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Q&A With Constangy Brooks' Nancy Leonard

Law360, New York (October 28, 2011, 2:29 PM ET) -- Nancy Leonard is a partner in the law firm of Constangy Brooks & Smith LLP, where she represents management in cases involving claims of sexual harassment; retaliatory discharge; disability, age, race and sex discrimination; and equal pay violations. She represents employers in state and federal courts, as well as before the U.S. Equal Employment Opportunity Commission and state and local administrative agencies.

Leonard assists employers in problem prevention and legal analysis of complex employment issues. She helps clients develop employee handbooks, employment-related policies, investigation procedures and training materials. She frequently presents seminars and lectures on employment law issues, and is licensed to practice law in Missouri, Kansas, Arizona and Illinois.

Q: What is the most challenging lawsuit you have worked on and why?

A: My most challenging case involved nearly a dozen different tort claims by a former employee against his employer, my client, as well as a number of individuals at the company. The subject matter wasn't complicated — the plaintiff essentially was upset because a co-worker yelled at him — but the circumstances of the case are what really created challenges.

Had we been in federal court, summary judgment would likely have been granted. But we were in state court at a time when judges were not all too familiar with employment-related claims and, in Missouri, our Supreme Court has made it very difficult for defendant-employers to obtain summary judgment.

To make matters even more difficult, opposing counsel seemed to be unfamiliar with not only employment-related claims, but also with the basic rules of evidence. In a transparent attempt to mask these weaknesses, plaintiff's counsel tried to set the stage with some emotional drama in the case, which really involved no more emotion than a simple real estate transaction. Opposing counsel wept during his opening statement.

Fortunately, no one was swayed. We obtained a directed verdict at the close of plaintiff's evidence on all but one count and, after the court made it abundantly clear that he would be inclined to overturn a plaintiff's verdict on the remaining count, were able to settle the matter for a nominal amount. My only regret is that I never got to do my closing argument — during which I had no intention of crying!

Q: Describe your trial preparation routine.

A: I know it sounds cliché, but trial preparation starts the minute I read the petition. That document includes, after all, the plaintiff's best version of the case and, at least in most state-court actions, has more detail than the plaintiff sometimes will be able to recall at deposition. The petition gives me a roadmap, albeit often not always the entire

truth, of the case.

Also included as part of my trial preparation is an early investigation of my own into the facts. This involves meetings with the client and potential witnesses and a thorough review of the documents related to the matter — for further discussion on that topic, see section below related to learning from a mistake made early in my career. Essentially, no stone is left unturned.

A few months before trial, I reach out again to all of the witnesses, primary and secondary, to confirm contact information, talk generally about trial, and to see if anything about their testimony has changed. I don't talk with them just once; I talk with them on numerous occasions, in different settings. People have good and bad days and I want to know how a witness is going to react under varying conditions.

I have a colleague do mock cross-examinations of the witnesses for whom I will be responsible at trial, and I do the same for my colleague's witnesses. I had one key witness tell me, after testifying at trial, that the actual trial testimony was less painful than our practice sessions; he thanked us for preparing him so well. Our witnesses tell our story, and their comfort with the process is critical to our success.

Q: Name a judge who keeps you on your toes and explain how.

A: The Honorable Abe Shafer, who presides in the Circuit Court of Platte County, Mo. I had the privilege to represent Southwest Airlines and an individual manager at trial before Judge Shafer last year in a race and disability case. Judge Shafer runs a very efficient courtroom and sticks to a strict schedule.

Judge Schafer appropriately expects counsel to make the trial experience as painless as possible for the jury. On one occasion, we got one question into a critical cross examination, and the event was unceremoniously halted by Judge Shafer for a lunch break. Many judges would wait until the cross examination was over, or perhaps allow the witness to answer the pending question, so this approach was a bit disconcerting.

However, serving on a jury is, for most, an inconvenience, and the vast majority are not elated at the prospect of spending an entire week of their lives with us in court. Judge Schafer tries to do what he can to make jurors comfortable. Waiting for lunch is not acceptable!

Q: Name a litigator you fear going up against in court and explain why.

A: "Fear" isn't the right word here. Instead, let's call it a healthy respect for skills and abilities. That litigator would probably be Dennis Egan, a plaintiff's lawyer here in Kansas City.

It has been years since I encountered him in a courtroom, but I recall that he knew his stuff, was self-assured and confident in his assertions — with which I often disagreed, by the way — and the jury appeared to like him. In that case, he was not completely successful, as the verdict was reduced on appeal to a mere fraction of the amount awarded by the jury, but he proved to be a formidable opponent.

Q: Tell us about a mistake you made early in your career and what you learned from it.

A: Very early on, I made the mistake of believing at face value what a witness told me, without verification. To be more precise, I failed to insist that the witness, a management employee of my client, locate and show me a document reflecting the alleged event at issue in the case.

The document existed. In fact, it was created at the time the events happened several years prior. But I relied on the witness' guess about what had happened three years earlier instead of putting my hands on the paper and looking at it myself. As it turned out, the witness wasn't so accurate in his recollection of the events.

Okay, he was dead wrong. Fortunately, a wise mentor at the time asked me if I had, with my own two eyes, looked at the supporting documentation. A review of the document created by the witness at the time of the event helped to focus our attention and refresh the recollection of the witness.

I learned from this experience that we, as attorneys, cannot reasonably expect our clients to remember every last detail of events that happened months, much less years, before. It is our job to track down the facts, and the documents that support those facts, as we guide our clients through the litigation process.

Now, as annoying as it may be for my clients, I look at each and every document myself and verify its consistency with our witnesses' testimony.