

A FIRM FOUNDATION FOR LIFE AFTER THE BENCH

Vincent L. McKusick*

For me any discussion of life after the bench necessarily involves the history of a law firm in Portland, Maine, over a period of more than a half century. Straight from law school graduation and two judicial clerkships,¹ I joined Hutchinson, Pierce, Atwood, and Scribner of Portland in August 1952. I arrived as the firm's eighth attorney. Twenty-five years later, in September 1977, I left the firm, which then had grown to twenty-seven lawyers, to serve as Chief Justice of the Maine Supreme Judicial Court. After retiring from the Court on February 28, 1992, I returned, of counsel, to the same Portland firm, by then grown to over ninety lawyers in size. Now I have served for fifteen years as counsel to the firm, which, known simply as Pierce Atwood, has grown to some 120 lawyers, including some twenty outside Maine at offices in Portsmouth, Concord, and Boston.

In a state as small in population as Maine any interaction between a sitting Chief Justice and his previous law firm, particularly when it is the largest firm in the State and is very active in the courts, demands careful restraint. Being personally conscious of that concern, I took various steps at the outset of my tenure as Chief Justice to avoid any appearance of bias. I consulted with Maine's highly respected Federal Judge Edward T. Gignoux, then a twenty-year veteran of the bench and our only United States district judge. He helped me work out a set of personal rules identifying cases for recusal. For example, in addition to recusal for at least two years in any case involving a

* Chief Justice, Supreme Judicial Court of Maine, September 16, 1977, to February 28, 1992. Of counsel to Pierce, Atwood, Scribner, Allen, Smith & Lancaster, later Pierce Atwood, April 1, 1992, to date.

1. Law Clerk to Chief Judge Learned Hand of the United States Court of Appeals for the Second Circuit, 1950-1951, and to Justice Felix Frankfurter of the Supreme Court of the United States, 1951-1952.

party for whom I had worked, I would recuse myself, again for at least two years, from any case in which my old firm was involved, whether or not I had ever had any personal involvement with the case or the client.

The same care needed to be exercised, I believed, if I should return to the same firm on leaving the bench. In the months prior to my retirement, I recognized the strong possibility that my old firm might ask me to come back, and I was anxious to avoid any later misunderstanding on the part of the public about my case decisions in the months before I left the Court. Accordingly, before my retirement date I carefully avoided any discussions with the firm about any post-retirement plans and, furthermore, for the last several months on the Court I recused myself in any cases in which Pierce Atwood appeared. By these precautions I sought to avoid any possible inference of bias on my part favoring the firm that might turn up as my post-retirement employer. At the time of any recusal I of course shared my reasons for doing so with my colleagues on the Court. Though some thought me over-cautious, all were fully supportive.

Coming back to my old firm after almost fifteen years of self-imposed isolation gave me a special opportunity to observe at first hand the changes that had occurred within the firm as well as in the Maine bar in that period of 1977 to 1992. The two most striking changes were the growth in the size of the bar and of the firm and the greatly increased specialization in both. In that period Pierce Atwood tripled in size, while the Maine bar nearly doubled in size, growing from 1520 to 2993 resident attorneys. In the same period Pierce Atwood became more highly organized into practice groups with well-defined specialties. The individual lawyers became highly skilled in their respective specialties, with commensurate benefits to their clients. But, for someone who in 1952 had started doing everything from title searches and estate planning to family business advice, utility rate cases, and appellate practice, there remained, and indeed remains today, a considerable sentimental attachment to versatility and variety in the practice of law.

Another professional trend already started in 1977 but much accelerated by 1992, was the ease of a lawyer's making a lateral move from one firm to another. In 1952 when I was

debating whether to come back to Maine and to join the firm that is now Pierce Atwood, the wise senior partner, “Squire” Leonard A. Pierce, urged me to take a good full time in making my decision. He said: “Aside from choosing the woman you will marry, your pick of the firm to practice with is the most important decision of your life. You’ll join that firm to stay.” Indeed, at that time, lawyers usually joined a firm “for good” and some people thought a lawyer who moved “couldn’t hold a job.” That has changed in Portland as in larger cities, speeded more recently in no small part as a consequence of specialization. The specialist can move readily to form his or her own boutique firm or to carry the specialized practice to another firm.

