

Firm's Appellate Group Successfully Represents Clients in Appellate Proceedings

In addition to the wide range of legal services CMDA provides to our clients, our Firm has a team of accomplished and talented attorneys who exclusively handle appellate matters.

An appeal often gives a second chance to a losing party. However, appellate procedures can be complicated, confusing and time consuming. For these reasons, it is crucial that any municipality, company or individual considering an appeal must have competent and experienced appellate counsel. CMDA has a long and distinguished history of successfully representing clients in appellate proceedings.



Karen M. Daley

Karen M. Daley is the head of the Firm's appellate group. Other attorneys in the group include Joseph Nimako, Gail Massad, Susan Lumetta, Melissa Stewart and Lindsey Kaczmarek. They focus on performing research for all areas of law handled by the Firm, writing briefs for submission to all levels of state and federal courts and keeping up-to-date with state and federal judicial

decisions and laws that can affect clients of the Firm. They successfully represent parties in the United States Supreme Court, U.S. Court of Appeals for the Sixth Circuit, the Michigan Supreme Court and the Michigan Court of Appeals.

Please continue reading for a better understand of the appellate process.

WHAT IS AN APPEAL?

A case is usually appealed when either the plaintiff or the defendant loses or did not get everything they wanted. If both

the plaintiff and the defendant are disappointed with the result, each may appeal the part of the decision that is adverse to them.

Many people think an appeal is simply a retrial of a case. However, appellate courts do not "retry" a case, take testimony or accept new evidence. Instead, the appellate court looks to see if the correct law was applied to the facts. If so, the appellate court will not interfere with the decision of the lower court.

WHERE DO I APPEAL?

An appeal may normally be taken to only the next higher level of court in the same system. In Michigan, there is a state system and a federal system. The state system is made up of:

- District courts,
- Circuit courts,
- Michigan Court of Appeals and
- Michigan Supreme Court.

In the state system, a case tried in circuit court, for example, would be appealed to the Michigan Court of Appeals (the next highest level).

The federal system is made up of:

- District courts,
- Sixth Circuit Court of Appeals, and
- United States Supreme Court.

In the federal system, a case tried in district court, for example, would be appealed to the Sixth Circuit Court of Appeals (the next highest level).

HOW LONG DO I HAVE TO FILE AN APPEAL?

Both the state and federal systems have strict time limitations

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Police Liability Defense Attorney Joins Firm



Mark A. Rouland

Please join us in welcoming Mark A. Rouland to the Firm. He has joined CMDA in our Livonia office where he practices in the areas of police liability defense, civil litigation defense, family law and labor and employment law.

Mr. Rouland was a police officer from 1989 – 2003 and has been an instructor at Schoolcraft College in Livonia

since 2002 where he trains law enforcement and security personnel regarding constitutional law, criminal law and procedure, rules of evidence and civil liability.

He received a Juris Doctor degree from Wayne State University and a Bachelor of Science degree in Criminal Justice from Ferris State University. He is a member of the State Bar of Michigan.

Mr. Rouland can be reached by calling (734) 261-2400 or mrouland@cmda-law.com.

Judge Rules that a Female Officer Did Not Violate Plaintiff's Constitutional Rights by Conducting a Pat-Down Search



Ethan Vinson

On April 8, 2011, Judge Sean Cox, U.S. District Court Judge for the Eastern District of Michigan, issued an Opinion and Order Granting the Defendants' Motion for Summary Judgment. Partner Ethan Vinson, of the Firm's Livonia office, represented the police officer in this case.

The Plaintiff was arrested on July 10, 2009 for operating a motor vehicle while intoxicated. The Plaintiff was traveling the wrong way on the I-94 service drive because he thought it was one way. A police officer, observing the Plaintiff's driving, activated the overhead lights and pulled the Plaintiff's car over. The Plaintiff had three female passengers in the car. Upon detecting the odor of alcohol upon the Plaintiff, the Plaintiff was asked to step out of the car and field sobriety testes were conducted. The Plaintiff failed the sobriety test and blew .098 on the PBT.

It was at that time the Plaintiff was advised he was being placed under arrest. He was handcuffed and a pat-down search was conducted. The arresting officer, a female, conducted the pat-down search of the Plaintiff. The Plaintiff claims his rights were violated because the pat-down search was done by a female officer. The Plaintiff did not object to the female of-

ficer conducting the search, nor did he request that he be searched by a male officer instead of the female officer. The Plaintiff claims his Muslim religion prohibits a woman from touching a man between the knees and the waist. However, the Plaintiff did not tell the officer he was Muslim.

