

MVP: Orrick's Josh Rosenkranz

Law360, Clifton, N.J. (December 13, 2017, 1:38 PM EST) -- Orrick Herrington & Sutcliffe LLP's E. Joshua Rosenkranz notched appellate victories for clients this year that included unanimous U.S. Supreme Court wins in a case over whether sheriff's officers used excessive force and a dispute concerning Fannie Mae's ability to move suits to federal court, earning him a spot as one of Law360's 2017 Appellate MVPs.

HIS BIGGEST ACCOMPLISHMENTS THIS YEAR:

The first of those high court victories occurred just a few weeks into 2017, when the justices handed down a unanimous opinion in favor of Rosenkranz's clients in a lawsuit to prevent Fannie Mae and others from foreclosing on their home.

In reversing a Ninth Circuit ruling, the justices found on Jan. 18 that the mortgage financing enterprise's charter does not allow it to automatically bring suits to federal courts. That matter affects "what court will hear tens of thousands of cases a year," said Rosenkranz, referring to litigation against Fannie Mae.

Rosenkranz scored his second unanimous win this year on behalf of two deputies with the Los Angeles County Sheriff's Department when the Supreme Court on May 30 reversed a Ninth Circuit ruling that they could be held liable for excessive force over a shooting.

Such a unanimous ruling is uncommon when the court is ideologically split on a wide range of civil rights issues, he said.

"Putting an excessive force case before the Supreme Court in that politically charged context is usually not a recipe for unanimity," Rosenkranz said.

Another Supreme Court battle is on the horizon, with Rosenkranz expected to argue next year on

MVP



Josh Rosenkranz
Orrick

Microsoft's behalf in the high court's review of a Second Circuit decision that the federal government can't use search warrants to access user data stored overseas by such service providers.

That July 2016 opinion struck down a warrant issued under the Stored Communications Act that would have forced Microsoft to produce customer email content data that it had housed on a server in Ireland.

"United States tech companies are now the dominant force in cloud technology, but if other countries don't trust U.S. companies to protect privacy, then they won't use U.S.-based companies and neither will ... the foreign companies and neither will foreign citizens," Rosenkranz said. "This case represents an existential threat to the U.S. tech industry."

Beyond his case victories, Rosenkranz said he is proud of how Orrick's Supreme Court and appellate practice has evolved over the past nine years into "one of the largest appellate groups in the country" in terms of the number of full-time appellate lawyers.

The practice — founded in 2008 with Rosenkranz as its sole attorney — now has 39 lawyers, he said. Such growth comes from winning cases, having talented attorneys taking creative approaches and relationships with clients who keep coming back to Orrick, said Rosenkranz, who leads the practice.

"First, it doesn't hurt to win, and we have been winning cases in ways that have defied expectations, repeatedly in a variety of different arenas against some of the best appellate practitioners in the country," he said. "Second, the reason that we're winning is all about the talent."

"I think the creativity has contributed to the wins," he added.

WHY HE'S AN APPELLATE ATTORNEY:

"I love legal puzzles," Rosenkranz said. "I love talking to judges about what the law should be, and I love the art of written and oral advocacy."

"There's not an area of law where those three things come together like there is ... in appeals," he added.

Rosenkranz noted how his appellate practice has allowed him to work on different types of cases — from excessive force and privacy cases to patent litigation — including his Jan. 3 Federal Circuit victory for Apple in overturning a Patent Trial and Appeal Board decision that rejected several claims of an Apple application for a touch-screen patent as obvious.

Learning new bodies of law and new industries "keeps it really fun," he said.

"For me, the practice is always fresh, it's always exciting and ... it's a diverse menu," Rosenkranz said.

WHAT MOTIVATES HIM:

Driving factors for Rosenkranz include winning cases and getting positive feedback from clients.

"First is winning," he said. "Second is, there is to me nothing more gratifying than having a client say, 'In all these years of litigation, you have captured the way I'm feeling better than anyone else has.'"

But Rosenkranz said he is motivated by collaborating with co-counsel and clients as well.

One of the most gratifying aspects of the Microsoft case has been working with an extraordinary team that includes fellow lawyers at Orrick and Covington & Burling LLP, and Microsoft officials, Rosenkranz said. "That excites and motivates me," he said.

"A lot of appellate lawyers are appellate lawyers because they want to sit in a room with their computer and a keyboard and do nothing but think big thoughts," said Rosenkranz, adding that "what motivates me is being in the room, working over difficult problems with colleagues."

HIS ADVICE FOR ASPIRING APPELLATE LAWYERS:

For attorneys looking to excel in appellate work, Rosenkranz said they should value their clients and be prepared to take risks.

"Briefs are not cookie cutters, so be willing to try new things ... in the interest of advocacy," he said. "Don't let someone say, 'Oh, I've never seen someone do that before.'"

"If it works and it makes a point that will be vivid and memorable, be willing to at least try it out," he added. In oral advocacy, appellate lawyers also should not "rehash your brief" and instead think about new, creative ways to convey their arguments, he said.

Rosenkranz said such aspiring attorneys should "look for opportunities to argue cases."

"It matters ... that I've had nearly 200 oral arguments," he said. "Not because it makes me any wiser, but just because everything that could ever happen in an oral argument has happened to me."

That experience has helped him learn how to deal with all kinds of unexpected circumstances, Rosenkranz said. For example, he added, "One of the hardest things to do as an appellate lawyer is to deal with a barrage of hostility from an appellate bench."

The first 20 times that happens, "you get flustered," Rosenkranz said.

With practice, an attorney can reach a point where "you can keep a smile on your face" and engage in "a discussion with the court even when you're feeling like you're under attack," he said.

— *As told to Bill Wichert*

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 2017 MVP winners after reviewing more than 1,000 submissions.

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