

New Mediation Clinic at the Economic Justice Institute

The Economic Justice Institute, home to the Remington Center's civil legal clinics, is proud to announce the creation of the Consumer Mediation Clinic. The mission of this Clinic is to train law students to provide a vital service to the community, helping members resolve pressing personal and legal conflicts.

Mediation is a process in which an impartial third party facilitates the resolution of a dispute by promoting voluntary agreement by the parties to the dispute. A mediator facilitates communication, promotes understanding, focuses the parties on their interests and uses creative problem solving to enable the parties to reach their own agreement.

Donna Erez-Navot is the new Clinical Instructor for the Mediation Clinic. Donna comes to EJI from the Wisconsin Director of State Courts Office where she focused on judicial training and programming in the area of juvenile law. Before moving to Madison in 2009, Donna was employed as a mediator in the Child Permanency Mediation Program in the NYC Family Court, where she mediated CHIPS and TPR cases, specifically issues surrounding placement of children in foster care. She is a graduate of Cardozo Law School in New York where she was a member of the Cardozo Mediation Clinic with Professor Lela Love. After attaining her undergraduate degree at Emory University, Donna studied Social Work at Tel Aviv University in Israel.

The skills-based clinic commenced in early September when the eight Mediation Clinic students completed



Mediation Clinic at the Dane County Courthouse. Chelsee Martinez and Joe Rectanus.

a basic mediation skills training co-taught by Donna Erez-Navot and Ralph Cagle, UW Law Emeritus Professor. In late September, the students began their mediation work at Dane County Small Claims Court, where they either observe or co-mediate cases, under faculty supervision. Mediation Clinic students mediate a variety of cases including landlord-tenant, contract, employment, auto-accident and property damage cases. Of the many cases that have been mediated to date, a majority has resulted in a voluntary agreement between the parties. The clinic work is accompanied by weekly instruction which focuses on the theoretical aspects of mediation and ADR (Alternative Dispute Resolution).

The Mediation Clinic has also reached out to other organizations on and off campus in order to expand mediation services to the community. The Clinic is currently accepting cases from the STEM (Student Tenant Education and Mediation Program), UW Division of Housing, Division of Student Life, and other UW campus organizations. The Clinic is also interested in expanding its referral base and would like to hear about other ideas and locate partners in the community. If you have any ideas, please contact the Clinic's Director, Donna Erez-Navot either via email at erez@wisc.edu or phone at (608) 262-4870.

EJI Director's Welcome

Economic unrest. A legislature trampling on consumer rights. Families torn apart by divorce or deportation. The demand for EJI's services grows as our community faces increased economic and societal challenges. How are we responding?

As the articles in this newsletter reflect, we are redoubling our efforts and expanding our programs. The Foreclosure Answer Clinic provides students in the Consumer Clinic the opportunity to provide immediate relief to those experiencing the trauma of a foreclosure, through answering questions, giving guidance, and simply listening to the sad stories that are shared with them. The Neighborhood Law Clinic has a redesigned space at the Villager Mall that allows students more privacy to meet with their clients as they gear up to handle an even greater influx of landlord-tenant cases that will be the result of new legislation limiting attorney fees in consumer-related cases.

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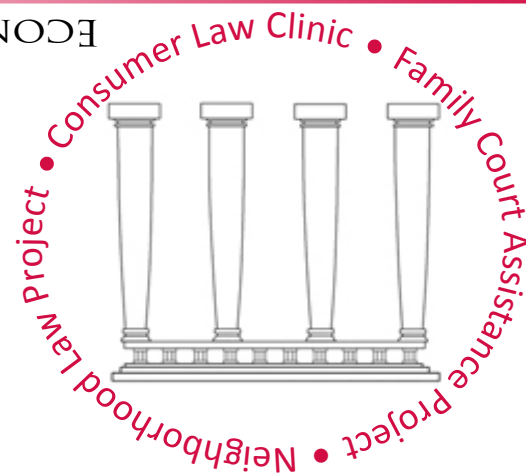




Photo By: Mike Hall
Family Court Clinic: Kari Kastenholz (l) and Marsha Mansfield (r) assisting a consumer.

Self-Represented Litigants and the Court System: Is There a Solution?

