

JOE TILSON

Understanding What Matters in Labor and Employment Law

by Rob Olmstead

Joe Tilson has a secret weapon.

It's not his razor-sharp understanding of labor and employment law. And it's not his prescient instinct for securing favorable Department of Labor opinion letters in emerging areas of law that help his clients win high-stakes cases before issues even arise. It's not even his cool demeanor that helps calm nervous clients and edgy witnesses.

While he has all those things, and they have helped him and the firm of **Meckler Bulger Tilson Marick & Pearson LLP** become one of the largest labor and employment firms in Chicago, Joe Tilson has a tool that may seem to many high-powered attorneys in his stratosphere, well, quaint.

Joe Tilson returns phone calls.

Seriously.

The co-chair of a 90-lawyer, three-city law firm actually picks up the phone when clients call. Or he gets back to them quickly, usually within about 15 minutes, say his clients.

"It's the simple stuff," says Ted Stamatakos, associate general counsel at the University of Chicago, laughing at the tendency of many high-powered attorneys to let their success impair their accessibility.

"That's a trait that, unfortunately, some lawyers lose sight of," says Stamatakos.

And if Tilson's personal approach seems quaint to other attorneys, that's probably just the way he wants it.

He and his fellow co-founders struck out on their own in 1994 precisely so they could deliver a more personal—and reasonably priced—labor and employment law solution that they felt Big Law was lacking.

"In the megafirms, the overhead structure is much greater and higher and much more expensive than labor and employment lawyers need," notes Tilson. "We [are] able to be much more cost-effective."

And service-oriented, say his clients, which include international conglomerate Archer Daniels Midland. ADM followed him from one of those bigger firms because Tilson's expertise in his field allows him to handle the headache cases like the expert outside counsel he is. And his availability makes him seem as if he's an in-house counsel.

"[Tilson's] responsiveness is phenomenal, as well as that of all his people," says David Smith, general counsel of ADM. "I can't

remember, frankly, in the 20-plus years [of working with him]...where I called for him and did not get a call back the same day, regardless of whether he was on a family vacation, whether he was on trial, [or]

whether he was in negotiations in a labor [matter]. Clients like that. I wouldn't be calling if I didn't have an issue, and most of the time I have an answer before I hang up the phone," Smith says.

Tilson's hands-on approach is second only, perhaps, to another trait that his clients—and co-workers, colleagues and opponents, for that matter—also universally remark upon. First and foremost, people trust Joe Tilson.

Family and Values

It is a trait inherited, in part, from his father, a Methodist minister and civil rights activist who left Vanderbilt University to become the first professor at the Methodist Theological School after a dispute with the university over segregation. C. Everett Tilson was a prodigious author whose most famous work, "Segregation in the Bible," was an exploration debunking segregationists' misplaced reliance on scripture for their discrimination.

His father's leadership in that arena "is one of the reasons I became keenly interested in discrimination law," says Tilson.

"His father, probably more than anyone else," influenced Tilson's sense of morals, says Paul Garry, a partner at Meckler Bulger Tilson Marick & Pearson.

Tilson tries to play a big role in his own children's lives, often conducting business by phone in the car and in parking lots so that he can attend their sporting events. Tilson married Margaret Tilson, herself the daughter of an attorney, after meeting her in that most-reliable of all matchmaking locales: a bar.

"I was sitting there minding my own business when Margaret asked me if I wanted to play Pac Man, and the rest is history," he laughs. His wife is an equally impressive multitasker, raising money for numerous charities and heading the local PTO.

The two have five children: Steve, 22; Mary, 20; Charlie, 17; Jane, 13, and Will, 10.

Tilson's dedication to family is part of a personality that puts clients at ease, making them trust him implicitly.

"This is so cliché, but he is what he appears to be. He is an easygoing person and he's a pleasure to be around," says Stamatakos.

"He's low key, down to earth [and] has kind of a Midwestern approach to him," says Smith. While some attorneys would view the "Midwestern" moniker as a negative, "I think it's a good thing. It's...integrity and honesty and work ethic, and he certainly has all those things."



Fred Budde, assistant general counsel of another Fortune 100 client, credits Tilson's "bedside manner" with easing the tension in a high-pressure and high-stakes disability case that Tilson argued before the 7th U.S. Circuit Court of Appeals in Chicago. At the time, one of the company's human resource officials was upset, unduly blaming herself for the lawsuit.

