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## New UT Law Grads Make Courtroom Debut in Federal Appeals Arguments

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Gabrielle Olubanke Howells felt calm as the newly minted law school graduate approached the U.S. Court of Appeals for the Fifth Circuit to present her first-ever oral argument on Thursday.

She got a last-minute case of nervous jitters as she approached the lectern, but her voice didn't give her away. Howells addressed the three-judge panel with a clear and measured tone. But not even a minute into her presentation, Chief Judge Jennifer Walker Elrod interrupted, and a flurry of questions from the bench began.

Behind Howells, fellow recent graduate Lizeth Badillo Garcia was anxious for her turn. She was next on deck to present her case and feared that a judge's interruption like that would throw her off.

But she watched Howells march forward, answering the judges' questions and redirecting the conversation to the timeline she intended to present. For her career debut, Howells said the inquisitive judges made the formal setting feel conversational.

"I think it was a great thing that they did for me, because with them asking questions immediately out the gate ... it really felt like we were chatting back and forth," Howells said.

Though they have yet to take the bar exam, the University of Texas School of Law graduates and incoming Kirkland & Ellis litigation associates were able to work on the case under the supervision of firm partner *Zack Ewing* and present the oral argument in the New Orleans appeals court.

"They did a great job of thinking on their feet," Ewing said. "All of their prepa-



**They have yet to take the bar exam, but on Thursday, newly minted University of Texas Law graduates Gabrielle Olubanke Howells (left) and Lizeth Badillo Garcia argued a prison conditions case before the U.S. Court of Appeals for the Fifth Circuit. The incoming Kirkland & Ellis litigation associates spent the last year working on the case under the supervision of firm partner Zack Ewing.**

ration and knowing the record and the cases allowed them to respond with real mastery over, maybe, some unexpected questions."

A year ago, Howells and Badillo Garcia were summer associates at Kirkland & Ellis, and they had traveled to the Fifth Circuit to watch the firm's lawyers argue a compassionate release case.

Their experience so inspired Howells and Badillo Garcia that Ewing was spurred to emulate a program he participated in during his third year at the University of Pennsylvania Carey Law School. The clinical partnership between

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the university and a Philadelphia-area law firm allowed him to argue a case on appeal before the Third Circuit, which he said was immensely beneficial to his career. Ewing hopes to establish a similar program between Kirkland and the UT School of Law.

Howells and Badillo Garcia inherited the case of pro se litigant Stephon Eric James from the Fifth Circuit's pro bono program. James, a Louisiana prisoner with a prosthetic eye, alleges he was denied appropriate care for an eye infection while in custody and accuses doctors and prison officials of falsifying medical records to cover up their failure to provide that care.

A magistrate judge granted the prison officials' motion to dismiss and, sua sponte, converted the doctors' motion to dismiss to a motion for summary judgment, dismissing James' claims without allowing him to amend his pleadings or engage in the discovery process.

Howells, arguing the case against the doctors, and Badillo Garcia, who focused on the prison officials, asked the Fifth Circuit judges to reverse the magistrate's dismissals and afford discovery to their client or, alternatively, to allow James to amend his pleadings.

Howells later said she was stumped by Chief Judge Elrod's question to provide them with a case that best supports James' allegation that the delay in his medical treatment amounted to deliberate indifference. She began to explain that there is no one best case when Chief Judge Elrod pressed her again.

"I'm asking you, 'What would you have us rely upon?' That's a question we often ask," Chief Judge Elrod said. "What would you have us rely upon that would say that you would win?"

Howells pointed to a Fifth Circuit case, *Gobert v. Caldwell*, that had similar facts.

"But it is a little bit of a different kind of claim, because, as you guys probably know from the briefing in this court, Mr. James' claim for deliberate indifference as to the doctor defendants is based on the idea that they delayed his treatment by falsifying his medical records to cover up



**Gabrielle Olubanke Howells (left) with Lizeth Badillo Garcia (right)**

their initial delay, and because of that, his treatment was delayed even further."

The judge complimented Howells and offered a critique: "The only thing I would say regarding your arguments is you might not want to say 'you guys' to the court, but we appreciate your very thorough explanation," Chief Judge Elrod said.

She likewise grilled Badillo Garcia. Three different times, Chief Judge Elrod asked Badillo Garcia whether James had been able to plead his best case or whether he could plead other claims.

If James were allowed to amend the pleading, Badillo Garcia explained, his legal team would seek to discover evidence. Badillo Garcia cited a previous Fifth Circuit case and quoted Judge James E. Graves Jr., who said from the bench that he recognized his line.

Senior Judge Carolyn Dineen King also sat on the panel; she did not pose any questions.

Howells and Badillo Garcia said they were surprised by some of the questions directed at them by Chief Judge Elrod and Judge Graves but felt good about their preparation. They were also encouraged by the judges' questions to the other side.

"Shouldn't there be some discovery if there are allegations that the medical records, some of them, are forged or done after the fact or that they don't comport with actual treatment?" Chief Judge Elrod asked Kathy Rito, the Wanek Kirsch partner who argued on behalf of the doctors.

A deputy said James did not go to the medical wing, but records indicate he did, Chief Judge Elrod pointed out.

"Why doesn't that cry out for some

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sort of actual discovery before summary judgement is granted?” she asked.

As their time before the judges ticked away, the nerves also dissipated. Howells and Badillo Garcia each saved time for rebuttal arguments and were eager to speak a second time.

“It was thrilling, and I actually had a

really good time up there,” Badillo Garcia said.

What’s important is what a lawyer does with the nerves, Ewing said.

“In the case of Gabby and Lizeth, [the nerves] can propel you to perform with excellence,” he said.