Prior to entering law school, I had no idea what self-represented litigants were or how they fit self-represented in to our current legal system. Little did I know that I would spend my second year of law school working almost exclusively with self-represented litigants.

The Family Court Clinic serves the abundance of self-represented parties with family law cases pending in the Dane County area. We hold office hours at the Dane County Courthouse and the need for our services is evident. The clinic-style outreach allows us to offer basic help to many

people dealing with divorce, child custody and placement, paternity cases, and post-divorce issues. We most often assist pro se parties with filing motions in their family law case, educating them in the basics of Wisconsin family law, and explaining how the family court process works in Dane County.

We have a very limited relationship with the clients we serve in the clinic, and we may only see them for one hour-long appointment. However, because of the sensitive nature of family law, some of the client's stories stick with me for a long period of time. Occasionally, I will go to Wisconsin's Circuit Court Access (CCAP) to see how a particular client's case is pending.

In recent years, there has been a rise

of self-represented litigants in family law and other civil cases. Based on interviewing many individuals, it appears that these parties are most often unable to afford a lawyer and would retain one if they had the financial means. The recession has only increased the amount of litigants who do not have the money to hire an attorney. In other cases, the self-represented parties believe that their case is simple enough to manage on their own and believe that getting a lawyer involved will make their case unnecessarily complicated.

Being a part of the Family Court Clinic continues to be a unique learning experience, but it has been even more interesting working with self-represented litigants against the backdrop of the civil Gideon petition pending in the Wisconsin Supreme Court. Over one-thousand Wisconsin residents submitted a petition to the Supreme Court requesting an amendment to Supreme Court Rule 11.02, to require that circuit court judges appoint attorneys at public expense for indigent civil litigants when basic human needs are at stake. The debate is primarily over the cost. Obviously, appointing counsel to the mass numbers of indigent litigants would be costly. However, the legal

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The Foreclosure Answer Clinic is Making a Difference

The Foreclosure Answer Clinic is a free, drop-in legal clinic designed to assist homeowners responding to a foreclosure lawsuit and access additional resources such as mediation and financial counseling services. The Consumer Law Clinic's students and volunteer attorneys from the community have staffed the clinic since it opened in July 2010. The clinic has assisted over 200 households to date. Consumer Law Clinic student Laura Janowitsch described the goal of the clinic, "We hope to instill in people a sense of control in the foreclosure process." Student Ilana Mindell noted, "The people we help leave the clinic with a better idea of the steps they can take."

Homeowners must file an Answer to the suit within 20 days of receiving the papers. Many people don't file an Answer, which results in a default judgment. Homeowners who do file an Answer can participate in the legal process and have an opportunity to inform the judges and the plaintiffs about their situations.

Consumer Law Clinic student Blythe Kennedy recently explored the steps the homeowners are taking after meeting with volunteers at the Answer Clinic. By checking the status of cases on the Circuit Court Access Program (CCAP), she discovered some very encouraging data.

In 2011, 74 Dane County residents received help responding to their foreclosure lawsuit at the Answer Clinic. The majority of homeowners filed Answers after visiting the clinic. In many of these cases, a judgment of foreclosure had not yet been entered. Blythe also discovered that the case was dismissed or the judgment of foreclosure was vacated in at least 11 cases. While the Consumer Law Clinic students will delve more deeply into this data in the future, this initial glimpse at the court data is very promising.

- Sarah Orr

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For more information: www.law.wisc.edu/fjr/clinicals/eji.htm

EJI In The News

Mitch testified against SB 107, regarding proposed changes to rental housing laws that seek to eliminate local government regulation of rental housing practices.

Marsha Mansfield testified against AB 54, relating to equalizing physical placement in family disputes.

Sarah Orr testified in favor of a proposal to require 3d-party debt collectors to comply with the special statutory pleadings requirements that debt collectors must follow. She also testified in favor of a proposal to cap the interest rate for "licensed lenders" (payday and auto title) at 36% (some compromise protections were enacted). Finally, she testified in October against a bill that included the factors a court must consider in awarding attorney fees in fee-shifting cases (such as consumer law, employment law, landlord/tenant and others).

