

# Clearinghouse REVIEW

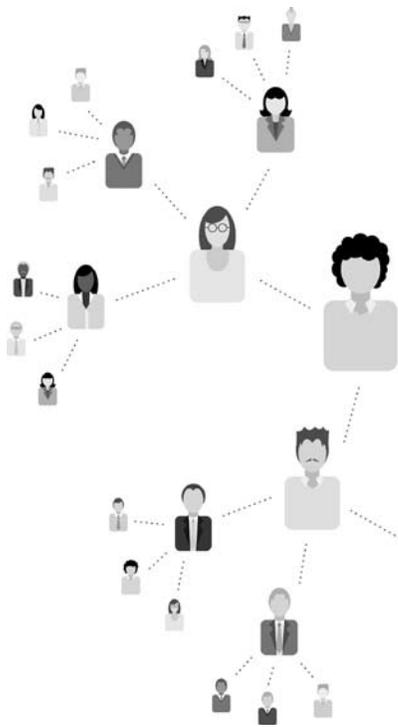
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Journal of  
Poverty Law  
and Policy

## ASSET BUILDING by People with Disabilities

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Postracialism or Targeted Universalism?





# UNEMPLOYMENT APPEALS

## Can Your Program Really Do More with Less?—the Legal Aid Perspective

By Susan Nofi-Bendici

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**Y**ou've seen the numbers: during 2009 the jobless rates in all fifty states and the District of Columbia increased, with the national unemployment rate at 10 percent as of December 2009.<sup>1</sup> In Connecticut unemployed workers were unable to file their claims because the telephone and Internet filing systems were unable to handle the unprecedented volume. In January 2010 a public outcry prompted the governor to add servers, add phone lines, and extend staff hours.<sup>2</sup>

### When Resources Are Fewer

Consequently the number of appeals from unemployment determinations has increased. Jobless workers need free legal assistance as they fight to receive or retain their unemployment insurance benefits. The sad irony for our legal aid program is that this increased need coincided with our very own job losses. In 2009, following the IOLTA (Interest on Lawyers Trust Accounts) crisis, our program had a net loss of five attorneys, one paralegal, and two secretaries. I am not persuaded by the recession mantra that we can simply “do more with less.” In fact, I know we could be helping many more clients with greater resources. However, our now-smaller program has adopted the following strategies to assist unemployed workers with their appeals.

**Reaching Out to the Private Bar.** Unemployment appeals make great pro bono cases. They are relatively uncomplicated administrative proceedings that resolve quickly and allow private attorneys to make a huge difference in a client's life. We conduct continuing legal education seminars on unemployment compensation law for our state and local bar association in an effort to recruit more pro bono volunteers.

**“Pro se” Clinics.** In November 2009 we began scheduling monthly *pro se* unemployment clinics, covering unemployment eligibility rules, the appeals process, what to expect at the appeal hearing, and how to prepare for the hearing. The drawback to

<sup>1</sup>Bureau of Labor Statistics, U.S. Department of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey (2010), <http://bit.ly/aHXDry>.

<sup>2</sup>See Press Release, Executive Chambers, State of Connecticut, Governor Rell: More Staff Time, More Technology to DOL to Speed Unemployment Insurance Processing—UI Call Center to Open for Full Shifts on Saturdays (Jan. 10, 2010), <http://bit.ly/aiJJAB>.

monthly clinics is that interested individuals often have a hearing date prior to the next scheduled *pro se* clinic. An individual who has been denied benefits is usually reluctant to seek a postponement of the hearing on an appeal since the individual is in need of the benefits as soon as possible. In such cases I set up individual consultations during which I prepare those pursuing benefits to represent themselves at their hearings.

Despite the timing problems, having a regularly scheduled *pro se* clinic has been a great outreach tool. We asked and received permission from the Connecticut Labor Department to post the clinic flier at the local unemployment office in our service area. Connecticut's Employment Security Appeals Division posted the flier on its website.<sup>3</sup>

Of the twenty individuals who registered for the first three *pro se* clinics, one did not attend, seven were referred out for pro bono representation, and two ultimately received full representation from our program. Of the remaining ten who received *pro se* advice and represented themselves at their appeal hearings, nine were awarded benefits and one was denied; we are representing her on appeal.

**Collaboration with Law School Clinic.** Partnering with the clinical program at Quinnipiac University School of Law has resulted in full representation for many claimants who would otherwise have received advice only or would have been rejected for legal assistance due to our limited resources. From our program's perspective, we are fortunate to be able to refer applications for legal assistance to the clinic. I am sometimes invited to speak to the classroom component of the clinic about representation in unemployment cases. While my participation is only occasional, I enjoy hearing from the students about their work. Not only does our collaboration with Quinnipiac Law School benefit the clients, but also the students gain valuable practical skills and an appreciation of equal access to justice.

### Clinical Professor's and Students' Perspectives

A professor and three students comment below on their experiences under these stringent circumstances.

On the first day of class each semester, Quinnipiac Civil Clinic students and I talk about goals. What do we want to accomplish during our semester together? Students almost always focus on traditional lawyering skills. They want to know how to interview and counsel a client effectively; how to research and analyze statutes, regulations, and case law and apply this analysis to the facts of a given case; how to draft documents that will inform and persuade; and how to advocate effectively for their clients before an adjudicator, including examining witnesses and introducing evidence. Students also want to see their cases through from start to finish, and to assume the maximum amount of responsibility over their cases—in effect, to “own” the cases. And students want all of this, they tell me, in a semester lasting approximately three-and-a-half months.

