

Member Spotlight: Michael Alan Dailey

A Life of Testing: Why Michael Dailey continually prefers what's new and untried



Michael Alan Dailey is a broadly experienced litigator who has presented and defended cases throughout the United States.

He has handled cases of first impression, such as *DCA v. SoftKlone Distributing Corporation*, in which the copyright status of computer screen displays was first established. He litigated the proper basis for overturning arbitration awards issued in the (US) state of Georgia, and in the process prompted the Georgia General Assembly to enact legislation upholding Mr. Dailey's courtroom contentions.

Mr. Dailey has handled disputes involving health care, global positioning, and voice recognition technologies.

Michael Dailey is a man who likes to extend his limits, to challenge himself by learning or trying something new.

Over the years he has been a hiker, a runner, a long-distance cyclist and glacial mountaineer, attempting to scale 6000 and 7000 metre peaks in North America, South America and Europe.

The same might be said of his professional life. While he customarily handles cases as head of the Anderson Dailey commercial litigation practice, when the opportunity arrives to become involved in a wholly different kind of case, he takes it.

A good example is a case on which he is presently working and which is proceeding through the US Supreme Court. "I represent a former but very prominent professor at the Georgia Institute of Technology. Holder of two endowed University Chairs, he was falsely charged with stealing from the Institute where he had been working for over 15 years."

The professor's career was demolished when an extravagantly false and misleading investigation, (about which the professor was never informed and with findings of illegality that the professor was never given an opportunity to refute) was presented to local law enforcement. When criminal charges were dismissed four and a half years later, Michael filed a 42 U.S.C. Section 1983 malicious prosecution action on the professor's behalf, seeking damages for his wrongful prosecution. It was the first such case he had ever filed.

The case proceeded through various stages, including an appeal to the Eleventh Circuit Court of Appeals after the case was dismissed by the trial court. On appeal, Michael successfully argued that the professor could bring his case despite the fact his criminal proceeding had ended without any "indication of his innocence" appearing on the record, a prerequisite which had been embraced by 7 of the 12 separate US Circuit Courts of Appeal. As a consequence of Michael's appeal, the Eleventh Circuit now stands alone in holding that a criminal case dismissal is sufficient if the circumstances attendant to its entry are "not inconsistent with a finding of innocence." At its next term of court, the US Supreme Court will resolve this conflict now existing among the Circuits.

"I am pleased I could make a contribution to this important legal issue. Most importantly, I look forward to the day when my client's damages can be fully recompensed."

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As Michael admits, this was an area about which he knew almost nothing beforehand: "It was humbling. But I gained a broad new exposure, researched issues that I had not previously encountered in any depth, and was able to write about them with all the precision and passion I could

muster. Few professions offer us the opportunity to transform ourselves as does the practice of law."

High quality work

Indeed, it was one of Michael's primary reasons for entering the legal profession: "I was interested to have a career that required a commitment to high quality work, an adherence to professional ethics, and a duty to provide services to the population at large."

"I wanted a broad exposure in life. To learn about things and subjects I knew nothing about. I was interested in being able to research, write and speak as an essential part of my work. The practice of law has permitted me to develop my skills in all of these areas.

It was for largely the same reasons that Michael chose litigation as his practice specialty: "I knew that I would be happiest and most engaged when working to settle disputes, performing as an advocate for my clients, and attempting to win on their behalf."

"Working also as an arbitrator, I thought, would provide a useful context for my work as an advocate." It would teach me to view the disputes I took on from the perspective of a decision-maker and, armed with that perspective, hopefully to make better strategic and tactical decisions on how to position cases, argue issues and win.

"Being an arbitrator is related to what advocates do but different in one important respect – you must be attentive to discover what those presenting believe to be at the heart of their case. Also you must strive to be fair, dispassionately even-handed, and committed to searching out the 'truth' of their dispute. It is a more exacting task than one might first think. But I enjoy it greatly."

Managing the Challenges

Michael handles this while leading his own practice. As the team is small, and his partners collegi-

al, he doesn't find this hard, saying that while there have been occasional challenges, they have been fully manageable.

He adds that it is important to liaise with everyone in the practice. "There is a wealth of talent out there supporting the things we do as legal practitioners," he says. "Check in with them from time to time, replenish your knowledge of what it is they offer and call upon them when needed."

However, his stamp is on the ethos of the practice, which has three main tenets: "First is responsiveness; letting your clients know and understand that you have their back and are on top of their legal issues," he says.

"Second is getting it right. Putting in the work to understand those issues which must be addressed."

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"Third is developing a plan of action. Whether it is an agreement that needs to be drafted, a transaction that needs to close, or a dispute that must be argued, devise, craft and execute a plan of action. Your chances of success are greatly enhanced if you have first given thought and care to what it is you will do.

Michael adds that he is also clear with clients about how much a case will cost from the outset, as US litigation can become quite expensive.

International Perspective

While most of Michael's practice work is domestic, he has an international outlook. In addition to publishing several articles in the *European Intellectual Property Review*, in 2012 Michael took the Chartered Institute of Arbitrators' course in Paris to become a Fellow in International Arbitration. "I was interested to learn how international arbitration was

organized and conducted," he explains. "It was a uniquely broadening experience, where I met and learned from a host of really impressive international specialists."

Since then he has twice participated as adjunct faculty to the Hong Kong Willem Vis Moot, in which students from around the world compete as arbitration advocates. "Because of those experiences, I am witness to the fact there is an emerging body of talent that is so very impressive and accomplished. Our profession is going to be transformed by these young practitioners."

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Michael also has advice for young practitioners: "Younger people should never doubt their ability to do more. When you feel hesitancy or begin to question whether you can really do something, put that aside. Push on to learn more about what it is you seek to do. With each new discovery, your confidence is bolstered. With each new skill acquired, your readiness is assured. There is simply nothing you cannot do or accomplish." "All that is required is that you commit."

Goals for the Future

Michael has clear goals for his own future. "I hope to increase the number of arbitration cases which I handle and decide," he says. "And because I wish to remain engaged in arguing cases which involve issues I have not previously encountered, I plan to write and speak about these topics with increasing frequency."

He is also eager to become more involved in IR Global: "I want to know as many of the outstanding practitioners in this incredible organization as is possible. They know so many things I do not; I am authentically excited to learn from them."

Michael Dailey

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Established in June 2000, the firm is comprised of experienced attorneys. Each of the founding partners has spent more than 20 years prosecuting, defending and managing business litigation. Experienced in a broad range of commercial litigation matters, our lawyers pride themselves on anticipating issues most likely to impact a client's cause.

