

## Pro Bono Appeals Program Serves Persons of Modest Means

"The work you did is one of the nicest gifts I've ever been given—I am truly at a loss for words." This response, by a client upon reading the brief submitted by his volunteer attorney, is typical of the reaction from clients receiving services through the State Bar's Pro Bono Appeals Program (PBAP).

In 2010, the Committee on Courts of Appellate Jurisdiction launched the present pro bono program as a pilot effort in the Appellate Division, Third Department. The State Bar's Executive Committee approved the venture, which offered pro bono representation in appeals involving family law matters. Later, other "Civil Gideon" topics were added, namely, education, health, housing, public benefits and unemployment insurance. In establishing an income cap of 250% or less of Federal Poverty Guidelines, the Program's goal was to focus on appellate representation for those who did not qualify for assigned counsel, but could not afford to retain private counsel to represent them.

In shaping the PBAP, the Committee partnered with two local not-for-profit organizations, the Rural Law Center of New York and The Legal Project. These partners have assisted by providing outreach efforts throughout the 28-county Third Department region; intake services for potential clients; and malpractice insurance to cover volunteer attorneys. In addition, the Committee established an eight-person subcommittee to review potential cases and accept only those which appear to be meritorious.

Over the ensuing years, the PBAP quickly began to take root in the Third Department. In addition to providing representation in about ten cases per year, the PBAP provides brief advice and assistance in many more cases. For example, rejected applicants are provided with a copy of the Pro Se Appeals Manual developed by the Committee in conjunction with the Third Department, and with insights as to the potential problems with their case.

In early 2013, with the support of the Rural Law Center, the PBAP established an Albany office staffed by two part-time appellate attorneys affiliated with the Committee. Not only do these attorneys perform initial review and case analyses, they also provide ongoing substantive support to volunteer attorneys handling appeals accepted by the PBAP.

As a result of the success of the program in the Third Department, during the spring of 2013, the PBAP sought and received State Bar Executive Committee approval to expand into the 22 counties covered by the Appellate Division, Fourth Department. As part of this expansion, a new service model was introduced. In addition to continuing to provide services to private litigants whose matters were accepted, the PBAP also entered into agreements with two legal service providers—the Hiscock Legal Aid Society and the Monroe County Public Defender's Office—to handle up to five Family Court "mandated representation" appeals per year as of counsel for each organization.

Not only has the PBAP been enthusiastically received by the Appellate Divisions and pro bono clients, it has also received an overwhelming response from the private bar. Today, the program maintains a confidential listserv of more than 100 experienced appellate attorneys who have offered to provide their services to appellate litigants on a volunteer basis. Further evidencing both the success and importance of the PBAP, the New York Bar Foundation has generously provided financial support for several years.

Today, the PBAP is able to provide free, quality appellate representation to litigants with modest means throughout upstate New York in 50 of the state's 62 counties. In addition, representatives of the Committee have met with colleagues at the New York City Bar Association to explore the expansion of the PBAP to the First and Second Departments.

Three Pro Bono Appeals Program appeals have already made new law. Most recently, in *Matter of Hazan v. World Trade Center Volunteer Fund*, \_\_\_ AD3d \_\_\_ (2014 WL2516444 June 5, 2014), the Third Department reversed a ruling by the Worker's Compensation Board that the claim-

ant 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, 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 court in *Oswald v. Oswald*, 107 AD3d 45, disagreed with 1989 Second Department precedent which had found, 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.

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 a custodial parents in New York State to initiate modifications proceedings here regarding out-of-state orders where both parents have left the state that issued the prior order—a decision which could have a significant impact, given the mobility of families.

Finally, New York's efforts received national attention when two Committee members spearheaded publication of a national manual on pro bono appeals programs for state court appeals. This resource, which includes detailed descriptions of New York's program and those in thirteen other states, was highlighted at a conference of the ABA Council of Appellate Lawyers in the fall of 2013.

If you are interested in volunteering for PBAP, email [jnelson@nysba.org](mailto:jnelson@nysba.org) or go to [www.nysba.org/probonoappeals](http://www.nysba.org/probonoappeals).



**The New York Bar Foundation presented a grant check to the NYSBA Committee on Courts of Appellate Jurisdiction for its Pro Bono Appeals Program (PBAP). The grant will help meet the needs of appellate litigants seeking legal representation in state appellate courts who cannot afford to hire an appellate attorney and are not eligible for assigned counsel.**

**Shown L to R, Foundation Board Member, James Barnes, Esq.; Program Administrator, Cynthia Feathers, Esq.; Program Administrator, George J. Hoffman, Jr., Esq.; Executive Director of the Rural Law Center (a program partner of PBAP), Susan L. Patnode, Esq.; and Lisa Frisch, Executive Director of The Legal Project (a program partner of PBAP).**