

THE LEGAL ACTION CENTER'S LEADING CASES

The Legal Action Center's litigation is directed at establishing basic principles of fairness and non-discrimination for individuals with alcoholism and drug dependence, HIV/AIDS and criminal justice histories. This list describes some of the many precedent-setting cases LAC's staff has litigated to address systemic practices that inhibit these individuals from leading productive lives.

Discrimination Against People in Recovery or Still Suffering from Addiction

SUPREME COURT AND FEDERAL APPELLATE COURT CASES

Beazer v. NYC Transit Authority, 440 U.S. 568 (1979), LAC's first case, was a groundbreaking class action challenging the New York City Transit Authority's policy of refusing to hire people who participate in methadone maintenance treatment. The Center's impressive presentation of state-of-the-art evidence, including the nation's leading methadone experts and employers testifying about successful employment of methadone maintained persons, turned around skeptical judge and won major victories in District Court and 2nd Circuit Court of Appeals. Despite Supreme Court reversal, the Transit Authority changed its policy. Moreover, the Center was able to use favorable findings of fact developed in Beazer and accepted by the Supreme Court in many successful cases based on Rehabilitation Act and other statutes prohibiting discrimination based on disability.

Burch v. Coca-Cola, Inc., 119 F.3d 305 (5th Cir. 1997), cert. denied, 522 U.S. 1084 (1998), participated as amicus curiae in employment discrimination case under Title I of the Americans with Disabilities Act on behalf of a manager who was fired after he entered in-patient alcoholism treatment.

Innovative Health Systems v. City of White Plains, 117 F.3d 37 (2nd Cir. 1997), successful challenge to city's refusal to allow an alcohol and drug program to move into a part of the city zoned for that purpose; established national precedent that Title II of the Americans with Disabilities Act covers zoning activities and protects providers of services such as treatment, as well as their clients, from disability-based discrimination.

Traynor v. Turnage, 791 F.2d 226 (2nd Cir. 1986), rev'd, 485 U.S. 535 (1988). Supreme Court overturned lower court decisions that Veterans Administration's classification of alcoholism as "willful misconduct" rather than a disease violated Rehabilitation Act, ruling that Congress did not intend for that regulation to be covered by the Act. Congress then overturned the Supreme Court decision by requiring the VA to treat alcoholism as it does other illnesses under the VA program in which VA granted extensions of time for using educational benefits to veterans who were unable, due to disabilities, to take advantage of those benefits by the regulatory deadline.

OTHER COURT AND ADMINISTRATIVE AGENCY CASES

Association for Drug Abuse Prevention and Treatment et al., v. New York City Department of Sanitation et al., NYSDHR Case Nos. 1A-E-D-85-104038 et seq. (Order after Stipulation June 13, 2000), successful settlement in case challenging the Sanitation Department's medical disqualification of sanitation worker applicants with alcohol and drug histories. Settlement resulted in implementation of revised medical standards that require individualized assessment of applicants with histories of alcoholism and individuals who have participated in methadone treatment for one year with no report of relapse.

Smith-Berch, Inc. v. Baltimore County, Md., 68 F. Supp.2d 602 (D.Md. 1999); 115 F. Supp.2d 520 (D.Md. 2000), successful challenge under Title II of the Americans with Disabilities Act to zoning hearing requirement imposed on methadone treatment programs that seek to locate in the county. Court required county to treat methadone treatment programs like all other medical offices for purposes of zoning.

Matter of RM (1998), settlement of administrative matter on behalf of a nurse who was prohibited from practicing clinical nursing in Florida because of her participation in a methadone maintenance program. Negotiations resulted in the Florida Board of Nursing adopting a policy that permits nurses in methadone treatment to practice clinical nursing initially with monitoring and later without restriction or monitoring.

Does v. Chandler, C.A. No. 95-00498 HG (Jan. 1996), participated as amicus curiae in successful challenge to the State of Hawaii's policy of providing more limited welfare assistance to individuals with alcoholism and drug dependence problems than those with other disabilities.

