

DEVI M. RAO, Partner

Devi M. Rao is a litigator and a partner in the Appellate and Supreme Court; Content, Media, and Entertainment; and Government Controversies and Public Policy Litigation practice groups. She represents businesses and government entities in complex commercial litigation and civil, constitutional, and regulatory matters.

Ms. Rao's practice spans a diverse range of substantive areas in a wide variety of industries including media, communications, automotive, and education. In particular, she has experience handling complex commercial litigation and civil and regulatory matters facing copyright owners in the music and video game industries, representing clients in a wide range of cases in district court, before courts of appeals, and before the Copyright Royalty Board.

In addition, Ms. Rao has significant experience with consumer class actions, both at the trial court and appellate levels. She has also managed document reviews and data analyses in response to civil discovery as well as high-profile DOJ, congressional, and regulatory subpoenas. Ms. Rao has extensive experience with compliance and enforcement issues surrounding Title IX and its intersection with due process protections, including litigating due process issues in student disciplinary proceedings on behalf of universities, leading training presentations for Title IX compliance officers, and working with schools to ensure their sexual assault and harassment policies and procedures are Title IX compliant.

Ms. Rao maintains an active pro bono practice, ranging from representing clients in investigations before Congress to authoring amicus briefs before Courts of Appeals, for clients such as the American Medical Association and the National Congress of American Indians.

Ms. Rao received her B.A., *summa cum laude*, from the University of California, Berkeley in 2005. She received her J.D. in 2010 from Columbia University School of Law, where she served as editor-in-chief of the *Columbia Law Review*. Prior to joining Jenner & Block, Ms. Rao clerked for Judge M. Margaret McKeown of the United States Court of Appeals for the Ninth Circuit and Justice Ruth Bader Ginsburg of the United States Supreme Court. Ms. Rao previously worked as a Skadden Fellow at the National Women's Law Center.

Ms. Rao has an active US Supreme Court and appellate practice, including arguments before multiple courts of appeals. Representative matters include:

- Represented the City of Oakland in a successful brief in opposition at the US Supreme Court, regarding a First Amendment challenge to a city regulation.
- Argued before the DC Circuit challenging an FCC order related to the low-power frequency radio licensing process.
- Argued before the Seventh Circuit on a novel question of law under the Americans with Disabilities Act.



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PRACTICE GROUPS

Appellate and Supreme Court Practice
Class Action
Content, Media & Entertainment
Government Controversies and Public Policy
Litigation
Litigation

INDUSTRY GROUPS

Education

EDUCATION

Columbia University School of Law, J.D., 2010; James Kent Scholar, 2009, 2010; Harlan Fiske Stone Scholar, 2008; Editor-in-Chief, *Columbia Law Review*

University of California, Berkeley, B.A., 2005; *Summa cum laude*; Matilda Morrison Miller Prize for Thesis

ADMISSIONS

California (inactive), 2011

District of Columbia, 2011

COURT ADMISSIONS

U.S. Court of Appeals, Ninth Circuit, 2011

U.S. Supreme Court, 2014

U.S. Court of Appeals, D.C. Circuit, 2016

U.S. Court of Appeals, Federal Circuit, 2017

U.S. Court of Appeals, Seventh Circuit, 2017

U.S. Court of Appeals, Eleventh Circuit, 2019

JUDICIAL CLERKSHIP

- Represented SoundExchange in a successful DC Circuit appeal on statutory interpretation question regarding the Copyright Act.
- Served as key member of appellate teams in cases involving, for example, a due process challenge to a university's sexual misconduct adjudication, and a statutory interpretation question regarding the Federal Power Act.

Hon. M. Margaret McKeown, U.S. Court of Appeals, Ninth Circuit 2010 - 2011 (Clerkship)

Hon. Ruth Bader Ginsburg, U.S. Supreme Court 2013 - 2014 (Clerkship)

Ms. Rao also regularly represents clients before federal courts of appeal, state high courts, and the US Supreme Court in filing amicus briefs in high-profile cases. Representative matters include:

- Represented the Recording Industry Association of America in the Ninth and Eleventh Circuits and in the New York Courts of Appeals in support of state common law copyrights in pre-1972 sound recordings.
- Represented the Electronic Software Association in the New York Court of Appeals in support of dismissal of a right of publicity claim against a video game publisher, arguing that video games are a modern form of artistic expression fully protected by the First Amendment.
- Represented the American Medical Association and other medical and mental health organization in a series of cases across the country involving discriminatory policies against transgender individuals, to assist the court in understanding gender dysphoria and best practices for treatment.

Ms. Rao also has an active commercial litigation practice, including representing copyright owners and automotive manufacturers. Representative matters include:

- *Consumer class action defense.* Ms. Rao has represented Nissan in a series of consumer class actions in district court in Florida and Texas, including briefing motions to dismiss, class certification, and summary judgment.
- *Rate-setting litigation on behalf of the recording industry.* Ms. Rao represented the recording industry in a landmark rate-setting proceeding before the Copyright Royalty Judges to determine the rates and terms for royalty payments due for the digital transmission of sound recordings by Satellite Digital Audio Radio Services (SDARS, Sirius XM's satellite radio service) and Preexisting Subscription Services (PSS) (audio-only music channels in cable/satellite TV packages from music providers that were in existence prior to 1998). SoundExchange represents all artists and copyright owners in these proceedings and advocates for rates that fairly value their music. Pursuant to the determination, the rate paid by Sirius XM increased on January 1, 2018, to 15.5% of gross revenues, a "nearly 41 percent jump from the 11 percent the service was paying in the current year," according to a *Billboard* article.
- *Class action defense for recording industry group.* Ms. Rao represents the trustees of the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund in a putative class action case involving allegations of breach of fiduciary duty. Following six months of discovery and two amended

complaints, the judge overseeing the case has stayed further discovery to consider the Fund's motion to dismiss.

In addition, Ms. Rao also brings her appellate research, writing, and argumentation skills to bear on key briefing in the district and state courts including: arbitration clauses and arbitrability, *Daubert* motions, motions in limine, motions to dismiss, class certification, and summary judgment motions for clients in industries including telecommunications, real estate, technology, financial, and energy.

Community

- National Women's Law Center, Leadership Advisory Committee
- Pathways to Housing DC, Key Society Member

Publications

- "Gender Identity Discrimination is Sex Discrimination: Protecting Transgender Students from Bullying and Harassment Using Title IX," *Wisconsin Journal of Gender & Society*, Vol. 28, 2013
- "The Continued Enforceability of the Medicaid Act's Availability Requirement Through § 1983 Litigation," *Columbia Law Review*, Vol. 109, 2009

Speaking Engagements

- Firm's Chicago Office Hosts US Supreme Court 2017 Term in Review Program, June 27, 2018
- Panelist, "Class Action Litigation 2018," Practising Law Institute, June 21, 2018
- "Privacy Basics for Contracting Professionals," Federal Publications Seminars, November 05, 2015