Presentations

Rosa Frazier participated as a panel member on the Immigration and Child Welfare: Practice and Legal Topics Related to Serving Immigrant and Refugee Children and Families in the Child Welfare System in October, providing information to child protective social workers on

immigration remedies. She also was a panel member on Wisline for Wisconsin District Attorneys presented by the Department of Justice, presenting about prosecutorial certifications for U- Visa victims in October. It was a busy month for Rosa as she also presented to the sensitive crimes units of law enforcement agencies about the U Visa and the certification process.

Marsha Mansfield presented an Ethics Update for the Women's Caucus Seminar sponsored by the Wisconsin Association for Justice on September 16, 2011. She also participated in a conference on legal education reforms at Nanzan University in Nagoya, Japan in October, speaking about the history and development of clinical education in US law schools with a specific focus on clinical opportunities at the University of Wisconsin.

Service

Marsha Mansfield served on the Joint Legislative Council's Special Committee On Review Of Spousal Maintenance Awards In Divorce Proceedings as well as on the Wisconsin Judicial Council's Appellate Procedure Committee in drafting Recommendations Regarding

Limited Scope Representation

Mitch developed a court approved form that allows families at risk of homelessness to stay eviction actions while they are waiting to receive emergency assistance benefits. The form includes instructions and is now available state wide.

Mitch also worked with a coalition of workers and worker's rights organizations to highlight the issue of wage theft in the community. He met and worked with the District Attorney's office to coordinate limited resources and a referral process for prosecution of the worst wage thieves.

Scholarship

Marsha Mansfield authored with Louise Trubeck, Clinical Professor of Law Emerita, *New Roles to Solve Old Problems: Lawyering for Ordinary People in Today's Context*, scheduled for publication in the forthcoming issue of the New York Law School Law Review.

Court Victories

Mitch successfully obtained a Court of Appeals decision finding that "a reasonable attorney fee" should include a reasonable market rate for work done by attorneys and law students or law clerks (330 Wis. 2d 497, 2009 AP 2344).

Self-Represented (continued from page 2)

system already absorbs costs associated with delay and other consequences caused by uninformed unrepresented parties in the courts. This debate will be an interesting one to follow for anyone involved in the legal system, particularly those in family law who increasingly deal with an opposing party who is self-represented.

Until there is a guarantee that indigent parties will be represented by counsel, legal assistance programs

like the Family Court Clinic will be the main source of information for self-represented litigants moving through the court system. I am hopeful that the assistance we provide will relieve at least some of the delay and lack of knowledge that is common in cases involving self-represented parties. Seeing that a client has gotten what they wanted in their case, or at least that they have had an opportunity to be heard at a hearing, is what makes the Family Court Clinic experience most gratifying for me.

- Kari Kastenholz (3L)

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Photo By: Mike Hall
Mediation Clinic: Kim Loopman and Chris Neal

Lawyering with Boundaries: A Valuable Lesson

As a clinical law student at the Domestic Violence Immigration Clinic (DVIC), I encounter many clients who need services, ranging from legal help, language assistance, community support, and social services. I define my role as an advocate with clients at our first meeting by setting boundaries, which often includes a referral to a community organization for non-legal matters. This is not an easy task, however. As our clients are low-income immigrants who have been victims of violent crimes, this “line drawing” is not always concrete and the scope of my legal representation is left undefined. This article focuses on a particularly challenging experience in which I learned the importance of setting boundaries with one client in an effort to effectively serve all my clients.

The question of boundaries of lawyering arises often throughout my client work. Often, DVIC clients have very few resources and access to services. While I have experienced the issue of boundaries with most of my clients, the case of Federico Jiménez (names have been changed to protect client confidentiality) proved particularly challenging. However, Federico’s case taught me the importance of setting boundaries, a valuable experience to learn early in my career.

Federico and his girlfriend, Ramona, certainly fall into the notion that lower

income people have a lot of needs for services. From the beginning, there were issues ranging from lack of communication to arrange appointments to lack of commitment for filing an immigration petition. Yet by the very end of Federico’s casework, I experienced too much communication and too much commitment.