Burka v. NYC Transit Authority, 739 F. Supp. 814 (S.D.N.Y. 1990), class action challenging the Transit Authority's drug testing policies on constitutional grounds, charging that they violated Fourth Amendment's unlawful search and seizure provision and Fourteenth Amendment due process. Court ruled for Center's plaintiffs in most aspects resulting in implementation of accurate drug test procedures, limitation on the job titles that would be subject to drug tests, monetary and injunctive relief for class members.

Doe v. Roe, 539 N.Y.S.2d 876 (N.Y. Sup. Ct. 1989), aff'd, 160 A.D.2d 255, 553 N.Y.S.2d 364 (App. Div. 1st Dept. 1990), successful challenge under New York State Human Rights Law to securities company's dismissal of employee based on a drug test that could not distinguish between an opiate and a poppy seed bagel.

Deas v. Levitt, 73 NY2d 525 (Ct. App. 1989), cert. denied, 493 U.S. 933 (1989), due process challenge to the New York City Personnel Department's practice of ending eligibility for civil service positions when list of eligible applicants expires, in case brought on behalf of applicant who filed successful administrative appeal of medical disqualification prior to expiration of the list, but was not reinstated before list expired.

Clowes v. Terminix, 109 N.J. 575, 538 A.2d 794 (N.J. 1988), established precedent that alcoholism is a protected disability under New Jersey Law Against Discrimination.

Doe v. New York City Transit Authority 85 Civ. 4521 (Order on Consent S.D.N.Y. March 10, 1987) and **Roe v. New York City Transit Authority** 85 Civ. 4690 (Order on Consent S.D.N.Y. March 10, 1987) (the "sons of Beazer" cases), successful settlements in a pair of post-Beazer employment discrimination cases brought under the Rehabilitation Act on behalf of methadone-maintained job applicant and employee seeking safety-related positions. In the settlements, the Transit Authority affirmed its non-discrimination policy toward individuals in methadone treatment and provided the plaintiffs jobs and monetary relief.

Alcoholism Services of Erie County v. City of Buffalo, No. H6064 (Order and Judgment N.Y. Sup. Ct., Erie County, Dec. 30, 1981), Center's first major case challenging zoning discrimination against an alcohol and drug treatment program. Court ruled in favor of our client, a halfway house, ordering City to issue a zoning permit.

Rodriguez v. New York City Police Department et al., 80 Civ. 4784 (Order on Consent S.D.N.Y. Dec. 1980), successful settlement after the Center won temporary restraining order in a class action challenging Police Department's use of inaccurate drug testing procedures that resulted in firing of numerous newly-hired police officers. Case confirmed Rehabilitation Act's protection of persons erroneously labeled as drug abusers, resulted in Police Department changing its drug testing procedures and reinstating those who had been fired.

Perez v. New York State Division of Human Rights, 70 A.D.2d 558, 416 N.Y.S.2d 813 (1st Dept. 1979), SDHR Case No. E-DNR-56824-78 (Stipulation of Settlement April 8, 1980), established that a person in methadone maintenance treatment has a protected disability under New York State Human Rights Law prohibiting disability-based discrimination.

Ocasio v. Klassen, 73 Civ. 2496 (Order and Judgment S.D.N.Y. Nov. 25, 1974), successfully challenged the United States Postal Service's policy of refusing to hire people in methadone maintenance treatment and other people in recovery; relief obtained for clients and Postal Service changed its hiring practices to conform to the Rehabilitation Act.

In the Matter of Operation: Phase Piggy Back, challenge to Manhattan District Attorney's illegal seizure of confidential drug treatment records led to return of those records, sealing of all DA's notes and notice to all DAs in that office about the requirements of the federal confidentiality law.

