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CROWLEY | FLECK PLLP
ATTORNEYS

PRO BONO NEWSLETTER

December 2023



Crowley is excited to announce the addition of Brittney Mada as pro bono counsel. In addition to her extensive experience in poverty law issues, Brittney brings with her the life experience of a former wildfire firefighter, a non-profit professional, and a professional photographer. Brittney will be based in Billings but will offer support on pro bono matters throughout our eleven offices.

While many access to justice initiatives necessarily shift towards clinic and limited scope models to maximize resources and to serve the greatest number of people possible, nothing closes the access to justice gap more than direct representation of a client.

In 2022 alone, Crowley Fleck attorneys worked on close to 200 distinct pro bono matters, donating close to 8,000 hours of free legal service to our communities. But those numbers do not come close to telling the story of impact. The impact of the firm's contributions can be seen best on the face of a mother who thought she would have to go into an order of protection hearing alone, but never had to say a word in the face of her abuser. The impact can be felt with the sigh of relief from parents who did not have to figure out the complicated court process to obtain guardianship of an adult child lacking legal capacity—a child for whom they spend all day advocating in the face of endless challenges.

None of our clients' stories can be reduced to a statistic or a bullet point on a page. And we would not have that any other way. For all the public teasing attorneys endure for being cut-throat and calculating, everyone in the business knows that attorneys are mostly type-A perfectionists who want to do things right.

With a team of do-righters at our disposal, so much good is done through Crowley's in-house pro bono program. And by that, we mean that so many clients are treated with the integrity and kindness that they deserve. It is our honor to share some of their stories and the causes for which they are the true champions.

-Morgan Dake, Senior Pro Bono Counsel

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Contested Adoption Turns the Corner



Stefani came to our firm in a wave of pure panic. She was raising her three grandsons under a legal guardianship she obtained with the consent of her

drug-addicted daughter and son-in-law. The boys, ages four and under, suffer from a berth of medical issues resulting from their mother's drug use. Their medical issues require the assistance of medical experts in specialized children's hospitals throughout the country.

To better support the boys' needs, Stefani hoped to move out of Montana where there are no specialists trained to meet the boys' co-occurring medical issues. However, she was keenly aware that moving the guardianship from state to state would be prohibitively difficult for her to manage, and ultimately, she did not believe she could secure the continuous cooperation from her daughter and son-in-law that the process would require.

Early in the process of transferring the guardianship it became apparent to our attorneys that adoption would provide Stefani the most consistency and autonomy in providing continued care for her grandsons. However, it would require the consent of her daughter—a daughter

whom she was rarely able to locate.

When it became clear that the parents would not consent, we started the adversarial process of terminating parental rights. Because parental rights are constitutional rights, we filed accompanying motions to ensure the parents were appointed counsel and braced for a long fight.

The whole case took a turn the moment the parents, who had been living out-of-state, came face to face with their children. When they returned to Montana for their first hearing, Stefani allowed them a visit with the boys, their first visit in more than a year. Witnessing the boys' complex needs and seeing Stefani's exceptional efforts to provide for the boys', the parents recognized their own inability to provide the level of care their children required.

In an emotional meeting of the family, the parents signed consents to the adoption, and the Judge—who had adjudicated the original guardianships—recognized the immediacy of the proceeding and set the final adoption hearing for the following morning—an uncharacteristically fast turnaround for any court proceeding.

Now, Stefani is not just grandma. She has complete power to make decisions for her grandsons to provide for all their needs long-term, across all borders, and with the assistance of any medical professionals available to help.

Afghan Asylum Project Update

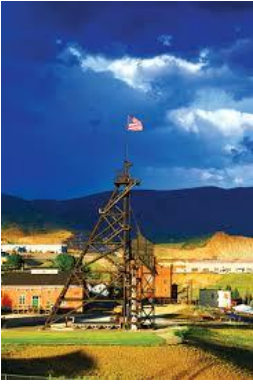


After the fall of the Afghan government in 2021, tens of thousands of Afghans who had worked for the U.S. government fled Afghanistan. When nearly forty families made their way to Montana, the state bar, in conjunction with other legal service organizations, committed to finding attorneys for every Afghan family seeking asylum. Several Crowley attorneys jumped in to assist and began the years long process of seeking asylum on behalf of our clients.

