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# Advocacy Appeal

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**Arizona Center for Disability Law**

Protection and Advocacy System for Arizona

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March 2004

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## **TUCSON UNIFIED SCHOOL DISTRICT DISCRIMINATED AGAINST CUSTODIAN LIVING WITH HIV**

On February 9, 2004, after a two-week trial, an eight member jury unanimously concluded that Tucson Unified School District (TUSD) discriminated against Frank Fiolek, a custodian living with HIV represented by the Arizona Center for Disability Law. Fiolek was awarded \$50,220 in damages for back wages and the emotional distress caused by TUSD, and the Center will be entitled to reasonable attorneys' fees and litigation costs. The Center is also currently requesting that the Court enter injunctive relief against TUSD to institute policies and procedures to ensure what happened to Frank doesn't happen to other employees at the state's second largest school district.

Fiolek worked for TUSD from 1990 to 1998. In 1996, he asked for an accommodation because of the chronic fatigue and other negative side effects of the medication he took to treat his HIV infection. That is where his troubles began. TUSD denied him an effective accommodation and continued to require him to work a larger workload than could reasonably be performed in an eight hour day. After unsuccessfully attempting to resolve the matter internally within the district, Fiolek filed a discrimination complaint with the Arizona Attorney General's Office and the Equal Employment Opportunity Commission.

Because of his excessive workload, Fiolek became unable to continue working and went on medical leave in 1998. Center Attorneys Rose Daly-Rooney and J.J. Rico filed the lawsuit on Fiolek's behalf in April 2001, and represented him throughout the litigation. Private attorney Don Averkamp of Raven and Averkamp joined the Center in representing Fiolek in trial preparation and at trial. Frank Fiolek alleged that TUSD discriminated against him by refusing to provide him with an effective reasonable accommodation when he suffered from chronic fatigue related to the medications he took to treat HIV. Fiolek also claimed that TUSD subjected him to harassment, intimidation, and unequal working conditions, and that he faced retaliation for reporting the discrimination to the Arizona Attorney General's Office and the Equal Employment Opportunity Commission.

As I would not have had a prayer without the Arizona Center for Disability Law representing me in this case, said Fiolek. When it came time to decide about whether to file a lawsuit, I talked to other people who have experienced similar discrimination because of HIV. They told me that I could either quit or stand up for myself. Little did I know that when I filed with the Attorney General's office in 1997 that I would be involved in this lawsuit in 2004, but it has a purpose beyond me, stated Fiolek.

## Center Staff work to protect the rights of Arizonans with mental illness

Since its inception, the Center has been dedicated to ensuring that persons with mental illness are free from abuse and neglect and have access to the services and supports they need. Through individual cases, investigations and systemic reform litigation like *Arnold v. Sarn* and *Jason K. v. Eden*, Center staff work hard to make a difference. The federal Protection and Advocacy for Individuals with Mental Illness Act provides funding as well as giving the Center the authority to obtain records and access to facilities in order to investigate and monitor conditions. In the last fiscal year, the Center:

- \$ Directly assisted 479 individuals with mental illness.
- \$ Successfully resolved 131 complaints of abuse, including failure to provide necessary and appropriate treatment.
- \$ Advocated for community placements for 43 individual clients residing in mental health facilities.
- \$ Provided assistance on discrimination issues, including housing and employment, for 126 individuals.
- \$ Impacted the lives of 1000s of individuals through the services developed as the result of the *Arnold* and *Jason K.* cases.

In achieving these results, the Center depends on an excellent staff with experience, enthusiasm and sensitivity to the issues. The Center is pleased to announce it has added three new members to its mental health services team within the last month, increasing our ability to respond to the legal needs of people with mental illness.



**Cheryl Koch-Martinez** has recently come on board as a staff attorney on the mental health team. Cheryl will be assisting Senior Litigation Attorney Anne Ronan on the *Arnold v. Sarn* case, as well as working on a variety of mental health services issues. Cheryl comes to the Center with significant experience in poverty law and child welfare issues having worked as an attorney in Gila River Indian Community and with Community Legal Services Farm Workers program.

**Carl Roberts** joined the staff in February as an Information and Referral (I & R) and Intake Specialist. Carl will be the first person most people contacting the Center speak to about health care or mental health legal issues. He will be able to provide resources to those persons calling as well as taking down the information necessary for the legal staff to review the case for further assistance. Carl comes well prepared for the position, after working the last 3 years as a team leader and peer support specialist at META and for other mental health agencies in the Phoenix area for many years.

**Peri Jude Radecic** will be splitting her time between the mental health and health care teams, providing representation for individuals on appeals in the AHCCCS system as well as addressing systemic problems in both the health care and mental health systems. Peri Jude attended law school in Arizona, but most recently was employed by the U.S. Department of Agriculture in Olympia, Washington as the Equal Employment Specialist for Washington State and Oregon.



