

Q&A With Locke Lord's Jennifer Kenedy

Law360, New York (June 7, 2011) -- Jennifer A. Kenedy is managing partner of Locke Lord Bissell & Liddell LLP's Chicago office and co-chairwoman of the firm's board of directors. She concentrates her practice on commercial litigation, including trade secret misappropriation and other intellectual property litigation, employment and distributorship contractual disputes, construction, product liability, ERISA, real estate and eminent domain.

Kenedy has served as national counsel for several financial services, insurance and other companies covering all aspects of litigation, from supervising complex discovery and attending mediations and arbitrations to pursuing injunctive relief, trying cases and briefing and arguing state and federal court appeals.

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

A: As a member of the trial bar in the Northern District of Illinois, I was assigned by the court to handle a pro bono employment discrimination case for an indigent plaintiff against one of the largest corporations in the country. I do not handle employment discrimination cases and do not represent individual plaintiffs.

The company had a "zero pay" approach to the case so it went the distance. I had to learn a completely new area of the law. The case went all the way until a few days before trial. After numerous depositions and voluminous discovery and overcoming their motion for summary judgment, we were able to position the case to obtain orders in limine from the federal judge barring most of the other side's witnesses, which led to an immediate, very sizeable settlement two days before trial.

Q: Describe your trial preparation routine.

A: I view trials like the production of a play, with each witness and exhibit serving a purpose to the story. I draft my closing argument first and work backwards. I want to have the conclusion of the story in print before I develop the script. I outline which facts from which witnesses and exhibits will support each statement in the argument and write my script. Unlike a real play, in trial, your opposing counsel is trying to disrupt and co-opt your story, so the challenge is to put on your play while preventing that from happening. I anticipate the ways the other side will try to undermine my story and add to the script

ways to minimize those disruptions.

Next, I develop a plan for disrupting the other side's play. I accomplish this by determining the order of witnesses (perhaps calling one of their key witnesses adverse) and identifying key areas of impeachment. If the other side has an expert, I save one question for trial that I intentionally do not ask at deposition. It is typically something basic about their alleged area of expertise that if they answer it correctly will not hurt our story or help theirs, but if they answer it incorrectly it will seriously damage their credibility.

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

A: I recently handled trade secret litigation before the Honorable Mark Kravitz in the U.S. District Court of Connecticut. The proposed findings of fact and law for both sides each exceeded 70 pages. We submitted a complete set of 10 depositions, each several hundred pages long, over 200 exhibits and those proposed findings to Judge Kravitz only five days before he ruled on our request for preliminary injunctive relief.

It was apparent at the evidentiary hearing that Judge Kravitz not only had read and digested the several hundred pages of materials, but had committed them to memory. His understanding of the factual minutiae and analysis of those facts under the relevant law was something to behold. At the hearing, he actually corrected opposing counsel on what was contained in the record during an impeachment, stating "I read the deposition. You forget."

I enjoyed being in the courtroom of a judge who had such an extraordinary command of all the facts in the case on such short notice, as well as the relevant law, which covered Illinois contract law and Connecticut law on other issues.

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

A: I don't fear any specific litigator but there is a "type" I do not enjoy litigating against: a litigator who will intentionally misrepresent facts or evidence. This is an honorable profession and litigation is a collection of all relevant facts and a persuasive presentation of those facts and the law to a fact-finder from each party's point of view to determine which position prevails. When a litigator does more than argue a different interpretation of facts but deliberately misrepresents them, they are not playing by the rules and it not only makes my job more difficult, it undermines the sanctity of our judicial process for resolving disputes. I take our role as officers of the court very seriously. I don't enjoy calling them out on it, but I will, every time.

In all honesty, I don't "fear" any litigator. However, I have respect for David Schippers. Several years ago, I handled a Seventh Circuit appeal of a decision barring the other side's experts and granting summary judgment for my client. David represented the appellant on the appeal only. He called at the outset, politely introduced himself, then proceeded to write an excellent brief on a losing issue, zealously argued his client's position with talent, all while following the rules and always with professional courtesy. A few years later, although a lifelong Democrat, he was selected as the Chief Investigative

Counsel for the U.S. House Judiciary Committee in its impeachment inquiry of President Clinton, so I was not the only fan.

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

A: At my first jury trial, the judge made the absolute wrong decision during a side bar on an important evidentiary issue. We had briefed it in advance, showed him the case law, and he still did not allow the evidence. I was a young trial lawyer and kept arguing, and the judge almost held me in contempt! After the trial (we won), the judge said that, although he had threatened me with contempt, "you were not even close to being held in contempt" and laughed about it, but I learned my lesson: When you lose on an issue, you lose, step away from the bench, and say "thank you your honor" and move on.

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