Tilson quickly put her at ease with "just sort of a confident comment: "Don't worry. We're in the driver's seat. I'll take care of this for you," says Budde. "She believed it, [and] it was true. Everything was OK."

And more often than not, with Tilson in the driver's seat, things are OK for clients.

That, clients say, is a result of several factors. They cite his versatility. He is one of the few attorneys who practices both traditional labor law—centering on contract negotiations and arbitrations—and employment law, which focuses more on wage and hour issues and anti-discrimination legislation.

"There are, unfortunately, few lawyers who are equally capable in both areas," says Stamatakos. The dexterity allows Tilson to see crossover issues and spot potential problems in both spheres, he adds.

No Substitute for Preparation

Preparation is also key. When presidential administrations changed in 2000 from Democratic to Republican, Tilson saw an opportunity to make headway in an area that the Department of Labor had, for a number of years, prevented. With a changing of the guard, Tilson thought the department might be receptive to allowing unions and management to agree, if they wished, to exclude as compensable time spent "donning and doffing" clothes and safety equipment in preparation for work.

The Clinton administration had said they could not. Tilson secured an opinion letter for a client—a trade association—ruling that if both sides agreed to it, they could. Years later, when a different client was sued over the same issue, Tilson obtained summary judgment based on the letter he had secured years earlier.

And although he didn't know it at the time, Tilson's willingness to join an obscure American Bar Association committee fortuitously prepared him for the coming explosion in wage and hour cases. The committee focused on a then-little known statute called the Fair Labor Standards Act. Eventually, Tilson became chair of the committee.

"There were like nine people on the committee...and once the big onslaught of wage and hour cases came along, people just assumed that [since] I was the chairman of the ABA's committee on wage and hour law, I must be a national expert. It was like a self-fulfilling prophecy. I became a real expert," Tilson says.

Creativity is also cited by clients. Budde

noted that Tilson was able to prevail in a disability discrimination matter because he advanced a creative argument that said the alleged disability claims that were at issue in the class-action suit were so unique to each individual employee that the plaintiffs could not satisfy the "commonality" requirements of a class-action lawsuit. The 7th Circuit agreed. That left employees free to proceed individually, but the major threat of an en masse lawsuit was defused.

The ability—but not necessarily the predisposition—to litigate to the end of the road is a must-have for employers and employment lawyers, Tilson believes.

"You oftentimes have to demonstrate you are prepared to go the distance in order to resolve cases on reasonable terms in the future and to deter frivolous claims. If you get the reputation as an employer that is afraid to go to trial, or as a lawyer who is afraid to go to trial, it's just going to cause more people to assert claims and hold out for unreasonable settlements," says Tilson. "I've been in situations where we've had to try certain cases just to let people know we would stand up for our position where we felt we were in the right."

A Moderated Sense of Fair Play

Smith appreciates not only that Tilson keeps the long-term view in mind, but that he's willing to put himself personally on the line when recommending solutions that aren't necessarily the safest professionally.

"He puts himself in the client's shoes. He certainly understands the law and he can tell you the pros and the cons and the risk of different scenarios, but then he has a point of view that is balanced. So often when you work with outside lawyers, they are ultra-conservative in their advice. ... They go to the path of lowest risk," Smith says. That allows them, if the client goes another route and problems develop, to deny culpability.

"He doesn't play that game," says Smith.

Nor does he apply a cookie-cutter, one-size-fits-all approach, says Stamatakos. There are solutions that would work fine for the business world that just don't apply to the world of higher education, he says.

"He understands our culture," says Stamatakos.

And he understands that means not losing the forest for the trees or letting emotions get away from him, he adds.

"Joe has dealt with intense and stressful and high-stakes contract negotiations with a firm hand, but also with great professionalism and respect for the process and the other side," says Stamatakos. "I'm...thinking about how he dealt with very difficult [contract negotiation] circumstances...without either personalizing it or losing sight of what the client's goal was."

Labor and employment law tends to evoke strong passions and an instinct to "put the dukes up," says Stamatakos, but Tilson resists that.

"He always brings me back to, 'Hey, what is our goal here?' He knows how to step back," says Stamatakos.

That moderated sense of fair play is not lost on opponents, either.

