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Lawyers mentor students at employee rights clinic

By Matthew Blake

Plaintiff-side employment lawyer Michael E. Velarde noted with a smile that in workplace legal disputes, "Each side feels more righteous than the other."

Velarde sees the labor code and anti-discrimination cases he takes on as just a couple of steps removed from pro bono work. But the Laguna Beach attorney admitted efforts to fight for economic justice or civil rights must be balanced with making money.

"We have to focus on things we can make a living doing," Velarde said, making it difficult, for example, to take on contingency a case where the employer might not be able to pay out a settlement, jury or arbitration award.

To do pro bono work then, Velarde spends Tuesday nights volunteering at the Legal Aid Society-Employment Law Center worker's clinic in Tustin.

Like other California employee rights non-profits, LAS-ELC runs a regular clinic to intake worker complaints. Many clinics feature for-profit plaintiff employment lawyers, like Velarde, counseling workers pro bono before any formal complaint is filed or other action is taken.

The LAS-ELC weekly clinic has a bit of a twist in that the pro bono lawyer is helping workers and also law students.

Clients with a workplace grievance do not directly talk to a lawyer. Instead, they speak with two UC Irvine law students about their issue. The law students then explain the client's situation to pro bono lawyers, and, after getting attorney advice, return to the client with a plan.

The clients never actually encounter the pro bono attorney. Michael T. Gaitley, a staff attorney at LAS-ELC and coordinator of the pro bono program, said this ensures the lawyers do not overshadow the law students.

On the Tuesday before Thanksgiving, eight UC Irvine students came into Legal Aid's Tustin office, armed with employment law books the size of briefcases. They've each attended the clinic since February, choosing among each other what cases to take each week, and happily discussed how the set up benefited both themselves and aggrieved workers.

A few had already discovered tricks of the employment law trade. "I like wage claims; they're pretty straight forward," said law student Alex McIntosh, drawing laughter from her fellow students. "I kind of pick and choose through them to find the wage claim."

Replied Angie M. Kwik, a plaintiff employment lawyer from Irvine who volunteered along with Velarde that night, "Us lawyers do the same."

Students then broke into teams. Meigan Thompson and Lauren Shelby met with someone who battled alcoholism and was fired from work for chronic absenteeism. The client signed a severance agreement and was told perhaps deceptively by their employer, "If you want to get your COBRA, you need to sign a severance."

Thompson and Shelby then discussed their client's situation with Kwik and Velarde.

Kwik pointed out the company made no effort to see if their employee was okay. The students debated whether the client had a claim under the Americans with Disabilities Act; Velarde explained he did not, because he did enter a rehab program.

The students soon thereafter returned to their client.

"About 95 percent of the cases all get resolved here one way or another," Gaitley said, with some resulting in the law student representing the worker at a labor commission hearing.

Like Velarde, Kwik volunteers to give workers the access to a lawyer they would not normally enjoy.

"So much of my day is trying to calculate, 'Am I using my time efficiently? Is this case really worth the time?'" Kwik said. "Here you don't have to worry about the practical considerations as much."

Velarde added weekly clinics are a more reasonable pro bono expectation to place on a plaintiff lawyer, who may not have a larger firms' blessing to take on a pro bono case.

"It's a limited time commitment," Velarde said. "Most pro bono when you get involved is like, 'Can you take on this case?' The next thing you know you're in court filing motions and it's all for free."

Velarde and Kwik are each members of the California Employment Lawyers Association, the state's main plaintiff employment lobbying group. Leonard S. Sansanowicz, an associate at Feldman Browne Olivares APC plaintiff firm who helps guide CELA pro-bono efforts, said there are areas like immigration in which plaintiff lawyers often must go pro bono to advocate for employees.

LAS-ELC has run clinics throughout California for more than 20 years. The first was near their San Francisco headquarters and is a partnership with UC Hastings law school.

Los Angeles's Bet Tzedek has weekly clinics, in which aggrieved workers fill out questionnaire after which the non-profit takes further action. One Bet Tzedek attorney helms the clinic, explained Bet Tzedek lawyer Matthew DeCarolis, while mostly paralegals and local law students do the intake.

While not having a law student tie-in, Oakland-based California Rural Legal Assistance also runs clinics across the state where workers schedule an appointment and talk to a lawyer. Theirs are in locales like Stockton and Modesto, situated close to farmworkers, and the clinics provide training for pro bono attorneys.

Cynthia Rice, litigation director at Rural Legal Assistance, said the clinics can be a barometer for budding workplace issues. "It's a good way to screen and see if there are cases that involve individual workers but suggest a workforce-wide evaluation."

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