

State Bar Offers Pro Bono Appeals Program

By Cynthia Feathers, Esq.

You are a legal services staff attorney. Your client needs representation in an appeal, and you would like to help, since you believe that an adverse decision should be reversed or a favorable decision should be upheld. You also realize that the appeal could establish precedent that would help many other litigants.

Unfortunately, your program lacks the resources to represent the client, who does not qualify for assigned counsel based on the nature of the litigation or income level. Where can you turn? Try the NYSBA Pro Bono Appeals Program, if the appeal is in the Third Department – and soon, the Program hopes, also if the appeal is in the Fourth Department.

The two-year old program provides pro bono representation to litigants at 250% or less of Federal Poverty Guidelines in selected Third Department appeals involving the essentials of life, such as family law issues, as well as education, housing, and unemployment insurance matters.

How to Apply for Representation

To apply, simply go to www.nysba.org/probonoappeals, download a program brochure, and help your client complete an application. While the program will consider applications completed by pro se litigants, it is invaluable to have the involvement of trial counsel, whether from nonprofits or law firms, who were involved in the litigation and can describe appellate issues.

The initial review of applications regarding basic eligibility is done via two program partners, the Rural Law Center of New York and The Legal Project in Albany. Merits review is handled by the third program partner, the State Bar's Committee on Courts of Appellate Jurisdiction ("Appeals Committee"). Factors considered include the potential impact and complexity of the case. Acceptance of an appeal is contingent on finding a volunteer and obtaining free transcripts, if any are needed.

The first opportunity to volunteer for cases goes to members of the Appeals Committee. Thereafter, a list serve message is sent to nearly two dozen appellate attorneys statewide who have volunteered to take pro bono appeals, as well as to the pro bono coordinators of two Manhattan law firms that expressed interest in the Program. The Program welcomes additional volunteers who have extensive appellate experience.

Goals for 2012 Already Met

For 2012, the Program had two goals: receiving State Bar Executive Committee approval to expand the topics covered and to do 10 appeals. The approval was received, and 10 appeals have already been placed with volunteers



The Pro Bono Appeals Program helped Becky Bowman and her daughter Kaitlin, pictured above last year. When the child was diagnosed with a degenerative neurological condition requiring constant care, Becky sought increased support. Her petition in Saratoga County was dismissed based on existing law regarding the modification of out-of-state child support orders. *Bowman v. Bowman*, 82 AD3d 144 (3rd Dept 2011), changed the law to allow Becky to seek more support in a New York court, rather than litigating in California, where the father lived. Kaitlin's support payments were then tripled.

Appeals Committee has worked in collaboration with The Legal Project, headed by Lisa Frisch, and the Rural Law Center, led by Susan Patnode. The Program was launched when Hon. Betty Weinberg Ellerin, retired First Department Presiding Justice, chaired the Appeals Committee. The Program is now overseen by Cynthia Feathers, a current co-chair of the Appeals Committee.

There are three funding partners: the New York Bar Foundation, which has provided grants for two years, and OCA and IOLA, which have provided funding to The Legal Project and the Rural Center, some of which goes toward staff attorney time devoted to the Program. There has also been a unique upstate-downstate partnership, with downstate appellate attorneys volunteering to handle a number of Third Department appeals. Attorney fee awards in some appeals may prove to be a source of additional funding.

Expansion to Fourth Department Planned

Finally, the support of the Appellate Divisions is critical to the success of the Program. Before a pilot version of the Program was launched in the Third Department, the Presiding Justice and Clerk were consulted extensively for input regarding several aspects of the Program.

Discussions are currently under way with Presiding Justice Henry J. Scudder, Justice Erin M. Peradotto, and Clerk Frances E. Cafarell of the Fourth Department about how to implement the Program for appeals to that court. An Advisory Committee has been created to help in any program design

this year. Each appeal is a substantial undertaking, requiring anywhere from 25 to 100 hours. One of the appeals recently accepted could have an impact on the validity or invalidity of hundreds or thousands of marriages. An earlier appeal changed the law to make it easier for custodial parents to modify out-of-state child support orders where both parents left the issuing state.

The success of the Program flows from the many partnerships it represents. From the outset, the NYSBA

modifications, to promote the Program, and to encourage local appellate attorneys to volunteer to take cases.

The Fourth Department – which was honored by NYSBA with a 2011 President’s Pro Bono Award and by the ABA with a 2012 Pro Bono Publico Award for its innovative pro bono program for employees – has expressed enthusiasm about the planned expansion into the western part of the state. The program’s goal is to receive NYSBA Executive Committee approval for expansion by year-end and to launch in the Fourth Department in January 2013.