

Of Counsel Interview ...

Seasoned Attorney Serves Clients & Cultivates Communities in Big D

Practically everyone who circulates in the Dallas legal community—and for that matter, the Dallas civic community as well—knows Mark Shank, or at least his last name. Not only does the partner at Dallas-based Diamond McCarthy carry a resume that includes 40 years of strategic client service in high-stakes, complex litigation, and expertise on a wide range of labor and employment matters, Shank is also known a skilled arbitrator, mediator, and negotiator.

In addition, Shank's community outreach and Dallas and Texas bar efforts have earned him numerous honors. One of his most recent recognitions perhaps best characterizes his multifarious talents and commitment to his community—the 2018 Dan Rugeley Price Memorial Award from the Texas Bar Foundation.

“The recipient,” according to the bar foundation's award criteria, “exemplifies the qualities of an accomplished legal writer and researcher, a talented and dedicated practicing lawyer, a servant of the profession as a volunteer and an advocate on its behalf ... and an unreserved commitment to clients and to the practice of law.”

One of his former partners, Michael Gruber, praises Shank's energetic and passionate community service. “Mark has a

complete inability to leave well enough alone,” Gruber joked in introducing Shank for another award in 2012. “In working with him on a vision and plans for Habitat for Humanity, Mark was always pushing, always asking, ‘What if we could rebuild communities, instead of just houses?’”

And then, there's Shank's adventurous side. He's a master at barefoot water-skiing, and what's more, media photos show him performing his water ballet with one foot aloft.

Literary Influence

Recently *Of Counsel* spoke with Shank about his legal career, the labor and employment practice area, his work with the city and state law bars, the merit in lawyers finding ways to relieve stress—in his case zipping along the surface of a lake at 40-plus miles per hour behind a speedboat and without skis—and other topics.

Of Counsel: Mark, what was it that inspired you to become a lawyer?

Mark Shank: I read a book by Irving Wallace called *The Seven Minutes* – it was about a trial – and that's what got me interested. I was about a junior in high school and

I was just really taken by what it took to be a trial lawyer.

OC: That's great. Several lawyers tell me the old TV series "Perry Mason" first got them interested in law. Did you watch the show?

MS: I admired Perry Mason, but there was something about that book that caused me to want to be a lawyer. And, I remember when I was a freshman in high school I wrote an article about what it took to be an aeronautical engineer and I realized that I probably had more aptitude for the soft sciences than for the hard sciences. I never wavered from it. During college I wanted to be a writer also, and I figured those two things were compatible.

OC: Well you've done a lot of writing in the last 40 years as a lawyer, I'm sure.

MS: I bet I've delivered over 250 CLE articles.

OC: Yes, and you've won a couple of awards for them. What did you do after you got out of law school?

MS: For one year I practiced law in a small town called Osage Beach, MO. Osage Beach was the economic hub for the Lake of the Ozarks, which is where I grew up. My wife was a graduate of Stephens College, but she grew up outside Houston and wanted to get back to Texas. And after being out of school about nine months I said: "Will you marry me?"

And she said: "Yes, comma, what part of Texas shall we live in?" She was working for Hallmark Cards out of Kansas City at the time, but wanted to go back home.

OC: So when you moved back to Texas, what firm did you go with?

MS: The firm was called Clark, West, Keller and Ellis, and I was there for 20 years.

OC: I know that you do several kinds of work, but you've also gravitated toward the

labor and employment sector. What attracted you to that practice area?

MS: Once again, it was something I read – it was a magazine for young lawyers. I knew I was headed to the big city and I thought labor and employment law was very interesting. That's what turned my attention to that.

OC: Once you started practicing, what did you like about that field of law?