**THE ARIZONA CENTER FOR  
DISABILITY LAW AND THE DAVID AND  
MINNIE MEYERSON FOUNDATION  
ANNOUNCE THE ESTABLISHMENT OF  
THE "MEYERSON ADVOCACY  
PROJECT"**

The Arizona Center for Disability Law has received a generous three-year grant from the David and Minnie Meyerson Foundation to establish the Meyerson Advocacy Project. The goal of the Meyerson Advocacy Project is to address the unmet legal needs of children with disabilities in rural Northern Arizona through no-cost special education advocacy assistance.

Over 88,000 Arizona children with disabilities are entitled to federally funded special education services. Sadly, many of these children do not achieve their full potential because of a lack of understanding regarding the laws governing special education and the full obligations owed to children by state and local authorities. The Meyerson Advocacy Project hopes to remedy these problems by providing direct assistance to children with disabilities at educational programming meetings, technical assistance and training through legal clinics and seminars, as well as forming and strengthening parental advocacy networks in the targeted communities. The project will serve families residing in Apache, Navajo, Coconino, Yavapai, and Mohave Counties.

"We view this as an exciting opportunity to help raise awareness about the uniqueness of every child," remarked Leslie Cohen, Executive Director of the Arizona Center for Disability Law. "Thanks to this generous grant, we will be able to reach those families who are most vulnerable and have the greatest need for information and advice."

Former Southern Arizona Special Education Staff Advocate, Jim Murray, is the Meyerson Foundation Project Fellow. After working in the Center's Tucson office for more than 12 years,

Jim has taken on this exciting project in Northern Arizona. Already Jim has made his presence known. He has 20 clients in Northern Arizona and has performed outreach and training events in communities ranging from Prescott to Lake Havasu City. He may be contacted regarding special education issues in Northern Arizona at 1-800-927-2260 or [jmurray@acdl.com](mailto:jmurray@acdl.com).

*In tribute to Jim's years of work in Southern Arizona, he will be honored along with Representative Pete Hershberger and City Court Judge Michael Lex at the Center's Spring Event in Tucson on April 1. See more information regarding the event below:*

Arizona Center for Disability Law cordially invites you to join us for a reception hosted by the law firms of Piccarreta & Davis, P.C. and William G. Walker, P.C.

"Celebrating Southern Arizona's Commitment to the Disability Community"

honoring  
State Representative Pete Hershberger  
for his leadership in reforming Arizona  
guardianship laws

Honorable Michael Lex, City Magistrate  
Recipient of the Bill Edwards' Mental Health  
Advocacy Award for his work in creating a  
mental health City Court in Tucson

James C. Murray, Longtime Southern Arizona  
Special Education Advocate, for the Arizona  
Center for Disability Law  
(now Meyerson Foundation Fellow in Northern  
Arizona)

Thursday, April 1, 2004  
5:00 - 7:00 p.m.  
145 S. Sixth Avenue  
Tucson, Arizona

Tickets are \$25 per person. Cocktails and hors  
d'oeuvres will be served. Call  
520-327-9547 (voice/tty) for more information  
and/or to RSVP.



Mary Slaughter, Board Member; Leslie Cohen, Executive Director of ACDL; Charlie Rahill, Former Board Member and Joyce Millard-Hoie, Executive Director of Raising Special Kids at last year's Spring Event.

## Center to Honor Community Members who Make a Difference to People with Disabilities

Phoenix Spring Event - May 6, 2004

As the weather warms up and our thoughts turn to Spring, we at the Center take time out of our busy schedules to celebrate our work and honor community individuals who help in making Arizona a better place for people with disabilities. The event to be held on April 1 in Tucson is described on the previous page.

**On May 6th in Downtown Phoenix, from 5 pm to 7 pm at the Law Firm of Squire, Sanders & Dempsey, we are holding a cocktail party and reception honoring:**

- \$ **Jean Fairfax**, philanthropist, long time civil rights and education activist whose support of the Center has enabled us to better serve disabled African American youth in the schools. Jean's assistance was crucial in bringing African American professionals and family members together to talk about problems and solutions for children with disabilities.
- \$ **Sherri Walton**, Mental Health Association of Arizona Public Policy Chair and chief advocate and lobbyist. On a volunteer basis, Sherri has worked harder than anyone to ensure public policy reflects true equality for persons with mental illness, including advocating for mental health parity.
- \$ **Bob Broman**, this year's recipient of the Maureen Zeeb Mental Health Advocacy Award (read more about Maureen's legacy below). Bob is a staunch mental health consumer advocate working hard to make a difference in our community through his participation in the State's Human Rights Committee, Behavioral Health Planning Council, Arizona Alliance for the Mentally Ill and various other consumer groups.

