

Pro Bono Firm Of 2016: Covington & Burling

By Kelcee Griffis

Law360, New York (September 20, 2016, 4:12 PM EDT) -- From securing the release of Guantanamo Bay detainees to scoring victories for immigrant teachers and Guatemalan migrant forestry workers, Covington & Burling LLP has earned the distinction of being one of Law360's Pro Bono Firms of 2016.

The firm's pro bono program is loosely structured to allow attorneys to take on cases they feel strongly about, said Alan Pemberton, the public service committee co-chair. Legal services are often too expensive for the people who need them most, he said, so the firm takes addressing pro bono work seriously.

"We view it as a moral and professional obligation as a result of the privileged position we are allowed to occupy in society as our status as lawyers," he said. "From those to whom much is given, much is expected."

In that vein, Covington attorneys devoted roughly 80,300 hours to pro bono work over the last year, or about 106 volunteer hours per attorney.

Much of the firm's work has focused on securing legal representation for marginalized groups in individual and class action cases.

Covington's ongoing Guantanamo Bay prisoner release effort saw major strides, culminating in the August release of five detainees represented by the firm from the U.S. military prison in Cuba.

To date, the firm's attorneys have represented a total of 20 detainees from Yemen, advocating for their release from the controversial detention camp that was established in 2002 and that holds people indefinitely without formal charges or a hearing.



The five detainees from Yemen represented by Covington were released to the United Arab Emirates as part of a larger group of 15 who had been “unanimously approved for transfer by the six departments and agencies” that make up the Guantanamo Review Task Force, according to a U.S. Department of Defense press release.

Covington represented those detainees throughout the grueling process of periodic review boards, in which prisoners plead their case before senior officials from the DOD, the U.S. Department of Homeland Security, the U.S. Department of Justice, the U.S. Department of State and the Office of the Director of National Intelligence.

Pemberton said the idea underpinning legal representation in the reviews is getting the agencies to focus on the men’s perceived level of rehabilitation, rather than on criminal acts the men committed in the past or on their supposed terrorist ties.

“The question is not so much ‘What was the involvement with potential terrorist organizations at one point?’ but, ‘What is your threat level to national security if you were to be released now?’” Pemberton said.

Aside from arguing successfully before the national security agencies, Covington attorneys invested numerous hours in litigation that turned the tides for vulnerable, noncitizen groups, including Mexicans who were racially profiled, teachers who immigrated to the U.S. and migrant workers who plant forests.

As co-lead counsel in an Arizona federal court case known as *Melendres v. Arpaio*, Covington took on Maricopa County Sheriff Joe Arpaio, securing a ruling in May that found the sheriff and some of his deputies in contempt of prior orders meant to prevent racial profiling of Latinos during traffic stops.

Arpaio and his department routinely stopped drivers to check their immigration status, according to court records. The contempt order and an August referral for criminal contempt charges were among the latest developments in a 2007 class action brought by drivers against the department.

The sheriff and several deputies “demonstrated a persistent disregard for the orders of the court,” the judge wrote in the order, also finding that the department conducted its own phony internal investigation into the accusations.

Stanley Young, a Covington attorney on the case who cross-examined Arpaio, said it was “gratifying to help remedy the violation of the court order.”

As a law enforcement professional, he said, Arpaio “is supposed to follow the law. He didn’t follow it in this case, and he’s now seeing the consequences of that. As a lawyer who believes everyone should follow the law, it was gratifying to bring that proceeding to a result.”

In another case, Dennis Auerbach, of counsel for the firm, and Henry Liu, an associate, took on a project advocating for Filipino teachers in the U.S. that culminated in a December 2015 win at the Ninth Circuit in which the court affirmed a \$4.5 million jury verdict for the instructors.

The case centered around fees that recruiting agency Universal Placement International Inc. charged the teachers in connection with their immigration process, Auerbach and Liu said. The recruiting firm told the teachers that they were responsible for visa-processing fees, when in fact the fees should have been billed to the school district. The agencies also wrongly charged the teachers for “placement fees” and

then pocketed them, Auerbach said.

After a California jury returned a \$4.5 million verdict in favor of the teachers, the placement agency appealed, and Covington then took the lead in arguing the case. At the Ninth Circuit, the firm was successful in keeping the verdict intact, investing about 2,000 hours from trial to appeal over the course of three years, Auerbach said.

“I can’t say I met every class member, but everyone I met was extremely dedicated,” Auerbach said. “Being able to achieve a degree of justice for them was certainly very rewarding.”

Covington attorneys secured a victory for another group of immigrants when they won a class-action wage dispute in federal district court on behalf of a group of Guatemalan workers. A handful of reforestation companies recruited the workers to come to the southeastern United States through the H-2B visa process, which grants work permits for seasonal jobs. When the workers arrived, they realized they could barely make a living from the wages.

Austin Hampton, one of the Covington associates who worked on the case, said the migrant workers weren’t paid minimum wage for their hours of labor. They weren’t paid for all the hours they worked, either. They were additionally required to make payments “that were essentially business expenses,” Hampton said, noting that the workers’ hotels and other travel and lodging costs were not reimbursed, and they had to purchase some of their own tools for tree-planting.

Many of the workers didn’t speak English and didn’t understand their legal rights as workers in the U.S., Hampton said. They had trouble communicating their situation and had no voice until Covington stepped in.

Because the forestry companies failed to respond to the initial complaint, the attorneys had to come up with other ways to get documents that could prove their case. Hampton said the legal team collected a stack of affidavits from class members to demonstrate the unconscionable way the employers were treating the migrant workers. The attorneys drove to rural Minnesota to conduct one deposition of a company executive, and the court ended up quoting that interview in its opinion certifying the class.

The final result — a \$1 million default judgment in favor of the workers — was hard-fought and rewarding, Hampton said.

“There is really no way for them to secure this kind of relief for themselves. To be able to help out with that was really gratifying,” he said. “Especially when you get a million-dollar judgment. That’s kind of nice.”

--Editing by Jill Coffey.