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ACLU's profile on the rise in Delaware

WILMINGTON -- The American Civil Liberties Union of Delaware has sharpened its teeth.

In the past three months, the group saw the state Supreme Court uphold a ruling in a lawsuit it brought involving the rights of gay parents, saw a bill approving civil unions that it strongly lobbied for pass the Legislature and saw new discipline policies approved that it had demanded in one school district.

It also filed a complaint with Sussex County Council regarding a new policy that banned speakers at public meetings from personally criticizing county officials and filed a friend-of-the-court brief in the state Supreme Court in a case that could set new restrictions on the ability of police to electronically track suspects without a court order.

Whether these events are the result of new leadership -- new executive director, Kathleen MacRae, took over in November just a few months after the organization appointed veteran attorney Richard H. Morse as legal director -- or years of hard work, depends on whom you ask.

"One of my goals is to raise the profile of the organization," said MacRae, but she pointed to the flurry of recent headlines as more happenstance than the result of a more aggressive stand by new leaders.

"They just all happened to come to a head at the same time," Morse said.

MacRae said many of the things that have recently garnered publicity and attention for the Delaware ACLU came as a result of years of work -- particularly the civil unions bill -- and predated her and Morse.

But they cannot pass off all the credit. Years of slow and steady progress by the ACLU in Delaware is allowing it to take on more issues and be more aggressive in its mission of fighting what it sees as threats to civil liberties.

MacRae is only the third full-time executive director in the organization's history. The first was Judith Mellen, who ran it from 1986 to 2001, and spearheaded the ACLU's 1990 lawsuit against the Ferris School that resulted in significant reforms.

The second was attorney Drewry Fennell, who served from 2001 to 2010 and was charged with raising the ACLU's profile in Dover as a lobbyist.

"She took what had been a letter-writing group to a real voice in the General Assembly," said former ACLU Delaware Board President and Widener Law Professor Lawrence A. Hammermesh. "That was a huge change."

Fennell also hired the first full-time staff attorney for the Delaware chapter.

In August 2010, the organization's evolution continued when veteran attorney Morse, who had been a cooperating attorney with the ACLU for years, left the law firm Young, Conaway, Stargatt & Taylor after 35 years to take the position of legal director.

Previous staff attorneys -- by design -- had been promising but fresh out of law school and were often paired with more experienced volunteer attorneys by the ACLU.

With Morse -- a graduate of Harvard Law School -- the experience is now in-house.

Morse said he has always believed in the mission of the ACLU and was willing to take a significant pay cut. "What we care about is freedom. We do not care what side someone is on," he said.

In addition to the defense of freedom of speech and separation of church and state "which are our meat and potatoes," MacRae said, the Delaware ACLU and national organization are focused on emerging areas of civil liberties as they apply to gay, lesbian and transgendered individuals and what some call "the school to prison pipeline."

MacRae cited the recent settlement with the Christina School District as an example of that focus on cases in which zero-tolerance discipline policies result in more children ending up in prison, the juvenile justice system or out of the school system.

She said the policies, like the ones that were changed in Christina as a result of intervention by the ACLU, came about because of a handful of high-profile incidents of school violence, like the shootings in Columbine, Colo. The laws and rules may have seemed appropriate at the time, MacRae said, but as the years have gone on, "they have become too rigid."

"A tussle in the cafeteria used to result in a trip to the principal's office and detention. Now, if there is a police officer on premises, it often can end in arrest," she said, and derail that student's academic career.

In the case of Christina, two elementary school students with decent records who committed seemingly minor infractions were abruptly suspended or expelled. As part of a new policy -- adopted after the ACLU brought suit -- Christina said it will now consider mitigating circumstances before imposing punishment, including such things as the age of the offender, their intent and the potential risk of harm.

MacRae said while they can handle perhaps 10 to 30 cases a year, the Delaware ACLU gets 30 to 50 requests and complaints every month.

Morse said about 25 to 30 local attorneys have expressed interest in helping should the need arise.

Many complaints or requests for assistance that the ACLU receives, however, are not appropriate for the ACLU, MacRae said.

"We are not a legal firm," she said, adding the ACLU only gets involved when there is a larger civil rights issue or it is a case that has the potential to affect a large group of people.

As a general rule, she said, they don't get involved in family court matters, employer issues or litigation between individuals.

MacRae said there is never a shortage of civil liberties issues for the organization to tackle.

"No civil liberties battle stays won," said MacRae, quoting the ACLU's founder.

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