

How Honigman Won Its Michigan Pro Bono Fee Battle

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After Honigman LLP helped two freelance journalists obtain requested audio and video recordings from the Michigan Department of Corrections in Freedom of Information Act requests related to the 2016 death of a prisoner, the Court of Claims reduced the law firm's fees by 90% solely because Honigman worked pro bono.



Robert M. Riley

But the Michigan Supreme Court determined last month that the Court of Claims abused its discretion by reducing the attorney fee award to Honigman on the basis of its pro bono representation of plaintiffs Spencer Woodman and George Joseph.

The Supreme Court's historic 4-2 majority ruling will ensure that pro bono counsel are treated the same as their paid counterparts and will encourage lawyers to represent those otherwise unable to afford access to justice, Robert M. Riley, a partner in Honigman's litigation department, told Law360 on Wednesday.

"If fee-shifting statutes are only applied to lawyers who bill their time, that entirely disincentivizes lawyers from donating their time to these really important public interest groups," Riley said. "This ruling forever bars a court from reducing an otherwise reasonable fee to a lawyer who works pro bono."

The decision comes more than six years after the journalists filed separate FOIA requests seeking video and audio recordings of a prisoner altercation

that resulted in the death of inmate Dustin Szot under suspicious circumstances.

Szot was allegedly involved in an altercation with another prisoner, and prison guards shocked him with a stun gun. Woodman learned that the entire incident was captured on video and requested a copy of the footage under the FOIA, according to the [American Civil Liberties Union of Michigan](#).

When the Department of Corrections denied their requests, claiming the videos would undermine prison security, the journalists sought legal assistance from the [ACLU of Michigan](#), which in turn recruited Honigman as pro bono cooperating counsel.

In 2017, the ACLU and Honigman filed a lawsuit on Woodman's behalf, arguing that the state had no legitimate justification for keeping the video secret. Another lawsuit was later filed on behalf of Joseph, and the cases were later consolidated.

During discovery, the journalists' attorneys learned that the corrections staff has a policy of automatically denying all FOIA requests for videos, without even viewing the video in question to determine whether or how its disclosure would threaten security, Riley said.

"These were two pretty routine Freedom of Information Act cases," he said. "It came out in discovery that the Department of Corrections just rubber stamp denied every request, citing a couple of different FOIA exemptions, and that was their blanket policy. We were both shocked and kind of thrilled to uncover that at the same time."

The Michigan Department of Corrections is represented by the Michigan Department of Attorney General, which did not immediately respond to a request for comment.

The Court of Claims in 2019 ruled that Woodman and Joseph were entitled to all of their requested audio and video recordings and that, as prevailing parties, were entitled to attorney fees under the FOIA.

"Their argument was that by turning over these videos, the inmates would know where the security cameras in this particular facility were located," Riley said. "We said since they know that they're under 24-hour surveillance, and they can see the cameras, that's kind of a dumb argument."

The original petition sought more than \$200,000 in attorney fees and out-of-pocket costs, divided roughly as \$14,000 for the ACLU and \$192,000 for Honigman. The Court of Claims awarded the ACLU all of its fees, and Honigman just 10% — or \$19,200 — of its fees and costs, Riley said.

The Court of Appeals later affirmed that ruling, and the attorneys appealed to the state Supreme Court.

The Department of Corrections argued the requested fees should be reduced, because the plaintiffs provided an unreasonable number of hours worked and an unreasonable hourly rate, according to the Supreme Court ruling.

In its July ruling, the Michigan Supreme Court noted Court of Claims Judge Cynthia D. Stephens held that the attorneys' hourly rate and the number of hours billed on the cases were reasonable, and awarded the ACLU 100% of its requested attorney fees. However, it awarded Honigman only 10% of its requested attorney fees because the firm represented the journalists pro bono.

"Plaintiffs prevailed ... because the action was reasonably necessary to compel the disclosure of the records and because plaintiffs obtained everything they initially sought; accordingly, the court was required to award reasonable attorney fees," Justice Kyra H. Bolden wrote in her majority opinion. "Furthermore, pro bono representation is not an appropriate factor to

consider in determining the reasonableness of attorney fees."

Justice Bolden added that allowing courts to reduce an otherwise reasonable attorney fee on the basis of pro bono representation would be contrary to the policy and purposes underlying FOIA.

"We refuse to undermine the purpose of the law so blatantly," she said in the opinion.

The Honigman team included Riley, fellow litigation partner Rian Dawson and Scott Kitei, a partner in the firm's restructuring and insolvency practice group.

Several groups filed amicus curiae briefs in support of Honigman's position, including the Association of Pro Bono Counsel, the [Michigan Association for Justice](#), the [State Bar of Michigan](#), Michigan State Planning Body, Legal Services Association of Michigan, and Disability Rights Michigan.

Dan Korobkin, ACLU of Michigan legal director, called the Supreme Court's ruling important for nonprofit organizations and private law firms that provide pro bono legal counsel to support important public interest work.

"This is a major victory for organizations and individuals in Michigan who provide pro bono legal services, and we're grateful to the team at Honigman for their counsel and partnership," Korobkin said in a statement.

Riley said the firm will be donating all of its fees from the journalists' cases to the ACLU of Michigan.

"It came up at oral argument that isn't this just a windfall for Honigman or private practitioners who take on pro bono cases if they're awarded all their fees? And we can say the answer is no," Riley said. "I told Justice [Brian K.] Zahra in no uncertain terms that we'd donate 100% of the fees that we're recovering in these cases to the ACLU, so this isn't a windfall for BigLaw."

Meanwhile, the Supreme Court's decision gives Honigman the opportunity to go back to the Court of Claims to file a renewed petition for attorney fees.

"There's a strong likelihood that we will be back in front of the Court of Claims to address the specific amount of fees we think we're entitled to in light of this decision," Riley said.

--Editing by Jay Jackson Jr. and Nicole Bleier.

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