

Pro Bono Firm Of 2013: Fried Frank

By **Alex Lawson**

Law360, New York (September 04, 2013, 5:15 PM ET) -- Through its sprawling pro bono practice, Fried Frank Harris Shriver & Jacobson LLP has tackled politically charged cases addressing issues such as immigration policy and public health care, and fought battles to ensure basic civil rights for everyday citizens, landing the firm a spot on Law360's Pro Bono Firms of 2013.

Not content with its already sterling pro bono participation, the firm in 2012 implemented systemic changes to the program's structure in order to add further incentives, which led the firm's attorneys to log 45,098 pro bono hours for an average of 101 hours per attorney over the past year.

Namely, Fried Frank tethered its bonus award system to the amount of pro bono hours logged, stipulating that if an attorney did not meet a 20-hour minimum of pro bono duties, they would not be eligible for a bonus. The policy change paid off in spades, as 99.8 percent of Fried Frank attorneys met the 20-hour minimum, with most attorneys far exceeding it.

Douglas Baruch and Janice Mac Avoy, who co-chair the Fried Frank pro bono program, said that the changes to the program's structure were spurred by a desire to expand the range of the firm's pro bono work.

"What we were missing was the breadth of the practice, how wide it was," Mac Avoy told Law360 in an interview last month. "We wanted to increase our participation rates, and the pro bono committee made the recommendation. It was phenomenally successful in expanding the breadth of the program."

"I think everyone wants to do pro bono," Mac Avoy explained. "But you get busy and it becomes that thing you're going to do next week, like weeding your garden, and it never happens. The change in bonus policy was instrumental in getting people to do it now."

Mac Avoy added that by incentivizing pro bono work and exposing the firm's younger attorneys to it, they have become aware of how easily they could fit it in with the rest of their case load. Baruch echoed that sentiment and championed the overhauled program's profound effect on the firm's younger attorneys.

"These changes have helped us introduce a new crop of attorneys to the rich tradition of public service that the firm has had over the years," Baruch said. "And the impact has been really beneficial to everyone — our clients, our attorneys and the firm itself."

Mac Avoy found herself at the forefront of the firm's most noteworthy pro bono efforts when she acted as a co-counsel for a coalition of reproductive health groups and private citizens in their challenge of a U.S. Food and Drug Administration decree restricting the sale of Plan B emergency contraception only to women over the age of 17.

A New York federal judge struck down the FDA decision in April, saying the agency had acted arbitrarily when it restricted access to the drug in violation of its own policies.

While the FDA had tried to "create the illusion that it was engaging in some independent exercise of agency discretion" when it rejected the plaintiffs' citizen application to allow Plan B to be sold over the counter, its hand was forced by Sebelius, who had ordered the agency to reject a manufacturer bid for Plan B OTC sales, despite it previously finding that the drug could be sold to all women safely without prescription.

The case attracted nationwide attention, which was not daunting for Mac Avoy, who regularly conducts high-profile litigation for the firm. Still, she said she found the case "extremely gratifying," noting that it presented her with a unique perspective on the issue that went beyond her professional life and into her home.

"One thing that was unusual for me was that it engendered some very wonderful discussions with my 14-year-old daughter about teenage sexuality that I wasn't sure I was ready to have, but I certainly was once we litigated," Mac Avoy said.

Fried Frank also dipped its toe in the tempestuous waters stirring around Arizona's immigration law, filing two amicus briefs to the U.S. Supreme Court arguing that the law was unconstitutional. It submitted one brief on behalf of 68 members of the U.S. Senate and House of Representatives and the other on behalf of the American Bar Association.

Baruch worked extensively on the ABA brief, which he said was something of a nontraditional legal document, as it amounted to soliciting personal anecdotes of ABA members' experiences with the controversial law's enforcement.

"We gathered facts and vignettes that we thought would be most compelling, marshaled them into a brief and tried to convey these experiences in a way that would make a difference," Baruch said. "We wanted to submit a perspective that would stand out among all the other briefs that were filed in that case."

The high court eventually struck down three of the law's key provisions: the criminalization of undocumented immigrants seeking work, the broadening of police search and seizure rights and the requirement of immigrants to register themselves with the federal government.

Immigration issues loomed large over Fried Frank's pro bono slate during the past year, with 110 lawyers devoting 7,098 hours to cases tackling immigration matters

But Fried Frank's work in the pro bono sphere was not limited to headline-grabbing cases driving national debates. They source a significant amount of work from activist groups such as the Innocence Project, which aims to exonerate wrongfully convicted citizens either on death row or serving life sentences.

Increasingly, the Innocence Project has striven to root out the causes of these wrongful convictions, which often can lead to uncovering tremendous malfeasance on the part of investigating authorities.

Such was the case with Michael Morton, a man wrongfully convicted of killing his wife and sentenced to life in prison in Texas. After the Innocence Project successfully exonerated Morton, Fried Frank entered the fray to help the group secure a petition from the Texas Supreme Court for a court of inquiry into the circumstances surrounding Morton's prosecution.

Fried Frank helped secure the petition, and in April, the court said that former Williamson County District Attorney Ken Anderson, who went on to become a judge in Texas, will face criminal contempt and tampering charges for failing to turn over key evidence that would have cleared Morton.

Jennifer Colyer, a Fried Frank special counsel who worked closely on the Morton petition, said that the firm's relationship with the Innocence Project is among its most important, noting that "it is the highest calling of a criminal defense lawyer to get people who were wrongfully convicted exonerated."

Fried Frank's other key pro bono victories included convincing the New York State Supreme Court to uphold the status of Bike New York's Five Boro Bike Tour as a charitable event, thereby saving the nonprofit organization \$1 million in permit fees.

Baruch stressed that the entire point of the firm's pro bono operation is to expose attorneys to work they find interesting and challenging, and the firm encourages its employees to field their own cases.

"Our program is designed make sure that people tackle matters that will interest them and that they'll be passionate about and that they'll like to work on," Baruch said. "We want them to enjoy their experience."

--Editing by Melissa Tinklepaugh.