Although Afghan asylum applicants were told their petitions would be part of an expedited process, more than a year and a half after our clients' entry into the U.S. there was still no word. Then, in April 2023, the National Immigrant Justice Center and Kirkland & Ellis LLP filed a class action against U.S. Citizenship and Immigration Services for failure to timely adjudicate the asylum applications of thousands of Afghan people who entered the United States. In September 2023, plaintiffs reached a settlement with the U.S. government expected to help approximately 20,000 Afghan people seeking asylum in the United States. It was one of the largest asylum adjudication class action settlements in U.S. history.

Within weeks of the settlement, each of our clients received notice that their applications were approved. With their asylum petitions granted, our clients will now begin yet another tedious process to be reunited with their families. But for the moment, they are enjoying the first win.

Assisting the Butte Rescue Mission to fulfill its Primary Cause



When our attorneys assisted the Butte Rescue Mission with the disposition of a former building, the transaction took more twists and turns than the underground mine tunnels running underneath Butte. The Mission thought it would be an easy transaction and the board even questioned whether they needed an attorney. Our attorneys first noticed the deed named a reversionary grantee and had to negotiate a termination of the reversionary interest. The county wanted to purchase the property for demolition, but the commissioners did not all agree, which required additional negotiation. The property was then deemed a dangerous building and the Mission was given 60 days to correct the deficiencies. We ultimately helped the client turn the property over to the city. Our pro bono assistance allowed the Mission to fulfill its primary cause—to direct its funds to support the homeless and hungry people of Butte.

Preserving Parental Rights

Yan Sun (“Sonny”) is a Chinese national who entered the U.S. in 2017 at the age of 20 to study business at Auburn University in Alabama. Sonny was born during China’s one-child policy and has a very close relationship with his mother and grandmother. Sonny’s father was killed by local police under suspicious circumstances related to his Christianity—a prohibited religion in China. This influenced Sonny’s decision to study abroad. Once in the U.S., Sonny and his family made the decision that Sonny would have a child via surrogacy. Surrogacy was the family’s best opportunity for a child because Sonny is a homosexual and surrogacy is illegal in China.

Sonny selected a 32-year-old single mother in Billings, Montana to act as the surrogate, and they executed a 72-page Gestational Carrier Agreement which ultimately required Sonny’s family to pay more than \$200,000 in various fees. Sonny’s mother planned to travel to the U.S. to help Sonny raise the baby while he finished school. Sonny himself was raised by both his parents and grandparents who supported the family as a unit. But just when the baby was born, the Covid pandemic hit China and Sonny’s mother was unable to leave. Sonny traveled to Billings when his son was born and thought he found luck when the surrogate offered to help him out for a while.

In a bizarre twist of events, within days of Sonny’s son being born, the surrogate offered to marry Sonny. Within weeks, Sonny signed a premarital agreement purporting to give the surrogate the right to pursue parental rights of the child, in direct contradiction of the gestational carrier agreement. Then, Sonny’s mother, grateful that her son found a source of the support in the surrogate, agreed to help the surrogate purchase a home for their non-

traditional family. Although Sonny’s family provided the \$100,000 downpayment for the house, the surrogate’s name alone was put on the deed. Within just weeks of closing on the sale of the home, the surrogate filed for and was granted a temporary order of protection that essentially evicted Sonny and his son from the house. Once Sonny was left homeless, she filed for a divorce and parenting plan. Finding Sonny’s living arrangements in temporary Airbnb’s inappropriate for a child, the Court ordered Sonny to place the child with the surrogate, despite Sonny’s objections that the surrogate had no parental interest in his son.

