

Rising Star: Greenberg Traurig's Ashley M. Farrell Pickett

By Beverly Banks

Law360 (June 2, 2022, 2:02 PM EDT) -- Ashley M. Farrell Pickett of Greenberg Traurig LLP has advised major companies on how to navigate wage and hour and wrongful termination claims, including defending McDonald's and a Kentucky Fried Chicken franchisee against class actions, earning her a spot among the employment law practitioners under age 40 honored by Law360 Rising Stars.

HER PROUDEST MOMENT:

Farrell Pickett recalled her time on the moot court team in law school, where she practiced how to answer hypothetical questions from appellate court judges. Years later, she has made four appearances before the Ninth Circuit in what she called one of her proudest moments as an attorney.

"It's a bit of a pinch-me moment to get to actually, in my real practice, do what I practiced many, many years ago in law school," Farrell Pickett said.

One of those cases involved a class action against KFC franchisee Great American Chicken Corp. The Ninth Circuit agreed with Farrell Pickett in September 2018 that the case should remain in federal court under the Class Action Fairness Act. The parties later settled.

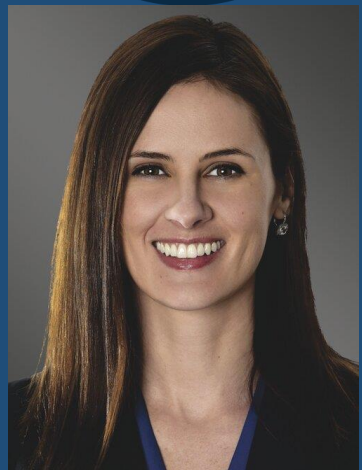
HER BIGGEST CASE:

As counsel for McDonald's in two similar matters, Farrell Pickett secured major wins for California's franchise industry, describing this as one of her most significant achievements to date.

In one of these cases, Farrell Pickett removed the suit to federal court under the Class Action Fairness Act and argued against the plaintiffs' theory that McDonald's was liable for wage and hour claims as a joint employer with the company's franchisee, Paschen Management Corp.

"We strategically removed the court case to federal court, and we were really proactive in our defense," Farrell Pickett said.

2022



Ashley M. Farrell Pickett

Greenberg Traurig

Age: 36

Home base: Los Angeles

Position: Shareholder

Law school: Loyola Law School, Los Angeles

First job after law school:

Associate at Lynberg & Watkins

She said her team "pushed hard early" against the plaintiffs' contention that McDonald's was responsible as a joint employer for wage and hour violations. "It wasn't easy, but it did pay off, and we ultimately obtained voluntary dismissal of McDonald's in both of those actions," she said.

The outcomes of both cases were significant as more plaintiffs are bringing wage and hour suits against the franchisee and the franchisor as joint employers, she noted.

"That's had a major impact because it's not only deterred future claims against franchisors, including McDonald's, but it's helped protect the franchisor-franchisee business model in California," Farrell Pickett said.

WHY SHE'S AN EMPLOYMENT ATTORNEY:

Employment law wasn't Farrell Pickett's first choice. She initially thought she'd enjoy business litigation, but when she tackled some employment cases, there was no going back.

"My first year practicing, I handled a few employment cases, and I was hooked," Farrell Pickett said. "It is a constantly expanding area of the law, and the complexity of the Labor Code, but also the human stories that are at the core of every employer-employee relationship, they allow space for creative arguments."

Farrell Pickett said she's crafted some of those creative arguments while arguing on behalf of Kanye West and his clothing brand in a California Private Attorneys General Act case and in an arbitration agreement spat in which she represents Netflix.

In what she called a "very hard-fought" win in Netflix's favor, Farrell Pickett tailored her arguments around the lack of clarity within the law on "whether a court even has the power to determine conscionability" of an arbitration agreement.

"We successfully argued that this was not for a court to decide, this was for an arbitrator to decide," Farrell Pickett said.

When arguing for clients like West in PAGA disputes, Farrell Pickett said she crafts her arguments to show the judge that "manageability and the ability for courts to adjudicate" are factors in the dispute that should be evaluated early in the proceeding.

"PAGA has, I think, often been seen in California as a bit of a safety net for plaintiffs counsel where even if you can't get class certification, it's considered often a lower standard to be able to bring a case on a representative basis under PAGA," she said. "And we've really been able to show that's not the case."

In Class Action Fairness Act cases, like the one with the KFC franchisee, Farrell Pickett delved into the legislative history of the statute to counter a bid by the proposed class to remand the case back to state court. For the case to be in state court, the proposed class had to show they were U.S. citizens, citizens of California, and that citizenship is "a subjective state of mind of where you consider home," she argued.

"So that test and that creative argument of showing the court what actually had to be proven to remand these cases to state court has allowed us to keep a number of large actions in federal court where they belong," Farrell Pickett said.

A RECENT INTERESTING CASE:

In one of her "most challenging but also rewarding cases" recently, Farrell Pickett got a plaintiff alleging wrongful termination to confess in deposition that they were lying about the accusations made against her client.

"I recently took the plaintiff's deposition and, in the middle of that deposition, was able to get the plaintiff to admit that the claims were made up and that they actually did engage in the improper conduct that had led up to the termination," she said.

Farrell Pickett said that in her more than decade-long career as an attorney, she never before "had that happen in the middle of a deposition."

ON THE FUTURE OF HER PRACTICE:

The outcome of the U.S. Supreme Court's upcoming decision in Viking River Cruises Inc. v. Angie Moriana will have an impact on California employment law for years to come, Farrell Pickett said.

In Viking River Cruises, the Supreme Court is mulling whether workers can skip arbitration for labor law violation claims that they bring through PAGA.

"I do think that where a lot is up in the air is arbitration of PAGA claims pending Viking coming down in just about a month," she said. "I think that has the ability to really shake things up, so I'm excited for it."

Farrell Pickett also noted that the rise in remote work during the pandemic has shifted how employers craft their policies and view compliance.

She has found that remote work "is here to stay in California," which she said has benefits but also drawbacks for some of her clients.

"Utilizing a remote workforce can create efficiencies that result in less company overhead, but it also can create a bit of a challenge where employers are now tasked ... with compliance of all 50 states," she said.

— *As told to Beverly Banks*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2022 Rising Stars winners after reviewing more than 1,350 submissions. Attorneys had to be under 40 as of April 30, 2022, to be eligible for this year's award. This interview has been edited and condensed.