

## Deaf Partner at Boies Schiller Overcomes Obstacles

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January 5, 2015

Melissa Felder Zappala remembers the first time she heard a commercial on the radio from start to finish.

She was 25, en route to Boies, Schiller & Flexner's office in Washington, D.C., a firm she had recently joined as a first-year associate.

"I don't think you'd ever seen someone so excited about a commercial," Zappala says. "And I think it was for Walmart."

Zappala, now a partner in Boies Schiller's commercial litigation group, is deaf. From a very young age—if not from birth—Zappala has had what is called profound sensorineural hearing loss, which means that even with a hearing aid she cannot hear all the sounds that are part of human speech. When her parents learned of her condition, they were told she wouldn't communicate orally and that she might not surpass an elementary school reading level.

Against those odds, Zappala has done just fine. She was mainstreamed in Long Island's public school system, played the viola, learned Spanish and studied abroad. She also graduated magna cum laude from Yale University through extensive speech and auditory training and by relying on a personal amplification (or FM) system, hearing aids, lip reading and a stenographer, who would provide live transcripts of lectures.

It wasn't until after graduating from the Georgetown University Law Center in 2005 that Zappala received a cochlear implant in one ear. Invented in 1978, a cochlear implant is an electronic hearing device designed to bypass damaged portions of the ear and directly stimulate the auditory nerve that sends signals to the brain.

For Zappala, there was a possibility that the implant, which requires both a surgical procedure and months of therapy to relearn the sense of hearing, wouldn't work or, even worse, damage the little hearing she had. So she decided to keep the hearing aid she had already been using for her other ear.

"I knew—I was told—it was going to be a difficult process, but some part of you wants to think it will be fine. We'll turn it on, and I'll adjust



immediately," Zappala says of the cochlear implant. "And it was not an immediate process. In the first month, there were certainly moments of questioning whether I would be able to improve."

A decade later, there's no physical trace of Zappala's disability, except when she occasionally pulls her short, wavy brown hair behind her ears and reveals her hearing aid and the external processor of her implant. She doesn't use sign language, strain her face to listen or exaggerate her pronunciation. Even what Zappala calls her "deaf accent" fades away within minutes of conversation.

Nonetheless, Zappala says a key to her practice is being up-front about her disability.

"When I do a deposition, I always introduce myself for the witnesses and explain that I have a hearing loss," says Zappala, who has focused her practice on complex commercial litigation and class action cases. "Also, I say if you have any trouble understanding me, just stop me, and likewise, if I need you to repeat something, bear with me."

She says she has no problems interacting with clients, speaking in public or following along in court. "Everything that happens in a court-

room is on the record,” she says. “That means that ordinarily, only one person can speak at a time, and that person needs to speak at a speed that a court reporter can capture.”

Elaine Gardner, a former attorney for the Washington Lawyers’ Committee for Civil Rights and Urban Affairs, worked alongside Zappala and her father, Foley & Lardner litigation partner Barry Felder, back in 2012 as cocounsel on a suit alleging that the videos posted on the District of Columbia government’s website prevented deaf residents from accessing information about D.C.’s services and benefits.

It was a swift case, which ended with the D.C. government’s agreement to caption or provide transcripts for videos posted online, but Gardner says she was particularly impressed with Zappala’s eloquence during the settlement talks.

“She’s fabulous. Anyone who has interacted with her over the years would say that,” says Gardner, now an attorney for the Federal Communications Commission’s Disability Rights Office. “I think the people with hearing loss who become lawyers are often so much smarter than other lawyers,” she adds.

Boies Schiller litigation partner Michael Brille says one thing that differentiates Zappala, who was elected to the partnership in late 2012, is her “outstanding presence.”

“She instills confidence in the partnership and more importantly among our clients,” he says. “The notion of her being hearing impaired quickly falls into the background.”

Zappala is one of the principal partners Brille has turned to for support in Boies Schiller’s defense of British banking giant Barclays against litigation related to the alleged manipulation of the London Interbank Offered Rate.

Zappala has also joined the team representing plaintiffs in an ongoing polyurethane foam antitrust class action, which recently saw settlements for defendants Carpenter Co., E. R. Carpenter and Carpenter Holdings for \$108 million and Leggett & Platt for \$39.8 million. Over the last year, she has advised another group of plaintiffs—including ABC Appliance, Marta Cooperative of America and family-owned electronics chain P.C. Richard & Son—that has opted out of the class action to pursue its own price-fixing suit against manufacturers of liquid crystal displays.

The most challenging case Zappala has worked on, however, was for

private equity firm Terra Firma’s fraud claim against Citigroup over the leveraged buyout of British music recording and publishing company EMI. In May 2013, a Boise Schiller team succeeded in persuading the U.S. Court of Appeals for the Second Circuit to grant a right to retrial based on prejudicial jury instructions, which is relatively rare for an appellate court.

Zappala admits that she would not be able to practice law without modern technology and the support of Boies Schiller.

The firm, which recently capped a busy 2014, pays for a captioning service that allows Zappala to listen to phone conversations while reading them in real time on her computer screen. As often as possible, Zappala schedules phone calls in advance so she can fire up her computer and give the remote captioning service some notice.

“I listen on the phone, and to the extent that I don’t understand something that is being said, I check [the transcript],” she says.

On the occasion that someone calls unexpectedly, or the captioning service isn’t immediately unavailable, Boies Schiller has also outfitted her office with a phone that has a small screen to display automated captioning of conversations. And should Zappala ever answer a call from a phone that doesn’t have captioning on it, she lets the caller know that she’s hard of hearing and will ask her assistant to repeat what the caller says.

“I’m not going to pretend I can hear the other person because that will make for an awkward conversation,” Zappala adds. “Once it’s clear the terms on which I’m communicating ... I’ve never had a negative experience.”

But the technology would be useless if Zappala weren’t able to simultaneously process information from multiple sources. More often than not, she is reading lips and text and assessing auditory cues and context, while most people are just listening.

In fact, her ability to speed-read has caught people off guard. The first time she met her mother-in-law, she gave Zappala a letter, which the litigator read and returned so fast that her mother-in-law began quizzing her on its contents. “I passed with flying colors,” Zappala says.

Zappala and her wife, who she married in 2012, are expecting their first child in May, but as of now, Zappala doesn’t plan to push the youngster into the legal profession.

“Whatever my child wants to do, I will be very supportive,” she says. “But at this point, I’m hoping for a healthy child.”