

Q&A With Faegre Baker's Ellen Boshkoff

Law360, New York (May 14, 2013, 12:33 PM ET) -- Ellen Boshkoff is a partner with Faegre Baker Daniels LLP. Her experience includes trials in state and federal courts and arguments in the Indiana Court of Appeals, Indiana Supreme Court and federal Courts of Appeals. Boshkoff has defended class actions and wage and hour collective actions, Employee Retirement Income Security Act matters and cases involving claims of sexual harassment, discrimination, retaliation and failure to accommodate. She is a speaker at the National Employment Law Institute and a member of its advisory board.

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

A: I had a case earlier in my career involving the firing of a famous athletic figure. The legal issues were unique but more challenging was the fact that defense strategies were analyzed in various sports-related chat rooms. It was the first (and only) time that my legal work was mentioned on espn.com!

More recently, I worked on a novel Fair Labor Standards Act case that was one of a series of cases filed against an entire industry. One challenge of the case was tracking how the law was developing in other cases across the country; each new development had a potential impact (positive or negative) on the case I was handling. Another challenge was addressing the arguments of the U.S. Department of Labor, who weighed in late in the case to take a position adverse to my client.

Ultimately, we prevailed on summary judgment, and the ruling was upheld by the Seventh Circuit Court of Appeals. A few months later, the U.S. Supreme Court issued a ruling in a different case that was favorable to the entire industry. It was fascinating to track the progress of the law during the course of the litigation, and I wonder to this day if I wasn't just one case away from making it to the Supreme Court.

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

A: The process for certifying wage and hour collective continues to present thorny issues for counsel and the courts. Because conditional certification in a wage and hour case is often decided at an early stage, many cases are conditionally certified that could not meet the more rigorous standards of Rule 23. I think the law should be reformed so that the two methods of certification (Rule 23 certification versus conditional certification under the FLSA) are more closely aligned.

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

A: Balancing the need for jury trials in appropriate cases with the goal of weeding out nonmeritorious cases at an earlier stage. Having tried a dozen cases in state and federal courts, including several jury trials, I know from experience that jury trials can be expensive, exhausting, disruptive, inefficient and a drain on the resources of our judicial system. In fact, I just completed a jury trial in which the parties spent nearly a week litigating what amounted to a single issue. Parties and the courts need to be better at resolving or deciding cases at earlier stages because many times, the parties getting their "day in court" isn't the best solution for anyone.

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

A: Grace Speights at Morgan Lewis. I worked with Grace on a complex employment litigation matter that not only required us to manage the litigation but also required us to provide ongoing advice to the client about employment-related matters that could impact that litigation. I was impressed by Grace's deep subject matter expertise, no-nonsense approach and practical and solutions-oriented advice to our mutual client.

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

A: The first time I argued a summary judgment motion, the judge denied my motion immediately after I sat down and then signed the form order offered by the opposing party. I was too stunned to do anything, much less read the order. The partner that was with me read the order and then pointed out to the judge that he had accidentally just granted summary judgment to the other side. The judge quickly tore up the order and signed a new one, denying summary judgment to both sides. From this experience, I learned: It may not be a good idea to move for summary judgment in a doubtful case; and always read the order, even if it isn't in your client's favor!

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