

Q&A With WilmerHale's Rachael Kent

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[Rachael D. Kent](#) is a partner and vice chairwoman of the international arbitration practice group at [WilmerHale](#), based in Washington, D.C. Kent has more than 15 years of experience representing clients in a variety of commercial and investment disputes in arbitration proceedings seated in common law and civil law jurisdictions worldwide. She has recently represented parties in disputes in the energy, mining, aerospace, defense, pharmaceutical, construction, insurance, telecommunications, technology and retail sectors, among others.



Rachael Kent

Kent has been recognized as a leader in the field of international arbitration in numerous publications, including Chambers, Euromoney's Guide to the World's Leading Experts in International Arbitration, Global Arbitration Review's Who's Who in International Arbitration, and Expert Guides' Guide to the World's Leading Women in Business Law. Kent has taught international commercial arbitration at the Georgetown University Law Center and the Duke University School of Law.

Q: What attracted you to international arbitration work?

A: Two things initially attracted me to international arbitration. The first was the opportunity to be an advocate in a procedure that requires strong written and oral advocacy and minimizes procedural tactics so that the focus is on the merits of the case from the very earliest stages. The second was doing so in the context of an international dispute with parties, counsel and arbitrators from different legal and cultural backgrounds. Those are still the things about my practice that I value most highly.

Over time, I have come to value several other features of an international arbitration practice. I have been very fortunate to have the opportunity to do both commercial and investment treaty arbitration, involving a wide range of legal issues and a broad range of clients. As lawyers are increasingly under pressure to specialize, specializing in international arbitration provides the opportunity to handle cases involving diverse subject matters. I have also come to appreciate what a remarkable group of lawyers practice as advocates and arbitrators in this field. It is a rich community, outstanding not only for the talent of its members, but also for their collegiality and professionalism.

Q: What are two trends you see that are affecting the practice of international arbitration?

A: One trend that I think is very positive for our field is that the practice is truly globalizing. At the beginning of my career, most of my cases were seated in Europe and were administered by one of a handful of well-known institutions. Now, clients have a broad range of seats and institutions to choose from, and they are increasingly choosing seats and rules they would not have considered even 10 or 20 years ago. The community of practitioners is also expanding geographically, and one need only look at the participant lists for the VIS Moots to see how diverse the pool of young

lawyers who want to come into the field is. The challenge for those of us already in the field is to figure out how best to absorb all this talent and enthusiasm so that young lawyers have opportunities not only during law school but after law school to practice their skills as advocates in international disputes.

Another trend, which I am less enthusiastic about, is an increasing focus on very high-value disputes. While there are benefits from increased media coverage of international arbitration matters, there is a risk that headline-grabbing damages awards may skew perceptions of what is a “small” or “large” dispute. I think we need to remember that even a “small” dispute may have huge consequences for the parties. It would be unfortunate if we start to place too high a premium on taking on “big-ticket” cases to the exclusion of the many interesting and complex cases with smaller amounts in dispute but whose stakes may nevertheless be very high to the parties.

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

A: I think you could ask me that question at any point in my career, past or future, and the answer would always be the same: the one I am working on right now. Every case brings challenges, and I am completely absorbed by those challenges at the time I’m dealing with them. I remember some cases for challenging procedural issues and other cases for a challenging contractual provision or a difficult document or witness. Some cases are memorable because the stakes were so high for my client or because the dispute between the parties had become as much emotional as legal.

If I have to choose just one, the case that comes to mind is a case in which the claimant, an individual entrepreneur, stopped participating in the arbitration. My client, the respondent, had counterclaims and wanted the arbitration to continue. While there were interesting procedural and substantive issues in the case, they are not what I remember as the most challenging aspect. The challenge was the pressure of my client’s expectation that there was no way we could lose an uncontested case, when I knew the tribunal could do as good a job of testing our case as opposing counsel. I was confident about our position, but the pressure to achieve a great outcome was so much higher than when there is a competent adversary on the other side. I remember a particularly difficult conversation with the client explaining that the client’s CEO, CFO and general counsel still needed to attend the hearing, halfway around the globe, and would still be subject to questioning. Needless to say, it was a good day when we finally received the award and the client was happy with the result.

Q: What advice would you give to an attorney considering a career in international arbitration?

A: First, become an excellent advocate. Many young lawyers focus on learning everything they can about arbitration. I think their priority instead should be to learn everything they can about advocacy. Focus on building excellent writing skills. Learn to develop a factual record, and how to use your best facts and to deal with the less helpful ones. Take every opportunity you can to practice oral advocacy, in any forum, by arguing procedural issues or motions, examining witnesses, or doing legal arguments. Being a successful international arbitration practitioner requires a range of skills and expertise, but at the heart of it, the core skill is being an excellent written and oral advocate.

Second, this practice can be exhausting, with multiple competing deadlines, complex cases, and the additional challenges of working across time zones and international travel. My advice is pace yourself. Work hard, but find some balance. Whether it's taking time to be with your family or pursuing a passion like poetry or cycling, find something you love to do that gives you a break from the pressures of work. The times you can least afford a break are often the times you need one the most. I suppose this applies as much to seasoned practitioners as to young lawyers, but learning to manage the pressure and find some balance can be especially challenging for lawyers at the beginning of their practice.

Q: Outside of your firm, name an attorney who has impressed you and tell us why.

A: That's not a fair question! There is no way I could choose just one. Our field is full of so many talented advocates, at every level of seniority, and I am consistently impressed with the legal skills, dedication, and collegiality of my colleagues and adversaries.

—By Rachael D. Kent, WilmerHale

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