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Dean Logan's Blog

Alums on the Cutting Edge

Posted by David Logan on 06/24/2011 at 12:52 PM

As our younger graduates take their place in the legal profession, they are tackling new issues and new variations on old ones.



Nicole Dulude Benjamin '06 and Rob Humm '08

For example, [Nicole Dulude Benjamin \('06\)](#) and [Rob Humm \('08\)](#), associates at leading New England firm [Adler, Pollock & Sheehan](#), recently presented on electronic discovery to a group of RI lawyers in a continuing legal education program that they conceived and delivered. [Electronic Discovery: Unraveling E-mail Strands and Strands](#) provided a comprehensive overview of the issues that arise when reviewing e-mail strands for responsiveness and privilege in discovery. The presentation highlighted the two different approaches federal courts have endorsed for reviewing e-mail strands and redacting privileged communications within e-mail strands. The CLE also featured a discussion of the pros and cons of each approach in an effort to help assist attendees in identifying the most defensible process for reviewing e-mail communications when responding to discovery in their cases. Nicole and Robert are President and Vice President respectively of the RWU Law Alumni Board.

Another young star alum is [Tom Gonnella \('06\)](#), who

practices with the terrific firm [Pannone, Lopes Devereaux & West](#). Here are his reflections on a case he just handled that involved a range of novel constitutional issues.



“*Cohen v. Rhode Island Turnpike and Bridge Authority* involved the Authority’s toll schedule for the Newport Bridge. Under that schedule, the Authority afforded discounts to Rhode Island residents for passage over the Bridge. The plaintiff, a class of out-of-state residents who used the bridge and paid the undiscounted rate, alleged that the discounted toll rate violated, among other things, the Commerce Clause (more precisely, the so-called dormant Commerce Clause), the Privileges and Immunities Clause of Art. IV, and the Equal Protection Clause of the United States Constitution. The parties ultimately cross-moved for summary judgment on a set of stipulated facts. The question before the Court seemed simple enough: did the toll discount for in-staters run afoul of the above provisions of the constitution. I quickly found out, however, that the words “Commerce Clause,” “Privileges and Immunities Clause,” “Equal Protection Clause,” and “simple” rarely find themselves in the same sentence.”

“When the case came into our office, I was immediately tasked with researching the issues presented, and then later tasked with drafting the memoranda supporting the Authority’s motion and its objection to the plaintiff’s motion. The research was a bear. The body of law analyzing the dormant Commerce Clause is nothing short of brobdingnagian. And, within it, the United States Supreme Court can’t seem to agree on much (Justice Thomas even goes so far as to say that the case law applying the dormant Commerce Clause should be discarded – all of it).”

“Nevertheless, as I read and re-read the case law, I began to take real ownership of the law. I found myself continually discussing my thoughts on the case with other lawyers in the firm, especially partner Bill O’Gara, Senior Counsel Brian Lamoureux, and Of Counsel Bernie Jackvony, and even jousting with them on most of the finer constitutional points and distinctions. Ultimately, my big mouth seemed to pay off, as the firm decided that I should argue the matter before the Court.”

“The argument before Federal District Judge Will Smith was lively and resembled more an appellate argument than most of the summary judgment arguments that I’ve seen (and argued). Judge Smith did his best law professor impression. He hit both sides hard with many pointed and difficult questions, but never gave any real clues as to which way he was leaning. Opposing counsel, a more seasoned attorney who practiced out of a California firm specializing in class actions, argued first. He made some very strong arguments that appeared to make good headway with the judge. Luckily, I had two crutches to fall back on: first, I had been jawing with some darn good lawyers in my firm about this case for quite some time, so I knew that I could withstand fairly intense external pressure, and, second, this wasn’t the first time I had argued in this type of situation – the firm had given me the opportunity to argue in the 1st Circuit two years earlier. Relying on my past experiences, I just tried to keep it simple and attack the argument with the same vigor and confidence that I had tapped previously in the offices, halls, conference rooms, the staircases, the elevators, and the parking lots of my firm.”

“Arguing the motion was cathartic. For months I had been discussing what I thought should be argued, and finally, I was able to just argue it and let the chips fall. In the end, I think (read: hope) I made a pretty decent showing. If nothing else, my boss, Bill O’Gara, who sat at counsel table with me during the argument, seemed happy with my performance. Although, as I look back on it, he may have just been relieved to know I wouldn’t be storming in his office at 8 a.m. the next morning with my latest theories on the application of the market participant doctrine. Tough call.”

The good news for Tom and his colleagues: Judge Smith granted his client’s motion for summary judgment. If you are interested, Judge Smith’s opinion can be found at 2011 U.S. Dist. LEXIS 40248 (D.R.I. April 7, 2011).

Congratulations Nicole, Rob, and Tom. Excellent work!