

## Q&A With Baker Donelson's Darwin Hindman

*Law360, New York (April 09, 2013, 1:34 PM ET)* -- Darwin A. Hindman III is a shareholder in Baker Donelson Bearman Caldwell & Berkowitz PC's Nashville, Tenn., office and leader of the firm's government contracts practice. He has bench, jury trial and bid protest experience and practices regularly in state and federal courts and agencies throughout the Southeast. He has a strong concentration in public contract law including bid disputes, bid preparation, contract management and contract compliance.

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

A: When NASA decided to contract out management of the U.S. payload for the International Space Station, I represented one of the leading teams (a joint venture of aerospace government contractors) competing for the award. As the name implies, the ISS is a cooperative venture between several countries, so there were unique legal challenges from the very beginning.

Aside from the complexities due to multinational laws and agreements, bidders faced potential conflicts of interest issues that would never have arisen in an ordinary commercial case. For example, the same entities that were bidding on the contract to manage the Space Station payload had relationships with almost every research university and scientist who wanted to send their experiments into space. We developed a unique legal solution that mitigated the conflicts, allowed NASA to make the award and maximized the number and types of experiments conducted on the Space Station.

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

A: Ethics reporting for government contractors. In 2009, the federal government created a new set of rules requiring contractors to report any potential occurrence if they have "credible evidence" that a violation of the laws or rules has occurred. Four years later, no one really knows what the government expects to be disclosed. The effect is that good contractors trying to follow the new rules end up being investigated (which is expensive and stressful) while culpable ones avoid scrutiny. Regulators need to update or completely change this system.

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

A: Federal budget cuts, especially sequestration. This issue is important to anyone who pays taxes and benefits from government services (which is to say everyone). But it is felt the most directly and most painfully by government contractors and grantees. Not only are there less opportunities for work, but existing contracts and programs are becoming much more difficult to perform. And there is more risk to contractors, too. All of this, of course, impacts the legal practice. In some ways, the problems created by budget cuts create more need for legal services (defending bid protests, asserting claims), but the uncertainty about funding has had an overall negative effect on both the contractors and the lawyers who serve them.

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

A: Maclin Davis is a senior litigator at Waller Lansden Dortch & Davis in Nashville with whom I have practiced in the past and have had cases against since. In addition to being an excellent litigator and trial lawyer, he showed me the importance of writing well, with special emphasis on grammar. Many attorneys underestimate how much grammar and style mistakes stand out to judges and clients, and how they can hurt your credibility in an otherwise strong piece of writing or a pleading. Mac always believed that if a client is paying for expensive legal services, the work product should not only be persuasive, it should be grammatically perfect. I have tried to follow his example in that regard, and I notice when others do not.

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

A: When I was an associate, I was sent to a client's facility because a federal inspector had arrived and was interviewing client employees. I was not familiar with the regulations that governed the federal agency or the industry in question, but I felt like the client wanted a lawyer to stand up to the inspector and assert a legal position, so I bluffed. But all of my guesses were wrong about the rights a company has in that situation, and it almost caused a relatively small inspection to turn into a much larger inquiry. In retrospect, I should have admitted my limitations and simply stated that I was going to observe the inspection and then assist the client later with the same information gathered by the inspector, but at the appropriate time.

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