

HODGSON RUSS ATTORNEYS SECURE DISMISSAL OF FIRST AMENDMENT RETALIATION LAWSUIT RELATED TO HIGH-PROFILE MURDER CASE

Press Release
September 4, 2014

A Hodgson Russ team led by Joseph S. Brown, and including Adam W. Perry and Michael B. Risman, secured for Hodgson Russ clients the City of Buffalo, Mayor Byron Brown, and Buffalo Police Commissioner Daniel Derenda the dismissal of a First Amendment retaliation lawsuit brought by former police detective Dennis Delano.

After making public comments to a news reporter and releasing evidence related to the 1993 murder of 13-year-old Buffalo resident Crystallyn Girard, Delano was brought up on disciplinary charges and later suspended for 60 days at the recommendation of an independent hearing officer. According to the Buffalo Police Department, Delano's actions violated numerous departmental regulations and were in direct violation of orders from his superiors. Delano, however, asserted that the suspension was in retaliation for his exercising his right to free speech under the First Amendment.

Chief U.S. District Judge William M. Skretny dismissed the civil lawsuit in August 2014 on the grounds that Delano's conduct amounted to insubordination, which outweighed the value of his speech. Judge Skretny's ruling was informed by the decision handed down by the U.S. Court of Appeals for the Second Circuit in *Sacha v. Sedita*, another First Amendment retaliation case successfully handled by a Hodgson Russ team (Adam Perry and Joe Brown) at the district court and on appeal in defense of Sacha's claims against Erie County District Attorney Frank A. Sedita, III. In the decision, the Second Circuit ruled that an assistant district attorney's public statement expressing criticism of his office "was sufficiently disruptive to justify terminating his employment." Judge Skretny agreed with the *Sacha* precedent, stating that "no matter the merits of his motivation," Delano's action "had the potential to cause a disruption significant enough to impair 'discipline by superiors' and 'harmony among co-workers.'"

Hodgson Russ partner Joe Brown, who argued *Delano* as well as *Sacha* on behalf of the defendants, told *New York Law Journal*, "Legally, what I find most significant is it reaffirms the wide latitude that courts give to police departments to impose

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discipline for conduct that threatens the department's ability to maintain discipline, morale and order."