Marv Gittler, who works the plaintiff's side of the table, isn't going to cede anything to Tilson when it comes to legal wrangling. Gittler says the best legal tactic he ever saw Tilson use was to "agree with what I ask[ed] for. It's the most efficient way to get out of negotiations."

But he does acknowledge Tilson's acumen and trustworthiness.

"We had a case...where the residency of the employee was determinative of the issue between us. And because of the trust and confidence, I advised the employee that he could and should be totally candid [with Tilson] as to why he was in certain locations at certain times."

The admissions would have been personally very embarrassing and hurtful to the client if revealed to the general public—Gittler won't say why—but were necessary to explain the residency issue. Gittler says he wouldn't have trusted another attorney with those revelations.

"Joe kept the confidence and was able to achieve a resolution of the dispute satisfactorily to both parties," says Gittler.

"He's a damn good attorney," says Gittler, but pride prevents him from going any further—no matter how good Tilson is. Asked if Tilson had ever gotten the best of him, Gittler replies, "He thinks so, but in fact he has not."

Trust Means Something

While being one of the best in the labor and employment field is tremendously gratifying to Tilson, the success of his firm is even more rewarding to him.

Tilson came to run his own firm after graduating *cum laude* from University of Michigan School of Law in 1979. After clerking for U.S. Court of Appeals Judge Stephanie Seymour of the 10th Circuit, Tilson joined the now defunct firm of Pope Ballard in 1980 before moving to Katten Muchin (now Katten Muchin Rosenman LLP) in 1989. He and others soon felt they needed a home where labor and employment law was more of a central focus of the firm. He started talking to Bruce Meckler, who was then at the now-defunct firm of Phelan, Pope & John and was also looking for a new home.

"It was actually Joe's idea," says Meckler of the decision to strike out on their own.

Meckler can sum up why he did so in one word: "Trust. It's an overused word, but with Joe, it means something. I trust the guy with my life."

Meckler hasn't been disappointed.

"He always wants what's best for the firm," says Meckler, who brought the commercial transaction and litigation side of the operation to the new firm while Tilson handled labor and employment.

And what's best for the firm often means what's best for its people.

Partner Paul Garry was recruited to join the new firm and also hasn't regretted it. When asked to describe an anecdote that embodies Tilson, he doesn't hesitate.

Garry's father suddenly took ill when Garry was "in the midst of doing a briefing for a class-action for a client. Joe stepped in without hesitation...without even me asking," says Garry. "When my father passed away, he dropped everything and made sure that [he and Brian Bulger] were at the funeral, which was really touching to me. When you ask what kind of partner Joe Tilson is, that's the kind of partner [he] is."

Devotion to Other Activities

The willingness to give of himself shows in other ways.

U.S. District Court Judge Rebecca Pallmeyer first got to know Tilson when both were on a Chicago Bar Association young lawyers committee for labor and employment law. Later, Tilson decided to get involved in the ABA's Employment Law Trial Advocacy Competition, and he recruited her to do the same.

"You have to say that he was the person [who] spearheaded it here in Chicago," says Pallmeyer. "No one argues that."

While many attorneys volunteer for ABA activities, often they do so with an eye toward marketing opportunities. Organizing and judging a bunch of law students' trial skills just doesn't fall into that category, says Pallmeyer.

"It's really an educational effort. I don't see him thinking about this as a way to expand his business. In fact, one of the things I've always admired about Joe...is that he makes the whole client contact thing seem kind of effortless," says Pallmeyer.

The involvement is "genuinely [about] getting people involved in labor and employment law and helping bring them along," she says.

Besides organizing the mock trial competition, Tilson serves on the Council, the governing body of the ABA's Labor and Employment Law Section. He is the former management co-chair of the ABA's Federal Labor Standards Legislation Committee, the former chair of the ABA's Age Discrimination Subcommittee, the former management co-chair of the ABA's National Programs Subcommittee. He was also chair of the Chicago Bar Association's Young Lawyers Section Labor Employment Law Committee years ago.

An avid sports fan, Tilson until recently played basketball religiously with a group of other lawyers on their lunch hour. But an arthritic hip placed him on the sidelines.

Meckler, along with fellow firm partner Dick Devine, continues to play basketball three days a week. He insinuates Tilson may just be afraid of his jump shot.

"I seriously question the arthritis," says Meckler. ■