Coming into DVIC as a former case manager at the Milwaukee County Courthouse, I struggled with drawing my own boundaries for Federico and Ramona. It is my nature to be compassionate and help others. Those traits fit perfectly with my job description in Milwaukee. My former coworkers, many of whom were social workers, diligently arranged services for their clients, in whatever capacity was needed. I often played the role of multi-tasker and wore many different hats, ranging from counselor, to listener, to advocate.

I worked closely with my clients’ attorneys, and I recall feeling frustrated because I knew more about our mutual clients than they did. These days, I’m wearing a different hat, and I now understand where these attorneys were coming from. Many of them were overworked, underpaid, and had too many clients to keep track of, especially those in the Public Defender’s office with heavy caseloads. I also think that many had been in the profession long enough to realize that they must draw their own

boundaries with clients in order to be productive and efficient.

Working with DVIC has been a great learning experience in this regard—I am constantly learning to wear different hats that are not necessarily natural fits. Federico and Ramona, mostly due to the numerous phone calls I received each day, taught me how to focus on my legal work, and not on case management (a valuable lesson for a new attorney). When I would serve as a counselor to them, I fell behind on other clients’ work. While it is foreseeable that some clients might demand more attention at times throughout the case than others, focusing on Federico’s problems with rent, money, child care, and lack of employment proved to be overwhelming. I began drawing my own lines and boundaries with him, making deadlines and explaining acceptable times to call. While he did not always listen, I stuck to my own boundaries in order to be a successful advocate for all of my clients.

I believe that money matters and if Federico was being charged for my services, he would not have called as often or demanded as much of my time. I am learning that there is a fine line between legal work and providing social services to my clients, many of whom desperately need access to both.

In Federico and Ramona’s case, there was a distinction between legal counseling and counseling for the difficult times they were going through. Towards the end of our case, I explained my responsibilities as the law student on their case and provided them with community services to help with other areas of their new life in Wisconsin. While I wish I had been clearer with them initially, I learned a valuable lesson early on in my legal career on the importance of clarity, being upfront, and setting boundaries.

-Kathryn Finley (2L)

How the Consumer Law Clinic Woke Me Up

“My name is Blythe Kennedy, and I am a 2L at the University of Wisconsin Law School.” At least that’s what my nametag says. I am writing this from a job fair in Washington, D.C., where I spent the last six hours waiting nervously for interviews to begin, interviewing, and looking over my resume for the one-hundredth time. I am one of six students currently enrolled in EJI’s Consumer Law Clinic, an experience that has opened many doors for me, including the series of interviews offered at this public interest job fair.

Apart from my work at the clinic, the most common question I received from interviewers was: “What’s happening in Wisconsin right now?” That might seem like a rather vague question, but the acerbic tone with which it was delivered left nothing to the imagination. They wanted to

Empowering Parties by Facilitating Mediations

EJI’s new Consumer Mediation Clinic provides law students an opportunity to develop both conceptual knowledge and behavioral competency in mediation while providing free and confidential community mediation services. Developed in partnership with the Dane County Small Claims Court, student participants work in pairs as neutral facilitators to mediate diverse cases including landlord tenant issues, contract disputes, and general small claims cases set for trial.

Structured under a facilitative model of mediating, the sessions help disputing parties generate settlement options by going beyond the legal issues to broaden their resolution ideas. Success in facilitative mediation is having the parties see each other eye to eye and work toward a solution together. Under this model, student mediators

know about Wisconsin politics. Had I received this question during my first year of law school, my unintelligible response would have sent my resume straight to the recycling bin. I lived in a bubble last year. If I wasn’t in class or at the library, I was sleeping. I knew the base details, and living a block away from the Capitol meant I was reminded daily that something significant was happening. But I had no real context. How was knowing about any of the brouhaha going to help me on my Contracts exam?

Fast forward twelve months, and Wisconsin politics relates to everything I do. I am finally seeing the “action” part of the UW Law School’s maxim “Law in Action.” This awakening is entirely a product of the clinical experience. I see firsthand how the law, and lawmakers, affect real people and how I can make a tangible difference. Through the Consumer Law Clinic’s Foreclosure Answer Clinic, where we help struggling homeowners navigate the judicial foreclosure process, or with my individual clients, I finally feel

a sense of purpose to my education. That purpose is not driven by grades, class rank or job prospects.

