

MVP: Gibson Dunn's Mark Perry

Law360 (November 28, 2018, 10:39 AM EST) -- Mark Perry of Gibson Dunn & Crutcher LLP achieved what he calls one of the hallmarks of his career this past year with the precedent-setting Supreme Court win in a case about how the Securities and Exchange Commission selects its administrative law judges, earning him a spot among **Law360's 2018 Securities MVPs**.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

The SEC case, in which the U.S. Supreme Court voted 7-2 in favor of Perry's client Raymond J. Lucia, was significant not only because it opens up potential Appointments Clause challenges to a vast spectrum of ALJs across dozens of agencies, but also because it took on constitutional proportions.

The Appointments Clause requires all "Officers of the United States" to be appointed by the president, a court of law, or head of a department such as the SEC acting as a whole. SEC judges, however, are selected by commission staff. The legal question was whether ALJs are "Officers of the United States."

"We have here the holding of the Supreme Court that [the SEC] for years and years has been deliberately and intentionally violating the constitutional rights of respondents in enforcement agency proceedings by refusing to follow the Constitution's directives in setting up the administrative tribunal," Perry said.

"It's a remarkable thing for the Supreme Court to announce that an agency of the federal government has willfully been ignoring the Constitution. It's also a fun thing for lawyers to get in and mess around with the guts of the Constitution," he added. "The structural protections put in place for liberty by the Founding Fathers are still alive and with us today. And this case is a reminder of that."

The logo consists of the letters 'MVP' in a blue, serif font. A red circle is drawn around the 'V', with a red arrow pointing upwards from the bottom of the circle.

Mark Perry
Gibson Dunn

HIS OTHER NOTABLE CASES:

Perry was also involved in the Supreme Court's 2014 *Alice v. CLS Bank International* decision over patent eligibility, specifically whether certain claims about a computer-generated, electronic escrow service for financial transactions covered abstract ideas not protected by patents.

The patents were found to be invalid because the claims were drawn to an abstract idea, and the act of implementing those claims on a computer did not make them rise to the material covered by patent protection.

While the *Alice* opinion did not specifically mention software, the case was widely viewed as a ruling on software patents, or patents on software for business methods.

"It redefined the standard for when computer-implemented inventions can be patented," Perry said. "It's the most cited Supreme Court patent case in history. It has had a dramatic effect on the world of intellectual property. I won that case and have continued to litigate 'Alice'-related issues since then.

HIS ADVICE TO YOUNGER ATTORNEYS:

Perry says when looking to hire associates, he often gravitates toward journalism majors because they are trained communicators, and that is so much of what practicing law is about.

"The advice I give to people is that communication is the most important thing. Being able to convey what often are exceedingly difficult concepts in simple and straightforward ways is hard," he said. "It's one of the most difficult skills of the lawyer, and what I hope younger people work on. That takes time, experience, education, effort — all of those things."

HIS PROUDEST MOMENT:

Perry clerked for former U.S. Supreme Court Justice Sandra Day O'Connor from 1993 to 1994. While he never got the chance to argue a case before her while she served on the Supreme Court, he did argue a case on appeal in a circuit where she sat on the panel as she traveled the country after her retirement from the high court.

"It was just such an honor to be arguing in front of my former boss," he said. "Frankly, I think she was pretty proud of me, too."

Perry said he was also honored when O'Connor showed up for his very first argument before the U.S. Supreme Court.

"She came and sat in the court and watched me do it," he said. Which was also a very cool thing."

— *As told to John Petrick*

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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