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Q&A With Epstein Becker's Kenneth Menendez

Law360, New York (March 18, 2013, 2:33 PM ET) -- Kenneth G. Menendez is a member of Epstein Becker & Green PC's litigation and labor and employment practices and serves as the managing shareholder of the firm's Atlanta office. His expertise is in complex business litigation, with concentrations in employment, insurance, financial transactions and general corporate litigation.

Q: What is the most challenging case you have worked on and what made it challenging?

A: Perhaps the most challenging case in the insurance sphere involved our representation of an insurance broker in a case involving alleged negligent advice to a client.

Our client, Willis Insurance Services of Georgia, was sued by a former client who alleged that Willis was negligent in procuring certain directors and officers liability insurance for the client. We were successful in obtaining summary judgment in the trial court, but the plaintiff appealed the ruling. We argued the case before the Georgia Court of Appeals, where we prevailed in a 4-3 decision. The plaintiff then applied for a writ of certiorari to the Georgia Supreme Court, but the Georgia Supreme Court ultimately denied their request, ending the litigation.

Q: What aspects of your practice area are in need of reform and why?

A: I believe that the aspect of my practice area which is in the greatest need of reform is motion practice in both the state and federal court systems. Motion practice offers clients an opportunity to resolve issues (and sometimes entire cases) at an early stage of the litigation. Unfortunately, motion practice is currently administered unevenly from court to court.

The first issue is that some judges allow motions to languish on their dockets for extended periods of time. While acknowledging that most judges face significant workload challenges, the old adage about justice delayed being justice denied often applies in this area. In many cases, the parties are required to proceed with discovery despite the pendency of a motion, which might make certain discovery unnecessary or even result in the dismissal of a party from the case. The adoption of local rules establishing periods within which motions should be ruled upon might alleviate this problem.

The second problem involves diminishing opportunities for oral argument of motions. While again recognizing that most judges do not have time to hear oral argument on all motions, many judges have eliminated oral argument altogether. This practice sometimes denies a party its best opportunity to focus the court on the key elements of the motion or to respond to questions the court may have regarding the motion. Local rule amendments, which require oral argument for certain motions (such as motions for summary judgment) or which provide parties the right to designate a certain number of motions for oral argument, might address this problem.

Q: What is an important issue or case relevant to your practice area and why?

A: Perhaps the most important issue relevant to my practice area involves the runaway costs and complexity of civil discovery. The information revolution and the explosion of e-discovery have transformed the civil discovery process. In many cases, the cost of pretrial discovery has become prohibitive, causing clients to seriously consider settlement in some cases in which the facts do not merit a settlement.

This situation has spawned the development of numerous e-discovery consultants and companies which provide discovery services to law firms. While such companies can prove quite helpful in the course of a litigation, they also add to the cost of the litigation.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Lee Parks of Parks Chesin & Walbert is an outstanding advocate for both plaintiffs and defendants. Lee specializes in employment cases but also handles a large variety of complex civil cases. Lee has a deep knowledge of the law and is fearless in his representation of his clients. He has the ability to synthesize complex issues in a manner which is understandable to both judges and juries.

Q: What is a mistake you made early in your career and what did you learn from it?

A: I have learned to take great care to corroborate the information provided to me as I develop my client's case. As a civil litigator who practices primarily on the defense side, an important part of my job is to marshal all of the facts which support my client's case. These facts are typically derived from both documentary evidence and the testimony of witnesses. The information contained in the relevant documents sometimes conflicts with the accounts provided by the witnesses. Any such discrepancies must be identified and resolved before any of the so-called facts can be utilized in support of the client's case.

Early in my career, I made the mistake of relying upon the representations of an employee of my client without obtaining a second source to confirm those representations. As I investigated the case further, it became apparent that the representations made by the employee were inaccurate in a number of respects. Luckily, I discovered this before I used the employee's representations in the defense of the case, but the experience taught me to always seek confirmation of important facts from multiple sources.