

## MVP: Latham's Melissa Arbus Sherry

By Jack Karp

*Law360 (September 12, 2022, 2:02 PM EDT)* -- Melissa Arbus Sherry of Latham & Watkins LLP led teams that scored a unanimous U.S. Supreme Court victory over a narrowly missed Tax Court deadline and an important ruling on the enforcement of federal forum-selection clauses, earning her a spot as one of Law360's 2022 Appellate MVPs.

### **HER BIGGEST ACCOMPLISHMENT THIS YEAR:**

Sherry headed the team that won a 9-0 ruling from the Supreme Court in April reviving a North Dakota law firm's challenge to an Internal Revenue Service levy even though the challenge was filed a day late.

The IRS' 30-day deadline for bringing lien and levy challenges in the Tax Court, which had been considered jurisdictional for decades, according to Sherry, is actually not a jurisdictional bar that needs to be cleared to get in front of the Tax Court, the justices ruled in *Boechler PC v. Commissioner of Internal Revenue*.

The high court also ruled that equitable tolling, which can extend the statute of limitations in certain circumstances, can apply to the deadline.

"To get that win was really meaningful," Sherry said, adding that the ruling is not only important for all taxpayers "but especially for low-income and pro se taxpayers."

More than the win itself, what made Sherry proudest of the *Boechler* case was how it got to the Supreme Court in the first place, she said.

The case was brought into the firm by a junior tax associate, Amy Feinberg, who argued a similar case in a tax clinic while at Harvard Law School. Feinberg's former clinic adviser asked her to argue the *Boechler* case just weeks before the argument at the Eighth Circuit, and Sherry agreed to supervise her.

"So I kind of love the story of how the case came into Latham," Sherry said. "And then sort of the icing



on the cake for me was when we got to the Supreme Court, we had a briefing team that was made up of all women."

#### ***ANOTHER NOTABLE CASE SHE'S WORKED ON:***

Sherry also led a Latham team that secured the first appellate court ruling affirming the enforcement of a federal forum-selection clause outside of Delaware.

A number of companies started adding federal forum-selection clauses to their charters and bylaws in the wake of the Supreme Court's 2018 decision in *Cyan Inc. v. Beaver County Employees Retirement Fund* that precluded the removal of parallel state court actions, Sherry said.

While the Delaware Supreme Court has upheld the validity of those clauses under Delaware law, there hadn't been any rulings on the issue outside that state until Sherry and her team secured one from a California appeals court on behalf of Restoration Robotics.

"It was sort of a precedent-setting decision on an issue that is important to a lot of companies who were struggling with duplicative litigation in state and federal courts," Sherry said.

#### ***WHY SHE'S AN APPELLATE ATTORNEY:***

The consistency of appellate practice is one of its draws for Sherry, who explained that while there's variation among jurisdictions, the general format of appellate arguments used to be pretty constant.

The pandemic has, of course, upended that predictability. Sherry didn't know until she was tested for COVID-19 the day before arguments if she would be arguing the Boechler case at the Supreme Court in-person or remotely, she said.

And while that uncertainty "remains a little bit unsettling," one advantage is that she's now very adept at arguing by phone, Zoom or some combination of the two, she said.

Its predictability aside, though, the real reason Sherry is an appellate attorney is that she's a "self-proclaimed law nerd," she said.

She loved law school, and being an appellate lawyer is the closest thing to being in law school, she said.

"As I tell many associates or law students that are trying to decide what they want their practice to be, appellate law is very much like a law school exam," she said. "And so I found that I gravitated toward that type of work."

#### ***WHAT MOTIVATES HER:***

Sherry said the most rewarding part of her job has been helping the next generation of appellate lawyers.

That includes supervising associates, as she did during the Boechler case, and also serving as vice chair of Latham's Associates Committee, a post Sherry took up this year and which she said has been one of her proudest accomplishments.

The "unique" committee, made up of both associates and partners, is involved in deciding all aspects of associate life, including partnership and progression decisions, she said. In fact, Sherry served on the committee as an associate and is now back to help chair it.

She also devotes time to growing diversity within the appellate practice, an area she said has needed work for some time.

"There's been nothing more rewarding than really watching and hopefully helping the next generation of appellate lawyers, at Latham and beyond," Sherry said. "Over the last few years, I've seen so many of our associates get argument opportunities and really just kind of crush it at the podium."

***HER ADVICE FOR JUNIOR ATTORNEYS:***

Sherry tells younger attorneys to "learn to be comfortable with the uncomfortable," she said.

As someone who found public speaking "terrifying" at first, she had to force herself to take it on in order to be an appellate attorney.

"Honestly, if I had stayed in my comfort zone, I probably never would have had the practice I have today. I would not have stepped up to a podium," she said.

So she advises others that you only learn by doing and that you can only conquer your fears by proving to yourself — not to others — that you can perform.

— *As told to Jack Karp.*

*Law360's MVPs of the Year 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 2022 MVP winners after reviewing more than 900 submissions.*