MS: The facts patterns. You think about business litigation and somebody says, "Well, he breached my contract" or "he failed to deliver my stuff" or whatever. That's not as interesting, in my opinion, as the fact patterns you deal with in the workplace. For instance, I've probably handled 250 sex harassment cases. Those fact patterns are always interesting. I always say, "What kind of lawyer I am depends on what was hot when I started." And employment law was very hot at the beginning of my career. When I first started, in 1981, most of the claims were race discrimination cases. And then we moved to sex harassment for a while. Then age discrimination cases got to be hot. Then covenant not-to-compete claims, then disability claims. And all those sort of gave rise to very interesting fact patterns, I thought.

OC: And certainly in the last few years I'm sure you've handled many sexual harassment and gender discrimination cases. Is that still keeping you busy?

MS: No. I've migrated my practice in the last couple years almost exclusively to arbitration. I am the arbitrator. I do arbitrations for employment cases and business cases – a lot of health-care, a lot of breach of contract, executive employment disputes, those kinds of things.

A Challenge: Consensus among Lawyers

OC: It seems like you have an ability to get people to listen to you – and you probably

listen very well to them – but they trust you as an arbitrator, as a neutral. Is that a fair characterization?

MS: It is. I think it's fair. Somebody called what we do “bar leaders” and “community leaders,” and a lot of times we call that “herding cats.” Often it's not very easy to build a consensus among lawyers. They're all very bright, forceful, opinionated people. So to be president of a bar association or to raise money or to be in charge of a bar foundation, or to head a committee on the state bar board – all those things require an ability to build consensus. And of course in my current practice, if I'm not able to get people to at least trust that I'll make a reasoned decision, or if I can't get them to trust that I will listen to them carefully and hear what they have to say, then I probably won't get to be an arbitrator or a mediator.

OC: So a lot of your arbitration experience came in working with bar associations and other foundations?

MS: Well, I don't think so. My arbitration experience came with being an arbitrator since the mid-1980s. But a significant part of my practice has been over the time working as an advocate in arbitration, so not just down at the court house. Knowing it from both sides is pretty important. But also when you do bar work, people are watching you and you build a reputation outside the context of the practice, which I think is also valuable now.

OC: You've done so much in your practice. But when you think of the types of work you've done that have really made a difference, what comes to mind?

MS: Well, let's start with the covenant not-to-compete in departed employee cases. I've done those my entire career and I wrote the first book that put it all in one place, the body of law associated with those. And you won't find any other book in Texas that explains what you look at in a departed employee case.

The second area is ... I've handled some very difficult and significant cases involving sex harassment or gender harassment or workplace harassment. I take pride in the fact that I've managed to navigate most of those cases without my corporate clients showing up in the newspapers, if you understand what I'm saying. Those types of cases are better resolved without a lot of publicity.

OC: Why are those harassment cases so important or compelling?

MS: Well, first of all, a lot of the allegations in those cases are a bit salacious. Anything you might imagine to be alleged, I've dealt with it: same sex, opposite sex, male on female, and even a situation where the female was the aggressor. So, number one, they are the kinds of things where the fact patterns get people's attention. But having those fact patterns in the media doesn't really benefit anybody. It doesn't benefit the company, because it has nothing to do with their business. And typically it doesn't benefit the people who claim to be victims, because once it's out there, well, it's out there.

Constructing the Narrative

OC: What is it you really enjoy about the legal profession?

MS: Problem solving. I love taking difficult problems and figuring out a way to solve them and taking a chaotic set of facts and putting some order to it.

OC: And that's a little bit like writing.

MS: Oh, yes. Except I think writing is harder than what I do. I think writing is really hard. It's a very solitary activity and it requires a tremendous amount of self-discipline. When I wrote my book, I would go up in my little study for three to five hours every Saturday and Sunday for six months – I think that's really hard.

OC: The reason why I mentioned that is you're making sense of the facts and building a narrative in your practice.

MS: Oh yes, absolutely. If you're handling a case, particularly a difficult case, you'd better start building a narrative early. And you'd better be flexible enough, because you know that it's not all going to be linear.

