

# BONO

## ONE FOCUS



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## A SUCCESS STORY FROM NEVADA'S PRO BONO APPELLATE PROGRAM

When I first heard about the Nevada Pro Bono Appellate Program, I immediately applied to be added to the list of pro bono attorneys assigned to handle pro bono appeals from the Nevada Supreme Court. I saw this as a great opportunity for myself and my associates to not only help clients in need, but also to gain valuable experience in writing appellate briefs and arguing appeals before the Nevada Supreme Court.

Shortly after I applied for the program, I received my first pro bono appeal. The client, "W.," a convicted felon, completed his prison term in 2000. Thereafter, on his behalf, the Division of Parole and Probation filed a petition for restoration of his civil rights. While the civil rights petition was pending, the Nevada Legislature substantially changed the law regarding restoration of civil rights, making it more restrictive. The more restrictive law went into effect in July 2003; W.'s petition was filed. Following a hearing, the district court orally granted W.'s petition, but did not issue the written order until nearly nine years later. In the order, the district court restored W.'s civil rights under the amended, and more restrictive, version of the statute.

Because this appeal was difficult, I asked two associates to assist me. I had one of the associates argue the appeal before the Nevada Supreme Court in Carson City.

Under the pre-amended version of the restoration of rights law, W. would have been released "from all penalties and disabilities which resulted from the offense or crime of which he was convicted." However, the amended version of the law did not contain the broad restoration of rights and release of penalties and disabilities. Rather, the amended law provided timeframes for when certain rights would be restored. For instance, the right to hold office and the right to serve as a juror in a criminal action were restored four and six years later, respectively. Because the district court waited nine years to enter the order, one of the issues was whether the district court had erred in not timely entering the order. We argued that, had the district court restored W.'s civil rights "as soon as practicable" as the statute requires, this controversy would not have existed because W.'s petition would have been granted under the original version of the statute. We also argued that the amended version of the statute was improperly applied retroactively, and that the district court's delay

and error in granting W.'s petition under the amended law harmed W., because he was not free from all penalties and disabilities as contemplated under the pre-amended version of the statute.

At oral argument, the state conceded that the district court should have applied the pre-amended restoration of rights law. We argued during oral argument that the district court's failure to apply the pre-amended version harmed W. because he still suffered from certain penalties and disabilities.

Recently, the Nevada Supreme Court issued an Order of Reversal and Remand. The order reversed and remanded the matter to the district court, with instructions to grant W.'s petition under the pre-amended civil rights law. The Nevada Supreme Court ruled that there is a presumption that statutes apply prospectively unless there is clear intent by the Nevada Legislature to apply the statute retroactively. Because of the state's concession at oral argument, and the fact that there was no evidence that the pre-amended civil rights law should be applied retroactively, the Nevada Supreme Court agreed that the district court erred in restoring W.'s civil rights under the amended law.

After receiving this order, we had the pleasure of sharing the good news with W. Fifteen years after his sentence, W. will finally be released from all penalties and disabilities associated with his conviction.

I believe that Nevada's Appellate Program is important because attorneys are able to assist clients in need and obtain valuable appellate experience. For civil practitioners, it is difficult to gain appellate experience because it can be costly for a client to participate in an appeal. Even if a case is appealed, it is rare that the Nevada Supreme Court grants oral argument. But, in this program, the pro bono volunteer is guaranteed oral argument. Not only were we able to gain appellate experience, but we were able to help a client in need. I will continue to work on pro bono appeals through this program and hope that this encourages other attorneys to the same. **NL**

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