Discrimination Against People with Arrest and Conviction Records and other Criminal Justice Issues

Boatwright v OMRDD (100330/07, Sup. Ct. N.Y. Cty., 4/18/07). Won court ruling invalidating decision by New York State Office of Mental Retardation and Developmental Disabilities to prohibit Michael Boatwright from working at United Cerebral Palsy because of a 21-year old conviction for attempted weapon possession. Court found that OMRDD violated New York's anti-discrimination laws by failing to analyze Mr. Boatwright's conviction in light of the time that had lapsed, its relationship to the job sought, his evidence of rehabilitation, and other factors required under New York law.

Abdul-Rahman v. AlliedBarton (NYS DHR Case No. 10115420, 2007). Won \$7,000 in damages and sweeping policy changes for individual who was denied a job as a security officer pursuant to AlliedBarton's written policy of not hiring any security officers with felony convictions. In a settlement agreement, AlliedBarton agreed to eliminate the felony bar from all of its New York hiring policies and job descriptions and to remove from its New York job application form an illegal question concerning arrests that did not result in a conviction. AlliedBarton also agreed to train its New York staff about New York's law prohibiting employment discrimination based on a criminal record.

New York City Housing Authority (NYCHA) Admissions Denial Cases (2004-2007). Successfully represented numerous individuals who were denied public housing or federally subsidized Section 8 housing because of a criminal conviction belonging to them or someone in their household. In some of these cases, Debevoise & Plimpton represented the clients on a *pro bono* basis, with the Legal Action Center serving as back-up counsel.

L.M. - was denied public housing because the father of her two toddlers had a felony conviction. The Legal Action Center represented L.M. in an appeal to NYCHA, during which time she and her children became homeless. The Center won the hearing after convincing NYCHA that the father was permanently housed elsewhere and would not live with L.M. and her children.

D.B. - was at risk of being evicted from her Section 8 subsidized apartment when it changed ownership because of a criminal conviction she incurred while addicted to drugs. With the Legal Action Center's assistance, Debevoise & Plimpton represented D.B. in an administrative hearing and won a decision that D.B. could retain her Section 8 eligibility because she proved her rehabilitation through intensive treatment for both her drug problem and mental illness.

Y.L. - was homeless and unable to access Section 8 housing because of an 11-year old larceny conviction that Y.L. incurred while dependent on drugs. She had been in recovery 10 years and had been participating in intensive mental health counseling when the Legal Action Center represented her in a NYCHA hearing. The Center won a favorable decision, convincing NYCHA that Y.L. had been successfully rehabilitated.

Guevares v. Acxiom et al. (06-CV-2930, E.D.N.Y. 2006). Obtained substantial settlement in federal lawsuit challenging widespread practice by consumer reporting agencies of including non-criminal conviction information on criminal background checks for employers. Mr. Guevares was denied a job at Tyco because Acxiom's background report illegally included information about his non-criminal disorderly conduct violations. Settlement included agreement by Acxiom to train staff to stop reporting non-criminal conviction information.

New York City after-school program discrimination (2003-2004). In 2003, the New York City Department of Education began conducting criminal background checks on employees of the "Beacon after-school" program, which services at-risk youth and community members throughout New York City. As a result, numerous long-term employees were informed that they would be terminated because of their criminal records, some of which were long ago and for relatively minor crimes - despite the employees' successful employment records at the after-school programs. The Legal Action Center helped the following three employees retain their jobs:

J.B. The Center successfully obtained the reversal of the Department of Education's decision to terminate J.B.'s employment because of a twenty-year-old conviction. As a result, J.B. was able to maintain the position he had held for thirteen years as a well-loved and effective counselor at an after-school program for at-risk teenagers - many of whom wrote letters attesting to the important influence J.B. had had over their lives. Ironically, J.B. was named "Employee of the Year" the same week the Department of Education issued its new decision, in which it finally recognized JB's "dedication to the needs of young people" and his serving as "a constant positive force within the program."

