resolution. Despite the unsuccessful mediation the students were able to secure a settlement package five and a half times larger than the employer’s initial offer of $19,500. The settlement agreement ensures that Cynthia will be able to receive all benefits that she is entitled to under her former employer’s pension package. Although the monetary award will not redress all the pain and anguish that Cynthia has suffered, it provides much needed closure to what has been an extremely harrowing and traumatic experience for her.

Elder Law Clinic Student Helps Protect Liberty of an Older Adult

Elder Law Clinic students become immersed in sad and unusual real-life cases. Clinic student Paul Duffy 2L encountered such a case involving an 86-year-old man (“Mr. F”) whose nieces believed that he needed a guardian. They claimed he was a danger to himself because of moderate dementia and paranoia and filed a petition for the appointment of a guardianship with broad powers over his person and property. Paul and his mentor attorney, Cliff Meirowitz, were appointed Court Evaluator and made the required investigation. Paul spent several hours attempting to find Mr. F to interview him but had great difficulty because he was a “wanderer.”
When Paul finally was able to meet Mr. F at his apartment, he found him very frail and apparently in need of medical care and discovered that the apartment was in dire need of cleaning. Paul’s interviews with neighbors disclosed that one night he was found sleeping on a discarded mattress in the building hallway because he had lost his keys. His nieces sought to be named his guardians and proposed moving him to an assisted living facility in Florida.

The guardianship statute places great emphasis on protecting the rights of incapacitated persons and directs that if a guardianship is necessary the limitations on a person’s independence are to be based on “the least restrictive alternative.” As Court Evaluator, Paul—acting on behalf of the Elder Law Clinic—was obligated to inform the court as to whether the appointment of a guardian was necessary and, if so, to propose a care plan that was in Mr. F’s best interests and consistent with the least restrictive alternative approach. After conducting his interviews and making his investigation, Paul found that while Mr. F had serious incapacities, he was able to perform the activities of daily living—he was reasonably well fed, could dress and bathe himself, and was able to get around the city and visit his doctor.

In his written report, Paul recommended that the court appoint a limited guardian of the property for Mr. F, but not a guardian of the person. At the hearing, Mr. F’s counsel informed the court that Mr. F opposed the appointment of even a guardian with limited powers but would be willing to engage a professional geriatric care manager to assist him in cleaning the apartment and help with other aspects of his daily functioning. Mr. F’s nieces, the petitioners, accepted this proposal provided that the guardianship proceeding would not be dismissed but only adjourned for three months to see if the “settlement” would work. With the consent of all parties the Supreme Court Justice handling the matter accepted the plan, and the case was adjourned for three months. In approving the disposition of the case, the judge praised Paul’s work and stated on the record that his investigation and report were essential in reaching an appropriate resolution of the proceeding. Time will tell if the matter is truly resolved or whether Mr. F will fail to carry out his agreement and another hearing will need to be held. But for now, Mr. F will be getting the help he needs, with relatively little impediment to his independence.

The Safe Passage Immigration Project
Students Give Presentation to Families Affected by Immigration Issues

The Safe Passage Immigration Project gave a presentation about immigration as well as a screening for foster children and birth and natural parents with immigration issues at SCO Family of Services in Queens on February 28, 2009. The following students gave a presentation, which included a “Know Your Rights” information session and information about special immigrant juvenile status: Jennifer Anzardo 2L, Luz Restrepo 2L, and Zarina Syed 3L. Students who participated in the screening with Dean Lenni B. Benson and Adjunct Professor Lindsay Curcio, the Co-directors of Safe Passage, included: Jennifer Anzardo 2L, Alicia Arana 3L, Amy Bower 3L, Vivana Cosme 3L, Mary Frakes 2L, Camelia Ghiuzeli 3L, Kai Livramento 2L, Ivonne Norman 3L, Ruben Pena 1L, Agata Ratajczyk 2L, Luz Restrepo 2L, Robert Scott 2L, Kiran Siddiqi 2L, Zarina Syed 3L, Kristin Wett 3L, and Analiz Velasquez 3L.

