

Q&A With Much Shelist's Edward Shapiro

Law360, New York (June 27, 2011) -- Edward D. Shapiro is a principal in the Chicago office of Much Shelist Denenberg Ament & Rubenstein PC. He is chairman of the firm's litigation and dispute resolution group, and his practice focuses on the prevention, management and resolution of disputes for commercial entities, organizations and individuals. Shapiro handles all types of business disputes, including restrictive covenants (particularly for physicians and practice groups), as well as intra-family disputes involving personal, business, trust and estate, and real estate issues.

In addition to litigating in federal and state court, he represents clients in arbitration and before administrative agencies, and has extensive experience representing clients in mediation. He also serves as a mediator and acts as settlement counsel. Shapiro teaches a course in negotiation at Northwestern University School of Law.

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

A: I defended a large financial institution against claims of breach of fiduciary duty and fraud. The plaintiff was a lawyer turned businessman, a person of means and was dedicated to proving a point and getting his day in court — no matter what. His lawyers left no stone unturned. It was very clear from the beginning that we would be in this case for the long haul. The plaintiff was seeking \$50 million in damages and another \$50 million in punitive damages.

The plaintiff's deposition lasted three days. I had a lot to ask — he had a lot to say. Each day felt like a 12-round boxing match. There was no rest period in this case. I was constantly on my toes, always looking for ways to tip the balance in the case. I try to be very strategic in filing motions in my cases. I always ask, "Will this motion (if granted) truly affect the outcome of this case?" In one such motion, I was able to persuade the court that the plaintiff was not entitled to a jury trial on any of his claims. That was a major turning point.

The trial was equally challenging — and exhilarating. The plaintiff's cross-examination lasted about a day and a half. At the end of his case, I moved for judgment — but not in the typical, perfunctory manner. I was ready to argue and knew that the plaintiff's lawyer would be equally prepared. He was.

Fortunately, the judge was courageous enough to grant the motion. From a business perspective, the

case was challenging because my client required quarterly and annual budgets — not always an easy task to accomplish in a case like this. This requirement forced me to engage in a cost/benefit analysis for every action I took.

Q: Describe your trial preparation routine.

A: Trial is like opening night for a new play. As a former actor, my routine has some similarities.

1) Make sure you know the script so well that even if someone forgets a line of dialogue, you are able to cover without the audience knowing. So my preparation begins on day one of every new matter. I create a trial notebook — it doesn't have much in it at the time, but I add and subtract as the case moves toward trial. I'll include jury instructions that will become the structure for the prosecution or defense of the claims; key documents; checklists of potential motions.

2) Practice your lines with your fellow actors. I meet with as many witnesses and potential witnesses as I can, as often as possible. I discuss likely questions that might be asked at trial, go over key documents, and, perhaps most importantly, find out what their greatest concerns or fears are. I have never been in a situation where a witness has not raised at least one concern. I want to know that concern far enough in advance to effectively manage it.

3) Review the script. I spend a significant amount of time re-reading key documents and deposition testimony.

4) Be comfortable on the set. If I am not familiar with it already, I try to visit the courtroom on more than one occasion to get a feel for the space and the acoustics. I also want to get a sense of how technology might play in the space.

5) Practice your big monologue in front of others. I talk to colleagues (those with whom I'm working on the case and those who know nothing about it). I find it extremely helpful to talk through the critical issues. It helps me solidify key points and get feedback on opening and closing arguments. It also prepares me to counter new arguments that might be raised by my opponents. Additionally, I draft and re-draft direct and cross-examinations, and practice them until I feel I have reached the right timing and pace.

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

A: Chancery Judge Peter Flynn in the Circuit Court of Cook County. He is part jurist, part philosopher, part pragmatist. Because he is always prepared for oral argument, I have to be ready for well-reasoned questions and the practical implications of my argument. I always leave his courtroom intellectually challenged — even more so when he rules in my favor!

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

A: I have great respect for one of the lions of the legal profession here in Chicago, George Collins [Collins

Bargione & Vuckovich]. A number of years ago, we were adversaries in a case that lasted approximately 10 years, through two appeals and a trial. Ultimately, my client prevailed.

Collins is a gentleman, with a disarming manner in court. He is well known by the judiciary and has a reputation for honesty and credibility. I have always aspired to maintain similar traits. Going up against the aggressive, bombastic lawyer who will do anything and everything to win a case is what we're all used to. Handling the lawyer who is focused, knows the case inside and out, and is respectful in court actually provides the greater challenge.

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

A: I was probably a third- or fourth-year associate and was finally given the chance to argue a dispositive motion. I was determined to prepare the best outline that was ever created by any attorney who had ever argued a motion in the history of legal practice!

I covered every point. I practiced in my office, in a conference room, in front of the mirror. The senior partner came to court with me. The judge was very well prepared and asked a few key questions. I was so determined to get through my entire outline and show her how much I knew about the case that I didn't initially answer her questions. When she gave me another opportunity, I answered, but even then I continued to argue, determined to cover all of my points. I was so focused on my agenda that I didn't realize she was satisfied with my answers and would likely rule in my client's favor.

Eventually, I felt a hand on my left shoulder. As I turned around, I realized it was the senior partner. He leaned over and whispered very discreetly, "I think you're going to win...time to sit down." So the lesson? Answer the judge's questions and know when to sit down!

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