Q&A With Morrison & Foerster's James Hough

Law360, New York (May 13, 2011, 3:57 PM ET) -- James E. Hough is a partner with Morrison & Foerster LLP and head of the firm's New York litigation department. He represents companies involved in patent, copyright, trademark and trade secret disputes, joint venture dissolutions, securities fraud claims and government investigations. He is recognized as an authority on the Foreign Corrupt Practices Act and is a frequent speaker on this and other litigation-related topics, both in the U.S. and internationally. He is also co-head of the firm's distressed real estate practice group.

In a high-profile case, Hough represented the author and publisher of the best-selling book Memoirs of a Geisha. He has also represented the National Music Publishers Association in several high-profile copyright infringement cases, including a class action against YouTube and Google Inc.

Hough served as vice chairman of the Intellectual Property Committee of the Commercial & Federal Litigation Section for the New York State Bar Association, as well as secretary of the Arbitration Committee for the Association of the Bar of the City of New York.

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

A: I represented an Internet entrepreneur in a private securities fraud lawsuit during the tech bubble. The plaintiff’s allegations focused on statements allegedly made to the plaintiff during meetings with my client and others.

During preparation for his deposition, it became clear my client was unable to recall whether he attended those meetings, whether statements attributed to him in contemporaneous notes taken by others at the meetings were accurate, or even whether his signatures on the documents were genuine. He wasn’t all that shy about the reason for his lack of recall: “I was doing a lot of drugs then,” he explained, proud of his recent sobriety.

Happily, I was able to knock out most of the case on summary judgment, and the case settled soon thereafter.

Q: Describe your trial preparation routine.

A: First, I focus on the witnesses, with early and frequent meetings to prepare the testimony. Second, I focus on creation of visual demonstrative exhibits. Third, I refine the narrative for the fact finder through as many mock juries (or similar practice runs) as the time and budget will permit.

Q: Name a judge who keeps you on your toes and explain how.
A: Judge Jed S. Rakoff of the Southern District of New York. Judge Rakoff runs a rocket docket and holds litigants to a very tight schedule. He is thoroughly prepared for every appearance and that motivates attorneys who appear before him to also be thoroughly prepared. He frequently schedules routine conferences by telephone, and sometimes as late as 8 p.m. He runs each conference succinctly and encourages brevity in presentations from counsel. It’s a pleasure to appear before him, but never easy.

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

A: I cannot name any person or firm that I fear as an adversary. There are many lawyers I respect as adversaries, and some that I find more challenging than others. One of my more recent challenging adversaries has been Bruce Van Dalsem of Quinn Emanuel Urquhart & Sullivan LLP.

Bruce represents KB Home Inc. in a litigation I am handling for JPMorgan. Always cordial and professional, Bruce is a dogged advocate for his client, and his approach to the case epitomizes “scorched earth” litigation tactics. Every issue is thoroughly researched and artfully presented to the court, and, unfortunately, frequently on the eve of major holidays.

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

A: As a junior member of a large trial team, I was assigned to research a few questions the trial judge had raised at the end of the trial day. We were out of town, camping after trial at the offices of our local counsel. I performed the research late at night, after the rest of the team had left. This was in the days of bound paper books for Shepard’s, and although I Shepardized the cases I found, I failed to notice that I did not use the most recent volume — the Shepard’s I used was several months out of date.

You know where this story is heading: Sure enough, one of the cases I relied on had been overturned a few weeks earlier, and that fact was discovered by the trial judge’s law clerk. The judge announced his clerk’s discovery of this mistake from the bench, and he took the occasion to admonish counsel about the importance of providing accurate and reliable citations to the court. Mind you, these admonitions were not directed towards me. They were directed towards the partner who was lead trial counsel, who accepted the criticism and humbly promised to do better. Few would have faulted the partner if, after the judge left the courtroom, he had turned around and berated me for my error. He did not. Instead, he took me aside, privately, and asked for my sincere promise never to repeat an error of that type or magnitude again.

Of course, from this episode I learned the vital importance of ensuring I used the most recent Shepard’s volume for cite checking — a lesson that is now, happily, mooted by the availability of computer-assisted cite checking. More importantly, though, I learned the importance of gracefully accepting responsibility for mistakes made by those working under your supervision, and of delivering reprimands gently and privately.