

REPORT TO THE VID EXECUTIVE COMMITTEE  
RE OPERATION OF THE HOUSING CLINIC

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Per Rick Braun's request, I have looked into the following questions: (1) Does the activity of the Housing Clinic constitute the practice of law? (2) If so, is this illegal? (3) If illegal (or if legal but undesirable, for policy reasons), can the scope of the Clinic's activity be cut back sufficiently to remove it from the practice of law? (4) If whatever the Clinic does -- cut back or no -- may non-lawyers be used? (5) If so, under what restrictions, if any? (6) What liabilities is the Club exposed to? (7) May I be permitted to end the previous question with a preposition?

(1) and (3) The activity of the Clinic does constitute the practice of law. Under unvarying rulings by the various Disciplinary bodies, anything done by a lawyer similar to what lawyers do is the practice of law if done by a lawyer ... even if a non-lawyer would also be permitted to do it. The obvious cases are real estate brokerage and accounting ... but it has been extended to the case of a lawyer who published a book listing ship arrivals over a period of years, designed to help aliens establish the dates of their entry to the US.

Thus, it is impossible (in my view) to cut the activity back enough to remove it from being the practice of law. Just about anything beyond making brochures available would carry us over the line.

(2) It is legal for the Club to practice law! Although Section 495 of the Judiciary Law broadly prohibits legal practice by associations, an exception is made for "furnishing "legal services as an incidental activity in furtherance of their primary purpose." [I mention, but do not agree with, the argument that the Clinic is not incidental to the club's primary purpose defined as electing candidates; I feel we would have no trouble establishing that the VID's primary purposes include protection of tenant's rights, opposing gentrification, etc.]

\* That was the good news. The bad news is that we appear to be in violation of a requirement which has the force of law -- namely, that clubs offering incidental legal services pursuant to Section 495 must file annually with the Appellate Division "a statement describing the nature and purposes of the organization, the composition of its governing body [and] the type of legal services being made available" [22 NYCRR 608.1].

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(4)+(5) As to the use of non-lawyers, firms practicing law may use laypersons; I see no reason to suppose we are an exception. But there are severe restrictions of how these individuals may be used, both as to scope and as to the degree of supervision by attorneys.

The way the Clinic operates presently is very dangerous in this area. My advice is: Either no laypersons, or a serious revamping of the training, orientation, supervision. [In fact, some of this revamping may be called for even with respect to the use of lawyers!]

(6) Liability is a very serious and ever-present danger. It is no answer that we will limit ourselves to factual information and not give advice: For instance, the lawyer-client relationship attached even for consultation which is stated to be so limited, to the degree we enter into the relationship at all. A simple suggestion that the client try Small Claims Court may expose us to liability for malpractice if (a) we fail to inquire about dates, in connection with the Statute of Limitations, or (b) fail to inquire enough to learn that, without the client's having thought of it, his claim could have been for more than \$1500.

Moreover, there is no end to the chain: The individual lawyer may be cast in damages for her own error (or for the error of a layperson negligently supervised) ... but the Chair of the Clinic may likewise be exposed, and the officers of the Club and conceivably the entire membership! (Remember, the mere fact that the malpractice plaintiff ultimately loses does not reduce the cost of defending.)

I have asked a broker to find out if malpractice insurance is available to such as the VID and, if so, whether it is affordable. I shall pass along the answer when I get it.

(7) Definitely yes.

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#### CONCLUSIONS

The activity of the Clinic is worthwhile, and efforts should be made to continue it. It must be recognized that it constitutes the practice of law, and that cutting back enough would be cutting back too much. We are now (join the club) on notice of the Appellate Division filing requirement; failure to do so IMMEDIATELY would be a grave mistake.

Malpractice insurance should be obtained if available and affordable.

Attention should be given to the scope of the services offered, and to implementing whatever limits are set. (The present official no-advice policy is frequently violated.) Likewise, methods must be found to impress the scope upon both the clinicians and their clients; perhaps wall posters, individual cards, or both would be useful.

Attention should also be given to the referral question. Again, present policy is sometimes breached. There are those who feel it would be appropriate to hand out a list of individual lawyers or firms we have found to be competent and reasonable. Others want to stick strictly to the present approved list of organizations.

Finally, a decision must be made about the use of laypersons ... and, if they are to be excluded, a clear explanation should be issued.

Paul L. Klein, 10-1-84

