

Pro Bono Firm Of 2016: Jenner & Block

By Stan Parker

Law360, New York (September 29, 2016, 3:39 PM EDT) -- With influential wins at the U.S. Supreme Court, lifesaving work for clients on death row and a firmwide commitment to pro bono work at every level, Jenner & Block has earned a place on Law360's Pro Bono Firms of 2016.

Jenner & Block attorneys logged more than 60,000 hours of pro bono work from May 2015 to May 2016, about 115 hours per lawyer, according to the firm. Jenner & Block gives attorneys significant freedom in choosing what they want to work on, allowing younger attorneys to cut their teeth on cases that interest them and to serve with partners they want to learn from, partners say.

"There isn't a top-down approach to it. It isn't where someone in a corner office brings in a case and then assigns it out," Andrew Vail, a co-chair of the firm's pro bono committee, told Law360 in a recent interview. "It's really driven by individual attorneys and things they care about."

Jenner & Block's highlights from a year of pro bono work include successful efforts in pulling three inmates off death row, fighting for Vietnam veterans with previously undiagnosed post-traumatic stress disorder, securing parental rights for gay and lesbian adoptive parents and invalidating unconstitutional prison sentences for thousands of people.

In *V.L. v. E.L.*, the firm, working with the National Center for Lesbian Rights, was able to get the U.S. Supreme Court to affirm parental rights gained through adoptions nationwide, a far-reaching, substantial win for same-sex couples with children.

The Alabama Supreme Court had ruled that the state was not required to honor V.L.'s Georgia adoption of the three children that her former partner E.L. gave birth to during the course of their 17-year relationship.



When the couple broke up in 2011, E.L. tried to keep V.L. from seeing the kids, prompting V.L. to file a petition for joint custody. The Alabama family and appellate courts sided with V.L., but the Alabama Supreme Court said the state didn't have to honor the adoptions.

"Decisions that one could disagree with come down all the time, but I felt that this one really was quite inconsistent with very settled law," Jenner & Block partner Adam G. Unikowsky told Law360 in a recent interview. "And second of all, it really would have a terrible effect on families."

He said he reached out, through a colleague, to the National Center for Lesbian Rights attorneys who had been working on the case and offered to help bring the case to the attention of the U.S. Supreme Court.

"The case basically said that the nonbiological parent in a same-sex couple would have her parental rights stripped because in the court's view the adoption that she had originally been granted was sort of null and void," he said. "For the Alabama Supreme Court to just throw that out, retroactively, even after the adoption was granted years earlier, really jeopardized a lot of family relationships."

In March, the U.S. Supreme Court summarily reversed the case, finding that the Constitution's Full Faith and Credit Clause required Alabama to honor V.L.'s Georgia adoptions.

"A case like this is going to stay with me, emotionally, for the rest of my life, and I can't imagine a bigger honor as a lawyer than to work on a case like this," Unikowsky said.

According to Vail, pro bono work is hardwired into the firm's infrastructure. Jenner & Block encourages every attorney to put in at least 50 hours of pro bono work a year — and requires 20.

According to Vail, the firm encourages the pro bono work for associates in part because it's such a great training ground.

"I think our lawyers find that pro bono work can be some of the best learning experiences, some of the best team building experiences, that you can find as a lawyer," Vail said.

He said associates are putting in their time at all levels, participating in trial teams and transactional work and practicing under the guidance of Jenner & Block partners.

The firm takes on court-appointed cases, accepts referrals from organizations, helps with legal aid groups and sometimes partners with legal clinics, he said.

The firm worked with Yale Law School's Veterans Legal Services Clinic to represent a proposed class of Vietnam veterans who had been discharged on unfavorable terms because of unrecognized post-traumatic stress disorder.

After the suit was filed, the Department of Defense changed its policy to give more favorable consideration to the veterans seeking to upgrade their other-than-honorable discharge status, and the named plaintiffs were able to get discharge upgrades in June 2015, according to the firm.

Associates Amir Ali and R. Trent McCotter told Law360 about their experience fighting for a U.S. Supreme Court victory in *Welch v. U.S.*, a ruling that decisively invalidated unconstitutional prison sentences for thousands of incarcerated individuals across the country.

After the Supreme Court in 2015 struck down what was known as the residual clause of Armed Career Criminal Act in *Johnson v. United States*, sentences were put in limbo nationwide for people who had been imprisoned under the now-invalidated law. The federal appeals courts began to split on whether *Johnson* would apply retroactively to those already behind bars.

“We saw that as a pretty obvious injustice in the criminal justice system,” Ali said. “People who had the exact same criminal history and circumstances were being treated in disparate ways.”

Ali said he and McCotter started trying to figure out a way to get the Supreme Court to take a look at the issue, so they started monitoring as many cases as they could to see if they could find one that the high court would take.

“We ran into some real hurdles because most of the cases we were finding were prisoners who had already filed a petition for relief in the past,” Ali said.

A provision in the Antiterrorism and Effective Death Penalty Act of 1996 created a substantial barrier to getting the Supreme Court to hear any case for a prisoner on a second or subsequent petition, Ali said.

The lawyers were also up against a ticking clock because felons who wanted to seek relief under *Johnson* had only a year after that case to do so, a period that was up in June 2016.

McCotter then noticed a petition for writ of certiorari from Gregory Welch, who was appealing an Eleventh Circuit decision *pro se*, and they reached out to represent him. The firm filed two briefs in support of the original cert petition before the court agreed to hear the case in January.

“When certiorari was granted, it was understood that it was a really momentous opportunity to give a voice to people who would otherwise be voiceless,” Ali said, adding that he felt the firm's leadership was fully committed to success in the case. “So the firm was very understanding, and I was able to devote almost my exclusive attention to this case.”

The six-attorney Jenner & Block team, with Ali arguing, was able to convince the court in a 7-1 decision to make *Johnson* apply retroactively.

Although two partners were also on the team, McCotter said he was glad the firm allowed Ali, an associate, to argue the case, seeing it as a sign of the trust the firm puts in its associates.

“I think it inspired a lot of other associates to realize that the pro bono work that they do is meaningful, and that they can stay in charge of the case, even at the highest level,” McCotter said.

--Editing by Jill Coffey.