



# The Independent

2017 - 2018

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## *Law & Disability Issues Conference*

Every year the Community Health Law Project presents a free conference on law and disability issues. The conference is sponsored by the New Jersey State Bar Foundation and the New Jersey Institute for Continuing Legal Education, with funding from the IOLTA Fund of the Bar of New Jersey. The most recent Law & Disability Issues Conference took place on May 9, 2017.

### **Health Care Reform—The Affordable Care Act and Its Aftermath**

This session discussed the various issues, problems and proposals.

**MODERATOR—John J. Sarno, Esq.**, President/General Counsel, Employers Association of New Jersey

**PANEL—Thomas M. Bane, LMSW**, Centers for Medicare & Medicaid Services (CMS), Consortium for Medicare Health Plan Operations (CMHPO); **Joel C. Cantor, ScD.**, Professor of Public Policy and Director, Center for State Health Policy, Rutgers University; **John V. Jacobi**, Dorothea Dix Professor of Health Law & Policy, Seton Hall Law School; **Wardell Sanders, Esq.**, President, New Jersey Association of Health Plans

### **WORKSHOP 1—Surrogate Decision-Making and Guardianships**

This workshop addressed the various types of surrogate decision-making and then discussed the legal procedures involved in filing for guardianship of a person alleged to be “incapacitated”.

**PRESENTERS—Erika Kerber, Esq.**, Director of Litigation, CHLP; **Elizabeth A. Scannella, Esq.**, Deputy Surrogate, Mercer County Surrogate’s Office

### **WORKSHOP 2—Affordable Housing-Mandate and Gap Litigation**

This workshop discussed the New Jersey Supreme Court decisions and recent litigation.

**MODERATOR—Steven M. Leder, Esq.**, Senior Attorney, CHLP

**PANEL—Adam M. Gordon, Esq.**, Associate Director and Staff Attorney, Fair Share Housing Center; **Joe Young**, Executive Director, Disability Rights New Jersey

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## *Law & Disability Issues Conference*

### **WORKSHOP 3—Housing-The Bricks and Mortar and Support Services**

This workshop a discussed the federal requirement to unbundle the housing and support services provided to residents.

**MODERATOR—Madeleine Coghlan, Esq**, Managing Attorney, CHLP

**PANEL—Valerie L. Mielke, MSW**, Assistant Commissioner, DHS, Division of Mental Health & Addiction Services; **Robert L. Parker**, Chief Executive Officer, NewBridge Services, Inc., (New Jersey Association of Mental Health and Addiction Agencies, Inc. representative); **Mary L. Rossettini**, Assistant to the CEO, Advance Housing, Inc. (Supportive Housing Association of New Jersey representative); **Jonathan Seifried, M.A.**, Director of Housing, Division of Developmental Disabilities



*Pictured L-R: John Jacobi, Thomas Bane, Joel Cantor, Harold Garwin, John Sarno, Wardell Sanders*

## **CONGRATULATIONS!**

The Board of Trustees and staff of the Community Health Law Project would like to congratulate Steve and Stu on their retirements. We wish them all the best!



**Steven Leder** - For more than thirty years, Steve, a former Legal Services attorney, was the Managing Attorney of the Law Project's office in Trenton. Steve has been referred to as the epitome of what might be called the consummate "street lawyer." He is known by provider agencies and clients throughout the service area as an ardent advocate whose dedication to his work has no bounds. Steve truly represents the mission of the Law Project. He continues to contribute a few days a week volunteering to help staff with their cases. His tenure began in 1981 and ended in 2017.



**Stuart Weiner** - For more than twenty-five years, Stu, a former Legal Services attorney, wore more hats during his years on staff than did any other attorney. As a Program Manager of two offices and the disability clinic at Seton Hall Law School, and as coordinator of the public policy committee, he has demonstrated his dedication to the organization's mission, its policy initiatives, and clients, thus making him one of the very special attorneys who have worked at the Law Project. His tenure began in 1989 and ended in 2017.

## *Message from the Director of Litigation*

The Community Health Law Project (CHLP) continues its mission of assisting the most vulnerable residents of our state – those who are low-income and living with disabilities. In addition to providing individual advocacy and legal representation, CHLP continues its role in impacting broad policy and systemic change to help better the lives of our consumers.

