

PROFESSIONAL  
LIABILITY

Dennis R. McCoy, Chair  
716.566.1560  
[dmccoy@hblaw.com](mailto:dmccoy@hblaw.com)

Frank V. Balon  
Robert A. Barrer  
Marc S. Brown  
David B. Cabaniss  
John R. Casey  
Thomas B. Cronmiller  
Charles Z. Feldman  
Alexandra George  
Kevin M. Hayden  
David M. Hehr  
Meredith Ireland  
Matthew J. Larkin  
Robert J. Lydford  
Brian G. Manka  
Paul A. Sanders  
Tara J. Sciortino  
Robert M. Shaddock  
Matthew J. Skiff

## *Cornejo v. Bell*: Addressing the Bounds of Immunity for City Lawyers and Caseworkers

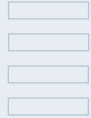
Although government officials are typically only entitled to qualified immunity from civil liability for acts committed during their official duties, the United States Court of Appeals for the Second Circuit recently granted absolute immunity to lawyers employed by the New York City Administration for Children's Services ("ACS"). In *Cornejo v. Bell*, 592 F.3d 121 (2d Cir. 2010), the Second Circuit was faced with the issue of whether ACS attorneys and caseworkers were entitled to immunity from liability for alleged violations of Federal and New York State law for their actions in seeking the removal of a child from his parents' home. ACS caseworkers were entitled to only qualified immunity for their role.

In 2002, the plaintiff, Sally Cornejo, came home from work to find her five-month old infant son not breathing in the arms of his father, Cornejo's fiancé. The infant was rushed to the hospital where the staff diagnosed him with Shaken Baby Syndrome. ACS temporarily removed the infant and his eighteen-month old brother, who was examined and showed no signs of abuse, from Cornejo's custody. ACS attorneys then filed Family Court petitions accusing both parents of child abuse. One week after the incident, the infant died in the hospital. Within one week of the infant's death, a city medical examiner informed ACS attorneys that she was uncertain whether the baby had been abused. ACS sought to parole the surviving child to Cornejo, but the Family Court denied the request in light of the conflicting medical evidence and the open petitions against Cornejo and her fiancé. Three months after the death, the medical examiner issued a final report finding that the infant died from a natural heart defect, not from Shaken Baby Syndrome. Shortly thereafter, the surviving child was paroled to Cornejo. She later successfully moved to dismiss the petition against her.

Cornejo sued the ACS caseworkers and attorneys on behalf of herself and her surviving son, alleging federal claims of due process and search and seizure violations, federal and state claims of malicious prosecution and a state law claim for breach of the duty of reasonable care. The lower court granted summary judgment to the defendants on grounds of immunity and the Second Circuit affirmed the dismissal with slightly different reasoning. The Second Circuit held that the ACS attorneys were entitled to absolute immunity from the federal claims because they were "performing functions analogous to those of a prosecutor." The Second Circuit disagreed with the lower court's determination that the ACS caseworkers were also entitled to absolute immunity from the federal claims and found that they were

(Continued on back)

Hiscock & Barclay is a full service, 200-attorney law firm, with offices throughout the major cities of New York State, as well as in Boston, Washington, D.C. and Toronto. We provide comprehensive legal and business counsel to a diverse client base in 30 specialized practice areas with statewide and regional expertise as well as with national and international capabilities.



- Branding, Trademarks & Copyrights
- Commercial Litigation
- Construction & Surety
- Corporate
- Creditors' Rights
- Economic & Project Development
- Energy & Utilities
- Environmental
- Financial Institutions & Lending
- Health Care & Human Services
- Immigration
- Indian Law
- Insurance Coverage & Regulation
- Intellectual Property Litigation
- International Business
- Labor & Employment
- Lobbying & Election Law Compliance
- Media & First Amendment Law
- Municipal & Land Use
- Patents & Prosecution
- Professional Liability
- Public Finance
- Real Estate
- Real Property Tax & Condemnation
- Regulatory
- Sports & Entertainment
- Tax
- Telecommunications
- Torts & Products Liability Defense
- Trusts & Estates

entitled to qualified immunity instead because they were performing police-like functions. Because they acted reasonably, however, the Court affirmed the dismissal of the federal claims against the ACS caseworkers.

Relying on the New York State precedent, the Second Circuit found that all defendants were entitled to absolute immunity from the state malicious prosecution claims. Regarding the breach of reasonable care claim, the Second Circuit found that the attorneys were entitled to absolute immunity because their actions involved the use of discretion in a judicial proceeding. Finally, the Second Circuit held that the caseworkers were entitled to dismissal of the breach of reasonable care claims under a qualified immunity because there was no evidence that they acted with gross negligence. ■

*If you require further information regarding the information presented in this Legal Alert and its impact on your organization, please contact any of the members of the Practice Area listed on the front of this Alert.*