

MVP: Orrick's Josh Rosenkranz

Law360 (November 26, 2018, 11:20 AM EST) -- Josh Rosenkranz, leader of Orrick Herrington & Sutcliffe LLP's Supreme Court and appellate litigation practice, notched multiple headline-grabbing triumphs in the past year, including a high court victory in a closely watched immigration dispute and a circuit court win in the historic Oracle v. Google copyright clash, earning him a spot as one of **Law360's 2018 Appellate MVPs**.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

For Rosenkranz, one achievement from the past year that stands out as among the largest of his career is his successful argument before the Supreme Court on behalf of James Dimaya, a lawful permanent U.S. resident threatened with deportation after he was convicted of burglary.

"No one thought we were winning that case," Rosenkranz said, recalling that the high court's conservative majority had been effectively sealed with the confirmation of Justice Neil Gorsuch, who did not have "the profile you generally associate with protecting immigrants."

But an associate on Rosenkranz's team poured over everything Gorsuch had written even casually connected to the issues raised by the case and determined what precise arguments they had to advance in order to secure the justice's crucial vote.

The strategy paid off and Gorsuch broke ranks with the conservative wing. The court ruled in April in Dimaya's favor on a 5-4 vote.

"He joined the liberals with a concurrence that took a position on due process that was more expansive than any justice has taken in the history of the Constitution. So that was quite remarkable," Rosenkranz said.

The logo features the letters "MVP" in a blue serif font. The letter "V" is partially enclosed by a red circle with an arrow pointing upwards and to the right, suggesting a path or achievement.

**Josh
Rosenkranz
Orrick**

ON HIS HISTORIC COPYRIGHT BATTLE:

Equally significant for Rosenkranz was his Federal Circuit win in March on behalf of client Oracle, which is locked in a nearly \$9 billion row with Google, which has profound ramifications for the future of copyright law and fair use doctrine as it applies to computer software.

“This case is the latest chapter in an epic battle over how copyright law protects computer code. For 40 years, since the last copyright law was passed and even before then, a policy debate has raged about whether software should be protected the way any other written work is,” Rosenkranz said.

The Federal Circuit in March overturned a jury’s finding that Google’s use of Oracle’s Java software in its Android smartphone platform was protected by fair use. Google has said it will appeal to the Supreme Court.

In Rosenkranz’s mind, the case illustrates the power of using metaphors to advance an argument, particularly when the material is arcane or virtually inscrutable for most laypersons.

“The case is about how you apply old copyright principles to a new context, but the new context is software, which many judges don’t understand,” Rosenkranz said. “So trying to make it accessible was really important.”

The arguments likened Google’s use of Java to a screenwriter who adapts a short story into a film, and may develop loads of additional material in the course of translating it into a new medium, but still owes the original author for inventing the core ideas on which it was based.

“Where the material is inaccessible, I am a strong believer in winning the battle of the metaphors — finding a way to make the abstract seem familiar and that drives the decision maker to a particular result,” Rosenkranz said.

WHY HE’S AN APPELLATE ATTORNEY:

The “battle of the metaphors” framework is part of why Rosenkranz loves this area of law so much, he said. The challenge of breaking down new, complex areas of law, cracking unsolved legal problems and making them generally accessible is one reason he is so passionate about the practice.

“I’ve tried cases, but I’ve always been so much more comfortable talking to judges about law than I have talking to juries about facts,” he said.

The second reason he loves appellate law is the diversity of matters that come across his desk, which means he “can be a securities litigator one day and a patent litigator the next and an immigration lawyer the day after that,” he said.

“I’m constantly learning new businesses and new areas of the law.”

HIS ADVICE TO YOUNGER ATTORNEYS:

Rosenkranz advises young attorneys interested in appellate law to “take every opportunity to stand up in court and argue legal issues.”

He spent his early years at a public defender office, which he founded, that specialized in New York state criminal appeals, and he believes the early trial experience was invaluable.

“I argued 100 appeals in my first eight years. I was lucky to have a job that lent itself to that. ... Most people in private practice are not going to get to do that. But seize those opportunities when you can,” he added.

The second major piece of advice he gives to young lawyers is to hone the craft of the written word and understand generally that “good legal writing is not different from good writing.”

“Your job as an appellate lawyer, when it comes to the written brief, is to engage the audience and make them want to keep reading, make everything seem accessible,” he said.

“Make it a practice to read the stories in the New Yorker or op-ed pieces,” he advises. “Because the talent of digesting things to their simplest, most accessible ways of articulating them is something that good writers do all the time in those short forms. And I think we can learn a lot from that sort of writing.”

— *As told to Sam Reisman*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2018 MVP winners after reviewing nearly 1,000 submissions.

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