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Q&A With Duane Morris' Thomas G. Servodidio

Law360, New York (July 07, 2009) -- Thomas G. Servodidio is the national chairman of Duane Morris LLP's employment, labor, benefits and immigration practice group in Philadelphia. His practice focuses on handling the defense of all types of employment-related litigation, including the defense of employment discrimination claims, wrongful discharge cases, wage-and-hour litigation, employment contract matters and restrictive covenant litigation.

Q: What is the most challenging case you've worked on, and why?

A: Over the years, I have had the privilege to work on a number of challenging cases, so it is difficult to select one case. Nevertheless, a case which comes to mind is a recent one decided by the National Labor Relations Board. The case involved objections to a representation election which were filed seeking to overturn the results of the election and have the election rerun.

The basis of the argument was that an admittedly color-blind board agent mixed up different-colored ballots when handing them out to voters for two different bargaining units voting simultaneously at client's facility, declined an employer representative the opportunity to review the ballots during the counting process, and then took the ballots home over the weekend. I argued that the integrity of the election process was undermined by this conduct, justifying a new election. The objections were summarily denied without a requested hearing prompting an appeal to the NLRB which, in turn, ordered a hearing to receive evidence.

After the hearing, the administrative law judge overruled the objections, prompting a second appeal to the NLRB, which eventually upheld the objections and ordered a rerun of the election. The lesson learned is to press forward with your legal position even when you encounter obstacles since perseverance by seeing a cause through to the end is itself rewarding regardless of the outcome.

Q: What accomplishment as an attorney are you most proud of?

A: The professional relationships I have developed with my colleagues and clients are the accomplishments of which I am most proud. Over more than 20 years, I have had the privilege of practicing labor and employment law at a wonderful firm, and this has allowed me the opportunity to learn from some very bright lawyers as well as mentor junior lawyers in the development of their professional careers. When I was a young lawyer, my father would often ask whether I was giving to the next generation what I learned from the preceding generation, and I have tried to implement this principle during my career.

Similarly, I have had the opportunity to develop strong professional relationships with our clients over the years, which has also been very rewarding. In my experience, clients rely on us for our sound judgment and advice. When clients have expressed sincere appreciation for our good counsel and assistance in difficult legal situations, it makes the many daily challenges we face as attorneys well worth the sacrifices.

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

A: In my view, the federal and state wage-and-hour laws are long overdue for reform. Businesses continue to face significant liability for the misclassification of employees as exempt from the overtime requirements; however, these laws were written without the modern workplace in mind.

Also, in my practice, there has been a significant increase in the filing of retaliation claims in which employees argue that they suffered an adverse employment action due, in whole or in part, to some protected conduct such as an internal complaint about one's terms of employment or work conditions.

Although these cases are oftentimes difficult to dismiss prior to trial, they are not likely to be successful on the merits. Thus, the extensive resources of businesses to defend against these cases or settle them in order to avoid costly litigation does not seem to be a productive use of resources; particularly in these challenging economic times.

Q: Where do you see the next wave of cases in your practice area coming from?

A: In my practice area, I anticipate an increased number of representation election petitions filed with the National Labor Relations Board since unions have become much more aggressive in seeking to organize businesses throughout various industries.

Also, as a direct result of these union efforts, I anticipate an increase in unfair labor practice cases filed with the NLRB. Of course, if some version of the Employee Free Choice Act passes Congress, then these trends will be even more pronounced due to the ease with which unions will be able to organize and the financial penalties that may be implemented for meritorious unfair labor practice charges.

The recent downturn in the economy, the change in the administration, and the renewed emphasis on expansion by unions seems to be the “perfect storm” for an increase in this area of the labor and employment practice.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: In recent years, I have had the privilege of working with Greg Kurey, senior vice president and general counsel for The Siegfried Group. He demonstrates a sound knowledge of his client’s industry and business, he has developed a well-rounded knowledge of the law [and is] able to provide advice in commercial law, employment law, corporate law and litigation matters.

Of course, he supplements this strong legal knowledge with a tremendous sense of humor. Perhaps most important, his integrity is unquestionable and he demonstrates it throughout his practice. In my view, his character, acumen and work ethic are ones we should all seek to emulate in our daily practice.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: In the practice of labor and employment law, the practitioner has the unique opportunity to mesh three distinct skills: providing sound counsel and advice to clients on day-to-day employment questions; honing one’s trial skills to handle class action litigation, single plaintiff employment litigation or employment arbitrations; and developing an expertise in traditional labor matters such as NLRB proceedings and collective bargaining negotiations.

Based on my experience, there are few, if any, practice areas that allow you the opportunity to develop such a diverse set of skills and interests. Thus, the young lawyer should take every opportunity to develop all of these skills in order to mature into a well-rounded practitioner in the field.