

## Appellate MVP: Akin Gump's Patricia A. Millett

By Jeremy Heallen



Patricia A. Millett

*Law360, Houston (December 05, 2012, 6:00 PM ET)* -- One week after scoring a win at the U.S. Supreme Court, Akin Gump Strauss Hauer & Feld LLP's Patricia A. Millett made her 31st appearance before the high court — the most of any woman in history — landing her on Law360's list of appellate MVPs.

A partner with Akin Gump's D.C. offices who leads the firm's Supreme Court practice and co-heads its national appellate practice, Millett said that although she finds the distinction humbling and professionally gratifying, she finds an equal measure of satisfaction in the privilege of representing clients before the high court.

"Every case is a challenge, and it's an enormous responsibility in that incredibly important moment when you are arguing to the court to give your client the best shot," Millett said.

This year, Millett's "best shot" has translated into wins for her clients pursuing federal and state appeals across the country. Before her record-breaking appearance last April, Millett secured the reversal of a Ninth Circuit decision that denied immunity to a private employment attorney hired by a California city for an internal-affairs probe of a firefighter.

The case turned on 42 U.S.C. Section 1983, a Reconstruction-era statute that provides a cause of action against state actors who deprive an individual of federally guaranteed rights. The Ninth Circuit found that Steve Filarsky was not entitled to seek the protection of qualified immunity because he was a private lawyer and not a city employee, but the U.S. Supreme Court disagreed.

Millett successfully argued that since Filarsky was retained by the city to assist in conducting an official investigation into potential wrongdoing, he was performing the function of a government employee who would be entitled to seek the protection of qualified immunity.

In August, the Federal Circuit reversed a preliminary injunction against her client Amphastar Pharmaceuticals Inc. that prevented the company from marketing Enoxaparin, a generic drug designed to prevent blood clots, in a patent infringement dispute brought by competing generics maker Momenta Pharmaceuticals Inc.

The Federal Circuit agreed with Millett that Amphastar's use of a test patented by Momenta to develop Enoxaparin fell within the safe harbor provisions of the Hatch-Waxman Act because use of test was reasonably related to the development and submission of information to the U.S. Food and Drug Administration.

And in May, at Millett's urging, the Second Circuit upheld Starbucks Corp.'s right to prohibit employees from wearing more than one pro-union button at a time, overturning a National Labor Relations Board ruling that the company had committed unfair labor practices.

The Second Circuit found that Starbucks' decision to prohibit multiple pro-union buttons was not an unfair labor practice and defended its decision to fire a pro-union employee with lackluster performance reviews.

Although Millett represents several corporate clients, her victories this year cover a range of practice areas and the political spectrum. Millett says she prefers not to be pigeonholed and says one of the great joys of her career is that she serves as a "translational service" between legal specialists and generalist justices.

And she said she's never been deterred from representing clients in emotionally charged cases, like convicted murderer Rafael Gonzalez's. Millett persuaded the U.S. Supreme Court in January to hear Gonzalez's challenge to time limits imposed by the Antiterrorism and Effective Death Penalty Act that stood in the way of an appeal of his death sentence.

"Whatever a person's politics, lawyers have to understand that we are, for most people, the gateway for them to have access to the third branch of government," Millett said.

That dedication to her clients is why Akin Gump partners view her as a "treasure," according to the firm's U.S. managing partner and chairwoman-elect Kim Koopersmith.

"Her record speaks for itself, but it's the obvious value she adds whenever she is introduced to a firm client that stands out with our partners," she said.

Koopersmith added that despite Millett's modesty, her historic oral argument and accomplishments showcase a "gift that is a joy to witness."

"We are fortunate to have such a skilled advocate as Pattie as our partner," Koopersmith said.

But Millett says she's no trailblazer and is "riding the coattails of giants" Justice Ruth Bader Ginsberg and prolific appellate attorney Beatrice Rosenberg, a previous record holder who argued 29 cases to the court before she retired in 1979.

"Every crack in the glass ceiling is to be celebrated," Millett said. "But it's not a record I want to keep. The goal is to get to the point where this is no 'woman statistic.'"

--Additional reporting by Ben James. Editing by Lindsay Naylor.