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Politics and Law in Texas ...

Will Recent Events in the Lone Star State Cool Off its Red-Hot Legal Market?

Over the last 10 years or so, perhaps no legal market in the country has grown as much as the collective Texas market, comprising Houston, Dallas, Austin, San Antonio, and other cities. Many lateral attorneys and first-year associates have been flocking to The Lone Star State to help meet demand in practice areas across the legal spectrum, particularly financial services, intellectual property, real estate, health, and of course the always-active energy law area, despite or perhaps because of the recent roller coaster ride of the oil and gas industries. Law firms operating in the state have relatively little to worry about—at least for the time being.

The Texas economy, unburdened by the lack of a state income tax, has also recently experienced significant activity and expansion,

attracting global and national companies that set up operations within its borders.

“Texas’ business and legal markets are very hot right now,” says David Dawson, chairman of Dallas-based Winstead, which has close to 300 attorneys. “The number of national and international firms that have or are opening offices in Texas is proof of that. The state has tremendous momentum, and we see that continuing well into 2022 and beyond, based on economic and demographic trends.”

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Of Counsel Interview ...

Health Law Pro Builds upon McDermott's Strong Track Record in a Dynamic Practice Area

Some people know they want to be an attorney at a very early age, keep their eyes on that prize and enter the legal profession. Others take unexpected, sometimes wild, twists and turns in their career and fall into the profession. Still others take a path that follows a logical yet flexible arc to their career, prompting onlookers to say, "Of course she's an XYZ attorney. That's perfect for her."

Emily Jane Cook can be placed in the latter of those categories. When you learn about her upbringing and her early career you're likely to say, "Of course Emily's a health care attorney. That's perfect for her."

By growing up in a home where both parents were health care professionals, gaining an education that included a degree in public health, and taking a health care-related government job, Cook was laying the solid foundation for private practice in the Los Angeles office of Chicago-based McDermott Will &

Emery. The global legal powerhouse is known for its collective expertise in many areas of law, including a long tradition of serving clients in the health care arena.

In the decade-plus she's been at McDermott, Cook has earned a reputation for her legal acumen, communication skills, and commitment to her clients. Consider this feedback from an anonymous client published by Chambers. "[Emily] is far and away my most trusted outside counsel. She is clear, efficient, patient, thorough, transparent, smart, excellent at explaining complex rules, and very trustworthy."

Another client who recently met Cook said this about her: "During the pandemic, I was introduced to Emily Cook. [She's] great at knowing some super-intense and specific issues and giving me great legal insights but

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Of Counsel Profile

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also solid practical advice. That balance is so important to me.”

Recently, *Of Counsel* spoke with Cook about her life before law, her practice, her dedication in helping health care providers serve vulnerable people, many of whom live in undeserved rural areas, the virtues and challenges the legal profession faces, and other topics. The following is that excerpted interview.

A Natural Flow to Legal Career

Of Counsel: Emily, you worked in the health care profession before becoming an attorney. What led you down the path to pursue a career in the legal profession?

Emily Cook: My path is a little different than the one that many attorneys take. I started working in the health care sector fairly early in my life. Both of my parents were involved in health care. My father is a retired pediatrician and my mother was a health care administrator and went to law school when I was in high school. She’s now a health law professor. So health care is in my blood. From an early age, my parents exposed me to a lot of health care settings and part-time jobs during breaks in my education in high school and college. When I was in college I majored in history but also got a certificate in health policy.

I then went on to get a degree in public health with the intention at that time of focusing my work on access to health care services for uninsured and vulnerable populations. After I earned that degree I went to work for a federal agency, the Health and Human Services, Health Resources and Services Administration, HRSA, which is primarily

known for providing significant amounts of grant funding to various health care providers and programs. I worked in the Denver field office, primarily with community health centers, which are funded by the federal government to provide care for the uninsured and vulnerable populations. I enjoyed that work but I realized I wanted to be in a more active policy-making role.

So, I transferred within the agency into the Federal Office of Rural Health Policy, which would give me an active role in U.S. health care policy. I absolutely loved working there. Among the roles I had was reviewing and commenting on, and in some cases drafting, federal regulations related to payment and participation in the Medicaid and Medicare programs, with a focus on rural providers.