Regardless of my personal thoughts or opinions on Wisconsin politics, I am proud finally to be an active participant, part of the process rather than part of the problem. Apathy and disengagement can be common in higher education where students are, understandably, focused on themselves rather than the needs of others. Fortunately, the UW Law School’s clinical programs foster personal growth, education and work experience, while also serving the Dane County community and beyond. So what’s happening in Wisconsin right now? People are calling, and we are listening.

-Blythe Kennedy (2L)



Photo By: Mike Hall
Consumer Law Answer Clinic: Assisting consumer at Dane County Courthouse.

learn how to gain insight into both sides of a dispute by listening and giving up control. Working in pairs allows the mediators to demonstrate collaborative behaviors and problem solving techniques to encourage disputing parties to work toward solutions.

Instead of advocacy skills, student mediators are developing active listening skills (including appropriate

ways to summarize, reflect, and use body language). Instead of positional bargaining skills, student mediators are developing collaborative problem solving skills (including option-generating, negotiating and reality-testing). Students also use interviewing skills, agreement writing skills, and non-judgmental interpersonal skills. Unlike traditional evaluative

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Mediations (continued from page 3)

mediation, familiar to most lawyers, the facilitative model allows the process to move forward without getting caught up in the technicalities of legal doctrine. One of the greatest assets student mediators gain under the facilitative model is the ability to look beyond the legal aspects of the claim and see disputes as a real-world problems with potential real-world solutions. Instead of separating parties into different rooms and providing “shuttle diplomacy,” facilitative mediators place both parties in the same room and welcome the awkward and sometimes heated environment this creates.

For example, in a recent Mediation Clinic case involving a contract dispute, an antiques retailer and his former commercial landlord each presented cohesive narratives and appeared firmly entrenched in their respective positions. On the surface, the issues were plain. The dispute involved the interpretation of a clause in the parties’ lease and the amount in controversy was several thousand dollars. In a traditional evaluative mediation, each party would be in a separate room, the mediator would independently review the lease, and then would move back and forth the parties closer to a solution the mediator feels is appropriate. However, under the clinic’s facilitative model, this was not done. Instead, the parties met face-to-face in the same room with student co-mediators. Although the litigants were not related and are no longer doing business with each other, they worked together to reach an agreement and settled their case. The controverted lease itself was never viewed by the mediators.

Facilitating a conversation means going beyond the legal issues and fleshing out what is truly important. In this case, asking open-ended questions and engaging in active listening allowed the mediators to set aside the dispute over the contract’s language and discover that, despite the relationship fallout and no future plans to do business with each other,

each party had a significant interest in remaining active in the local antiquing market. Further exploration of this mutual desire lead the parties to conclude that maintaining their reputations in this niche was far more desirable than winning the lawsuit. Seeing each other eye to eye and being candid with the process allowed this case to settle with a monetary agreement that not only disposed of the case, but also brought dignity to the agreement and mutual understanding that will promote continued co-existence in this relatively small world of antiquing, without the fear that this incident will tarnish either’s reputation or create additional problems later.

By the time a lawsuit arises, individuals tend to be disconnected from each other and from the court system. For plaintiffs, the idea of small claims court may conjure images of Jim Carey in *Liar Liar* (“... if I take it to small claims court, it will just drain 8 hours out of my life and you probably won’t show up and even if I got the judgment you’d just stiff me anyway...”). For defendants, the thought of being sued can be stressful and disheartening. In a recent mediation session, the defendant asked the mediators in disbelief “anyone can just file a lawsuit against me?” Facilitating a discussion prior to a scheduled trial reconnects disputing parties and helps bring satisfaction to the disposition of their case by directly involving them in the outcome.

- Joseph Rectanus (3L)

Welcome (continued from page 1)

The Domestic Violence Immigration Clinic is reaching out to educate law enforcement about critical aspects of the law, and the Family Law Clinic students continue their efforts to assist the ever-growing number of self-represented litigants accessing the court system. We also have developed a Mediation Clinic, under the direction of Donna Erez-Navot, an experienced mediator, who trained at Cardozo School of Law and worked with the Child Permanency Mediation Program in New York City Family Court prior to moving to Wisconsin. The Mediation Clinic is currently working with the Dane County Small Claims Court to provide mediation services to litigants as well as seeking other opportunities to provide alternate dispute resolution techniques to resolve conflict in the community.

