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Q&A With Faegre Baker's Bruce Jones

Law360, New York (April 26, 2013, 1:04 PM ET) -- Bruce Jones is a partner in Faegre Baker Daniels LLP's Minneapolis office. He appears in a variety of federal and state appellate courts. He holds specialized knowledge and experience in many litigation areas, including product liability, drugs and medical devices, consumer fraud, and the environment. In addition to his expertise in briefing and oral argument, he has conducted extensive appellate motion practice, pursued and resisted petitions for extraordinary writs of mandamus and prohibition, and sought and opposed discretionary appeals. He provides extensive pre-appellate consultation to litigants in state and federal trial courts, supplying advice and guidance on topics relating to anticipated appeals, motions, jury instructions, and other arguments directed to preserving issues for appeal.

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

A: The most challenging case I have worked on was probably Glorvigen v. Cirrus Design Corporation, 816 N.W.2d 572 (Minn. 2012). The case involved wrongful death claims arising from a plane crash and the jury reached a verdict for the plaintiff. The post-trial and appellate proceedings were challenging because of the unusually large number of different legal theories of duty that the courts and the parties tried to apply to a relatively straightforward set of facts. Each of the parties urged their own theory of duty at trial, the trial court adopted a different theory following post-trial motions, the court of appeals reversed based on yet another theory, and the state Supreme Court eventually affirmed but on still another theory. At various times, the case involved the analysis of the defendant's duty under theories of simple negligence, educational malpractice, breach of contract, duty to train, and product liability for failure to provide instructions.

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

A: The structure of appellate practice in general is in good shape. Over the past two decades, the appellate courts made concerted and successful efforts to simplify and clarify their rules. These changes have removed a lot of the jurisdictional and procedural traps that once caught unwary appellants and have permitted more litigants to have their appeals heard on the merits.

My chief concern with the appellate courts today is the question of access. The expense of litigating an appeal — or even filing an appeal — has risen to the point that those costs unavoidably discourage litigants from seeking review in appellate courts, even where they have strong arguments on the merits. Although the overall cost of litigation in general has risen alarmingly in recent years, I believe that the problem is particularly acute in the appellate arena because of the sometimes complex procedures and strict time deadlines. Many appellate courts and bar associations created programs to try to help litigants with limited resources to pursue potentially meritorious appeals, but we have thus far only scratched the surface of the problem.

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

A: As an appellate and procedural geek, I am very fond of the Minnesota Supreme Court's decision in State v. Hugger, 640 N.W.2d 619 (Minn. 2002). Most court rules establish deadlines by measuring forward or backward in days from a particular event, but that measurement may be affected by whether a document is served by mail, whether there are any intervening weekends and holidays, and by whether the final day of the period falls on a weekend or holiday.

For years, all these possible adjustments had frequently confused and stymied attorneys, who were just trying to calculate exactly when their brief or memorandum was due. In Hugger, the Minnesota Supreme Court solved this problem, laying out in careful detail exactly how to calculate a deadline under the court's rules, including the meaning of all the possible adjustments and the order in which they are to be applied. The Hugger case did not vindicate any important constitutional rights or create any new remedies for the injured, but it went a long way in helping attorneys avoid unnecessary mistakes and in providing the certainty and predictability on which a credible court system must rest. And for an appellate practitioner, those are very important things.

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

A: I have been consistently impressed over the past decade by Tom Boyd of Winthrop & Weinstine in Minneapolis. Not only is Tom an able and experienced appellate attorney, he has been a tireless worker in helping to improve the appellate bar and increase and broaden the service that the bar provides to the community. His work in both professional organizations and pro bono efforts represents the best of the profession, and I know it encourages others to similar efforts, myself included.

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

A: Early in my career, I came across a Minnesota Court of Appeals decision that I realized gave my client an excellent statute-of-limitations argument. I drafted the motion, ran it by the partner in charge, and filed the motion with the court. Only after the response came in did I discover that the Minnesota Supreme Court had reversed the Court of Appeals decision on which my argument relied. I took the two decisions in hand, marched into the partner's office, and told him what I had done. Once he read the cases, however, he pointed out to me that despite the reversal, the Minnesota Supreme Court's decision actually provided stronger support for my motion than the Court of Appeals decision. I learned three important lessons from this mistake that have stuck with me in the years since: (1) Always cite check everything. (2) What is important in using a court's decision as authority is the court's analysis, not the outcome of the case. (3) If believe you have made a mistake, deal with it immediately.

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