As I started to do more and more regulatory work, I got to the point where I realized that I really needed to be an attorney to do the work I wanted to do. So I went to law school with the goal of continuing to do Medicare and Medicaid reimbursement work but at a law firm instead of the government.

My husband is an avid surfer and very early on in our relationship, while we were in Washington, D.C. and I worked for the government, he made it clear that he wanted to relocate back to California. That was one part of the motivation to leave government and become an attorney so I could continue doing the work I was doing but outside of D.C.

I was fortunate to have met Eric Zimmerman, who’s now the head of McDermott’s health care practice, while I was with the government. I worked with Eric and learned a lot about McDermott and determined that the firm did the sort of work I wanted to do. And, I was fortunate to land at McDermott as a summer associate and then as a first-year associate in 2009, and I’ve been here my entire legal career.

OC: And, you’re doing the work you wanted to do.

EC: Yes, I am. I have a broad portfolio of clients and I continue to work with many rural providers and on issues associated to access to care to vulnerable populations, as part of my practice. It's really turned out quite well for me.

Helping Serve an Important Mission

OC: You must get a lot of satisfaction out of advising clients who help provide health care to people who need it. Can you talk about that?

EC: Sure, one of the aspects of my job that I really enjoy is the opportunity to work with our clients on solving problems to allow them to carry out their mission in providing health care services. What I find most rewarding is working with providers who have an idea, or have a problem they need to solve in order to provide care to their communities, to their patient population.

As you know, health care is a heavily regulated industry. So, even when you have the best intentions of providing care to different populations there can be significant regulatory barriers. I enjoy working with our clients, who are trying to improve access to care and expend the services they provide, to evaluate the risk, determine whether they need to make any changes, and help them get as close to what the original goal was within an appropriate regulatory risk profile.

OC: When you think of a matter, or type of matters, that's particularly important or intellectually stimulating or gave you a lot of occupational satisfaction, what comes to mind?

EC: I do a lot of work with the 340B drug pricing program, a federal program that allows for safety-net providers to access significant discounts on out-patient drugs. The goal is to allow for those providers to leverage those discounts to expand services that

they provide to their communities. So something that brings me particular satisfaction is working with our clients in the 340B space. They are developing new care models and implementing new programs that are built from that 340B program participation, and I truly enjoy working with them to ensure that they're able to preserve and maximize their participation in the 340B program.

Right now the program is under a significant amount of scrutiny, and it has been for the past 15 years or so. The history of the 340B program is long and fraught with challenges. But the entities that participate in it qualify by virtue of being considered safety-net providers by the government. By definition their approach to care is intended to serve broad populations and they leverage the 340B program to continue those important missions.

It always brings me a tremendous amount of satisfaction when I'm able to work with clients who are having challenges with retaining their 340B program eligibility, encountering audits from the government that may result in changes to their program, and, again, developing new and innovative care delivery models that are possible only because of their participation in the 340B program.

OC: Like every profession, the practice of law has its virtues and drawbacks or challenges. I want to ask you about both and start with the negative. When you think about the legal profession, what is it that you consider to be a pain in the neck or something that you really wish would change?

EC: I think that one of the challenges of the legal profession is that many people who are attracted to the law are overachievers. They have type-A personalities and have been at the top of their class in school, gotten the highest grades, and when they come into the legal profession, they continue that competitive view of life. It's very challenging because it attracts those who thrive on competition and who thrive on top performance, which is great, and can certainly work for the benefit of clients. But it can pose problems, particularly

for more junior attorneys, because, in addition to the pressures of clients and work, there's this unrelenting pressure to work all the time, to always be in competition with others and often with themselves.

So it's important for the profession to develop ways to ensure that attorneys are provided the opportunity for work-life balance, for self-care, for the opportunity to take vacations, which help us refresh and recharge. I always tell our junior attorneys that they absolutely should be taking vacations—they should be taking long weekends when they need to.

OC: And take real vacations, without constantly checking their cell phones for texts or their email accounts for messages, right?

EC: Yes, absolutely. Obviously our client work is very demanding and we need to ensure that we're meeting the needs of our clients, but when we, together as a team, can figure out ways to give them time away to take a break, to recharge – I think that's so important. We can't do the work that we need to do for our clients if we're burned out. That doesn't serve anybody's interests.

