

Rising Star: Mintz's Kelly L. Frey

By Clarice Silber

Law360 (June 24, 2021, 3:27 PM EDT) -- Kelly Frey of Mintz Levin Cohn Ferris Glovsky and Popeo PC has litigated cases across a broad spectrum of matters related to commercial real estate and government regulation, including the first case establishing commercial landlords' rights against tenants protected by Massachusetts' COVID-19 eviction moratorium, earning him a spot among the real estate lawyers under age 40 honored by Law360 as Rising Stars.

THE MOST INTERESTING CASE HE'S WORKED ON LATELY:

Frey said that when COVID-19 first took hold over the nation last year, Massachusetts passed emergency legislation that protected certain categories of commercial tenants from eviction. But some tenants were taking advantage of the new rule and choosing to withhold their rent even though they were able to pay, he said.

In May 2020, Frey took a deep dive into the moratorium legislation and developed a novel legal theory that commercial landlords could still seek damages and obtain an attachment of tenants' available assets against those that withheld rent during the pandemic despite having funds available to meet their lease obligations.

Frey had the opportunity to test the theory in the summer of 2020, and it became and still remains the primary case that established commercial landlords' rights in cases involving the scope and application of Massachusetts' COVID-19 eviction moratorium.

The case was cutting edge, and the theory amounted to a meaningful remedy for commercial landlords after the court wholeheartedly agreed with it, Frey said.

"What you're doing is suing for breach of contract and then also seeking an attachment of the sums they hold in their bank account and the other assets they have so that those assets are preserved and can't be alienated," Frey said. "So in effect, I mean that is not the same remedy as getting an eviction, but it still is a very meaningful recourse for the commercial landlords."



Kelly L. Frey
Mintz

Age: 38
 Home base: Boston
 Position: Member
 Law school: Emory University
 School of Law
 First job after law school:
 Associate at Mintz

HIS PROUDEST MOMENT AS AN ATTORNEY:

While Frey is proud of his novel theory, he is equally proud when he sees the fruits of his labor amid the success of other attorneys he has mentored at his firm.

Frey described seeing those attorneys arguing a motion or making arguments in court for the first time.

"Or responding in a way that I provided them guidance on or suggested that they do and then them doing it and then putting their own spin on it, and developing their own style. I mean that type of experience, that's a different kind of pride," Frey said. "That's happened maybe a handful of times over the past year or two. That's the best."

WHAT MOTIVATES HIM:

Above all else, Frey is motivated by the team mentality of litigation. The Mintz real estate attorney said that having been an athlete his entire life, including a college football career, his big motivation to get into the weight room and start training came down to the team element and the feeling that "we're all in this together."

"We're all working toward the same goal, and it's the exact same dynamic that I find in my professional career now, whether my team is other internal attorneys at Mintz that I'm staffed on a case with, or whether it's me and my primary client contact as they're grappling through issues in a case," Frey said. "That sort of team element is the strongest motivator because I want to make sure that I am at my best to contribute my role as part of the team and move the ball forward."

HOW HE THINKS HIS PRACTICE AREA WILL CHANGE IN THE NEXT 10 YEARS:

Frey sees real estate litigation and real estate disputes being shaped by COVID-19 for at least the next five to 10 years.

There was the first pool of real estate litigation last summer, and there is likely to be multiple waves in the coming years in which tenants look to exercise other rights under their leases, Frey said.

"For instance, if a year or two years from now, when a lease is coming up for expiration and the tenant has the option to extend the lease, but it's conditioned on them not having any prior defaults, there's going to be lawsuits over whether they can exercise their extension option because they missed a month or ... two months of rent during COVID," Frey said. "It wasn't worth litigating at the time, but now they're fighting over it because landlords might ... want to use the space for a different tenant, they might want to repurpose the building, so it's going to be ripe for frequent litigation in future years."

Frey said he believed that those issues would be the primary driver of a lot of litigation over the coming years, and his own work is likely to be related to COVID-19 as well.

— As told to Clarice Silber

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2021 Rising Stars winners after reviewing more than 1,400 submissions. Attorneys had to be under 40 as of April 30, 2021, to be eligible for this year's award. This interview has been edited and condensed.