The event will also include a silent auction with great items, such as restaurant gift certificates, hotel stays, sporting event tickets, Lord of the Rings memorabilia and more. Tickets to the Center's Spring Event are \$25 for individuals with sponsorship opportunities, and may be purchased by telephoning Pat at 1 (602) 274-6287 or [pschappaugh@acdl.com](mailto:pschappaugh@acdl.com).

***The Maureen Zeeb Memorial Fund needs YOUR help!***

In February 2003, the Center lost one of its long-time employees, Maureen Zeeb, after a long illness. Maureen was a tireless and dedicated mental health advocate who fought for the rights of individuals with disabilities in institutions. In Maureen's honor, a fund has been established to assist Arizona State Hospital patients who are encountering barriers to discharge that can be overcome through the availability of temporary financial assistance. Currently, however, this fund is in danger of being discontinued due to a lack of funding! If you would like to contribute, please mail a check to the: Maureen Zeeb Memorial Fund, Arizona State Hospital, Attn: Business Office Manager, 2400 East Van Buren Street, Phoenix, AZ 85008. Make checks payable to: Arizona State Hospital **B** Maureen Zeeb Fund. *All donations are tax deductible.*

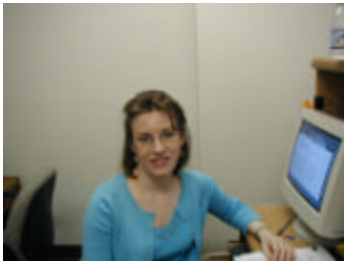
## Jason K. Settlement in Action

*The Center has been advocating for years for the rights of children with behavioral and emotional problems to get the services they need. Much of that work has taken place in the context of the Jason K. v. Eden lawsuit, a statewide class action to reform the children's Medicaid funded public health system. Jack's case below is a prime example of the Jason K. settlement in action.*

Jack was five when he was removed from his home by Child Protective Services. He had been found handcuffed to a tree. He was separated from his brothers and sister and has not seen them in years. His parents' rights were terminated and he has now been in the custody of the state for seven years. He has been moved from foster home to foster home. He has lived for years in mental health institutions for children, where he was being physically restrained on a daily basis.

One of the requirements of the settlement of *Jason K. vs. Eden* is that all children will be served by teams in which the child and family are at the center of the team. Services are developed and provided in active collaboration with the family and they are designed to ensure that children can live at home in their community with family. But Jack had no family. When Jack's team began, it struggled because of the lack of a family perspective. How could this child ever benefit from the agreements in the lawsuit if he had no family.

A significant accomplishment of the *JK settlement* was the expansion of the types of services funded by the Medicaid State Plan. One of the newly funded services is family support. This service is generally seen as support for the parents of children with mental health needs but it is quite flexible and can be used to fund persons unrelated to the child who take on the role of family. Jack's team brought Sam on board, a father who had several children with mental illness, to provide a family focus. Sam began taking Jack out of the institution for fun and holidays and eventually Jack spent weekends with Sam and his family. About a year ago, Sam became a Therapeutic Foster Parent for Jack. Jack is now living with Sam and his family and going to school. He now describes himself as a child who belongs in a family. A huge step for this child.



When I was first diagnosed with a mental disorder at age seventeen, I presumed that my life as I knew it was over. Already struggling with the effects of medication, stigma, and poor access to services, my expectations for success diminished rapidly. At the time I was a high school student in New York City, unaware of the work that advocates, attorneys and volunteers were engaged in at the Arizona Center for Disability Law and Protection and Advocacy Centers nationwide. Still less did I know that one day I would have the opportunity to work with such dedicated and passionate individuals on topics so close to my heart.

Now eight years later I am blessed with the opportunity to assist clients and families who are similarly struggling to come to terms with their disability. I am honored to work with the mental health team and support staff who selflessly share their talents and expertise with me, a law student hoping to pursue a career in mental health advocacy. Working on short term assistance projects for individuals dealing with insurance, medication, housing and employment issues has opened my eyes to the myriad ways people's lives are affected by their disabilities. Speaking with clients and family members similarly has shown me the enormous courage and fortitude that can enable persons to live beyond their diagnoses. I am especially eager to work on the project investigating conditions at the Adolescent Treatment Unit at the Arizona State Hospital. Knowing what it is like to be an adolescent with a mental illness, to be viewed as a throwaway because of your diagnosis, and to see the miracle that recovery and opportunity can be in a young person's life, no project holds more sentimental value to me.

Thank you for this wonderful opportunity to learn and serve and I look forward to many productive years with the Arizona Center for Disability Law in the future.

Laura Lawless, Staff Extern  
Miss Arizona 2002

## Advocacy Appeal is a publication of the Arizona Center for Disability Law

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