CHLP was instrumental in helping to draft and promote the legislation which now provides residents of “free-standing” Residential Healthcare Facilities (RHCFs) with the same protections against arbitrary eviction as enjoyed by tenants and by rooming and boarding house residents. Prior to this new law, residents of RHCFs could be involuntarily discharged on 30 days’ notice at the whim of the operator without any right to due process before an impartial tribunal. The new law will protect RHCF residents from arbitrary removal and will place the authority to evict a resident in the hands of a court to make an independent, neutral decision.



CHLP is also at the forefront of promoting a relatively new and exciting model of providing holistic, comprehensive, and integrated care to consumers through Medical-Legal Partnerships whereby attorneys are embedded into the healthcare setting as partners in the treatment team. Research indicates that when key elements of everyday life are compromised - when housing is compromised or food security is uncertain, benefits are interrupted or terminated, or safety is compromised - health suffers and recovery is jeopardized. These social determinants of health can be addressed through legal assistance and advocacy. By screening patients for legal issues in the healthcare setting, attorneys can address these issues proactively, as opposed to reactively when the patient may already be in crisis by the time they are referred for legal services outside of the healthcare setting which, at that point, may be too late. The impact of medical-legal partnerships includes, but is not limited to, better patient compliance with care and improved health, reduced healthcare spending for high-use and high-cost patients, and healthcare cost savings for patients and recovery of vital benefits.

CHLP has a medical-legal partnership to assist individuals battling HIV/AIDS. We also recently launched medical-legal partnerships with several agencies providing services to those suffering with substance use disorders, which is critical in light of the opioid epidemic plaguing our state. And we are hoping to form medical-legal partnerships with other healthcare providers as resources permit. We are very enthusiastic about this innovative and common-sense approach to providing necessary legal services to consumers as part of the healthcare team in order to promote positive health outcomes.

In addition to these exciting initiatives, CHLP continues to provide services to consumers through our main referral system. Our priority areas include public entitlements, housing, family issues, consumer matters, and foreclosure. We also continue to serve individuals receiving home care, such as personal care assistance, private duty nursing, and durable medical equipment, to help resolve issues related to the amount of care received and continuation of care. We are also pleased to be able to continue providing services to individuals with developmental and intellectual disabilities in all of our priority areas with the addition of assisting them in the area of surrogate decision-making, including guardianships.

This past fiscal year, CHLP has served 4,341 individuals in 5,122 civil matters. We are hopeful that given New Jersey’s new administration, CHLP will continue to thrive and grow in order to serve the ever-increasing number of individuals who face daily challenges because of their disabilities and/or financial circumstances.

Sincerely,

A handwritten signature in black ink, appearing to read "Erika Kerber".

ERIKA KERBER, ESQ.  
Director of Litigation

## *The 30th Annual Ann Klein Advocate Awards*

On Thursday, October 19, 2017, the Community Health Law Project's annual awards dedicated to the memory of Ann Klein, former Commissioner of the Department of Human Services, were held at The Wilshire Grand in West Orange, NJ. CHLP's Chairperson, Lorraine D'Sylva-Lee, presided over the presentation of awards to five recipients who were nominated by their colleagues as individuals who have made extraordinary contributions to improving the lives of people with disabilities. The 30th Annual Ann Klein Advocate Awards honorees were:

**Brenda Considine**, *President & CEO, Considine Communication Strategies*

**Gary S. Horan**, *President & CEO, Trinitas Regional Medical Center*

**Gail Levinson**, *Executive Director (Retired), Supportive Housing Association of New Jersey (SHA)*

**James Romer**, *Director, Mental Health Crisis Services, Monmouth Medical Center*

**Laura Williams**, *Executive Director, The Arc, Ocean County Chapter*

**Eileen Goff**, *The Mike Lione Accessibility Award*

We thank the following sponsors for support of the Ann Klein Advocate Awards and the important work of the Community Health Law Project:

*Gold Sponsor:* Drinker Biddle; Verizon; Wakefern Food Corp.