P.P. Working with the New York University Law School Ex-Offender Reentry clinic, the Legal Action Center successfully settled a state court lawsuit challenging the Department of Education's decision to terminate P.P. because of an attempted drug possession charge he incurred nine years earlier when he was sixteen. P.P. was the deputy director of the Beacon program, having risen quickly up the ranks over his seven-year tenure.

G.B. G.B. had been a much heralded music specialist and security guard for a Beacon after-school program for several years, when the Department of Education decided to terminate him due to a misdemeanor conviction he received during college, eight years earlier. Through rigorous advocacy, the Legal Action Center convinced the Department of Education to rescind its decision because it was based on a misreading of G.B.'s criminal record. GB was, therefore, able to continue doing what his supervisor described as "inspiring the kids . . . with his charisma and creativity."

In the Matter of J.M., No. B-01333/92 (Bronx Family Ct. Aug. 15, 2000), Center represented foster parents in successful adoption of their foster child in the first case applying amendments to New York's statute that implemented the federal Adoption and Safe Families Act. The parents, who had raised the eleven year old child since birth, were initially disqualified from being foster and adoptive parents under the state's

statute because of the father's criminal record. Amendments lifted the statutory bar to custody by individuals who had been convicted of serious crimes, and the court found that father was completely rehabilitated and provided the child with a stable and loving home.

Connolly v. New York City Transit Authority, 74 Civ. 1085 (Memorandum and Order approving settlement, S.D.N.Y. January 26, 1982), class action challenging the New York City Transit Authority's policy of refusing to hire people with arrest and conviction histories. Settlement included relief for hundreds of clients and rewriting of the Transit Authority's employment practices toward people with criminal histories.

Sutherland v. U.S. Postal Service, 77 Civ. 2294 (Consent Order and Judgment S.D.N.Y. July 27, 1979), successful challenge to U.S. Postal Services's policy of refusing to hire people with arrest and conviction histories. Settlement included relief for most named plaintiffs and class members and rewriting of Postal Service's employment practices toward people with criminal histories.

Dominquez v. Beame, No. 78-7353 (2nd Cir. June 28, 1979), constitutional challenge to the New York City Police Department's policy of arresting people it suspected of being prostitutes and charging them with disorderly conduct. Lawsuit forced an end to the practice.

Captan v. Nyquist, 77 Civ. 2825 (Memorandum Order S.D.N.Y. Nov. 22, 1978), challenge to New York State policy of denying optometry licenses to ex-offenders who had been trained in prison to practice this trade resulted in statewide policy change allowing ex-offenders to become optometrists.

Smith v. Fussinich, 440 F. Supp. 1077 (D. Conn. 1977), participated as amicus curiae in successful constitutional challenge to Connecticut's flat statutory ban against licensing former felons as private detectives.

Carmona v. Ward, 436 F. Supp. 1153 (S.D.N.Y. 1977), rev'd, 576 F.2d 405 (2nd Cir. 1978), cert. denied, 439 U.S. 1091 (1979), challenge to Rockefeller drug laws' maximum life sentence for sale of small B and possession of small and medium B amounts of heroin and cocaine; District Court ruled it was unconstitutional cruel and inhuman punishment. Court of Appeals reversed and Supreme Court's denial of certiorari led to much publicity and legislative repeal of those provisions.

Keyer v. Civil Service Commission, 397 F. Supp. 1362 (S.D.N.Y. 1975), successful challenge to New York City's policy of denying tow-truck licenses to all ex-offenders regardless of relevance of the criminal record.

Outlaw v. D'Elia, 75 Civ. 3487 (S.D.N.Y.), class action challenge to guard-on-inmate brutality in New York City jail for adolescent inmates. Successful settlement led to change of procedures and monetary relief for lead plaintiffs.

