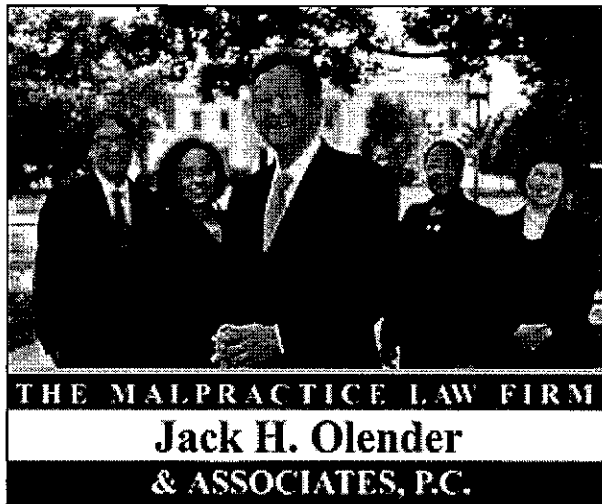


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## Shifting the pro bono paradigm

**By Catherine Ho, Published: November 27**

Not once during his 40 years as a trial lawyer did Robert Rosenbaum get to board a snowcoach for a private tour of Yellowstone National Park, go cross-country skiing and watch wolves chase elk. But that's exactly what the retired Arnold & Porter litigator did to prepare for a major pro bono case he's been working on since 2007, in which he represents the National Parks and Conservation Association in its battle to limit tourists' use of snowmobiles at Yellowstone.

Rosenbaum, 68, has been fully retired from Arnold & Porter for four years, but continues to maintain two-thirds of the workload he shouldered as a senior partner. He handles environmental pro bono cases including litigation launched last month to restrict the use of off-road vehicles at Florida's Big Cypress National Preserve, and a major legal battle that ended earlier this year with Wal-Mart halting plans to build a supercenter near the site of a famous Civil War battle in Fredericksburg, Va.

Rosenbaum does most of his work in the same District office where he spent his entire career. He works with the same secretary he's had for years, and gets research and litigation help from other Arnold & Porter partners and associates. It's a pro bono model that once was rare among Washington law firms, many of which lack institutional paths for senior attorneys to wind down their commercial practice and pick up more pro bono projects as they head toward retirement.

Now, many law firms in Washington are rethinking how they structure retirement and compensation for senior lawyers. Eleven firms, including Arnold & Porter, are working with the D.C. Access to Justice Commission on a project called the [Senior Attorney Initiative for Legal Services](#). The program, created by the commission, targets a generation of attorneys who have retired or are on the cusp of retirement —

the type of lawyers who at many firms make up a good chunk of the rainmaking roster — to encourage them to stay at their firms, transition commercial work to younger attorneys, and take more pro bono cases in-house.

“It’s a paradigm shift,” said Jess Rosenbaum, (no relation to Robert Rosenbaum) executive director of the D.C. Access to Justice Commission, a group of local judges, lawyers and law professors tasked with helping low- and moderate-income residents access the civil justice system. “It used to be you had a handful of lawyers wanting to transition to pro bono, and they would have to go to a pro bono organization.”

Now, firms are trying to keep those lawyers by providing resources such as office space and staff to support pro bono work. A few, such as Arnold & Porter and Arent Fox, already have “phase-down” programs for senior lawyers to ease into retirement over several years as they ratchet down chargeable commercial work and ratchet up pro bono involvement. Several others are working to institutionalize what’s long been an informal practice of senior or retired lawyers doing pro bono work. Those processes vary firm to firm, which have different retirement and pay structures, but the same questions remain at almost all firms navigating these changes: Do the lawyers get paid, and how? Do they get administrative support, and how much? Are they covered by the firm’s malpractice insurance?

“Those are all being internally discussed,” said Guy Collier, chairman of McDermott Will & Emery’s pro bono and community service committee and a partner in the firm’s health care group. “It hasn’t quite crystallized yet. One of the things we’re assessing is how interested retiring lawyers will be once they leave partnerships. We’re having those discussions with folks who may be candidates.”

Sending senior attorneys down a more formalized pro bono path means more order and structure in pairing experienced litigators with pro bono issues they’re best suited for, said Mike Naeve, partner in charge of Skadden’s District office. Several Skadden lawyers are representing Alex Blueford, a jailed Arkansas man, in a double jeopardy case heading to the U.S. Supreme Court next year. At issue is whether Blueford, charged with killing his girlfriend’s baby years ago, can be tried twice for the same crime.

Both McDermott and Skadden have had “ad hoc” systems for retired or retiring lawyers to do pro bono work, but now are developing more formal internal structures.

More involvement from the law firm community gives the struggling legal services network some much-needed help at a time that the need for legal aid is growing.

Since late 2008, funding for legal assistance in the District has dropped at least \$4.5 million, and legal services programs have had to slash the jobs of at least 21 lawyers and 30 paralegals, policy advocates and social workers, according to [the most recent published report on how the recession impacts access to justice in the District](#).

“Because of the economic downturn, more families are living one legal issue away from disaster,” Jess Rosenbaum said. “Having the help of a lawyer when facing foreclosure, unemployment or domestic violence can make the difference between stability and crisis.”

The commission has started a separate initiative to boost law firms’ contributions to legal services: the [Raising the Bar Program](#) asks firms to funnel a small percentage of their District office revenue to local legal services providers. It’s the only program of its kind that bases giving on a local office’s revenue, as opposed to per lawyer, Rosenbaum said. So far, 22 District firms (or firms’ District offices) have signed up.

For law firms, keeping senior attorneys around is also a business benefit: it can help ease a longtime client into working with the younger attorneys inheriting their commercial work.

“For any senior partner, especially ones with significant client relationships, as retirement happens, any firm wants to be able to continue that work,” said Phil Horton, head of Arnold & Porter’s pro bono committee. “We make efforts all the time to make sure that as our lawyers slow down or retire, their commercial responsibilities are turned over to other lawyers. That’s a process that should start well before the phase-down to get a younger generation of lawyers involved.”

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