We just went through our summer associate recruiting season. There were several interviews with potential summer associate candidates and I was surprised that they were surprised to learn that we actually take vacations. Maybe the folks I work with and I are unusual, but we do value that as part of our work. Again, we can't do the work our clients expect of us and, what we expect of our ourselves, if we're not able to take a break.

A Passion for Regulatory Practice

OC: Great answer, Emily. Now let's flip it around. When you look at the big picture, what do you think is great about the legal profession?

EC: Well, this may be specific to the nature of my practice, which is a regulatory practice. There are two [well-known types of] attorneys: transactional attorneys and attorneys who are litigators. And then there's a third category, regulatory attorneys like myself. For me, one of the best things about the legal profession and the work I do in the regulatory space is that we get to create the answers.

I really like it when clients come to us with questions that are in the realm of: "We have this great idea about how we can better deliver care—can we do this? If so, how?" The reason they come to us is because there is no answer. If they were able to review government regulations and find the answers, they would do that. So when clients come to us with questions, it is almost always because there is not a clear answer.

As regulatory attorneys, we, in some ways, get to create the answers. We develop the analysis and generate the arguments that can provide our clients with comfort going forward because they know that if their decisions are called into question, they have the backstop of legal advice. We're not always going to be proven right if litigation arises or if there are disputes, but in terms of making those business decisions and evaluating the regs, we get to do that analysis and we do it well.

I think that is such a great opportunity that we have as regulatory attorneys because they are not easy questions. Every day involves critical thinking. We have to understand our clients' business operations, their needs, and risk tolerances, and we also have to maintain a very deep understanding of the statutes, the rules, the guidance, and the administrative interpretations and case law.

We get to put that all together and we get to come to an end result. I don't know that there are that many professions where you get to make the answer. We get to decide how things will proceed.

OC: I really appreciate the passion you demonstrate for what you do. I can tell you love helping clients.

To switch gears, we both know that the legal profession has a long history of failing to adequately hire, retain and promote attorneys of color and woman attorneys. We're doing better but we're still lagging behind many other industries. Could you assess the progress of women and minorities in the legal profession, and then, secondly, how can we improve?

EC: Sure. I think "doing better" is the best way to describe it. I absolutely think there's room for improvement, but there has been some improvement. I think that's critical, that we are at a point where there really is momentum. We're not where we should be but we can see it improving, and every year there's more and more improvement.

Particularly with women, the biggest challenge is ensuring that there are appropriate supports and appropriate resources, both in terms of internal mentoring, but also in actual benefits to help support women who are in a profession in which what we do is not a nine-to-five job. There are times when we as women do take on more responsibilities in terms of childcare or other obligations and it's important to ensure that there are resources and benefits available to assist with ensuring that those needs can be met at the same time that our work-related needs can be met.

At McDermott, we have that support. I relied heavily on backup child care options when my son was much younger. I'm very fortunate that my husband is a stay-at-home dad—he's an illustrator—and he does assume much of our childcare duties. But there are times when he's not available and there are

other times when he just needs a break, particularly when our son was younger, and we were fortunate to have the backup child care option. So if he had to be out of town or if he had appointments he needed to take care of, we were able to avail ourselves of that benefit and take our son to a daycare center on an ad-hoc basis so that I was able to continue doing my work while my husband was able to take care of his obligations and our son was cared for by the wonderful staff at the backup daycare center.

And since then, McDermott has added on many additional benefits. For example, the firm just implemented a milk storage [and transfer] program [to accommodate nursing mothers]. That's an essential benefit for our nursing mothers and I know several of our attorneys have used that and found it very valuable.

I think it's very important to recognize that these benefits can serve critical needs by ensuring that women have resources available. I feel very strongly about the continuing disproportionate share of childcare and home-related obligations that are placed on women. In the interest of the reality of the world we're living in today, I think it's important that firms recognize this and ensure that those benefits are available to women and also to male attorneys who have those primary responsibilities.

Again, there continues to be opportunities to improve, and we must. I think that recognizing where the challenges lie and then developing solutions for them is something that has been occurring more rapidly, and I think we'll continue to make progress.

—Steven T. Taylor