*Silver Sponsors:* Columbia Bank; Employers Association of New Jersey; Gibbons, P.C.; Post, Polak, Goodsell & Strauchler P.A.; Progressive Comprehensive Services, LLC; Trinitas Regional Medical Center

*Bronze Sponsors:* Hinkle, Fingles, Prior & Fischer, P.C.; Mutual of America; Rubenstein, Meyerson, Fox, Mancinelli, Conte & Bern, P.A.; Starr, Gern, Davison & Rubin, P.C.; Supportive Housing Association of New Jersey (SHA); Trenk, DiPasquale, Della Fera & Sodono, P.C.



*Pictured L-R: James Romer, Brenda Considine, Laura Williams, Gary Horan, and Gail Levinson*



*Eileen Goff*

**The 31st Annual Ann Klein Advocate Awards will take place on Thursday, October 25, 2018, at The Wilshire Grand in West Orange. If you would like to attend, please call the CHLP at 973-275-1175.**

## HOUSING

# N.J.'S EVICTION MACHINE

Tenants should have the right to legal representation before eviction

Paula A. Franzese *Guest Columnist*

Our state's housing courts have become eviction factories. In Newark alone, tenant evictions affect 30,000 residents annually, destabilizing families and neighborhoods, targeting the most vulnerable and compounding the crisis in homelessness.

A safe place to call home is a human right. When a tenant is displaced, a parade of horrors follows in the form of economic loss, trauma, illness, physical and emotional stress and, most tragically, homelessness.

Homelessness comes at a high cost to already strapped government budgets. It costs more to provide temporary shelter than it does to subsidize sustainable affordable housing and prevent wrongful evictions in the first place.

With so much at stake, it defies conscience and common sense that the vast preponderance of vulnerable tenant populations named in eviction actions are without access to counsel. While their landlords are typically well represented, low and moderate income tenants without a lawyer are without the mechanisms to assert their statutory rights to safe and inhabitable premises along with their right to be free from eviction unless the landlord can show cause. Indeed, in our study of the 40,000 eviction actions brought in Essex County in one year alone, my colleagues and I found that only 80 of those cases (0.002 percent) had tenants asserting any defense at all, this notwithstanding the effects of gentrification's contributions to wrongful evictions and the many documented instances of rentals in Newark and beyond that are grossly substandard.

Against that bleak landscape, I applaud Newark Mayor Ras Baraka's commitment to bring to fruition a right to counsel for Newark's most vulnerable tenant populations — the disabled, the elderly, and those with incomes no more than two times the federal poverty level. The city's initiative will give voice to tenants otherwise silenced by a system that too often is stacked against them. It is a major step on behalf of fundamental fairness and equal access to justice and should serve as a model for statewide implementation.

The right to counsel must be supported by just landlord-tenant laws. New Jersey's rent deposit requirement impedes an aggrieved tenant's right to a hearing on claims that the premises are uninhabitable. It provides that a tenant named in an eviction action for nonpayment of rent cannot be heard on her defense that the premises are unsafe and unsound unless she first remits to the court any rent amounts claimed by the landlord to be owed, without consideration of whether those amounts are actually owed in view of the rental unit's defects.

That law conflicts with the seminal New Jersey Supreme Court case on habitability (*Marini*), which provides that tenants need only remit rent determined by the court to be owed following a hearing on the premises' condition.

Worse yet, there are a proliferating number of private reporting agencies that comb



Shutterstock images, illustration by Joe Lee, for The Star-Ledger

court records for eviction filings which they then sell to landlords for profit. Tenants whose names appear on these "blacklists" find themselves denied future renting opportunities, stigmatized and excluded from the promise of fair housing. What is more, the specter of being blacklisted chills an aggrieved tenant's willingness to rock the boat, lest she endure the banishment that can attach because she fought for her rights or, more simply, fell upon hard times.

The New Jersey Senate has before it two important bills introduced by Sens. Richard Codey and Ron Rice, both Democrats from Essex County. The first, S805, relieves

aggrieved tenants of the rent deposit requirement pending a hearing on the premises' habitability. That bill brings New Jersey in line with the majority of states that do not require a tenant to post rent claimed by the landlord to be owed in order to get a hearing on the habitability claim.

