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### **Open-Records Dispute Could Complicate Work of Public Law-School Clinics**

*By Peter Schmidt*

A lawsuit seeking to force a Rutgers University legal clinic to disclose client information under New Jersey's open-records act poses a serious threat to the work of public law schools elsewhere, several higher-education associations argue in friend-of-the-court briefs recently filed in the case.

The lawsuit was brought against Rutgers University and the Rutgers Environmental Law Clinic by a real-estate developer whose plans to build an outlet mall were unsuccessfully opposed by a citizens' group that the clinic had represented. Although the developer, Sussex Commons Associates, has not stated why it is seeking a wide array of the clinic's records dealing with the citizens' group, it has accused the group of receiving financial support from the owner of two existing outlet malls in the region and has criticized the clinic's expenditure of "a significant amount of public funds" in opposing the mall development.

Among the law-clinic records being sought by Sussex Commons are minutes of meetings, documents received from expert witnesses, and various billing and payment records associated with the clinic's representation of the anti-mall group, Citizens for Responsible Development at Ross's Corner. Sussex Commons initially sought the records from Rutgers in May 2006—as the battle over the outlet mall was still being waged—and filed its lawsuit that September, after the university's custodian of records refused to give up any of the documents requested.

A New Jersey Superior Court judge, Travis L. Francis, dismissed the lawsuit last year in a decision holding that the state's public law clinics are exempt from its open-records act because they need to protect the confidentiality of those they represent. Sussex Commons, which has argued that New Jersey's open-records law should be interpreted as fully covering public institutions like Rutgers, is challenging Judge Francis's decision before a state appeals court.

#### **Teaching Law Students a Lesson**

The friend-of-the-court briefs that higher-education associations have filed on behalf of Rutgers show that they see the dispute as involving much more profound stakes than proximity to an Old Navy or Cinnabon.

In one such brief, filed late last month, the American Association of University Professors, the Clinical Legal Education Association, and the Society of American Law Teachers have joined in arguing that a ruling in the developer's favor would seriously harm the ability of public law-school clinics to provide students with hands-on training.

If such clinics are unable to offer their clients the same assurances of confidentiality as other law offices, they will have to operate in a much different manner than private law firms and corporate legal departments, rendering the experiences they give students much less authentic, the brief says. And subjecting law clinics to such open-records requests, the brief says, will enable those they oppose in litigation to use demands for documents to divert their attention and burn up their time and resources. Clinics are likely to be scared off from taking on certain cases or clients, limiting the educational opportunities they could offer their students,

the brief warns.

"Law clinics across New Jersey and the rest of the country provide millions of hours each year of unpaid student legal work to clients without the financial resources to hire a private attorney," the brief says. "The plain result of a decision in this case requiring disclosure is that many clinic clients will no longer be assisted by a law clinic."

In a separate brief filed last week, the Association of American Law Schools argues that the federal and New Jersey courts "have consistently endorsed" a distinction between public officials who generate public records in their governance role and publicly paid lawyers, like clinical professors and public defenders, "who perform lawyerly activities on behalf of private clients."

The law-school association's brief says, "The essence of effective and ethical practice, in a law-school setting as in every other practice setting, is the lawyer's ability to develop the case outside public scrutiny." It argues, "Deeming client records to be public records would end the client-representation clinical programs in New Jersey's public law schools and would do nothing to further the public-record law's goal of making public officials accountable for their decisions."

The chief lawyer for Sussex Commons Associates, Kevin D. Kelly, did not return calls seeking comment on Friday.

The university's brief before the appeals court argues that subjecting its law-school clinics to the open-records law will inhibit them in gathering and generating documents as they prepare for cases, and would leave them at a disadvantage in competing with private law schools' clinics for clients.

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