Q&A with Dykema's Rosa Tumialán

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Rosa Tumialán

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Rosa M. Tumialán, a member of the firm in Dykema Gossett PLLC's Chicago office, is a litigator who represents insurers in nationwide coverage litigation involving both personal and commercial lines. This representation includes involvement in multimillion-dollar environmental coverage disputes. Tumialán's recent insurance litigation experience includes third-party claims, surplus lines, bad faith and class actions. She presently serves as national coordinating counsel for insurance clients facing pattern and/or class action litigation, which role includes developing and implementing coverage strategies as well as monitoring developing case law. Tumialán is also an appellate specialist and the coordinator of appeals in the Chicago office.

Q: What is the most challenging case you have worked on and what made it challenging?

A: The most challenging case I have worked on so far involved drafting a response brief in a federal appellate response brief in less than one month. The appeal arose out of a relatively complex piece of litigation that was made all the more complicated by the defendant's litigation tactics. These tactics included filing numerous appeals which were ultimately consolidated. We were retained to file the response brief in the eighth appeal. The challenge was that we were retained shortly after the court entered an order that set a briefing schedule and instructed the parties that no extensions of time would be granted. Our response brief was due in three weeks. We had not been involved in the case and so lacked case history knowledge that came with briefing the previous appeals. I devoted days and nights to reading district court dockets as well as all the briefs in the earlier appeals all to get an understanding of the technical facts giving rise to the dispute and a feel for the issues to be addressed in the response brief. It was clear to our team that the court would be looking to our brief to tie the case together, so telling an accurate story was critical to placing the argument in proper context. I managed to work through all the material and crafted a statements of facts that set the proper stage for the argument. The team then worked together to present a cogent and compelling argument.

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

A: The novelty of a female lawyer should have worn off by now, but sadly, it has not. I walked into a courtroom [recently] for a status hearing. The courtroom was busy, with lawyers discussing their cases and the terms of agreed orders—typical activity before a judge takes the bench. I looked for my opposing counsel, did not see him, so sat down at counsel table. As I was reviewing emails, I noticed that the courtroom deputy was making his way around the room with a stack of papers. He was handing them out to the attorneys telling them that the judge recently revised her standing orders. He eventually made his way to me. I looked up at him and held out my hand to receive the revised standing orders, he held the document just out of reach and first asked me if I was an attorney. I let the question hang there for a moment. Why would a woman in a courtroom, obviously dressed for court and carrying a file, reviewing emails and waiting for the morning call to start, be an attorney? I then calmly asked him if I needed to be an attorney to receive the standing orders. He had no response. I looked around the room and for the first time, noticed that I was the only

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woman, aside from the court clerk and a court reporter, in the courtroom. He saw what I saw, decided he had his answer, handed me the standing order and quickly walked away. But the need to ask women if they are attorneys is not limited to courtroom staff—opposing counsel also ask this question with some frequency. One recent instance stands out. I was asked by one of my partners to handle post-judgment motion practice in anticipation of a contemplated appeal that I would be handling. I drafted the motion and appeared in court for the hearing. Opposing counsel was already in the courtroom. I settled in at counsel table. Opposing counsel approached me, and I thought he was going to introduce himself. I reached out to shake his hand, and he instead asked what "role I would be playing" in that days' proceedings. I withdrew my hand and told him I would be playing the same role as him except for the opposing side. That little nugget proved too shocking a concept and short-circuited his internal filter: His next spontaneous utterance was that he assumed I was "just a paralegal." Of course he did.

Q: What is an important issue or case relevant to your practice area and why?

A: Candor between attorneys and the court seems to be on the decline. Litigators marshal the facts, apply these facts to the law and present a compelling argument to urge a result in their favor. This intellectual dispute is what makes litigation challenging and enjoyable. But the process is cheapened when attorneys dissemble facts and misrepresent case law because one or the other does not support their position. Too often lately, I have been in the position of pointing out what are increasingly blatant misstatements of both fact and law. The former is mor than just the typical "spinning" that accompanies an aggressive argument. The latter is even more troubling because judges should expect honesty from the attorneys appearing before them. Yet, there appear to be no adverse consequences, even when the misrepresentations are exposed. This leads to more brazen instances of this conduct.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Michael Rathsack [at the Law Offices of Michael W. Rathsack. It is always a pleasure to handle an appeal with Michael on the other side. His briefs are always well-written and challenging. Michael's oral arguments are impressive as well. Some lawyers, me included, draft an outline of the points to be discussed at oral argument. This outline is my security blanket at the podium. I would never dream of stepping up without it even though I have it memorized. Michael, however, steps up with a three-by-five index card on which a few words are jotted don. He then presents his argument in a smooth and polished style. This was intimidating the first time I argued against him in an appeal I was defending. Now, I look forward to our cases together as the excellence of his written and oral work product is something that fosters development of my own skills.

Q: What is a mistake you made early in your career and what did you learn from it?

A: This is probably a typical rookie mistake: assuming that just because the law says you should win, meas you win. Before entering private practice, I served as an appellate law clerk and became accustomed to the "judicial view," so to speak. This vantage point carried over to my litigation practice. Early on, I presented my cases much the way I had written judicial opinions. The argument was legally and factually correct, but I discovered that sometimes, that simply was not enough to secure a result in my client's favor. I learned that having a command of the applicable law — a skill I honed as a law clerk — is just one facet of a litigation practi