The second, S806, keeps court-filing records in eviction proceedings confidential and unavailable to the public for at least sixty days after an action is filed to allow time for the case to proceed. Thereafter, those records would be discoverable only if the given matter did not result in a resolution favorable to the tenant. At the federal

level, Sen. Cory Booker, D-N.J., has introduced a national bill to reform unfair tenant screening practices and reporting procedures. These initiatives deserve passage.

We have reached a tipping point in this nation as unprecedented income inequality puts the plight of the most vulnerable into sharper focus. We can allay and also prevent the suffering wrought by housing displacement. In the process, let us seek for others the same basic assurances that we wish for ourselves.

Paula A. Franzese is the Peter W. Rodino Professor of Law at Seton Hall Law School.

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## **CASES AND ISSUES OF INTEREST**

### **SOCIAL SECURITY**

- CHLP handled a SSA case for a client who was originally referred by Atlanticare Behavioral Health to CHLP for SSA representation. He was being treated for mild depression. As we worked with the client and got to know him, it became clear that he might also have a developmental disability. After some discussion with the client about his educational background which involved special education and a “training” school for boys in the 1970’s, we worked on developing this aspect of his case. We had no educational records as they had all been destroyed. Eventually, we were able to get some literacy testing from DVR that showed he was reading at a kindergarten to first grade level. We used this to get him connected with and get services from DDD. His family never registered him with DDD as they did not know they existed. We also advocated on his behalf to DFD and were able to get NJ to declare him chronically unemployable thereby exempted him from their work requirements and time limits. Lastly, we used all of the above to request that the ALJ send the client for a CE with IQ testing. The test results showed that the client met the SSA listing for Intellectual Disorder. We were able to win him SSA benefits.

### **DEBT COLLECTION**

- Client was sued by American Express for almost \$10,000.00. We filed an Answer in Special Civil Part, requested discovery from AMEX who stonewalled and kept wanting to settle. Then we filed a Motion To Strike their pleadings for failure to answer discovery. The court granted our motion, then we waited and filed another motion to convert the dismissal without prejudice to with prejudice. The judge granted our motion. Client is so grateful to us since they can never come after her again and said we are a great agency for going above and beyond to give her piece of mind that she cannot be sued by them again.

### **LANDLORD-TENANT**

- Tenant with a subsidy, all rent was paid, tenant had a clean landlord/tenant record with no prior landlord/tenant filings. We determined the filing was completely without merit and no grounds for eviction existed at the time the eviction complaint was filed. We knew the landlord’s attorney would dismiss the complaint but we didn’t believe that was sufficient to address the damage done to this client. With online access to records, the tenant screening databases etc., dismissing the case doesn’t erase the stigma of the filing. So we went to court armed with an argument for the judge based on R. 1:1-2 (the relaxation rule). At first, the judge said he couldn’t help us. We said he could, by relaxing R. 1:38.1 (open records, public inspection) through the relaxation rule, and basically adding a new exception to R. 1:38-3 to change the caption of the eviction case to remove the tenant’s name and instead identify him only by initials. The judge agreed to enter an order amending the caption (with consent of the other attorney). We took that Order to the clerk’s office and talked to court staff about it, and advised them that we planned to take this action in any case that was dismissed due to improper filing. The clerk’s office was receptive, made the changes on the civil case access system, and by the time we got back to the office, the caption was changed. This means that if anyone searches for this tenant’s name in the court system, they will not find it. The only identifier on the caption now are the tenant’s initials. Hopefully, the legislation pending at the state and federal levels will resolve these issues in the future, but for now, this is an avenue for relief for some clients.

### **SOCIAL SECURITY DISABILITY**

- Received call from CBVI worker that client had what turned out to be a Warrant of Removal on her door. We immediately went to her home to ascertain the facts and obtain documents. She had been on Social Security Disability before returning to work in 2009 and benefits were terminated at that time. She woke up totally blind and applied for temporary state disability, but it ran out in September, 2017. However she was not able to pay her rent and went to court and signed for Judgement to be entered (as it would have been anyway as she had no money). We immediately contacted the Commission to see if they would approve Client Assistance Funds for past due rent (September, October, November) and also rent that would become due in December. CBVI agreed but the process took a bit of time. We were able to get the attorney for the landlord to convince his client to wait for the money and it was eventually paid through December. Client had applied for Social Security Disability in October but still had heard nothing by December. She went to the Board of Social Services and asked them to pay the rent. She was placed on cash benefits but denied Temporary Rental Assistance as she did not have an active eviction complaint. She received a letter in March, from the landlord’s attorney, that three month’s rent was due and if not paid, a complaint would be filed. When we were advised of this, we went to the client’s home early the next morning and took her to the Social Security District Office. (She had previously gone and was told she was approved back to October, 2017 but as she

