

Pro bono attorneys protect inmate's rights

Sep 14, 2015, 9:00am EDT

Michael Petro
Editor/Reporter
Buffalo Law Journal
Buffalo Business First



As board president of Neighborhood Legal Services, Tim Hoover is keenly aware of the need for pro bono civil legal services for the indigent, the poor and the disabled in Western New York.

He not only provides it himself but stresses the importance of such work to fellow attorneys. He said it's just as gratifying when he sees others get involved, especially young attorneys at his firm, Phillips Lytle LLP.

Last month, with the help of Hoover, a partner in litigation, associates Ryan Lema and Michael Silverstein handled the argument and won the appeal for a prisoner who claimed he was the victim of harassment and punishment at Wende Correctional Facility in Alden.

The attorneys worked up the appeal, wrote and presented the brief and Lema argued the case before the federal Court of Appeals for the Second Circuit. Hoover, who's on the pro bono panel for the Second Circuit and handed the case down to the associates, called them the primary strategists for the appeal.

The claims of inmate Aaron Willey, who said he was confined to an unventilated cell with a non-working toilet for at least a week, were dismissed in federal district court in Rochester. However, in a motion for summary judgment, Willey's pro bono counsel convinced Second Circuit Chief Judge Robert Katzman that the claims had merit and are cause for reinstatement.

"Pro bono work should be done because there's a need to help the client, but this was one where there was also a fantastic opportunity for fairly new lawyers to do sophisticated legal work, argue in the Second Circuit and really make a dramatic difference for our client," Hoover said.

It was Lema's first opportunity to make an oral argument in the Second Circuit appeals court. In district court, Willey represented himself, handling the paperwork and filing it from prison. In 2007, he filed a typewritten pro se complaint and three years later filed a hand-written amended complaint.

"It was an extremely gratifying experience and important subject matter to me — attempting to defend and vindicate the rights of an inmate who, until this point in the case, had not had the assistance of legal counsel and was trying to manage the case on his own," Lema said. "It was also a great learning experience to have that opportunity to get up and argue in front of the Second Circuit of Appeals."

He was proud that his argument resulted in a strong rebuke of what the court called "grotesque" conduct, and it served as a reminder that constitutional rights are designed to protect everyone, including those in prison.

"It was a very important decision," Lema said. "I think the court clarified in some respects the standards that govern these sorts of claims about unsanitary conditions and the rights of prisoners to receive due process when they raise grievances through the prison's internal channels."

Hoover said Willey had a strong case because all of his allegations checked out.

"It's a scary case and scary set of events, and I think the Court of Appeals took it as an opportunity themselves to make clear the substantive protections for prisoners that we have in our Constitution and sent the case back for trial," he said.

After arriving at Wende in 2005 as an 18-year-old serving a sentence for robbery, Willey alleged that on three occasions he was exposed to unsanitary conditions of confinement in violation of the Eighth Amendment because he would not falsely accuse a fellow inmate of smuggling drugs into the facility.

Willey alleged that he was placed in solitary confinement with a Plexiglas shield restricting the airflow to the small cell and a toilet that did not work. Two other alleged exposures to unsanitary conditions involved being detained in a small room where the walls and mattress were smeared with feces and stained with urine.

He said further retaliatory conduct included theft and destruction of his legal documents, being served uneatable food, malicious prosecution and false imprisonment. Willey claimed to have attempted suicide in 2006, despite not having significant mental health issues on record before entering prison. He was later transferred to a mental health facility for five months.

Katzman rejected the district judge's assertion that the prisoner failed to state a claim and that his Eighth Amendment protections against unsanitary conditions of confinement were constrained. He also disagreed with the district court's analysis of Willey's claim of unsanitary conditions while reviving claims for nutritionally inadequate meals, theft of legal documents, harassment, malicious prosecution and false imprisonment.

"Frankly, the actions that occurred in this case really should be of public concern," Lema said. "It's a case of institutional correctional officers abusing a fellow human being that they were charged with supervising. Certainly prisons aren't meant to be comfortable places, but prisoners also don't leave their humanity and civil rights at the prison gates."

While the case may not have broken new ground in terms of prisoner protections, Hoover said what is important is that the decision made it clear that prisoners have rights which protect them from abuse.

"We never know if someone we know or a loved one unfortunately is going to find themselves incarcerated, and the Constitution is meant to protect everyone, not just people who are free; it protects prisoners, as well," Hoover said. "There's really no one that believes prison is perfect, but there are clear lines that shouldn't be crossed and they were in this case, we believe."

He said the case speaks to other important points including:

- The federal Court of Appeals, Second Circuit, takes pro bono assignments seriously and will provide counsel in appropriate cases. In criminal cases, legal representation is required but it's not the same for civil matters.
- In most cases, having counsel helps a litigant who has a potentially meritorious claim. Pro bono work can be an important part of that.

"As a firm, we try to do our part but there's always more to be done," Hoover said. "There are organizations that do great work, but everyone should continually be reassessing if they can do more. It can change lives and help people get out of poverty, protect their families and make sure they have safe places to live."

He also credited Phillips Lytle litigation associates Spencer Durland, Bill Simon, Deena Mueller, Myriah Jaworski, Dan Maguire and Patrick Sheldon for pro bono work.

The firm will continue to counsel Willey on remand to federal court in the Western District of New York.

Lema, meanwhile, said he looks forward to the opportunity to conduct further discovery and eventually have Willey's claims heard at trial.