For the next year, our attorneys worked with local attorney Mindi Driscoll and Sonny to unwind the convoluted legal proceedings that ultimately declared the surrogate to be the legal mother of the child. In a sad final twist, to appease the Surrogate’s fear that Sonny would take his son to China and not return, the Court also ordered that Sonny would not be allowed to travel abroad with his son—meaning that this child who meant so much to his family, would have no opportunity to meet his grandmas, who dedicated their whole life’s savings to his very life.

Sonny’s attorneys threw everything into appeal and almost a year later, the Montana Supreme Court issued its ruling. In an in-depth analysis of the gestational carrier agreement and premarital agreement, the Court upheld the premarital agreement as to many of its terms. But most important to Sonny, the Court found that the lower court erroneously adjudicated a parental interest to the surrogate. The law finally recognizes that Sonny is the sole parent and custodian of his son. His son’s grandmas are impatiently waiting to meet him.

Representing Innocence on Appeal

When Bozeman associate Lars Phillips joined Crowley, he brought with him an established working relationship with the Montana Innocence Project. Lars also brought experience in postconviction relief, and a client, Katie Garding, that he had represented for several years. Katie was charged in connection with a hit and run on January 1, 2008, convicted in 2011, and sentenced to forty years in prison.

After her conviction, the Montana Innocence Project consulted with experts who opined that, based on the laws of physics and impact mechanics, it was impossible for Katie's vehicle to have been involved in the hit and run. Katie presented this evidence to the Montana's Fourth Judicial District Court in a petition for postconviction relief and later to the Montana Supreme Court after the district court denied her petition. After the Court denied her appeal in June 2020, Katie looked to the next option—a petition for habeas corpus to the federal court—and Lars took over as lead counsel.

In federal habeas corpus, state prisoners can petition federal courts to review the validity of their convictions and sentences when it is

alleged that their constitutional rights were violated. If a prisoners' petition is successful, a federal court can order than the prisoner be released from custody, reduce the sentence, or remand the case for further proceedings. Less than five percent of these petitions have been granted in whole or part, and only 1.8 percent resulted in any type of release of the petitioner. This incredible remedy was Katie Garding's last resort.

In March 2023, the United States District Court for the District of Montana, Missoula Division found in favor of Katie's claim that she received ineffective assistance of counsel and overturned her conviction. The federal court took a deep dive into Katie's case and reached the conclusion that if not for ineffective assistance of counsel, a jury would not have been able to reach the consensus needed for conviction. In a robust opinion, Judge Dana Christensen granted Katie's petition and ordered the State to either retry her or release her from custody.

The State appealed the decision to the Ninth Circuit which in turn held an expedited oral argument before a three-judge panel which would have

to be described as a "hot bench." One of the Judges on the panel came right out and said he was convinced that the State had convicted an innocent woman and was astounded that the State would even appeal considering the facts in the record, many of which had come to light in postconviction below.

While the panel was equally inquisitive of Lars, he responded adeptly to the Judges' questions with compelling arguments based on specific cases, which he cited to the panel. The outcome of the State's appeal is currently unknown. However, regardless of how it turns out, Katie was supported and empowered to use her voice and proclaim her innocence.

Katie is a daughter, sister, mom, artist, and dog-lover. While wrongfully incarcerated, Katie became a member of Prison PAWS. Katie uses the skills learned through Prison PAWS in her job at a veterinary office in Billings. She lives with her partner and their two dogs and spends much of her free time with her sister Chyrel and son Carson who recently relocated to Billings.

Dalthorp Clerk turned Health Law Summer Associate



Each summer, Crowley's Dalthorp clerkship offers one law student the opportunity to work in our pro bono program in honor and memory of George Carrol Dalthorp, who gained the enduring respect of his peers through his compassion and commitment to pro bono work. For the summer of 2023, for the first time in twelve years, the program selected a first-year law student to fill the position. Grace Fischer's previous work as a counselor brought invaluable insight to our pro bono caseload. She proved to be such an asset that we are excited to welcome her back next summer on our traditional internship track where she will be bringing her sense of humor and unmatched grit to the health law practice group.

For more information about our program, visit our website at:

<https://crowleyfleck.com/practice-areas/pro-bono/>