



Kevin A. Nelson

Partner
kevin.nelson@dinsmore.com

Charleston, WV
Tel: (304) 357-9995

Kevin has broad litigation experience, having conducted bench and jury trials in state and federal court in the areas of discrimination, wrongful discharge, professional liability, product liability, workers' compensation discrimination, the West Virginia Wage Payment and Collection Act, trade secrets, covenants not to compete, insurance, insurance coverage, mineral rights, and negligence in his more than 35 years of practice. He has also tried cases before administrative bodies including the West Virginia Human Rights Commission and MSHA, and has represented clients in proceedings before the West Virginia Office of Disciplinary Counsel and Boards of Medicine and Dentistry, the West Virginia Insurance Commission, and the Charleston Human Rights Commission. Additionally, he has argued a number of cases before the Supreme Court of Appeals of West Virginia and the United States Fourth Circuit Court of Appeals.

His experience in litigation also provides Kevin with the platform to provide advice to his clients with regard to how to avoid circumstances that may lead to it. He works extensively with his clients on risk management issues including hiring, discipline, discrimination, discharge, promotion and demotion, reductions in force, benefits, and employee handbooks in the employment arena and claims and claims reporting, emergency response, and pre-suit negotiations in the areas of professional liability and insurance.

A particular area of emphasis in the insurance area has been in professional liability, where Kevin has represented insurance agents and brokers, engineers, attorneys, financial advisers and brokers, real estate agents, accountants, and medical care providers facing claims under their errors and omissions insurance policies. He has also provided counsel with regard to and litigated cases involving bad faith and personal injuries including deliberate intent (Mandolidis) claims and in product liability claims representing manufacturers of products ranging from wire ropes to large pieces of mining equipment.

Kevin has litigated cases involving and provides counsel regarding First Amendment and related issues. As well, he has spoken often on Social Media issues as they relate to employers, insurance agents and media companies.

His clients include attorneys, engineering companies, accounting firms, insurance agencies and brokers, financial brokers, major suppliers to the coal industry, financial institutions, insurers, manufacturers, retailers, wholesalers, media companies, and the service industry. He has also served as a mediator or arbitrator in a variety of cases.

Examples of matters Kevin has recently handled to trial include: representing an international brokerage company at trial in two cases alleging breach of professional duties and failure to provide notice of the right to purchase “tail coverage;” defending a multi-national publication company against retaliatory discharge and wage payment and collection act claims; representing a Forbes 200 Global Company in a case involving claims of trade secrets, breach of restrictive covenant and constructive discharge; and litigating multiple discrimination complaints filed with the West Virginia Human Rights Commission against a coal industry supplier.

In addition to his legal work, Kevin was a girls’ soccer coach at Charleston Catholic High School for 10 years. During his seven seasons as head coach he was named the 2008 Mideast Sectional Coach of the Year for girls’ soccer by the NFHS Coaches Association, was the West Virginia girls’ Class AA-A Region III coach of the year in 2006 and 2009, and was Kanawha Valley Girls’ Coach of the Year in 2008. His teams won three consecutive state championships from 2008-2010, including the 2010 team that was nationally ranked, finishing 24th in the Nation in the NSCAA poll and 40th in the ESPN RISE poll. Kevin also played soccer and was a member of a West Virginia team that participated in the Veterans’ Cup, a national tournament for players over 40. He is also past vice-president of the Kanawha-Charleston Soccer Foundation, an organization dedicated to building soccer fields for recreational use in the Kanawha Valley, and served on the State Secondary Schools’ Activities Commission’s Soccer Committee.

Kevin was editor of his high school newspaper and, while at Wake Forest, was sports editor of the school newspaper The Old Gold and Black. He also worked part-time as a sportswriter for The Winston-Salem Journal while an undergraduate.

Services

- Litigation
- Employment Discrimination Litigation
- Insurance Industry

Education

- Washington and Lee University School of Law (J.D., 1983)
 - Washington and Lee Law Review
- Wake Forest University (*cum laude*, 1980)
 - With honors in History
 - Omicron Delta Kappa, Mortar Board

Bar Admissions

- West Virginia

Court Admissions

- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Court for the Southern District of West Virginia
- U.S. District Court for the Northern District of West Virginia

Affiliations/Memberships

- Defense Research Institute
- WV State Bar
- WV Bar Association
- Kanawha/Charleston Soccer Foundation, past vice president
- Kanawha County Bar Association, Executive Committee

Distinctions

- *Chambers USA*®: America's Leading Lawyers for Business, Labor & Employment
- West Virginia *Super Lawyers*®
- Peer Review Rated AV Preeminent by *Martindale-Hubbell*
- *Best Lawyers*®
 - Employment Law - Management, Insurance Law, Litigation - Insurance, Litigation - Labor and Employment, Privacy and Data Security Law, Technology Law (2021)

Experience

Obtained Favorable Ruling in Malpractice Lawsuit

Our clients previously represented plaintiffs in a Court of Claims lawsuit against the West Virginia Department of Highways. At issue was a culvert plaintiffs alleged caused flooding on their property. The lawyers obtained an \$85,000 settlement for the plaintiffs in exchange for a release by plaintiffs of their claim and release of any future claims arising from the alleged defective culvert. Five thousand dollars of the settlement was earmarked for plaintiffs to use to hire a contractor of their choice to clean out the culvert, which they never undertook. Plaintiffs, however, alleged they were not informed the settlement included a release of future claims and sued their lawyers for malpractice. We represented the lawyers in the legal malpractice lawsuit.