I then add several other goals to the mix. I tell them that I want them to be self-directed and creative lawyers—asking the questions that no one has thought to ask and making and defending the arguments that no one has bothered to put forward. I also want them to embody the ideal of service enshrined in the preamble to the professional rules that will govern their conduct as future lawyers: “All lawyers should work to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or secure adequate legal

<sup>3</sup>See New Haven Legal Assistance Association, *Free Pro se Clinic: Representing Yourself at Your Unemployment Compensation Appeal Hearing* (n.d.), <http://bit.ly/dfINoQ>.

counsel.”<sup>4</sup> This ties in nicely with the last goal—a focus on values. Through casework and readings, I want them to reflect on what makes them who they are—faith, family, adversity, privilege—and to understand the power that they wield as (future) members of the bar to effect their vision of justice. And I want all of this, I tell them, in a semester lasting approximately three-and-a-half months.<sup>5</sup>

This, of course, often leads to a discussion about case selection—what types of cases will meet all of our goals? The short answer is “not many,” but unemployment compensation cases are among those that do, and it’s no wonder that these cases are a staple of law school clinics across the country. My clinic students have the opportunity to interview clients who have been denied unemployment compensation benefits, who live on the razor’s edge between poverty and subsistence, and for whom the stakes are high. My students chase leads and uncover new facts, craft creative legal arguments, and build the theory of *their* cases. They represent their clients at administrative hearings with many of the trappings of trial, or in thoughtful written briefs to the Board of Review. They speak truth to power (be it a Connecticut Department of Labor official or an employer) at hearings and in appellate briefs, and examine their clients’ and their own place in relation to that power. And, of course, my students see the fruit of their labor before semester’s end. Testimonials from clinic students say it all.

—KEVIN M. BARRY, assistant professor of law and director

of Quinnipiac University Law School’s Civil Clinic

As we are often reminded in law school, every story has two sides. When I met her, my client had already attempted to tell her side of the story to a Department of Labor referee by explaining why she was eligible for unemployment benefits. Based on my review of the referee’s decision, it was clear to me that my client lost because her testimony was not credible. She did not provide supporting evidence, and she left a trail of contradictions and gaps along the way. As expected, the referee did not believe the client’s version of the story. Nor did I believe her initially. But as I gathered more information from the client and her doctors, as I connected the dots and filled in the gaps, I realized that she had a very strong and persuasive argument to make—that she was wrongfully fired. The challenge then became to convince the Board of Review that the referee’s initial credibility determination was not accurate.

I realized early in my representation of the client that she was a classic example of why people need legal advocates. It was not merely that she did not collect the proper evidence to prove her case, or that she did not present her testimony clearly at the hearing. I think the very nature of her state of mind is what hindered her the most. How can we expect someone who just lost her financial security then to focus on how best to prove her case? More likely than not, when she first appeared at the referee’s hearing, her mind was preoccupied with how to land her next job, not how to collect

<sup>4</sup>CONN. RULES OF PROFESSIONAL CONDUCT preamble (2007), <http://bit.ly/9zAPnx>.

<sup>5</sup>For a good discussion of educational goals in clinical legal education, see Philip G. Schrag, *Constructing a Clinic*, 3 CLINICAL LAW REVIEW 175 (1996).

documentation that would illustrate that she was fired. Because my client appeared before the referee in that frame of mind and without legal representation, the referee made a credibility determination against her. It is this determination that has been most difficult for me as an advocate to overcome. Unfortunately, in this case and perhaps in many others, that credibility determination seems directly correlated with whether a claimant has legal representation.

—SARA FRANKEL, Quinnipiac University law student

Our client was fired for taking a vacation. At our first meeting with her, we could tell that she was very upset. She loved her job, and she thought her vacation had been approved. It also became apparent that our client had an exceptionally hard time telling her story. Throughout the meeting, she explained her story in bits and pieces and repeatedly told us that it was unfair and she just wanted an explanation. In phone calls and in-person meetings over the course of the next month, we asked her question after question to piece together what happened. Each time, we heard something new to add to the narrative that we would present at her hearing, and something unexpected that we needed to follow up on in yet another conversation. It was apparent that our client did not understand the importance of

precision—she thought that our detailed questions meant that we were questioning her credibility. As the hearing approached, though, our client began to trust us and to put her case in our hands. She understood that our questions were aimed at helping her get the benefits she deserved.

Preparing our client to testify at her hearing proved to be equally challenging. We worked with her to answer each question concisely and accurately, and when her hearing date arrived, she shined. She was calm, her answers were clear, and we could tell that she felt confident, rather than defensive, in telling her story. She believed she had been wronged and finally had the chance to say so. The referee agreed. As we walked out of the hearing room, our client beamed. She turned to us in the lobby and told us that she was so proud of all the work we did, that we were going to be great lawyers, and that she would hire us again in a heartbeat.

—CONNIE NG and CHRISTOPHER SMEDICK, Quinnipiac University law students

The Quinnipiac Legal Clinic's partnership with New Haven Legal Assistance Association—one of the oldest legal aid organizations in the country, (too) leanly staffed by gifted lawyers committed to providing legal counsel to low-income individuals who would otherwise go without—has truly been a “win-win” for both parties.



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We are interested in your comments and suggestions on and criticisms of all aspects of our work. Please direct them to John Bouman, president, Sargent Shriver National Center on Poverty Law, 50 E. Washington St., Suite 500, Chicago, IL 60602; 312.263.3830 ext. 250; fax 312.263.3846; admin@povertylaw.org.

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