

Pro Bono Firm of 2013: Covington & Burling

By Linda Chiem

Law360, New York (August 30, 2013, 5:16 PM ET) -- Covington & Burling LLP has spearheaded the fight against government-sanctioned discrimination in the past year by snagging crucial wins declaring racially discriminatory two law enforcement policies in New York and Arizona, earning the firm a spot on **Law360's Pro Bono Firms of 2013**.

Covington attorneys in the past year convinced an Arizona federal judge to order Maricopa County Sheriff Joe Arpaio to stop his notorious practice of racial profiling and illegal detentions of minorities, mainly Latinos, and also convinced a New York federal judge to order changes to the New York City Police Department's stop-and-frisk policies after finding they disproportionately discriminated against Hispanics and African-Americans.

Alan Pemberton, co-chair of the firm's public service committee, frequently describes Covington's approach and implementation of its robust and multifaceted pro bono program — which dates back to the firm's founding 90 years ago before being formalized in the 1960s — as living up to a code: "For those to whom much is given, much is expected."

"We live in a very privileged position by virtue of our professional training and because of that privilege we owe something back to that society to make it a better place," he said. "We don't impose any particular political slant on what any individual lawyer considers the public good to be."

To that effect, Covington attorneys in the U.S. contributed an average of 117 pro bono hours, and dedicated a total of 81,386 hours to pro bono work firmwide over the past year, the firm said. Covington encourages its attorneys to meet the American Bar Association's recommended benchmark of 50 pro bono hours a year, but it does not make it a requirement, Pemberton said.

Additionally in the past year, Covington helped win voter approval in Maryland for same-sex marriage and challenged the legality of U.S. Department of Defense and U.S. Army policies that excluded women from certain ground combat units and other positions solely on the basis of their gender.

But the issue of racial profiling has served as the "center of gravity" for Covington's pro bono program of late, accounting for thousands of man hours and yielding key victories in Arizona in May and in New York in August, according to Stanley Young, a partner in Covington's Silicon Valley office who was among the lead attorneys in the *Melendres v. Arpaio* case that was launched in Arizona by the American Civil Liberties Union and the Mexican American Legal Defense and Education Fund.

Covington attorneys dedicated more than 1,700 hours to the case in which they presented a statistical analysis of the Maricopa County Sheriff's Office traffic stop data, as well as internal documents, arrest lists and the testimony of Latinos subjected to the office's practices to establish a pattern of intentional discrimination against Latinos.

Following a one-week bench trial in the summer of 2012, U.S. District Judge G. Murray Snow ruled in May that the Maricopa County Sheriff's Office flat-out engaged in racial profiling and unlawful seizures in violation of the U.S. Constitution and the Civil Rights Act of 1964 by stopping Hispanics it suspected of being illegal immigrants. As a result, Maricopa County deputies will undergo additional training, collect and maintain data on traffic stops and likely will have video recording systems installed on patrol cars.

"It does hold important lessons for law enforcement agencies across the country, not just in the immigration context where the sheriff has been saying he has the right to do what he's done, but in the context of any law enforcement activity that focuses on race," Young said. "I don't think there's anybody on either end of the political spectrum that thinks the use of race to make law enforcement decisions is legitimate. Achieving the result that we have achieved makes us, as lawyers, feel good about our role of upholders of the Constitution and the public good."

In a similarly daunting undertaking accounting for more than 4,830 pro bono hours, Covington attorneys took on New York City officials as co-lead counsel in a federal class action challenging the NYPD's stop-and-frisk policies and practices as unconstitutional and racially discriminatory in violation of the Fourth and Fourteenth amendments.

Eric Hellerman, of counsel in Covington's New York office who served as one of the lead attorneys in *Floyd v. City of New York*, said the city fought hard to defend its controversial stop-and-frisk policies intended to curb street crime. So U.S. District Judge Shira A. Scheindlin's August decision blasting the policies as racially discriminatory was a sweet victory partly thanks to an extensive and important motion practice leading up to the nine-week bench trial, Hellerman said.

"The city fought this tooth and nail and it's vitally important because people were made to feel afraid to go out into the streets and [to] stay at home and that's why Covington & Burling felt [the case] deserved so much resources and talent," he said.

For example, Covington attorneys, who teamed up with the Center for Constitutional Rights and the law firm Beldock Levine & Hoffman LLP on the case, secured class certification and defeated the city's motions seeking summary judgment and the disqualification of a key witness who presented crucial statistics establishing that minorities were disproportionately targeted for stops under the policies, Hellerman said.

"The city, through NYPD, engaged in racial profiling, selective enforcement, selective application, in a way both for the purpose of and resulting in discrimination," he said. "Those were wrongs that needed to be righted for the sake of New York City and for similarly situated people anywhere."

Earlier this year, the U.S. Department of Defense lifted its ban on women serving in combat following a still ongoing suit launched by Covington lawyers on behalf of Col. Ellen Haring and Command Sgt. Maj. Jane Baldwin challenging the legality of its policies excluding women from certain ground combat units and other positions solely on the basis of gender.

The firm has also stepped in as the lead outside legal counsel for Marylanders for Marriage Equality in its fight to protect marriage equality legislation in that state by advising the group on election-related matters, including the state's process for formulating the ballot language; the intricacies of early voting, absentee voting, and recount procedures in Maryland; and voter protection issues.

In November, the Civil Marriage Protection Act passed with 52 percent of the vote, allowing same-sex marriage to become legal in Maryland effective in January 2013 in what Covington described as major victory for the LGBT rights movement.

The firm's dedication to keeping its pro bono pipeline full has resulted in half of its approximately 800 attorneys meeting the recommended 50-hour pro bono benchmark in recent years — an achievement that the firm will continue to back, Pemberton said.

"For many, many years we have had excellent buy-in from the top levels of the firm straight down to the associates and it's really just a bedrock value of ours," he said.

--Editing by Katherine Rautenberg.

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