In the malpractice lawsuit, plaintiffs alleged but for the release of their future claims, they would have been able to sue the Department of Highways repeatedly with respect to the culvert. At trial, via cross-examination of the plaintiffs, we proved the terms of the settlement were explained to plaintiffs prior to the settlement being consummated. We ultimately obtained judgment as a matter of law in favor of our clients at the close of the plaintiffs' case-in-chief.

Successfully Defended a Claims Administrator

A third-party claims administrator (TPA) for Workers' Compensation claims was sued by a former employee of a company for whom the TPA administered claims. The employee alleged the TPA had fraudulently denied her workers' compensation claim and committed workers' compensation discrimination. The TPA was originally represented by other counsel, who filed and lost a motion to dismiss. We then filed a writ of prohibition with the West Virginia Supreme Court, seeking dismissal of the employee's lawsuit based upon the statute of limitations and statutory immunity provided to third-party administrators with respect to workers' compensation discrimination.

lawsuits. We prevailed on these arguments before the supreme court, which resulted in the dismissal of all claims against our client.

Successfully Obtained Dismissal Order

A real estate lawyer conducted the closing for the sale of a house to plaintiff. Approximately 10 years after the closing, plaintiff filed a lawsuit alleging the lawyer negligently failed to provide him with clear title to the property. The basis of plaintiff's lawsuit was the opinion of another lawyer (whom plaintiff had initially contracted to work on an unrelated matter) who opined the title work was not correct and therefore plaintiff did not have clear title to his house. Plaintiff, however, still owned his house and had never had any challenges to his title to the property. We successfully caused the dismissal of all claims against our client at the trial court level because plaintiff did have clear title to the property. Plaintiff objected to the dismissal order but did not do so in a timely manner. The trial court then denied plaintiff's objections to the dismissal order, and he appealed to the Supreme Court of Appeals of West Virginia. The West Virginia Supreme Court affirmed the trial court's decision, resulting in a full and final dismissal of all claims against our client.

Dismissal of Malpractice Claims Against an Attorney

We represented an attorney accused of intentionally inadequately defending his client, the plaintiff, due to the attorney's relationship with the opposing counsel and because of the plaintiff's race. We successfully obtained dismissal of all claims, with the court finding that the plaintiff's complaint was frivolous and failed to state a claim.

Supreme Court of Appeals of West Virginia Unanimously Affirms Judgment in Insurance Coverage Case

Kevin Nelson, representing a West Virginia Company, was successful in an insurance coverage dispute before the Supreme Court of Appeals of West Virginia. A unanimous supreme court affirmed the circuit court's ruling in a "deliberate intent" case that the company was entitled to a defense and indemnification from its insurer through its purchase of a Stop Gap employer liability endorsement.

Defense verdict of Retaliatory Discharge and West Virginia Wage Payment and Collection Act Case

Our client, a multinational media company, was sued by an employee who was laid off. The suit claimed retaliatory discharge/violation of public policy and a violation of the West Virginia Wage Payment and Collection Act (WVWPCA). The employee claimed he was due a large bonus at the end of the year. Under the WVWPCA, if the employee is discharged due to a reduction in the workforce, he or she is entitled to three times the amount owed plus attorney's fees if not paid by the next regular payday. When mediation failed, the case went to trial. The trial lasted six days including jury deliberation, which took eight hours. In the end, the jury found in favor of our client on both claims of retaliatory discharge and the WVWPCA violation.

Successful verdict when client switches from plaintiff to defendant when former employee countersues

When a former employee of our client, a Fortune Top 50 worldwide company that manufactures continuous gas analyzers and gas chromatographs, went to work for a competitor and took trade secrets with him, we asked for an injunction on the proprietary information. Once we obtained the injunction, the former employee and his current employer filed a countersuit claiming tortious interference with contract. When mediation failed, we went to trial, which lasted over three weeks. We obtained a successful result for our client with regard to the counterclaims of both the individual and his subsequent employer.

Single Publication Rule used in defense of defamation suit

We represented our client, a state-wide media company, in a First Amendment defamation of character case. Our client had published online stories about a public figure who had been accused of sexual harassment. After a jury found in favor of the public figure in a civil sexual harassment case, his lawyer sent several letters asking our client to remove the stories from its website. The letter alleged the presence of the stories was defamation. The articles were not removed, and subsequently, a suit was filed.

We filed a motion to dismiss the case on the grounds of the statute of limitations had expired based on the Single Publication Rule and the fact the stories were published two years prior. Under the Rule, unless content is significantly altered after its initial publication date it is not considered re-published. We convinced the courts the rule applied to articles published over the internet in the same manner as in print media.

The plaintiff appealed to the West Virginia Supreme Court of Appeals, which upheld the lower court's ruling.

Publications

Fall 2014

"Full-Court Press – The Legal Challenges Facing the NCAA," USLAW Magazine

Spring 2014

"Unpaid Internships: A Violation of Minimum Wage Requirements?," USLAW Magazine

March 28, 2014

Hiring an Employee with a Criminal Record

Spring 2013

"Pinning It Down: Pinterest and its Changing Terms of Service," USLAW Magazine