



TOD STEPHENS

PARTNER

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Having led American and Iraqi soldiers in combat for nearly three years, Tod Stephens now guides businesses in resolving security, government contract and litigation challenges. His unique background as a U.S. Army combat infantryman and an experienced courtroom attorney allows him to creatively solve clients' complex and sensitive problems.

Industrial Security and Security Clearance Law

Within the defense, intelligence, aerospace and government services industries, Tod advises in-house counsel, Facility Security Officers (FSOs), corporate directors and business owners in navigating their complex regulatory obligations. Tod regularly represents clients during their interactions with the Defense Counterintelligence and Security Agency (DCSA, formerly DSS), the Defense Office of Hearings and Appeals (DOHA), the Department of Defense Consolidated Adjudications Facility (DoD CAF), the Department of Energy (DOE, including NNSA), the Department of Homeland Security (DHS, including CBP), the State Department (DOS), and the Intelligence Community organizations (including NSA, NGA and NRO).

Mindful of the bottom line, Tod helps contractor companies efficiently obtain and maintain necessary facility clearances (FCLs), security clearances (PCLs), and other government authorizations. He assists large and small contractors on the administration of compliant insider threat programs and the mitigation of risk from the government's Continuous Evaluation (Vetting) programs, including incident and adverse information reporting. In addition to routinely helping cleared companies with the mitigation of foreign ownership, control or influence (FOCI) and the related planning requirements, Tod regularly advises companies on the National Industrial Security Program Operating Manual (NISPOM), Security Executive Agent Directives (SEADs), and agency-specific regulations, including when cleared facilities are reorganized, bought or sold.

When a company's trustworthy leaders and key employees face security clearance revocation or denial, Tod calls upon his deep experience in mitigating government security concerns to seek favorable adjudication at administrative hearings, personal appearances and appeals across the country. He has favorably resolved security clearance issues for hundreds of trustworthy individuals, including cases about every Adjudicative Guideline, at nearly every government agency, and in almost every state.

Government Contracts

Tod represents established and new government contractor companies in resolving bid protests, appeals and disputes at the Government Accountability Office (GAO), the U.S. Court of Federal Claims (COFC) and the Small Business Administration (SBA). Tod guides



SERVICES AND INDUSTRIES

Industrial Security and Security Clearance
Government Contracts
Litigation
Government Relations and Public Policy
Governance and Compliance
Internal Investigations and Regulatory Compliance
Outside General Counsel

ADMISSIONS

Missouri
Illinois
U.S. Court of Federal Claims
U.S. District Court, Eastern District of Missouri
U.S. District Court, Southern District of Illinois
U.S. District Court, Eastern District of Wisconsin

potential bidders, awardees and unsuccessful offerors in analyzing potential protest grounds, making strategic filing decisions, and proceeding when advisable in pre-award and post-award protests, including as an intervenor.

Tod routinely guides businesses in regulatory compliance and risk mitigation during government subcontracting and prime contract novation. He often advises companies on strategic teaming agreements, mentor-protégé program approvals and joint venture formation. Tod leads careful planning of bid eligibility and set-aside limitations, including contractor size, status, and affiliation. Companies frequently consult with Tod on mergers and acquisitions involving government contracts, especially when those contracts are classified or represent key assets of the company.

Conversant in the Federal Acquisition Regulation (FAR) and the Defense Supplement (DFARS), Tod often supports contract managers, business developers and in-house counsel in evaluating new contracting opportunities and fixing existing contract issues. Focused on risk mitigation and efficient compliance controls, Tod helps both business and legal professionals resolve flow-down, certification, qualification and reporting challenges to avoid disputes with government customers.

Business Litigation

Tod is also an experienced federal and state courtroom litigator who represents companies and business owners in contract, corporate, and employment litigation. He has resolved complex cases in many industries, including aerospace, construction, employment and insurance, counting both bench and jury trials.

EDUCATION

- Washington University School of Law (J.D.)
 - Washington University Law Review
- Washington University - Olin Business School (M.B.A.)
- United States Military Academy - West Point (B.S.)
 - Distinguished Cadet

PROFESSIONAL ACTIVITIES

- Military Order of the Purple Heart
- Veterans of Foreign Wars
- NCMS, the Society of Industrial Security Professionals
- ASIS International
- The Missouri Bar
- Illinois State Bar Association
- Law360 Aerospace and Defense Editorial Advisory Board (2020)

CHARITABLE AND CIVIC INVOLVEMENT

- The Snow Foundation (Board of Directors)

BACKGROUND

Before earning his MBA and law degree, Tod fought in Iraq for three years as a U.S. Army infantry officer, earning the Bronze Star for Valor, the Purple Heart, three Bronze Stars, the Combat Infantryman Badge, the Combat Action Badge and several other commendations. He led American and Iraqi soldiers in direct ground combat on a near-daily basis, and he advised Iraqi Army generals on operational and leadership matters. Tod is Airborne Ranger qualified, served on active duty for nearly eight years and remains a major in the individual reserves.

