



Thomas A. Nesbitt
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EXPERIENCE

Tom Nesbitt is Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization. He is admitted to practice in the U.S. District Courts for the Western, Southern and Northern Districts of Texas and the U.S. Court of Appeals for the Fifth Circuit. Prior to founding DeShazo & Nesbitt, Tom was with the Austin office of Fulbright & Jaworski.

Tom has successfully represented clients in a variety of labor and employment matters, including covenant not-to-compete drafting and litigation, trade secret litigation, cases brought before the National Labor Relations Board (NLRB), and employment discrimination and unlawful termination litigation. He often consults with employers about compliance with state and federal laws and regulations, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), employee policies and handbooks, Equal Employment Opportunity (EEO) training, drug testing, and managing employment performance and disciplinary issues.

Tom has recently represented a semiconductor manufacturing company, several national banks, hospitals, a physician's group, two electrical contracting companies and many other businesses of all sizes.

Recent significant cases include:

- Won federal court age discrimination jury trial as lead counsel.
- Argued and won appeal of national origin, race discrimination and breach of contract case before the Fifth Circuit Court of Appeals.
- Member of two-lawyer team that obtained a temporary injunction for a client against a former employee physician violating a covenant not to compete.
- Member of two-lawyer team that obtained an award of more than \$70,000 in sanctions against an adverse party for filing frivolous trade secret claims against the client.
- Obtained summary judgment for client in race discrimination and FMLA case.
- Handled an NLRB representation case in which the client defeated the union in an election and successfully defeated numerous objections filed by the union to the election.
- Handled numerous charges of unfair labor practices filed by union salts with the NLRB.
- Obtained summary judgment for client in Title VII national origin discrimination lawsuit in federal court.
- Successfully tried numerous jury trials as volunteer prosecutor for City of Austin.

- Assisted in the representation of a national bank in covenant not-to-compete litigation. The court denied a rival bank's request to restrain the client's employee from working and declared the rival's non-compete unenforceable.
- Assisted in the representation of another national bank, defeating an effort by a rival bank to obtain an injunction enforcing a covenant not to compete against the client.
- Assisted in the representation of an electrical contracting company in an unfair labor practice trial before the NLRB, defeating numerous allegations of unfair labor practices.
- Successfully defended another electrical contracting company in a third-party challenge to their Woman-Owned Business Enterprise (WBE) certification in the city of Austin.
- Defended of a non-profit organization in a race discrimination case; the court dismissed the case against the client on summary judgment, which was affirmed by the Third Court of Appeals.
- Obtained temporary injunction for client to prevent violation of a covenant not to compete.
- Defeated his 15-month-old son 4 to 2 in best-of-7 series for the Arm Wrestling Championship of the Civilized World, April 22, 2005.

EDUCATION

Doctor of Jurisprudence with honors, The University of Texas
Bachelor of Arts Degree in English, Baylor University

PROFESSIONAL HONORS

Rising Star, *Texas Monthly* magazine (2004, 2005, 2006 and 2007)
Best Lawyers in America, 2008

PROFESSIONAL ACTIVITIES

- State Bar of Texas
- Austin Bar Association
 - Labor and Employment Section
 - Local Rules Committee, Co-Chair
 - New Civil Courthouse Committee
- Breakfast with the Judiciary Series, Chair
- Robert W. Calvert American Inn of Court (2005-07)
- Travis County District Court Settlement Weeks, *pro-bono* mediator

CIVIC INVOLVEMENT

- Mothers' Milk Bank at Austin, Director (2002 - Present)
- Susan G. Komen For the Cure Austin Affiliate, Director (2005 - 2007)
- Seton Forum
- Austin Area Research Organization, McBee Fellow (2006-2007)
- Leadership Austin Class of 2007
- Entrant, 2007 *Austin Chronicle* Hot Sauce Festival (formal protest of results pending)