Finally, we are so proud of the expansion of our Pro Bono Program. Attorney Ann Zimmerman, who was the Pro Se Coordinator at the Wisconsin Supreme Court before joining the U.W., and VISTA member, Julia Zwak, are developing more pro bono opportunities for students and engaging more attorneys in our community. If you attended the Pro Bono Reception last September, you could see the interest they have already generated.

EJI strives to provide our students with the essential competencies needed to become effective lawyers while instilling in them a deep appreciation and understanding of the multitude of challenges that people face in these changing times. Your support is critical to our work. As we face more and more budget cuts, your contributions can make a difference in the number of students we can serve and the number of programs we can offer. We now have an easy way to donate on-line. Please visit our redesigned website and consider making a gift. Find us at: law.wisc.edu/fjr/eji/giving.html.

-Marsha Mansfield

Director, Economic Justice Institute



View of the Dane County Courthouse facade.



Pro Bono Program: Julia Zwak and Ann Zimmerman, Director.

U.W.’s Pro Bono Program Expands

Lubar Commons was rife with excitement at the Pro Bono Program’s annual Pro Bono Reception on September 15, 2011. Nearly 100 law students, faculty members, area attorneys, and non-profit service providers attended the event, more than doubling attendance from previous years. Speakers included Clinical Professor Ben Kempinen, Dean Margaret Raymond, and Wisconsin Supreme Court Chief Justice Shirley Abrahamson. Chief Justice Abrahamson encouraged law students and lawyers alike to get involved with pro bono service. The positive energy generated by this event already has resulted in a substantial increase in both pro bono opportunities as well as volunteer students and participating lawyers.

The Pro Bono Program started in 2007 as a pilot project supported by Clinical Professors Marsha Mansfield and Ben Kempinen and former Public Interest Advisor Kristin Davis to address unmet legal needs for low-income residents in the community and expand student opportunities for learning through service. In 2009, the Pro Bono Program was the recipient of an AmeriCorps VISTA grant from Wisconsin Campus Compact. Henry Weiner, now a 1L at the Law School was the program’s first VISTA program coordinator. That same year, partnerships were developed with Domestic Abuse Intervention

Services, the Coalition of Wisconsin Aging Groups, and the State Bar’s “Wills for Heroes” program. This year the program further expanded with the appointment of attorney Ann Zimmerman as Director. Julia Zwak has also joined the program as the current VISTA coordinator.

As a further step toward institutionalizing the Pro Bono Program as an important part of the Law School community, the faculty has approved the creation of a Pro Bono Society to recognize students who have participated in the program. Students completing 50 hours of pro bono legal services during their law school tenure will be inducted into the Pro Bono Society at the time of graduation.

This fall has seen a marked increase in student interest in the program. At the same time, Program Director Ann Zimmerman and VISTA Program Coordinator Julia Zwak have worked to expand student opportunities. Ann has developed partnerships with area attorneys at private law firms such as Foley & Lardner, where three students will be working on a pro bono death penalty case this semester. Similarly, student opportunities have been established with several non-profit legal service agencies such as Disability Rights Wisconsin and the Dane County Foreclosure Prevention Taskforce.

The Pro Bono Program is also strengthening ties with student groups involved in service projects. For example, the Latino Law Student Association will be leading two projects—intake visits at the Community Immigration Law Center and trips to the Dodge County Detention Facility to provide legal information to detained immigrants and the Student Hurricane Network will be sending eight students to New Orleans this winter to partner with AIDS Law of Louisiana in delivering pro bono legal services to Hurricane Katrina victims. As a result of collaboration with the Pro Bono Program, these students will have their service recognized through induction into the Pro Bono Society.

All of these initiatives will not only benefit the students involved, but will make a meaningful impact in combatting the justice gap in our local community and throughout the United States.

We are proud of the Pro Bono Program’s accomplishments and are excited about what more we can do. If you are interested, there are a number of ways to get involved. Visit the Pro Bono Program website to learn more about our current opportunities and to see more examples of ways that students are getting involved with pro bono service. For more information about the Pro Bono Program, visit law.wisc.edu/probono.