I know that song and verse proclaim that you can never go home again, and also I acknowledge that common wisdom posits that you never step into the same river twice. Be that as it may, my return to Pierce Atwood one month after leaving the Court was a warm homecoming. And I felt that I was indeed stepping into the same river, even though a few miles downstream.

My role back at Pierce Atwood has not been to re-engage in the practice of law as I left it in 1977. Indeed, since my return I have not practiced law except by way of advising or backing up lawyers of the firm in their brief writing, preparation for trial or oral argument, analysis of legal problems, and so on. Rather, most of my professional work since leaving the Chief Justiceship has been in what I jocularly call “playing judge.” Very soon after coming back, I served pro bono as the chair of an arbitration panel created by state statute to fix the financial terms for the secession of Long Island from the City of Portland. And at about the same time, I received my first appointment by the United States Supreme Court as the Special Master of an original jurisdiction action between States.² In 1995 and in 1999 there followed two more Supreme Court appointments as Special Master in State-vs.-State cases.³ In addition, over the

2. *Conn. v. N.H.*, No. 119 Orig. (1992) (constitutionality of special New Hampshire property tax on the Seabrook Nuclear Facility).

3. *La. v. Miss.*, No. 121 Orig. (1995) (location of state boundary on a stretch of Mississippi River); and *Ks. v. Neb.*, No. 126 Orig. (2003) (allocation of water of

years since my retirement from the bench, a good number of substantial arbitrations and mediations, along with a special master appointment from the Massachusetts Supreme Judicial Court, have taken me down the East Coast from Boston to Washington and west to Denver and San Francisco. From the start I have applied a personal rule not to take ADR cases in Maine for fear of creating conflicts for Pierce Atwood, which I am fond of calling the “largest law firm north of Boston.”

In all these special master and ADR assignments Pierce Atwood has provided me essential logistical support. The Special Master in an original jurisdiction case acts much like a federal district court in hearing the case, maintaining a docket, ruling on motions and resolving procedural disputes, and in the end rendering a decision in the form of a report to the United States Supreme Court with recommendations for the Court’s own final decision. Because of the responsibilities I assumed as Special Master, the first order I entered in each of my three State-vs.-State cases designated an able young associate of Pierce Atwood to serve as my Law Clerk and Case Management Assistant. And in all my special master and ADR cases, I have much valued the help of Pierce Atwood’s secretarial and technological resources.

The ultimate satisfaction for me in retirement comes from being back with many colleagues of my pre-court years—they now the leaders of a vibrantly successful law firm. My satisfaction comes from being able to observe at first hand, and in a small way participate in, the ongoing affairs of a large and growing law firm, with all the accompanying challenges of internal organization, communication, information sharing, and complex business operations as well as the challenges of external marketing and civic involvement. I am an intensely interested observer of the expansion of Pierce Atwood in both the subject matter and the geographical spread of its practice. When I left in 1977, I could have little imagined this Maine firm’s heavy involvement today in helping utility systems of Eastern Europe move from government ownership to government regulation; or its representation of the State of California in renegotiating power contracts; or its heavy practice

Republican River under 1943 Compact, involving in particular the effect of groundwater pumping).

in the fields of patents and copyrights and immigration law, subjects in 1977 thought to be the preserve of only specialist firms; or the firm's branching out beyond the traditional practice of law to provide through a subsidiary professional services in governmental and public relations as well as business development. Nor could I on leaving the firm in 1977 have foreseen the transformation that the computer and the internet have wrought in the firm's practice, a transformation that has accelerated in the fifteen years since my return. It is fun to be in the midst of such enlarged views of the law firm's potential and to work at law in the new computer age.

My satisfaction with life after the bench also comes from the fact that my busy law firm at times finds use for my antiquity. I am sometimes consulted as the firm's institutional memory and asked to make presentations on firm history for new arrivals, and I regularly meet with new associates and summer clerks over lunch. And at all times the firm encourages me to continue my long-time participation in professional organizations such as the American Law Institute, the American Philosophical Society, and the American Bar Association.

For one who loves the law and the legal profession as I do, and one whose whole legal career other than my years as Maine's Chief Justice has been with a single law firm, life back with Pierce Atwood is good—very good indeed.