Urban Law Clinic Students Successfully Mediate Case on Behalf of Discriminated Client

Urban Law Students Matthew Windman 3L and Eric Henry 2L successfully negotiated a large settlement in federal mediation for their client, who had worked as a dental assistant at a large hospital. After the client complained that he was being unjustly discriminated against by his supervisors and coworkers due to his ethnic, racial, and religious background, he was promptly terminated without a legitimate justification. This caused the client to endure an extended period of unemployment, severe psychological trauma, and medical damages.

Title VII of the Civil Rights Act of 1964 prohibits employers from taking retaliatory personnel actions against employees who have previously engaged in activity protected under Title VII, such as pursuing a complaint of employment discrimination. It is, therefore, unlawful for an employer to terminate a person
because that person is pursuing a complaint of discrimination. While it was undisputed that the dental assistant had complained to his superiors, Matthew and Eric had to analyze the facts in order to prove that a causal connection existed between the client’s complaint and his termination.

Following several rounds of intense negotiation, Matthew and Eric successfully negotiated a large settlement that included both back pay and compensatory damages. Though nothing can erase the pain and humiliation that their client endured, this settlement will allow him to move on with his life without pursuing the time and expense of trial litigation.

Urban Law Clinic Students Win Impartial Hearing against NYC Department of Education

On March 6, 2009, the Urban Law Clinic celebrated a major victory when it won an impartial hearing against the New York City Department of Education (“DOE”). In August of 2008, Urban Law Clinic students Jessica Fisher 3L and Jeremy Wechsler 3L were assigned a special education case concerning an 8-year-old child named Joseph. Joseph’s parents and treating psychologist believed that he was not receiving an appropriate education and needed to be placed in a private school specializing in speech and language disabilities. When the Urban Law Clinic agreed to take the case in early August 2008, an impartial hearing request had already been filed by Joseph’s treating psychologist, leaving Jessica and Jeremy with minimal time to prepare for the impartial hearing.

From the time that Joseph was approximately 1 year old, his parents observed that he did not appear to understand what they communicated to him, and he was unable to express himself verbally. Joseph was eventually diagnosed with a severe receptive expressive language disorder, which is a speech and language impairment that impedes his ability to comprehend and express information. In addition, Joseph was recently diagnosed with a central auditory processing disorder. When Joseph’s parents first observed his difficulties, he was enrolled in an early intervention program and then attended a private preschool that focused on providing services for his speech and language disorder. These initial steps, however, did not remediate Joseph’s impairment.

Even though Joseph still suffered from a severe expressive receptive disorder, the DOE placed him in a regular education classroom when he turned 5 years old without providing him with the requisite services to remediate his disability. Due to the fact that Joseph was not receiving the necessary special education services, he was unable to perform and progress at a typical pace. In addition to his academic difficulties, Joseph’s impairment impacted him socially and emotionally. Due to his inability to communicate with others, Joseph developed severe anxiety and depression, exacerbating an already precarious situation. Despite receiving comprehensive evaluations indicating the severity of Joseph’s speech and language impairment, the DOE maintained that Joseph’s current educational placement was appropriate to remediate his impairment. Unable to convince the DOE otherwise, the impartial hearing commenced, requesting that the DOE pay for Joseph to attend a private school specializing in speech and language impairments.

The impartial hearing required three full hearing days, during which Jessica and Jeremy conducted cross-examinations for four of the DOE witnesses, and direct examinations for six of their own witnesses, four of whom were expert witnesses. In addition to witness testimony, Jessica and Jeremy submitted documentary evidence substantiating their legal assertions. The hearing officer’s decision mandates that the relief granted be implemented immediately. Joseph should be enrolled at his new private school by the beginning of April, where he will finally receive the appropriate special education services to remediate his speech and language impairment.

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