

## Plaintiffs Bar Perspective: McKool Smith's Ashley Moore

*Law360, New York (May 22, 2017, 11:37 AM EDT)* -- Ashley Moore is a Dallas-based trial attorney at McKool Smith PC. Her practice is focused on high-stakes litigation involving complex technologies. Moore has successfully tried numerous cases to judges, juries and arbitration panels involving cutting-edge issues, such as hydraulic fracturing, the 4G cellular standard, and breach of fair, reasonable and nondiscriminatory (FRAND) terms for essential patent holders. Moore also represents clients with matters involving the intersection of technology and cybersecurity, the Health Insurance Portability and Accountability Act, trade secrets, nondisclosure agreements, insurance contracts, and fraud.



Ashley Moore

Her courtroom skills have earned her a reputation as one of the top rising attorneys under 40 as recognized by both Texas Super Lawyers and Benchmark Litigation. Texas Super Lawyers has named her a “Rising Star” each year since 2015, and last year Benchmark Litigation included her in its “Under 40 Hot List,” which honors the achievements of the nation’s most accomplished legal partners aged 40 or younger.

### **Q: What's the most rewarding aspect of working as a plaintiffs attorney?**

A: As a plaintiffs attorney, I often represent the underdog (in terms of resources and knowledge of the law) against some of the biggest companies in the world, including Google, Apple, Facebook, Samsung and others. These cases usually involve very complex issues, the review of source code, and cutting-edge legal doctrines. In these cases it is very important to be in regular contact with the client, explain the options at each decision point in the case, go through the potential consequences of each option, and detail the reasoning for my recommendation. It is extremely rewarding to deliver a just and fair result in these cases, especially when the defendant’s conduct may otherwise go unchecked.

### **Q: What skill do you feel is most important for achieving success as a plaintiffs attorney?**

A: Being a good listener is critical in becoming a successful attorney. First, listen carefully to your client to understand his/her goals, the business, and how he/she defines success for that particular issue. You may be surprised that your client’s idea of a “win” is different than you would expect. For example, in some cases it may be important to show competitors in the industry that the client will not give up without a fight. But in other cases, it may be important to resolve the case early to conserve the client’s time and money; thus, an early motion for summary judgment may be the best strategy.

Second, you have to listen carefully to both your client’s witnesses and the defendant’s witnesses. They can often provide a wealth of information, but you must listen diligently and follow up when necessary. I

cannot emphasize enough how critical it is to carefully listen to your client, a witness or the judge. I've seen seasoned lawyers in the courtroom who failed to listen effectively, which alienates the jury, destroys what could have been a devastating cross-examination, and sometimes frustrates judges who simply want their question answered.

**Q: What's one trend currently impacting your practice?**

A: A large portion of my cases involve patents, so one current trend is the evolving case law surrounding the patentability of certain subject matter under 35 U.S.C. § 101. Since the U.S. Supreme Court's decision in *Alice Corporation Pty. Ltd. v. CLS Bank International*, the federal courts, patent examiners and the Patent Trial and Appeal Board have given or received copious guidance on what it means to be eligible for patent protection. It is therefore critical at this juncture to stay current on the state of the law regarding the eligibility of various ideas for patent protection.

**Q: Name a plaintiffs attorney outside your own firm who has impressed you and tell us why.**

A: Brad Caldwell at Caldwell Cassady & Curry is an impressive attorney for many reasons. Not only has he been wildly successful in his practice, but he works tirelessly and treats others — his partners, his associates, his staff and opposing counsel — with respect. I've personally witnessed his kindness to those working under him. He will ensure they are recognized for their hard work, allow them the opportunity to speak in court if they have been overlooked, and give credit to those who deserve it. This often results in his co-workers going above and beyond the call of duty to help him succeed.

**Q: What advice would you offer to young lawyers interested in practicing as a plaintiffs attorney?**

A: I suggest that young lawyers raise their hand for new assignments that stretch their skill sets. There is no better way to hone your skills except through practice. Never taken a deposition? Ask to take one on your next case. Never argued at a hearing? Ask for the next one that comes up. Ask a co-worker to sit in and watch you practice and offer suggestions. It will be uncomfortable, but it is truly the only path to mastery.

Second, watch as many hearings and trials as you can. This will prove invaluable in helping you develop your own style. You will also quickly see a pattern for what works and what doesn't, regardless of whether the fact finder is a judge or a jury.

Finally, remember that failure is the mother of success. At some point in your career, you will fail at something — a motion, a hearing, a cross-examination or a trial. Use these opportunities to learn from your mistakes and grow as an attorney. The most insightful learning experiences typically come from mistakes, so take full advantage!

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