

LAWYERS OF THE YEAR

LAWYERS

of the

YEAR

Meghan Martinez

Employment lawyer behind Coats v. Dish takes cases, not sides



MEGHAN MARTINEZ'S WORK IN THE STATE'S LANDMARK EMPLOYMENT-RELATED MARIJUANA CASE AFFECTS BUSINESSES THROUGHOUT THE STATE.

PHOTO: LAW WEEK FILE

BY DOUG CHARTIER
LAW WEEK COLORADO

From day one, Meghan Martinez knew the gravity of the case that would become *Coats v. Dish Network*.

Her client did, too, and asked Martinez if she was up for Colorado's first medical marijuana case dealing with an employer's

zero-tolerance policy. The answer was an emphatic "yes."

Four years later, after what Martinez called a long and intellectually stimulating road, the Colorado Supreme Court ruled that an employer can terminate a worker for off-duty medical marijuana use even

CONTINUED ON PAGE 22...

MARTINEZ

CONTINUED FROM PAGE 14...

when that use complies with the state's medical marijuana laws. Corporate counsel in virtually every industry had been sweating over how to enforce their companies' drug policies since the passage of Colorado's Amendments 20 and 64. The June decision drew a crucial line in employment law and generated scads of CLEs and client alerts in its wake.

This was largely why Martinez was so eager to take the case. Tackling an ever-changing legal field is what drew her to employment law in the first place, and treading constitutional territory to become part of that change made it all the more appealing.

"The best part of employment law, besides the clients ... is being able to make the law," Martinez said. "It's so fun, it's so dynamic, it's so creative." Wrongful termination, discrimination and other cases are presented in constantly reinvented scenarios, and lawyers like Martinez are challenged to keep up.

When Dish Network employee Brandon Coats tested positive for tetrahydrocannabinol, or THC, in a random drug test in 2010, the company fired him pursuant to its zero-tolerance drug policy. Dish prohibited employees from having any detectable amount of controlled substances in their system while working.

Coats, a registered medical marijuana patient with quadriplegia, contested that

the firing was unlawful because his marijuana use complied with state MMJ laws. He filed a wrongful termination complaint, suing under Colorado Revised Statute 24-34-402.5 for off-duty MMJ consumption to be considered a lawful activity.

When the case was filed in the 18th Judicial District Court in Arapahoe County, Dish filed a motion to dismiss. The company contended that MMJ use didn't fit the statute's definition of "lawful" under either state or federal law. One of the arguments Martinez and Dish advanced was that Amendments 20 and 64 didn't legalize marijuana so much as give employees an affirmative defense.

The trial court touched only the state law piece of the argument, but tossed out the claim anyway. The appellate court addressed the lawful/unlawful component, however, and upheld Dish's motion to dismiss in 2013.

Then the state high court took up the case. Martinez recalls the long, nervous wait between oral arguments on Sept. 30, 2014, and the court's ruling on June 15: "It was nine months of getting even more gray hairs," she said. That wait might not have hinted at the 6-0 decision that Dish would eventually receive in its favor.

Martinez said that in her experience, employment cases tend to be emotional, and *Coats v. Dish Network* was no different. Given his circumstances, the plaintiff drew significant public sympathy, particularly from proponents of liberalized

medical marijuana policies. Martinez herself recalled many people being angry with her after she delivered her oral argument. She said Dish was "courageous" in taking an unpopular stance and enforcing its zero-tolerance policy in Coats' case.

"But at the end of the day, this is just about figuring out what the legal lines are. And then if there has to be change, then that falls upon the legislature," she said.

Martinez can empathize with plaintiff employees as she's represented many herself. In addition to defending employers, her firm has also brought forth discrimination claims under the Americans with Disabilities Act. Martinez Law Group attorneys recently worked with the Colorado Cross-Disability Coalition to file class actions against Build-A-Bear Workshop, J. Crew and Petsmart; the complaints claim the retailers violated the ADA by not having blind-accessible personal identification number pads at store registers.

There's a myth out there that employment and labor counsel must stick exclusively to either employee or employer representation, Martinez said. She added, however, that she chooses cases — not sides — and no client has refused to hire her firm because of her past work on one side of the employment fence or the other.

"If anything, we've had some tongue-in-cheek conversations (with employers) saying 'How about I hire you so you don't sue me?'" she said.

And it yields the benefit of

understanding. Martinez can empathize with opposing employers or employees to the advantage of her clients who are bringing cases against them. She can bring the corporate counsel perspective to plaintiffs and the employee mindset to defendants.

"You get all sorts of tools for your tool bag as long as you keep an open mind," she said.

Before starting her own firm in 2010, Martinez was already a significant player in the Colorado legal community, having originally made shareholder with Brownstein Hyatt Farber Schreck and served on the Colorado Women's Bar Association's board of directors. And she said talking shop often makes for interesting dinner table conversation with her husband, Chief Judge Michael Martinez of Colorado's 2nd Judicial District Court.

Even after the buzz her Colorado Supreme Court success generated this year, Martinez has a conservative growth outlook for the eight-member firm and wants Martinez Law Group to retain its boutique size.

It also matters a lot to her that Martinez Law Group is 100-percent woman-owned.

"It's huge to me," she said. "I hope that it creates some inspiration and understanding that you can be on the same playing field (as male-owned firms) and have Fortune 100 companies hire you. And you don't have to fit a specific or more traditional mold." •

—Doug Chartier, DChartier@circuitmedia.com

