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Q&A With Katten's Nancy Rich

Law360, New York (July 13, 2009) -- Nancy J. Rich is chair of Katten Muchin Rosenman LLP's sustainability and climate change practice. She began her legal career as a litigator in the Environmental Division of the Illinois Attorney General's Office in 1984. Three years later, she joined a large law firm and expanded her practice to include transactional, counseling and pro bono environmental work.

Rich joined Katten as a lateral partner in 1993. Most recently, she brought together lawyers from a variety of the firm's practice groups to form Katten's sustainability and climate change practice.

Q: What is the most challenging case you've worked on, and why?

A: The state of Illinois' lawsuit against Kerr McGee to force them to clean up radioactive waste from a public park and nearby areas was probably my most challenging case. I was a new lawyer and we were up against a big team of very experienced large firm litigators.

The state court judge who heard the case did not rule for more than two years, and then, in a twist of fate you'd expect only in a Charles Dickens novel, he dropped dead of a heart attack — on Law Day. So that was the end of the case. Several years later, the U.S. EPA finally forced a cleanup.

Q: What accomplishment as an attorney are you most proud of?

A: Definitely my pro bono work. Although I get a huge amount of personal satisfaction from helping Katten's clients find creative solutions to their legal issues, I think you aren't going to be a good lawyer if you are so self-centered that you focus only on your paycheck.

Pro bono work makes you realize that even on your very worst day, you are much better off than most people, and it is amazing to see how much you can make a difference in peoples' lives by taking on important cases.

It also helps you to understand issues and perspectives that you might never see in your particular type of law practice. Lawyers dispense advice for a living and that advice is based in part on how we understand a problem based on our ability to communicate with clients and opponents — not just our ability to read and interpret the law.

Q: What aspects of law in your practice area are in need of reform, and why?

A: This is my chance to rant about Section 113(h) of Superfund, which basically allows EPA to require any type of cleanup, at any cost, and their actions cannot be challenged in court until after the cleanup is complete.

It doesn't matter at all if EPA's actions are totally arbitrary and capricious. The government is always right until you can persuade a court that they aren't, and here you can't even file your case until it's too late for your client. They've already had to spend the money and in real life, the courts will almost never require the EPA to pay money to the people who have been forced to perform or pay for unjustified work.

Another issue is the inconsistent enforcement of federal programs that are implemented by state agencies. Now that the EPA is getting a bigger budget, let's hope that they help some of the more challenged state agencies to better implement these laws.

Greenhouse gas regulation is going to be a nightmare in some places if the states are expected to implement reporting, tracking, permitting, etc., and EPA fails to require consistency and provide the assistance and oversight needed to achieve it.

Q: Where do you see the next wave of cases in your practice area coming from?

A: We will continue to see regulatory litigation, but it's going to change from the last eight years when citizens' groups challenged Bush-era regulations. Now you're going to see industries try to vacate certain rules that will come out of the Obama administration.

I think that's a major reason the administration decided not to rely on the existing provisions in the Clean Air Act to regulate greenhouse gas emissions in spite of an existing Supreme Court decision that should allow them to do so. Greenhouse gas liability concerns will generate more lawsuits alleging corporate disclosure duties.

Also expect to see litigation regarding claims for "sustainable" and "green" products and patents. And if foreclosures continue to increase on commercial/industrial properties, or if lenders have problems selling those properties post-foreclosure, the lenders will seek help to determine whether any potentially liable parties exist further back in the chain of title, and if those companies or their successors are viable defendants.

On the toxic tort litigation side, I think we're going to see more lawsuits based on new studies of various chemicals and their potential long-term health effects.

It will be interesting to see if the large increase in EPA's budget for next year results in a substantial increase in enforcement cases. I'd like to say that will depend on the number of meritorious cases that the EPA hasn't had the funds to prosecute, but I think we all need to be afraid of the de facto "bean counting" requirements that EPA will likely impose on itself so that it can justify extending the budget increases into later fiscal years.

Clients, beware, and please check your compliance issues now so that you don't need defense counsel later.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Selecting just one in 24 years of practice is extremely difficult. The lawyers who have impressed me throughout my career all share a few common qualities. They work to understand the problem or issue from all relevant perspectives — i.e., those of their client and the other party or parties involved in the lawsuit or transaction.

Framing the problem within those boundaries allows them to use their legal and creative abilities and strategic skills to identify the most effective path for negotiation and/or litigation. They are focused on their client's goals and not their own egos, and they work to help their clients achieve a cost-effective, appropriate result as promptly as the problem and the legal system will allow.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: Get real life legal experience as early as possible — before or during law school. If you are lucky enough to work at the beginning of your career in an internship, clerkship or other job that provides good training without the pressure of billable hours, go for it.

The level of responsibility that I was given at the AG's Office right out of law school is impossible to obtain at a law firm. No self-respecting firm would ever have allowed me to cross-examine hydrogeologists and argue in the appellate court within the first year or so after I'd been licensed, at least not unless they had a really good malpractice policy and didn't mind using it.

Be aware though, that the transition into a law firm after that type of experience will force you to adjust your expectations regarding your level of responsibility and require you to learn new skills. Once you have a job in the practice area, you should seek assignments that will help you become well-rounded.

I've met a lot of lawyers who are subspecialists, or maybe even subspecialists.
That's great until the legal market changes and you have only one real skill that may no longer be marketable.