

State Bar Pro Bono Appeals Program Offers Representation in Civil Gideon Appeals

Cynthia Feathers*, Esq., Director, NYSBA Pro Bono Appeals Program



The New York Bar Foundation presents a check to the Pro Bono Appeals Program (PBAP) of the NYSBA Committee on Courts of Appellate Jurisdiction. Shown L to R: Foundation Board Member James Barnes, Esq.; Cynthia Feathers*, Esq. and George J. Hoffman*, Jr., Esq., Administrators of the PBAP; Rural Law Center of NY Executive Director Susan L. Patnode*, Esq.; and The Legal Project Executive Director Lisa Frisch.*

Pro bono services in the appellate realm present a unique opportunity, since an appeal may not only vindicate the client's rights, but may also shape the law in a way that benefits other vulnerable persons. Recognizing that many public service programs lack the requisite resources to create an appellate program, the State Bar launched an innovative Pro Bono Appeals Program (PBAP) to represent persons of modest means in selected appeals presenting Civil Gideon topics.

With the support of the **State Bar Executive Committee** and **The New York Bar Foundation**, the **Commit-**

tee on Courts of Appellate Jurisdiction (CCAJ) joined forces with two program partners, the **Rural Law Center of New York (RLC)** and **The Legal Project (TLP)**, to offer a pilot program in 2010. Initially, appeals to the Third Department were eligible, and then the PBAP expanded to the Fourth Department, thanks to the support of the Presiding Justices in both Departments. Program support in the Fourth Department also is provided by the **Worker Justice Center of New York**. Topics covered by the PBAP include education, family/divorce, health, housing, unemployment insurance, and worker's com-

ensation. The income cap is 250 percent of Federal Poverty Guidelines.

The program partners bring pro bono expertise and administrative support; the CCAJ offers appellate expertise; and the State Bar provides extensive staff support and other resources. A CCAJ pro bono subcommittee does a careful merits review of applications and then seeks to place selected appeals via a confidential listserv of more than 100 experienced appellate attorneys volunteers. This listserv includes interested CCAJ members, as well as other practitio-

continued on page 20

Representation in Civil Gideon (continued from pg. 19)

ners throughout the state. Typically, appeals come from four sources: trial counsel, the litigant, the Appellate Division Departments referring rejected assigned counsel applicants, and public services programs.

In addition to providing representation in selected cases, the PBAP provides brief advice and insights in many cases that are not accepted; and it sends rejected applicants a copy of the Pro Se Appeals Manual developed by the committee in conjunction with the Third Department.

Last year, there were several exciting developments in the PBAP. First, with the support of the RLC, the PBAP established a downtown Albany office staffed by two part-time appellate attorneys affiliated with the CCAJ. These attorneys perform initial case review and analysis and provide ongoing support to volunteer attorneys handling appeals accepted by the PBAP. Second, the PBAP entered into productive relationships with two new program partners—the **Hiscock Legal Aid Society** and the **Monroe County Public Defender’s Office**. PBAP volunteers will handle up to five Family Court “mandated representation” appeals per year as of counsel to each organization.

Third, CCAJ met with New York City Bar colleagues to explore possible expansion of the pro bono appeals concept to the First and Second Departments. Fourth, New York’s efforts received national attention when CCAJ members spearheaded publication of a manual on pro bono appeals programs for state court appeals.

This 270-page resource, describing 14 states’ programs, was highlighted at a conference of the American Bar Association’s Council of Appellate Lawyers. To view the manual, go to: www.americanbar.org/groups/judicial/conferences/appellate_judges/appellate_lawyers.html.

The manual reveals that, while pro bono appeal program models vary, one common element is a centralized pool of appellate talent, managed by a state bar appellate group, to provide services throughout an entire state or a large region of a state.

Finally, the desire to shape the law to benefit persons of modest means has been realized by three decisions that made new law in PBAP cases. Most recently, in *Matter of Hazan v. World Trade Center Volunteer Fund*, 987 NYS2d 484, the Third Department reversed a Worker’s Compensation Board decision finding that the claimant was not a participant in the World Trade Center rescue operations because he did not serve under an authorized agency.

In a matter of first impression that could benefit hundreds of other volunteers and that was featured in the New York Law Journal, the reviewing court found that imposing the authorized agency requirement contravened the plain meaning and legislative history of Worker’s Compensation Law Article 8-A. The volunteer attorney was Prof. Michael Hutter* of Albany Law School and Powers & Santola, LLP (Albany).

The court in *Oswald v. Oswald*, 107 AD3d 45, disagreed with a 1989 Second Department precedent that held, as a matter of law, that the Universal Life Church was not a church within the meaning of the Religious Corporation Law so as to have the authority to solemnize marriages. In a decision that could impact the validity of hundreds of marriages, the Third Department found issues of fact about the capacity of ULC ministers to officiate at marriage ceremonies. The lead volunteer attorney was Joshua L. Seifert of Skadden, Arps, Slate, Meagher & Flom LLP, one of several New York City law firms participating in the PBAP.

In *Matter of Bowman v. Bowman*, 82 AD3d 144, the Third Department adopted a new interpretation of a provision of the Uniform Interstate Family Support Act that makes it easier for New York custodial parents to initiate, in this state, modifications proceedings regarding out-of-state orders, where both parents have left the state that issued the prior order. Given the mobility of families, this decision could have a significant impact. The volunteer appellate attorney was Cynthia Feathers.

For more information on the PBAP, including an application form, go to www.nysba.org/probonoappeals. If you or an attorney in your organization has appellate expertise and would like to volunteer for the PBAP, please email CCAJ staff liaison Jean Nelson, Esq. at jnelson@nysba.org. If you would have any questions about the program, please email CCAJ member/RLC appellate attorney George J. Hoffman, Jr.*, Esq. at george@rurallawcenter.org.

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