Discrimination Against People with HIV/AIDS and Violations of their Privacy

C.L. v. national pharmacy chain (pre-litigation settlement, 2006). Obtained \$20,000 settlement against major national pharmacy chain who gave C.L.'s HIV medication to the wrong customer in violation of New York State's HIV confidentiality law and HIPAA. Also secured ruling by Office of Civil Rights of the U.S. Department of Health and Human Services that pharmacy violated HIPAA.

Doe v. Family Aides (Civ. No. 50016/02, Sup. Ct. Kings County, settled 2006). Won \$30,000 settlement for client whose HIV status was disclosed to his neighbor by his home health aide.

Brown v. H.I.R.E. (Index no. 03/400072, Sup. Ct., N.Y. County, settled 2005). Won \$30,000 settlement for client whose HIV status was disclosed to his aged mother by the director of his AIDS supportive housing facility.

Doe v. Children of the World (No. L-004042-04, Superior Ct. of NJ, Essex County, settled 2005). With *pro bono* support from Lowenstein Sandler PC, settled first known case in the country challenging a private adoption agency's refusal to provide services to a couple because one of them is HIV-positive. Under the settlement, Children of the World published a public apology in the Essex County Star Ledger, implemented anti-discrimination policies and training, and paid damages.

P.H. v. Frankenberg and NYC Marshal's Office (pre-litigation settlement, S.D.N.Y. 2005). With *pro bono* support from Paul, Weiss, Rifkind, Wharton & Garrison, won \$30,000 pre-litigation settlement for client whose HIV status was disclosed to his neighbor by New York City Marshal during an attempted eviction.

Roe v. Social Security Administration, (03-CIV-3812; settled 2004). Won a \$65,000 settlement of a lawsuit brought by Jane Roe, whose HIV status was illegally disclosed by the Social Security Administration (SSA). Ms. Roe had applied for disability benefits, and the SSA employee who processed her application recognized the name of Ms. Roe's roommate. After the interview, the employee immediately told a mutual friend that Ms. Roe has AIDS. Ms. Roe charged SSA and the employee with violating the federal Privacy Act and Constitutional right to privacy. The settlement compensated Ms. Roe for the enormous emotional harm she suffered as a result of the illegal disclosure, including a severe depression and psychiatric hospitalization. As part of the settlement, the SSA employee also agreed not to make further illegal disclosures about Ms. Roe's health. The \$65,000 payment is the largest known payment for an HIV confidentiality breach in New York as well as one of the largest such payments in the country.

Doe v. Courtien, (CV-01-1655, E.D.N.Y.; settled 2003). With *pro bono* support from Paul, Weiss, Rifkind, Wharton & Garrison, obtained a \$35,000 settlement of a federal lawsuit charging a New York City police officer with illegally disclosing an arrestee's HIV status to her family, in violation of the Constitutional right to privacy. The payment compensated Ms. Doe for the emotional harm she suffered, which included being shunned by some of her close family members.

New York City HIV/AIDS Services Administration Confidentiality Violations (June 2003). Obtained a pre-litigation settlement requiring the HIV/AIDS Services Administration (HASA) - the City agency responsible for providing financial and other assistance to low income individuals with HIV/AIDS - to correct numerous, egregious HIV confidentiality violations. HASA's violations ranged from systemic, implicit confidentiality violations, such as mail sent to client's homes with the return address of "HASA" readily visible on the envelope, and caseworkers' identifying themselves to third parties as the clients' HASA caseworker, to individual HASA employees' explicitly disclosing clients' HIV status to their neighbors and others. HASA implemented significant agency-wide policy changes in response to the Legal Action Center's demands, including removing its name from correspondence and changing the manner in which its employees identified themselves to the public.

P.H. v. Anonymous Social Services Provider (2003). Successfully settled a claim by P.H., whose HIV status was illegally disclosed by her social services provider. P.H.'s caseworker wrote the wrong apartment number on several letters intended for P.H. Neighbors who received the envelopes - some of which were unsealed - read their contents, which contained information identifying P.H. as having AIDS. As a result, P.H. suffered tremendous humiliation and embarrassment.