PUBLICATIONS

- Co-Author, "Polygraph Tests and Drug Testing," *The Texas Employment Law Handbook - A Guide for Employers*, Chapter 20, Texas Association of Business, 2004
- Contributing Editor, *The Developing Labor Law 2005 Supplement*
- Contributing Editor, *The Developing Labor Law 2004 Supplement*
- Contributing Editor, *The Developing Labor Law 2003 Supplement*
- "Texas Workforce Commission Adopts Payday Act Rules," *The Texas Labor Letter*, January 1999

SPEECHES AND PRESENTATIONS

2007

- "Covenants Not to Compete," The University of Texas School of Law, 14th Annual Conference on Labor & Employment Law, Austin, May 17-18, 2007
- "Covenant Not to Compete Legal Landscape After *Sheshunoff*," Panelist, Austin Bar Association Labor & Employment Section Meeting, February 8, 2007

2006

- "Top 10 Documenting Mistakes," Texas Society for Healthcare Human Resources Administration and Education Annual Conference, Austin, Texas, September 6, 2006
- Guest Speaker on Employment Law, Baylor University Executive MBA Program, June 2006
- 13th Annual Conference on Labor & Employment Law, Planning Committee, The University of Texas School of Law, Austin, May 18-19, 2006
- "Protecting Trade Secrets, Proprietary IP, and Litigating Employee Departures to Competitors," The University of Texas School of Law 19th Annual Technology and Computer Law Conference, Austin, Texas, June 8, 2006

2005

- "Legal Implications of Hiring, Investigating, and Firing," American Cancer Society Leadership Academy, Austin, Texas, September 28, 2005
- Guest Speaker on Employment Law, Baylor University Executive MBA Program, June 2005
- "Covenants Not to Compete and Related Causes of Action," The University of Texas School of Law, 12th Annual Conference on Labor & Employment Law, Austin, May 19-20, 2005
- FMLA Conference, Speaker, Council on Education in Management, Austin, Texas, April 2005
- FMLA Conference, Moderator, Council on Education in Management, Austin, Texas, January 2005

2004

- "Recent Developments in Covenant Not to Compete Law," Austin Bar Association Labor & Employment Section Meeting, Austin, December 9, 2004
- "Legal Issues in the Hospitality Industry," Panelist, Austin Hotel & Motel Association Leadership Forum, Austin, July 22, 2004
- "Examining Union 'Salting' Abuses and Organizing Tactics That Harm the U. S. Economy," Testified, U.S. House of Representatives Employer-Employee Relations Subcommittee hearing, May 10, 2004
- "Covenants Not to Compete," The University of Texas School of Law, 11th Annual Conference on Labor & Employment Law, Austin, May 6-7, 2004

- “The Unusual Law of Covenants Not to Compete in Texas,” Austin Corporate Counsel Institute, Austin, May 6, 2004
- “Documenting Performance and Disciplinary Issues,” Farm Credit Bank Spring Conference, Lakeway, Texas, May 5, 2004

2003

- “Hiring Well: Legal Issues to Consider at the Beginning of the Employment Relationship,” Texas Travel Industry Association, Fall Conference, Austin, November 4, 2003
- “The Do's and Don't of Documenting Performance and Behavior,” Texas Travel Industry Association, Fall Conference, Austin, November 4, 2003
- “Effectively Managing Return to Work Issues,” Council on Education Management, FMLA Update Seminar, Austin, August 20, 2003
- “Covenants Not to Compete,” The University of Texas School of Law, 10th Annual Conference on Labor & Employment Law, Austin, May 1-2, 2003

2002

- “Layoffs: Pink Slips and Not Red Flags,” The University of Texas School of Law, Computer and Technology Law Institute, Austin, May 30-31, 2002
- “Employment Issues in the Hotel Industry,” Austin Hotel and Motel Association, Austin, May 22, 2002
- “Covenants Not to Compete,” The University of Texas School of Law, 9th Annual Conference on Labor & Employment Law, Austin, May 9-10, 2002