
Back to Article

Economy's Busted, but Law School Clinics Booming

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The economy may have tanked, but business is booming at the nation's six law school securities arbitration clinics.

Spurred by news of corrupt and self-dealing brokerage houses, middle-class investors who have been churned or otherwise burned can often find an advocate to represent them in the few states where these clinics thrive.

The first securities arbitration clinic opened in 1997 after then-Securities and Exchange Commission (SEC) Chairman Arthur Levitt identified the need for representation of the middle-class investor. Most of their claims are too small to be taken on a contingency-fee basis and the hourly rates charged by securities lawyers are, for these clients, prohibitive and would likely amount to more than any potential recovery. Levitt went on a tour of law schools urging these institutions to fill the vacuum.

PACE ANSWERS FIRST

Pace University School of Law, in White Plains, N.Y., first answered the call. Eight students per semester participate in its clinic, supervised by two faculty members. Most cases settle, usually only one going to hearing a year.

"We're busier this year than last," said Jill Gross, who directs the clinic with Barbara Black. "We're getting fewer online trading cases, more mutual funds and variable-annuity cases -- people who didn't know what a variable annuity was, thought they were buying money-market funds," said Gross, a former boutique firm securities litigator and white-collar criminal defense attorney.

But so far, only a few schools have acted upon Levitt's entreaty, and all but one are on the East Coast, the exception being the recently formed Investor Justice Project at the University of San Francisco School of Law.

Fordham University School of Law's clinic in New York, which started a year after Pace's, is the largest. Staffed by two attorneys and 15 law students, it carries a caseload of 25, and is the only clinic to have won punitive damages.

In that case, a middle-aged accountant had lost her life savings. A whistleblower informed her that some of her losses were due to the brokerage firm secretly and unlawfully charging her, in addition to commissions, more for each security than the firm paid. When clinic students failed to negotiate a settlement, they successfully represented her in an arbitration that resulted in a nearly $90,000 award, almost a third of it punitive. *Buckley v. Dirks & Co.,* NASD Arbitration, No. 01-00385.

In 2002, the clinic was forced to court to confirm the award. *Buckley v. Dirks & Co.*, No. 113854/02 (New York Co., N.Y., Sup. Ct.). But the case abruptly settled for $30,000 when Dirks told Buckley that his company was on the verge of going out of business, which it did later that year.

Clients at all but one clinic pay no legal fees, except filing fees when waivers are inappropriate. State University of New York at Buffalo School of Law clients are charged a 15 percent contingency fee. "We try to cover some expenses," said Joseph Ogden, a professor of finance, who co-directs Buffalo's eight-student clinic. "And we use some of it to put on investment seminars for the public, but we're still subsidized by the law school."

The SEC, the National Association of Securities Dealers (NASD), the New York Stock Exchange (NYSE) and local bar associations refer prospective clients to the clinics. Besides having a compelling case, clients must also qualify under a school's financial criteria. At one end are U.S.F. and Buffalo, where the claim cannot exceed $25,000 and the income of the claimant cannot exceed $50,000, although there is some flexibility.

At Fordham and Brooklyn Law School, it comes down to whether the client can afford a lawyer, which is determined by a formula that weighs the relative value of the case against its complexity, with the client's income factored in. A valid claim for less than $50,000 usually qualifies, but the clinics have sought awards far in excess of that amount. Pace and Duquesne University School of Law in Pittsburgh fall somewhere in between, but Duquesne also gives preference to senior citizens.

At Fordham recently, student Matthew Wait, a member of a three-person team working on a case, reported that a successor brokerage firm said they couldn't obtain records from its predecessor.

"Prepare a subpoena," said Pamela Chepiga, who for seven years was chief of the Securities and Commodities Fraud Unit of the U.S. Attorney's Office for the Southern District of New York, and co-directs Fordham's clinic with Marcella Silverman, a former Legal Aid Society of New York civil lawyer.

Most cases fall into a subset of SCUM, an acronym created by a former Fordham student, which stands for Suitability, Churning, Unauthorized trading and Material misrepresentation. Chepiga has added an "E," (pronounced Scummy), for Execution.

Silverman said the clinic is able to settle most conflicts with reputable brokerage houses. An example is the case of a 75-year-old woman with Social Security income and sporadic earnings totaling less than $25,000 a year, who lost nearly all of her $40,000 in life savings after the broker at a major brokerage firm encouraged her to invest in volatile technology stock. After the unsuitability of that investment strategy for her was brought to the firm's attention by a student's correspondence, a settlement offer was forthcoming.

The clinics allow students to represent clients in NYSE and NASD securities arbitrations. At Brooklyn, the competition is keen. Students must first take Professor Romaine Gardner's securities arbitration seminar, which is limited to 12 students per semester. Gardner chooses just six out of 24, who staff the clinic for a year.

At Fordham, too, "The clinic is wildly popular," Silverman said, "the most subscribed of all our clinics."

"And these are not the same students who are applying to our family law and criminal defense clinics," said Alice Stewart, co-director of Duquesne's eight-student clinic. "These are mostly business-, corporate-, securities- and tax-oriented students who get an opportunity to have client contact and practice public-interest law."