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'Keep a Lot of Attorneys Busy': Janine Bauer Is Ready to Ride the Coming Wave of Government Infrastructure Spending

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By Charles Toutant | Originally published on **New Jersey Law Journal (/newjerseylawjournal)** | June 28, 2021



Janine Bauer of Szaferman, Lakind, Blumstein & Blader. Courtesy photo

As the nation readies for a surge in spending on roads, bridges and other infrastructure uses, New Jersey attorney Janine Bauer is well-positioned to help her clients navigate transportation, land use and environmental laws in regulatory or litigation matters.

Bauer says helping clients solve their problems is its own reward, and when the job involves preserving open space, or cleaning up a contaminated site, planning a great redevelopment project, or vindicating a legal principle, the reward is “even sweeter.”

In December 2020, New Jersey’s Senate confirmed Gov. Phil Murphy’s nomination of Bauer as one of three state representatives on a commission overseeing the massive project to construct two new rail tunnels and to rehabilitate existing tunnels under the Hudson River to New York’s Penn Station.

Bauer, of Szaferman, Lakind, Blumstein & Blader in Lawrenceville, is also a board member and former executive director of the Tri-State Transportation Campaign, a nonprofit group that seeks to make transportation in New Jersey, New York and Connecticut safer, more efficient and better for the environment.

The Law Journal asked Bauer about her practice and what she sees on the horizon. Here are her answers, edited for length and news style.

First, what sort of matters do you generally deal with in your practice?

About three-quarters of my practice is environmental, focused mainly on litigation—not regulatory or permitting—although I do environmental reviews for transactions. And then in order, transportation and infrastructure, which includes anything from litigation to administrative agency negotiations and compliance, land use and redevelopment, historic preservation and energy/utilities.

All things that need to fall into place to build a project or to save a place, I deal with. If it moves, I am interested in it—whether aviation law, seaports, rail or transit, ferries, trucking, towing, bicycling or walking. I've always been fascinated by transportation. It's what makes the Commerce Clause succeed in this great country.

What was your biggest lesson in 2020?

That I cannot work from home.

I was back in my office by May 2020.

Fortunately, my firm is very flexible. Those of us who went back were very careful. For me, there is no substitute for the efficiency, exchange of ideas, and collegiality of the law office.

What does the federal government's plans to increase spending on things like roads, bridges and clean energy mean for you and other lawyers who focus on these areas?

The first infrastructure deal the president agreed to is [for] \$1.2 trillion, if extended over eight years. It will be paid for by \$100 billion in public-private partnerships and direct-pay municipal bonds, and \$100 billion from stepped-up IRS collection enforcement.

Those revenue sources alone are going to keep a lot of attorneys busy, doing PPP deals, bond and other financial work, or representing clients before the IRS. There may be more government attorney hiring too. And the businesses we represent, from building materials to heavy equipment to engineering and environmental consulting firms, will be busier too.

With increased spending, transportation agencies will be looking to public-private partnerships to achieve greater efficiency in that spending.

Public-private partnerships require contracts between the agency and private firms for the design, construction and the delivery of projects. Often, the private firm takes on additional project risks such as design, construction, finance, long-term operation, and even revenue, all of which involved attorneys in negotiating and structuring the agreements.

Attorneys involved in project finance, representing construction firms, labor and prevailing-wage issues, arbitration of contract disputes and especially environmental law will experience more work. Until the gas tax was raised 22 cents in 2016, New Jersey suffered a long period of insufficient highway and transit capital and operating funding. So with this increased funding coming in to the region, attorneys will be asked to advise on public-private partnership transactions.

What is the biggest trend you are seeing in litigation right now?

Topical trends are antitrust, which is back in vogue, AI, civil rights, religious rights, climate change disclosures, areas of law that basically reflect current events.

Climate change disclosures are going to be very important to publicly traded companies as well as private firms and investors, but the extent to which a firm must disclose risks of the investment related to climate change are just being forged by the SEC, courts and others. There is no certainty about what risks should be included, or disclosed. For instance, does a company have to disclose the direct impacts of the product's manufacture, or the customer's use of it, over time, or also the indirect impacts? When there is uncertainty, businesses call their attorneys for advice.

So far climate change has only impacted my practice in the land-use and redevelopment area because of increased storm frequency, volume and velocity of rain and runoff in affected sites.

But I expect there will be an uptick in investors, like states and local governments, who want to be paid for the expenditures they have to make now to accommodate a warming climate.

Procedurally, the trend is less positive: litigation takes too long and is too expensive. Because I practice in other states, I can compare. For instance, Pennsylvania has an early dismissal procedure called preliminary objections.

In New Jersey, you have to wait until discovery is over—often [after] years—before you can realistically move for summary judgment. In New York, you can get an individually assigned judge on your case, instead of having one judge who gets to know your case for two or three years, then suddenly you get a new judge because assignments change. Other states have commercial courts, housing courts, and environmental courts.

There is a lot to be said for a forum like the Environmental Hearing Board in Pennsylvania, which hears all appeals from Pennsylvania Department of Environmental Protection permits and denials.

Frankly, our courts defer to agency decisions too much. The 1947 Constitution, which unified the court system and created a single type of pleading, has served us well, but it's time for some tweaking.

Second, specialization is here to stay and New Jersey should recognize that. Other states allow attorneys to be certified in many topical areas after testing, course preparation and practice for some years. They can advertise the certification.

In Florida, I could be certified in maritime, land use, environmental, etc. instead of the usual civil trial attorney, criminal trial attorney, matrimonial plus a couple recognized federal specialties, like being a patent lawyer.

Because we are fairly conservative in New Jersey in terms of what attorneys are allowed to advertise about themselves, litigants and people who need transactional work in certain areas have a hard time finding the attorney with the right specialty. This leads to personal referrals as the basis of business development which does nothing for market entry for women and people of color, and it disserves the public.

What are the major threats to your practice, and what are you doing to adjust?

My practice is fairly unique, but nationwide, the biggest threat is nonattorney ownership of law firms and law-related businesses, under the guise of affordability of basic services.

Legal rights and responsibilities should not be controlled by corporations whose duty it is to serve shareholders.

Fortunately, the New Jersey State Bar Association and our judiciary have successfully fought against the corporatization of law. At the same time, we as a bar have to better serve indigent, and working lower- and middle-income individuals and families, and small businesses, because people are often not familiar enough with their legal rights to help themselves effectively. We have to make the process affordable and efficient.

If we do not, we will lose control of the practice of law itself. We need to institutionalize mandatory pro bono and develop other reliable resources.

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