

## Pro Bono Firm Of 2016: Munger Tolles & Olson

By Adam Rhodes

*Law360, New York (October 4, 2016, 11:14 AM EDT)* -- Munger Tolles & Olson's attorneys averaged a whopping 160 hours apiece on pro bono work in the past year, triumphing against state governments in battles over lethal injection documents and Syrian refugee resettlement, to earn the firm a spot among Law360's Pro Bono Firms of 2016.

Attorneys at Munger Tolles worked a total of 32,660 pro bono hours last year, all without a requirement from the firm.

"As you can tell from the average of 160 hours last year, we do not need to require people to do pro bono work," said David Fry, co-chair of the firm's pro bono committee. That freedom extends to what pro bono cases Munger Tolles attorneys are allowed to pursue.

"Our approach is to permit lawyers to take on the pro bono cases that they think are important," Fry said. "We try to let each lawyer build the career that they want, including the pro bono practice that they want to have."

Fry, who's been with the firm for nearly 20 years, had a hand in one of the firm's recent victories over a California agency that was withholding thousands of documents, some about a new one-drug lethal injection protocol, from the public.

Munger Tolles, along with the ACLU of Northern California, sued the California Department of Corrections and Rehabilitation in November 2015 in California state court over the department's lackluster disclosure. The response to the ACLU's request was just 40 documents, and Fry said it was clear that documents were being withheld.

"California has a strong policy in favor of transparency and it was clear that the department was not meeting that expectation," he said.



Short deadlines were a constant in the suit that Fry called one of the most intense he's ever litigated. In one instance, Fry had to file a response brief just 18 hours after an order was issued. It was unlike anything Fry had ever experienced, but such a speedy trial was integral to what the case was truly about, he said.

"Courts understood that what was important was not that the documents be produced, but that they be produced at a time when the public could consider them in making their public comments [about the new protocol]," Fry said.

After reaching the California Court of Appeals and the California Supreme Court, in May 2016 the CDCR ran out of options. After extending the public comment period several different times, the department was forced to turn over the 12,000 pages of documents it had been withholding after the California Supreme Court denied its petition for review.

In another notable pro bono case, Munger Tolles took on the state of Texas when the firm helped a group of clergy file a novel amicus brief in the state's ultimately failed lawsuit to block Syrian refugees from settling in the Lone Star State.

In January 2016, Amelia L. B. Sargent helped 17 different clergy, from a variety of faiths and denominations, fight an order barring participation in a national resettlement program. The clergy argued that to deny their right to minister to lawfully admitted refugees would infringe on their religious freedoms.

The clergy, most of whom are members of the U.S. refugee resettlement program, leveraged their membership in the program to argue that the directive was not right in a moral, religious or legal way.

"The different clergy were very enthusiastic about the brief and the opportunity to make their voices heard in a legal forum," Sargent said. "Many of them already had very vocally expressed their support for resettlement of Syrian refugees in Texas either in the press or in other public fora."

The challenge in this case lay not in just forming the legally cognizable argument, however. It was forming the argument just days before Christmas.

Munger Tolles received an inquiry about the brief from the ACLU just three days before Christmas, but instead of letting the impending holiday hinder or deter her, Sargent said it added to her dedication.

"That was part of the whole project and it was part of why I felt like I had to do it. It was an opportunity that was very much in the holiday spirit. How can you turn away refugees at Christmas?" she said.

The daughter of two Episcopal priests, Sargent also found a very personal connection to the cause.

"I just felt like I had to do it, that it was something that I needed to do, and I'm very proud of having done it," she said.

In June, a Texas federal judge dismissed the state's suit, but Texas appealed in August. If need be, Sargent said, she would help the clergy argue their point again, this time before a federal appeals court.

In another, ongoing, watchdog-style case, the firm is representing families arguing that New Mexico's unfair education system violates the state's own constitution.

In the first-of-its-kind suit against the state, Munger Tolles represents parents, along with the Mexican American Legal Defense and Educational Fund, accusing the state and its education department of violating a provision of the state constitution that mandates “a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.”

Filed in April 2014 in New Mexico state court, the suit, which is now in fact discovery, alleges, among other things, that the department has failed to maintain sufficient English-language learner programs at its schools, affecting students who primarily speak Spanish and Native American languages.

The lead attorney on the case, partner Martin Estrada, said that the novelty of the case posed both a challenge and added to the responsibility of the suit. The lack of precedent means the Munger Tolles team has to look at similar cases filed in other states to see how to move forward.

“You’ve got a case like this that can impact hundreds of thousands of students and you want to do the absolute best job you can,” Estrada said.

The biggest reward for Estrada, who sees this also as an opportunity to give back to the Latino community, is seeing how hard the families are working.

“It’s so rewarding dealing with the parents of these kids and to see how committed they are to their children’s futures and to making sure they do something that benefits not just their families but all the families in New Mexico,” Estrada said.

Attorneys like Sargent and Estrada going out of their way and sacrificing their own time for pro bono work isn’t just an everyday practice at Munger Tolles, Fry said. It’s integral to the firm.

“People want to do this. It is something that is valued in the firm and as long as it’s valued in the firm, people will do it,” Fry said. “The lawyers we hire, like most people in my experience, want to continue to help their community, and the firm values pro bono work and therefore implicitly encourages those people to do what they want to do.”

--Editing by Emily Kokoll.