D.R. v. Mobile Health Management Services, Inc., (2002). Won a \$50,000 pre-litigation settlement from a medical office that disclosed a patient's HIV status to his employer without his written consent and against his express directions. The man, D.R., went to the medical office for a pre-employment examination, and when asked about his medications - which included well-known HIV drugs - told the medical staff that he would only reveal them if the information were not forwarded to his employer. Despite such assurances, the medical office did inform his employer that D.R. was HIV positive, which resulted in his experiencing harassment by his new supervisor and co-workers. The Center also filed a successful claim with the New York State Department of Health, which found that the medical office violated New York's HIV confidentiality law and required the office to implement confidentiality policies.

JR v. Time Moving and Storage (2000), pre-litigation settlement of employment discrimination claim against company that terminated employee after learning of his HIV status.

Donovan v. Girl Scouts-USA and Adirondack Girl Scouts Council, (NYS DHR Case Nos. 9K-PD-99-2400722 AND 9K-P-D-99-2400733 Nov. 1999), settlement in matter charging discrimination based on HIV status. Adirondack Girl Scout Council agreed to revise its existing HIV policy to ensure that volunteers understand that girls may not be denied admission to a troop or otherwise discriminated against based on HIV status. Defendant also established a comprehensive HIV education program for troop leaders and staff regarding HIV transmission, universal precautions, and its non-discrimination policy.

Doe v. Unnamed HIV Service Provider (December 1998), pre-litigation settlement and monetary award to father in case alleging violation of family's HIV privacy rights resulting from press photograph and caption identifying daughter as child of parents with AIDS.

In re: Factor VIII or IX Blood Concentrate (New York Surrogate Ct. 1998), assisted six families obtain settlement awards from a nationwide class action suit arising from the use of HIV-tainted blood products.

Doe and Roe v. Harlem Interfaith Counseling Service, NYSDHR Case Nos. 9K-P-D-93-2400344 and 9K-P-D-93-2400345 (Order after Hearing, June 19, 1995), victory after trial in New York State Division of Human Rights discrimination case brought on behalf of a 5-year old HIV-positive girl who had been denied the right to participate in an after-school program because of her HIV status and that of her mother.

Mary Doe v. New York City Department of Social Services and New York City Police Department, 93 Civ. 8385 (Memorandum and Order approving settlement S.D.N.Y Oct. 20, 1995), successful settlement of case brought on behalf of a mother with AIDS, teenage daughter and infant twins, one also ill with AIDS, whose HIV confidentiality was breached by the HRA caseworker assigned to the family and by police. Case resulted in improved HIV training for caseworkers and police as well as damages for the family. In approving settlement, federal district court noted merit of constitutional privacy claim against the police in addition to claim against HRA under New York's HIV confidentiality law.

Red Hook Civic Assoc. v. Halperin, Index No. 133097/94, (Decision and Order, N.Y. Sup. Ct., N.Y. Cty., Dec. 19, 1994), victorious ANIMBY@ case the Center participated in as co-counsel, which enabled AIDS housing and services agency, Food First, to overcome community opposition and open a new site.

Doe v. New York City Fire Department (1994), successfully negotiated a pre-litigation agreement on behalf of an HIV-positive firefighter who was forced into a non-fire-fighting position after his confidentiality was breached and HIV status was disclosed. In addition to obtaining individual relief, the settlement required the Fire Department to affirm a nondiscrimination policy concerning firefighters with HIV and to conduct HIV training for members of firehouse.

Challenge to Polygraph Testing by Employers

Brodsky v. Carey Transportation and Sterling Polygraph Systems, NYSDHR Nos. 2-E-DT-8498788 and 2-E-DT-84-98789 (Settlement March 14, 1986 and Withdrawal of Complaint April 22, 1986), one of a series of cases challenging illegal use of polygraph testing in employment. Case settled and Congress passed law outlawing use of polygraph in most employment settings.