## CASES AND ISSUES OF INTEREST (continued)

had an overpayment from 2009 of \$8000 so they were taking her entire retroactive payment of \$5400 and entire future checks of \$969, after Medicare deductions) until the entire overpayment was paid off. At the District Office we showed the representative the old first eviction complaint and the new letter and pointed out that April rent and late fee were now due. We also showed the shut-off notice from the utility company. We completed a Waiver Request. The representative approved a check which would pay all rent through April and also all the back utility bill. Unfortunately the client did not have a bank account. The representative gave the client a check for \$999 to go to a bank to open an account and told her to come back with a routing number. We took the client to a bank and received a routing number and returned with her to the District Office. The check cleared allowing her to pay her rent and outstanding utility bill and get a phone. The overpayment was not waived but repayment was set at \$50 per month. Usually a repayment would need to be paid back in one to three years. At this rate, the client will pay the overpayment in 12 to 13 years. The client was thrilled and will begin getting her ongoing check this month and will be able to pay all of her bills for April, 2018.

- Client is HIV positive and a transgender female who was recently released from prison. Since she was released, we are helping her pursue her Social Security claim. We have helped her to get a new name, conforming to her gender identity, along with a new birth certificate. She just received a HOPWA voucher and is now living in her own apartment. With our help, she is thriving in the community.

### INSURANCE APPEAL

- CHLP was referred a matter involving a 71 year old man who had been hospitalized a number of times in the past year due to stroke, subsequent dementia, chest pain, and severe protein malnutrition with orientation to self only. He had rehabilitation post hospitalization at a rehab center, then some home health care, then was referred to adult day care. He also has Cirrhosis and Hepatitis C. He has memory problems and impaired decision making and has fallen at home. He was denied coverage for adult day care by United Healthcare's medical director who reasoned that he did not need hands on help with two activities of daily living at the day care. Evergreen Court Day Care allowed him to come to the facility (without payment or insurance coverage) and in hopes that after appeal he may well be covered. CHLP met him, requested records and a letter of medical necessity from his treating physician, and filed an appeal with the NJ Department of Banking and Insurance which forwarded the appeal to IPRO for an independent review. Medical records and the adult day care records demonstrated that he suffers from confusion and forgetfulness and receives supervision and cueing in 3-4 ADLs as alternately required by N.J.A.C. 10:164-1.5(f). The New Jersey Department of Banking and Insurance processed an expedited appeal and issued a decision reversing United Healthcare's denial finding that due to his significant memory impairment, impaired decision making and some history of falls at home and the need for supervision with 3 ADLs caused him to be qualified for ADHS pursuant to N.J.A.C. 10:164-1.5. They also noted that "in order to help maintain a person with dementia at home, it is necessary to develop and provide a plan of care that addresses the person's functional needs and limitations. This patient already exhibits the need for supervision and some assistance with ADLs, and it can be anticipated that this need will continue. The services offered by adult day health care (in conjunction with the assistance he receives from family at home) can provide significant support to the patient and may help maintain him in the community in his home, or possibly delay the need for other types of placement."

### FEE-FOR-SERVICE

**The Community Health Law Project (CHLP) has initiated a Fee-for-Service (FFS) representation program for individuals with disabilities whose income exceeds CHLP's income guidelines to obtain free legal representation or for those individuals with disabilities for whom CHLP has no funding to provide free legal representation. Under the FFS program, CHLP bills its legal services on a sliding scale, from \$125 to \$175 per hour, depending on the client's income. Legal services are provided in such areas as special education, Social Security, special needs trusts, health insurer's denial of coverage or services, guardianships, expungements, name changes, wills, living wills, powers of attorney, fair housing and ADA issues, and certain other civil law matters.**

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# The Independent

COMMUNITY HEALTH LAW PROJECT

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