

Press Releases

O'Melveny Wins Cases Before Ninth Circuit as Part of Firm's UCLA Appellate Advocacy Clinic

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RELATED PROFESSIONALS

Charles Lifland

Los Angeles
D: +1-213-430-6665

Jeremy Maltby

Washington, DC
D: +1-202-383-5352

Sabrina H. Strong

Los Angeles
D: +1-213-430-6113

Catalina Vergara

Los Angeles
D: +1-213-430-7828

FOR IMMEDIATE RELEASE CONTACT:

Andrea Rodeschini O'Melveny & Myers LLP
212.326.2251
arodeschini@omm.com

Sonja Steptoe O'Melveny & Myers LLP
213.430.6384
ssteptoe@omm.com

WASHINGTON, DC — AUGUST 06, 2010 — As part of O'Melveny & Myers LLP's Ninth Circuit Appellate Advocacy Clinic at UCLA Law School, O'Melveny lawyers and UCLA law students have prevailed in two recent pro bono cases before the federal appellate court. The cases are *Hebbe v. Pliler* and *Thomas v. Ponder*.

Hebbe v. Pliler, a civil rights case, was brought by an inmate who is incarcerated in a California correctional facility. Mr. Hebbe alleged various violations of his civil rights by prison officials both during and after extended periods of "lockdown" at the facility. On appeal, the issues were: (1) whether prison officials violated his constitutional right of court access when they denied him access to the prison library while on lockdown without providing any meaningful alternative, thus causing him to miss the deadline to file a brief in support of his appeal of his state court conviction; and (2) whether prison officials violated his right to be free from cruel and unusual punishment after the lockdown periods, when they forced him to choose between his right to exercise and his right of court access — both constitutionally protected rights.

On July 29, the Ninth Circuit issued a published opinion in the case, siding with the O'Melveny/UCLA team on both issues. In its published opinion, the Court reversed the district court's dismissal of the claims and remanded for further proceedings. In the process, the Court answered an open question in the Circuit's precedent that is a significant win for inmates with civil rights claims. O'Melveny partner Jeremy Maltby supervised the O'Melveny team which was led by counsel Catalina Vergara and UCLA law student Mike Williams, who

will join O'Melveny in the Fall, who drafted the briefs and argued the case before the Ninth Circuit.

In addition to *Hebbe v. Piler*, the clinic also secured a victory in *Thomas v. Ponder*, a case also supervised by Maltby and handled by former O'Melveny counsel Jon Monson and UCLA law student Rebecca Hekman. In *Thomas*, Monson and Hekman argued that Salinas Valley State Prison officials violated Mr. Thomas's Eighth Amendment rights by depriving him of exercise for 13 months and 25 days, and that the district court erred when it granted summary judgment in favor of those officials. The primary issue on appeal was whether the prison officials' denying Mr. Thomas exercise for such a long period of time was reasonable under the circumstances, one of the two "deliberate indifference" questions at the heart of all Eighth Amendment cases.

In its opinion reversing the district court and remanding the case for further proceedings, the Ninth Circuit rejected the prison officials' main argument – that their actions were reasonable because Mr. Thomas had the power to end the restriction by signing a form pledging non-violence – and held that a genuine issue of material fact existed as to whether the prison officials acted reasonably. Just as Monson and Heckman argued in their briefs and at oral argument, the Court believed there was sufficient evidence in the record for a trier of fact to find that the prison officials refused to let Mr. Thomas exercise because he would not sign the pledge form, "not any fear that prison officials harbored about Mr. Thomas's dangerousness." The Ninth Circuit's views on the reasonableness of such a justification were evident when it wrote: "We should add that we have difficulty in conceiving how the prison officials might be able to justify the deprivation of so critical a human necessity as exercise for a period of almost 14 months on the basis of 'reasonableness,' as they would have been willing to allow Mr. Thomas to enjoy out-of-cell exercise throughout almost all of this period if he had signed the pledge form." The victory was a significant result for Mr. Thomas, who now has the chance to pursue his claims further in the district court.

Launched in 2008, O'Melveny's Ninth Circuit Appellate Advocacy Clinic is a joint venture between the Firm and UCLA Law School. The Clinic gives six third-year students the opportunity to work with lawyers from the Firm in representing pro bono clients at the federal appellate level. During the first two years, students and O'Melveny attorneys have argued eight cases before the Ninth Circuit. The students meet weekly with Los Angeles partners Charles Lifland, Jeremy Maltby, and Sabrina Strong, learning the nuts and bolts of writing appellate briefs, discussing strategy, and hearing guest lecturers.



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