The Court granted the Defendants' motion to dismiss the case holding that the Plaintiff does not have a constitutional right to have a pat-down search conducted by someone of his own gender.

The Plaintiff also claimed the pat-down search constituted a sexual assault under State law. The Court dismissed that claim holding that to the extent he was seeking to hold the officer criminally liable for conducting a pat-down search, he failed to state a claim as a private citizen and has no authority to initiate either a federal or State criminal prosecution. The Court also dismissed the Plaintiff's intentional infliction of emotional distress claim holding that the officer's actions did not rise to a level of extreme and outrageous conduct to support such a claim.

Ethan Vinson

Ethan Vinson is a Partner in our Livonia office where he concentrates his practice on civil litigation defense, municipal law and employment and labor law. He can be reached by calling (734) 261-2400 or evinson@cmda-law.com.

Firm's Appellate Group Successfully Represents Clients (cont.)

on when you can file an appeal. In the state system, you must file a claim of appeal within 21 days of the final judgment you are appealing. In the federal system, you must file a claim of appeal within 30 days of the final judgment. If you do not formally initiate the appeal process during this very short time, you may not be able to appeal. You can seek permission from the court to file a late appeal, but it is not guaranteed that the court will take your case for review.

WHAT IS THE BASIS OF AN APPEAL?

Appellate courts are limited to reviewing the lower court's decision for legal errors. If the legal questions were resolved correctly, the appellate court will not interfere with the decision of the lower court. If you cannot show an error of law in your case, there is no point in pursuing an appeal since there is no possibility you can win.

Keep in mind that "harmless errors" that do not have a significant impact on the outcome of the case cannot be the basis of an appeal. It is impossible to have a case free from errors, and the appellate court is not going to reverse a trial court's decision on minor matters if the error probably did not affect the outcome.

HOW LONG DOES THE APPEAL PROCESS TAKE?

The appeal process usually takes several months to years. Transcripts of the lower court proceedings must be prepared, along with briefs and responses to briefs from both the plaintiff and defendant. Once the briefs of both sides have been submitted, the case will be scheduled for oral arguments in front of the court. Delays are often encountered with time extensions throughout the appeal, and it can take many months after oral argument to receive an opinion from the court regarding the outcome of the appeal.

It is important to remember that while an appeal is a continuation of litigation, it is much different than trial practice. An appellate attorney brings an expertise in appellate practice to the case, and a client will benefit from the fresh perspective an appellate attorney offers. After all, the appeal is argued to a new court that was not involved in the trial court proceedings. Who better to identify the best arguments and how to present them than an appellate attorney who can view the case with the same objectivity?

For additional information, please contact Ms. Daley at (734) 261-2400 or kdaley@cmda-law.com.

Attorney Profile: Gerald C. Davis



Gerald C. Davis

In this month's newsletter, Gerald C. Davis is being profiled. Mr. Davis is co-founder of the Firm and works out of our Livonia office.

Mr. Davis has practiced law for 36 years. His main area of practice are business and employment law, transactional law effecting mergers and acquisitions, leveraged buy-outs, company reorganization and refinancing, analyzing investments for joint ventures, intellectual property and drafting loan agreements. Mr. Davis is experienced in workouts involving loan structures, asset relocation, payment restructuring, re-securitization of loans, collection strategies and documentation of secured transactions. Over the years, he has assisted Fortune 500 Tier 1 suppliers to the automotive industry, banks, major credit companies, large stock brokerage firms and businesses of all sizes.

Eileen Stoner, Mr. Davis' legal secretary for the past six years,

explains, "Clients rely on him, not only because of his wealth of knowledge and experience, but also because he responds so quickly to their needs. Client service is his first priority, and he always makes himself available to them. Other attorneys in the Firm, both new to the practice of law and those with years of experience, look to Mr. Davis for advice and guidance."

Mr. Davis received a Juris Doctor degree from the University of Detroit Law and a Bachelor of Business Administration, cum laude, from Detroit Institute of Technology. He is a member of the State Bar of Michigan.

Mr. Davis resides with his wife Julie in Farmington Hills. He has three adult daughters, two adult step-children and 12 grandchildren. Daughters Linda and Nancy are also attorneys and daughter Karen has a PhD in Marine Biology and is a professor and Assistant Dean at Ferris State University. Step-daughter Shari works in the IT Department at MMRMA and step-son Mark is a sales engineer. Mr. Davis enjoys spending summer weekends on his boat, reading, attending the Opera and playing cards with his parents, both of whom are in their 90's.

You can contact Mr. Davis at (734) 261-2400 or gdavis@cmda-law.com.

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Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features should be addressed to the attention of Jennifer Sherman.

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