Q&A With Adams And Reese's Ray Ward

Law360, New York (May 09, 2013, 4:54 PM ET) -- Raymond P. Ward is a special counsel with Adams and Reese LLP in New Orleans and focuses his practice on appellate law. He serves on the steering committee for the Defense Research Institute's Appellate Advocacy Committee, for which he served several years as chairman of Publications. Combining his love of writing with his practice of law, Ward has written several articles for DRI publications on appellate practice and legal writing. He is one of four co-editors of "A Defense Lawyer's Guide to Appellate Practice," published by DRI in 2004, for which he also wrote two chapters.

Q: What is the most challenging case you have worked on and what made it challenging?

A: My most challenging appeal arose from an explosion at an industrial plant on the Mississippi River, about halfway between New Orleans and Baton Rouge. The explosion generated massive litigation: dozens of personal-injury suits by plant employees, class actions by people in the area surrounding the plant, and claims by the plant owner and some of their industrial neighbors for property damage caused by the explosion — all consolidated into one massive case. Our client, one of dozens of defendants, manufactured a tiny product that was alleged to have played a role in the chain of events leading to the explosion. After a six-week trial, the jury exonerated our client. But the trial judge granted a motion for judgment notwithstanding the verdict, found our client 25 percent at fault, and rendered a judgment against the client for over $88 million. Our firm handled the appeal, and I was the lead brief writer. What made the case challenging was the enormous size of the record: 126 volumes, over 33,000 pages. In briefing the case, the challenge was to find the favorable facts strewn over that enormous record, boil them down into an interesting and persuasive story, and fit it within 28 legal-size pages—all under constrictive time deadlines. It was a tremendous amount of work, done under a lot of pressure. Fortunately our efforts were rewarded when the appellate court reversed the trial court and reinstated the jury verdict. (The decision is reported at 927 So. 2d 492.)

Q: What aspects of your practice area are in need of reform and why?

A: In Louisiana, the appellant must pre-pay the court costs involved in preparing the record for appeal. These costs can be so high that, for some litigants, they create a

significant obstacle to the right of appeal. These costs are fixed by statute: La. R.S. 13:841(A)(10) for the clerk of court's fee, and La. R.S. 13:961(F) for the court reporter's fee. Without getting into the details, the costs are a function of the size of the record: the bigger the record, the higher the cost. In a typical appeal, these costs are in the four-figure or low five-figure range. But sometimes the costs are much higher. In two appeals I am working on now, the costs were over $32,000 in one case and over $51,000 in the other. In the plant-explosion case discussed above, the court costs for preparing that enormous record were over $137,000. Although the appellate court may, if the appellant wins, order the appellee to reimburse these costs, collecting the costs from the losing appellee is sometimes difficult, if not impossible. But even when these costs are recovered on the back end, having to advance them on the front end places a significant financial burden on the right to appeal. "Right to appeal" can be an empty phrase when exercising the right costs thousands of dollars in court costs.

Q: What is an important issue or case relevant to your practice area and why?

A: For Louisiana appellate lawyers and judges, one of the most significant decisions ever rendered is *Gonzales v. Xerox Corp.*, 320 So. 2d 163 (La. 1975). At the risk of over-simplifying, *Gonzales* holds that, when an appellate court reverses a trial court's judgment in a civil case because of a legal error affecting the verdict, the appellate court ordinarily should not remand the case to the trial court for a new trial, but instead should determine the facts for itself and render the appropriate judgment. In these instances, the appellate court becomes the trier of fact. The *Gonzales* decision highlights the uniqueness of Louisiana civil appellate procedure. This uniqueness stems from the Louisiana Constitution, which vests the appellate courts with jurisdiction over both the law and the facts in civil cases, and from the Code of Civil Procedure, which empowers appellate courts not merely to review the trial court's judgment, but to render judgment themselves. *Gonzales* is an application of these principles. And because a trial court's legal error may lead to the appellate court's having to decide the facts for itself, *Gonzales* highlights the importance of selling your side's version of the facts to the appellate court.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Robert N. Markle, an appellate lawyer for the U.S. Department of Justice in Washington, D.C. Bob used to be with this firm before accepting his current position with the DOJ. For Louisiana appellate lawyers, Bob was a pioneer. Years ago, before the Louisiana State Bar Association had an appellate section and before most people in Louisiana conceived the idea of an appellate lawyer, Bob decided that his practice would

consist entirely of appeals. For a few years, he and a partner had their own appellate boutique firm — a rarity in those days. Later, he joined Adams and Reese by convincing the firm that it needed an appellate lawyer. Bob's idea has grown slowly but steadily since then. Today, our firm includes a team of appellate lawyers, which probably would not exist if Bob had not led the way. Bob's idea is also starting to catch on statewide, as the Louisiana Bar Association now has an active appellate section. I don't know if we'll ever have appellate specialization in Louisiana, as they do in Florida, Texas, California, and North Carolina. But if we do, Bob will deserve some of the credit.

Q: What is a mistake you made early in your career and what did you learn from it?

A: In my early days, I often fired off letters to opposing counsel when something they did or said offended me. In retrospect, I realize that those letters didn't do anything to help my client, and that I was wasting my time and the client's money writing them. But more importantly, I've learned a bit of equanimity, so that I'm usually amused rather than offended by things that obnoxious opponents say or do. When I am tempted to take offense, I remind myself that it's not about me; it's about the client, and if it's not hurting the client, then it's not worth my time or attention. I also remind myself that the only people whose opinions matter are my client and the judges on the appellate panel. There's a bit of wisdom — I don't know who first came up with it — that if you don't want it published in your opponent's brief, don't put it in a letter or e-mail. Nowadays, if I must respond to an obnoxious opponent, I try to be as polite as possible and to avoid anything snarky or sarcastic. I try to envision the response as an exhibit attached to my opponent's motion, and write it with the idea that the eventual audience will be a judge.