

Nadia Dahab and the Appellate Pro Bono Program Pro Bono Spotlight

by Florence Z. Mao
YLS Pro Bono Committee

Each year, the Oregon Supreme Court seeks pro bono assistance on a handful of its cases. When a need for pro bono assistance arises, the court refers the case to the Oregon Appellate Courts Pro Bono Program, which then appoints one of its participating attorneys to assist the court with briefing and argument.

In one of the court's recent pro bono matters, Nadia Dahab, a first-year associate in Stoll Berne's litigation group, assisted the court with a habeas case that presented an issue of access to justice for inmates confined out of state under the Interstate Corrections Compact. In *Barrett v. Peters*, the petitioner, Jacob Barrett, who was convicted of aggravated murder and currently is confined in a Florida prison, petitioned for habeas relief seeking to vindicate his free exercise rights under Article I, sections 2 and 3, of the Oregon Constitution. Mr. Barrett adheres to the faith of Druidism, a central belief of which is the growth of a beard and Celtic tonsure. Florida prison policy, however, prohibits inmates from growing hair or facial hair. To protect his Oregon constitutional right to the free exercise of his religion, Mr. Barrett petitioned

for habeas relief in Oregon, asking the Oregon state court to remove him from Florida and transfer him to an institution in which his religious rights would be protected.

The trial court dismissed the petition, concluding that the fact that Mr. Barrett was confined out of state precluded him from seeking relief in Oregon. In the Oregon Supreme Court, Nadia successfully argued that inmates transferred to out-of-state institutions pursuant to the Interstate Corrections Compact retain their Oregon state constitutional rights and that Mr. Barrett, in this case, could petition for habeas relief in Oregon state court on the ground that his conditions of confinement in Florida violated the Oregon constitutional rights to which he was entitled. The Court held that "[i]f Oregon officials are knowingly confining [an inmate] in a facility where his state or federal constitutional rights are being violated, those officials are engaging in state action that is subject to challenge in a habeas proceeding in Oregon."

Nadia signed up for the Appellate Courts Pro Bono Program right after joining Stoll Berne, and brought with

her the skills she developed in her appellate clerkships. (Nadia spent her first three years of practice clerking for Justice Rives Kistler of the Oregon Supreme Court and judges Susan P. Graber and Mary H. Murguia of the U.S. Court of Appeals for the Ninth Circuit.) Through her experience representing Mr. Barrett on appeal, Nadia further developed her advocacy skills, which she will continue to use in her practice going forward. She encourages other young lawyers interested in gaining appellate experience to join the Oregon State Bar's Appellate Practice Section and participate in the Pro Bono Program as well - by doing so, young lawyers can also gain oral and written advocacy experience and have the opportunity to work on novel legal issues. Although Nadia's clerkship experience provided her with a helpful foundation for this work, she believes that lawyers without clerkship experience should not be discouraged from participating in the program - "the program provides you with all the resources you need to succeed, including one-on-one mentorship with an experienced appellate practitioner. Anyone committed to developing appellate practice experience can be successful at this."

Young lawyers interested in appellate practice can also turn to other resources to gain valuable experience. Oral arguments at the Oregon appellate courts and at the Ninth Circuit are open to the public. "You can learn a lot just by watching oral argument - about effective advocacy skills and about the judges on the court," says Nadia. Appellate briefs filed in the Oregon courts are accessible through the State Law Library's website (for free), and

the Oregon Rules of Appellate Procedure are available online and relatively easy to understand. Appellate briefs filed in the Ninth Circuit are accessible through the court's fee-based PACER system.

Appellate practice can also be invaluable for young trial lawyers who would like to hone their research, writing, oral argument, and trial skills. "Dealing with issues on appeal gives you a unique perspective on what the record should or could have looked like at trial," says Nadia. "In that sense, appellate practice can help young trial lawyers as they learn how best to make a record, preserve important arguments for appeal, and approach questions of law in the trial court." And, although the time commitment with each case varies, the scope of an appointment through the Pro Bono Program is relatively limited. Nadia completed her work in Barrett within eight months of her appointment. "The issue in that case was somewhat



Nadia Dahab

narrow and one of first impression for the Supreme Court, so it was an excellent learning experience as my first case and a great opportunity to start developing an appellate practice," Nadia explained. "If you're interested in appellate work at all, I strongly urge you to participate in the program." For questions about appellate practice or the Appellate Courts Pro Bono Program, contact Nadia at ndahab@stollberne.com.



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Now prosecuting product liability claims against 3M Corporation for Bair Hugger® surgical warming blankets

Referrals and co-counsel arrangements welcomed
Referral fees paid in accordance with ORPC 1.5(d)



Jeffrey A. Bowersox

Jeff Bowersox has been appointed by the Federal Court to the Plaintiffs' Steering Committee (PSC) for the Nationwide products liability litigation against 3M related to its Bair Hugger® surgical warming blanket devices and alleged deep joint infections.

Jeff is serving on multiple subcommittees of the PSC. The PSC has responsibility to conduct all depositions and seek and manage document and ESI production from defendants to prepare plaintiffs' case for Bellwether trials.

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