

Pro Bono Firm Of 2010: Foley Hoag

By **Eric Hornbeck**

Law360, New York (December 1, 2010) -- Foley Hoag LLP's work on the Gill case, which successfully challenged one section of the Defense of Marriage Act in Massachusetts, and its decades-long and precedent-setting domestic violence efforts have landed the firm a place on Law360's Pro Bono Firms of 2010 list.

Foley Hoag's 208 attorneys logged some 23,000 pro bono hours, averaging about 110.6 hours per attorney, in 2009, even though the firm has no minimum requirement for pro bono work.

"We give equal credit to associates who work on pro bono matters. They'll get as much credit for that as a billable hour," said Claire Laporte, Foley Hoag's pro bono coordinator, who also works on patent cases.

The Boston-based firm has found that its attorneys reap unexpected benefits from pro bono work, as they get a chance to hone their skills, work on cases outside their practice area, and experience a personal connection to the outcome for participants that corporate cases often lack.

The firm handles its pro bono cases almost identically to corporate cases. Associates who opt to work on pro bono cases come under the supervision of a partner just as they would in a corporate case, and that partner evaluates the associate's pro bono work during reviews.

"We want our pro bono clients to receive the same quality of representation as our corporate clients receive," she said, adding that the firm works on everything from small, individual cases to sprawling pro bono matters, and that attorneys' work in those areas is given as much weight as the work they do in corporate matters.

The firm's biggest and most celebrated pro bono victory in 2010 was Gill v. Office of Personnel Management, which challenged the denial of federal benefits to legally married same-sex spouses in Massachusetts under Section 3 of the Defense of Marriage Act. Judge Joseph L. Tauro of the U.S. District Court for the District of Massachusetts ruled in July that Section 3 of the act violated the equal protection clause of the U.S. Constitution.

Foley Hoag's list of transformative cases such as Gill — so-called impact victories, which involve litigation designed to impact social change — dates as far back as the firm's work in the 1970s, which led to the desegregation of Boston city schools.

But even cases that start out as representations of individuals, such as an immigration case or a housing dispute, can wind up having a wider impact, Laporte said.

"We've also worked on run-of-the-mill cases that turn out not to be run-of-the-mill at all," she said, citing a domestic violence case that wound up in the Massachusetts Appeals Court earlier in 2010.

By the time Laporte joined Foley Hoag in 1990, the firm's pro bono program was "quite formalized," she said. When she

took over the program's leadership, she decided to add gay and lesbian civil rights to the several key areas that it already focused on, including domestic violence, housing, immigration and advising nonprofit groups.

After speaking with an associate at the New England nonprofit Gay & Lesbian Advocates & Defenders, Laporte found to her delight that the group was in the early stages of mounting a challenge to DOMA, which Foley Hoag joined.

The case challenged the federal government's denial of certain benefits — including Social Security benefits, federal income tax protections, and federal employees' and retirees' benefits — to spouses or widowers who were legally married under Massachusetts law to someone of the same gender. Section 3 of DOMA defines marriage, for federal purposes such as Social Security benefits, as being between a man and a woman.

The Gill case, which cuts across weighty constitutional issues like equal protection, offers attorneys the opportunity to gain valuable litigation skills early on in their careers.

“This is a large piece of federal litigation, so those of us who are junior on the case have a lot more responsibility than we would in a corporate case,” said Amy Senier, an associate in the firm's litigation department who worked on the case. “For skills development, it's been a big blessing.”

The impact of their work on client's lives was immediate and visible, a contrast to the more abstract issues handled in corporate work, said Matthew E. Miller, a Foley Hoag associate who handles mostly securities matters and worked on the Gill case.

Which isn't to say that the Gill case or other pro bono matters are about laid-back learning and warm-and-fuzzy charity. Attorneys are under pressure because overreaching or miscalculating on civil rights litigation can set the movement back decades, they said.

And in Gill, unlike some other pro bono matters like landlord-tenant disputes where the plaintiff might have some control over reaching a negotiated settlement, compromise isn't an option.

“Everybody's in it to win it, and it's going to take a long time,” said Vickie L. Henry, a Foley Hoag partner who worked on the case and whose practice focuses mostly on intellectual property issues.

While both gay and straight Foley Hoag attorneys contributed their efforts — “fundamentally, it's a human rights issue, and that's how everyone sees it,” Foley Hoag associate Catherine C. Deneke said — this civil rights litigation has had a direct impact on some of the lawyers' own lives as well.

For example, Henry, a lesbian, is legally married in Massachusetts and is raising two children with her spouse. She can share her work on the Gill case with her family and community in a way that she can't with her corporate intellectual property practice, she said.

And while the Obama administration has used its best arguments to defend DOMA, not the rhetoric that, Laporte said, would make them “seem like rabid homophobes,” there will be no such insulation as the amici curiae briefs begin to pour in now that the case is on appeal before the U.S. Court of Appeals for the First Circuit.

“For me, there's a personal aspect to the case with the amici; they're going to talk about whether gays and lesbians can be good parents,” Henry said. “That can be hard to read sometimes.”

But even some of the smaller pro bono matters that the firm has taken up have altered broader legal issues.

For example, Foley Hoag mounted a victorious pro bono challenge to legislative redistricting following the 2000 Census that went on to spur a perjury indictment against former Massachusetts House Speaker Thomas Finneran.

And just this year, Foley Hoag handled another case with broad implications as part of its decades-long domestic violence

program. Foley Hoag represented a child who had been sexually assaulted by two adult cousins. Abuse prevention orders were issued in 2008 and made permanent in 2009. The defendants balked at making the orders permanent because, they argued, they'd adhered to the terms of the original orders.

Lower courts had used different criteria when evaluating whether to make restraining orders permanent. On the appeal of Foley Hoag's client's case, the Massachusetts Appeals Court brought clarity to the issue, ruling that serious nature of the abuse and the victim's continued fear justified making the restraining orders permanent, even though the parties hadn't been in contact since the initial order.

The case illustrated how issues that seem straightforward can unexpectedly balloon into more far-reaching matters, said Laporte, who worked on the dispute.

"Even when you're representing individuals, you can have a big impact on the community," Laporte said.

--Additional reporting by Ryan Davis

Methodology: Law360 invited over 400 law firms to participate in its Pro Bono Firms Of The Year series. Participants were asked to identify major wins in pro bono cases in the past year. Submissions were reviewed several times by a committee of four editors. The firms with the biggest wins in pro bono cases that also displayed a major commitment to pro bono work in 2010 were selected to be profiled in this series.