OC: Right. And that's where the creativity comes into play, isn't it?

MS: Oh sure.

OC: What about the flip side. What is it about the legal profession that you don't like?

MS: The adversarial nature of the profession, particularly when it's unnecessary – people arguing for the sake of argument, people taking positions that seem untenable. And the lack of civility within the profession.

OC: Has it gotten worse?

MS: It actually got really bad in the '80s, and then it got better, but I think recently it's gotten worse.

OC: Yeah, I've heard that from other attorneys as well.

MS: I think in part it's because in the last five years all we see on media is shouting at each other. It doesn't matter what your political viewpoint is, when people are on TV or radio shows where they are taking opposing points of view, they try to shout each other down. And I do think that carries over into the legal profession.

OC: When did you come to Diamond McCarthy?

MS: Last April.

OC: What attracted you to the firm?

MS: Well these are all former lawyers from Hughes & Luce, and I loved my time there. When everybody at the Gruber firm [his

previous firm, Gruber Elrod Johansen Hail] decided to go their separate ways, my friends at Hughes & Luce were kind enough to invite me to come here, so I did.

OC: And you teamed up with a former colleague to start the L&E department?

MS: Yes, Christie Newkirk, a wonderful lawyer and a great friend.

OC: When you start a practice, what's the real challenge?

MS: Getting started [*laughs*]. It's the typical challenges: name recognition, processes, support, those sorts of things. It was easy with Christie because she's such a fine lawyer and a dear friend.

OC: You have three people in your team. Do you expect to grow the practice group?

MS: Sure. Yes.

The Right Stuff

OC: Is there something in particular that you look for in hiring a young or lateral L&E attorney?

MS: Well, they have to have shared values: work ethic, collegiality, approach to the problem-solving, treating clients well is of paramount importance.

OC: How do you find that out?

MS: One way is you get to know people. There's a phrase that carries over from fundraising, because I've done quite a bit of fundraising for charities: Make your friends before you need them. So these would be people that I know or have worked with or have been around or have heard about, that sort of thing. The person would have to be a known commodity.

OC: In the next year or two, how many attorneys do you think you'll need?

MS: We'll probably add one or two; that would be about it. We're very comfortable practicing in our configuration, and growth is not our primary goal.

OC: I know that you're very well known in the legal profession nationwide, but especially in Texas. But all lawyers still have to market. How do you market your practice in any other way besides having your name so well-known?

MS: Well, I post on LinkedIn. I still speak and write, and I just get to know people – my wife calls it glad-handing [laughs]. I still serve on some charitable and civic boards. My view is the best way to get people to hire you as a lawyer is for them to visualize you as a lawyer when they see you in some other activity. Obviously, the best is for them to see you practice law. But the second best is to be doing something that is meaningful where they can visualize you as a lawyer.

OC: Finally, Mark, I have to ask about your sport and how it helps you relieve the pressures of the job. You're an award-winning barefoot water skier, and I'm betting that activity helps you unwind from being a lawyer. That's important, right? If you agree,

can you talk about the importance of finding an activity to enjoy that's outside the legal profession?

MS: First of all, if you want to be a really fine lawyer, you put a lot of pressure on yourself to be really good. And the profession itself is a stressful profession. In litigation you've got people putting pressure on you: opposing counsel, judges, co-counsel, and yourself. And I always say there's got to be a way to flip your switch.

If I'm going to be skiing at 42 miles per hour on very little surface area, then I'm not going to be thinking about my cases. Barefoot skiing gives me a chance to flip that switch. Same thing with the bar work. Most lawyers are fully engaged in whatever they're engaged in. So if I'm leading a bar association group or leading a foundation or doing whatever I do for bar work then I'm typically not at that moment thinking about my cases. Now your clients want you to think very hard about your cases, but you're actually more effective if you can flip that switch. ■

— Steven T. Taylor

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