EXPERIENCE

Defeated Protest of \$138 Million Federal Contract Award

Defeated bid protest of technology company's \$138 million federal government contract award. Facing multiple protest grounds, we successfully used procedural and substantive arguments to prevent application of the ostensible subcontractor rule by the U.S. Small Business Administration.

Defeated Statement of Reasons Alleging Late Federal Tax Payments

Obtained withdrawal of a Statement of Reasons alleging late federal tax payments, resulting in our client's security clearance being granted immediately. When our client was facing government allegations that he and his wife had not properly paid joint income taxes, we collected evidence of issues beyond his control from the Internal Revenue Service and argued that all Adjudicative Guideline F security concerns had been mitigated. The government withdrew its Statement of Reasons less than a month after receiving our arguments and evidence.

Favorable Outcome for First-time Security Clearance Applicant

Successfully convinced Defense Office of Hearings and Appeals (DOHA) to withdraw Statement of Reasons against first-time security clearance applicant involving allegations of Adjudicative Guideline H conduct during college.

Mitigation of FOCI Concerns for Facility Clearance Eligible Companies

Successfully mitigated Foreign Ownership, Control or Influence (FOCI) concerns for facility clearance eligible companies related to Sweden, Germany, Canada, Japan, Norway, Finland, India, Slovakia and the United Kingdom.

Defense of Client's Top Secret Clearance

Successfully defended Top Secret security clearance during Defense Office of Hearings and Appeals hearing of government allegations under Adjudicative Guidelines H and E.

Withdrawal of Statement of Reasons Against USAF Veteran

Secured withdrawal of Statement of Reasons issued by the Defense Office of Hearings and Appeals against United States Air Force Veteran working as cleared contractor in combat theatre.

Defeated Bid Protest of \$320 Million Contract Award

Successfully defeated bid protest of a national intelligence agency contract award worth more than \$320 million over 10 years. When an unsuccessful bidder brought a U.S. Small Business Administration (SBA) protest against our client's receipt of a valuable government contract, we rapidly delivered persuasive and detailed arguments and

evidence to the SBA, defeating the protest completely.

Defeated False Allegations to Save Government Contractor's Job

Quickly secured reversal of a U.S. Customs and Border Protection (CBP) Notice of Proposed Action (NOPA) to find our client unsuitable for employment as a government contractor. In just 15 days, we collected evidence from multiple third-party witnesses to defeat false allegations of dishonest and illegal conduct by our client. We succeeded in convincing CBP to reverse its NOPA and to find our client fully suitable for employment, saving his job.

Prepared Security Clearance Applicant to Successfully Represent Himself

When our client was facing significant Adjudicative Guideline F allegations and desired to represent himself at the Defense Office of Hearings and Appeals (DOHA), we prepared his testimony and other evidence for the hearing. We rehearsed with him extensively, including his cross-examination by Department Counsel. Based on the quality of his testimony and evidence, the presiding Administrative Judge granted his security clearance.

Withdrawal of Statement of Reasons Against CEO

Achieved withdrawal of Statement of Reasons issued against company's chief executive officer alleging Adjudicative Guideline F concerns related to federal taxes.

Withdrawal of Statement of Reasons Related to First-Time Security Clearance Applicant

Convinced the Defense Office of Hearings and Appeals to withdraw a Statement of Reasons issued to a first-time security clearance applicant alleging concern under Adjudicative Guidelines B and C related to India.

Withdrawal of Statement of Reasons Against Company Executive

Achieved withdrawal of Statement of Reasons issued by Defense Office of Hearings and Appeals to company executive alleging past Adjudicative Guideline H concerns.

TRO Secured for Financial Client

Obtained a temporary restraining order for a wealth management firm against a former employee regarding the violation of a nonsolicitation agreement. The employee, who had provided services to approximately 300 households representing about \$50 million in assets, had signed a confidentiality and nonsolicitation agreement stating he would not directly or indirectly do business with or attempt to take away any of his employer's clients.

Defeated Manufacturer's Attempt to Obtain TRO Enforcing Noncompete

Defeated manufacturer's attempt to obtain a temporary restraining order (TRO) in U.S. District Court for the Eastern District of Missouri enforcing a noncompete agreement against a former plant manager. This resulted in a complete victory for the plant manager, allowing him to work for his new employer in the same industry.

Resolution for College in Consumer Protection Litigation

Represented client college in a consumer protection investigation and subsequent litigation brought by the Illinois attorney general. Following negotiations, the matter was resolved on favorable terms.

Favorable Resolution in Breach of Contract Suit

Represented an ambulance service provider who had an exclusive contract to provide services for an entire county. When the county government attempted to breach the

client's contract, we filed a lawsuit to protect the client's rights and negotiate a favorable resolution.

THOUGHT LEADERSHIP

January/February 2018

Facing Facts About Adjudicative Guideline F (Financial Considerations)

NCMS Bulletin

November 6, 2017

Federal Contractors Face Disqualification From Future Work

May 15, 2015

DOD CAF Backlog Likely To Endure Through 2016