Rising Star: Gibson Dunn's Ashley Rogers

By **Joyce Hanson**

Law360 (July 13, 2023, 9:00 AM EDT) -- Ashley Rogers of Gibson Dunn & Crutcher LLP has built a prominent practice in the emerging legal field of data privacy with her representation of technology companies including Meta Platforms Inc., earning her a spot among the cybersecurity and privacy law practitioners under age 40 honored by Law360 as Rising Stars.
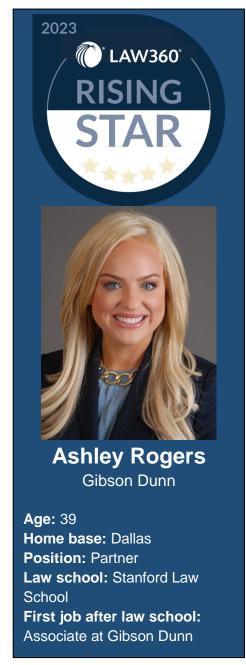
The most interesting case she's worked on lately:
As a member of Gibson Dunn's litigation department, Rogers works in the law firm's privacy, cybersecurity and consumer protection practice group and has played a lead role in data privacy cases at all stages.

A recent achievement for Rogers is her representation of Meta in a first-of-its-kind proposed data privacy class action. She is serving as lead counsel for the tech giant in a suit filed against Meta as well as against ovulation tracker Flo Health Inc., Google LLC and mobile analytics companies AppsFlyer Inc. and Flurry Inc.

The plaintiffs claim the Flo Health mobile app transmitted their personally identifiable health information for marketing purposes to Meta and the other analytics defendants without their consent, according to Rogers, who said the proposed class action "is a case to follow."

"This is one of the first of many subsequent lawsuits that are challenging these publicly available, ubiquitous third-party analytics tools upon which website developers and app developers routinely rely," Rogers said. "These are technologies that help developers provide consumers and users of their websites and apps with commonly expected features."

Rogers added that a significant part of her practice involves representing clients in privacy and consumer protection regulatory matters, which are typically nonpublic but are nevertheless some of the most interesting cases she has been involved in.

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RISING STAR

Ashley Rogers
Gibson Dunn

Age: 39
Home base: Dallas
Position: Partner
Law school: Stanford Law School
First job after law school: Associate at Gibson Dunn

She has played a role in achieving favorable outcomes for clients in more than a dozen Federal Trade Commission consumer protection investigations involving privacy and security issues. The best outcome for a client targeted in an FTC investigation is when the federal agency elects to close the investigation unconditionally, which is never publicly disclosed, according to Rogers. She said she has won closure without conditions in multiple nonpublic investigations.

Another notable achievement:

Rogers is part of a team defending Meta in a biometrics lawsuit that the Texas attorney general filed in state court in February 2022.

The suit alleges Meta violated the state's untested Capture or Use of Biometric Identifier Act and its Deceptive Trade Practices-Consumer Protection Act by failing to obtain Texans' consent to collect their biometric data, unlawfully disclosing the data to third parties, and misleading the public into believing it didn't collect the data.

"The litigation challenges Meta's former use of facial recognition technology in connection with a past feature called 'tag suggestion,' a free and optional feature offered on Facebook that made it easier for users to tag their friends in photos and videos," she said of the ongoing litigation.

Rogers said she previously represented Meta in the Texas investigation into the past photo- and video-tagging feature and noted that the more recent suit underscores the need for tech platforms to be ready for litigation when handling privacy-related regulatory matters.

"I had helped lead the defense of Meta in the Texas AG's investigation of this very feature. And then I became involved in the litigation when the Texas AG subsequently filed suit after Meta had announced that it was discontinuing the feature at issue," Rogers said. "Increasingly, regulators are either pursuing litigation on their own, or targets of privacy investigations are electing to go to litigation with regulators. This is a very interesting illustration of that point."

Why she's a data privacy litigator:

As soon as she became involved in the area of data privacy, Rogers realized it offered a potent combination that mixed exposure to a dynamic industry with exposure to novel and noteworthy legal issues.

"The legal landscape with respect to data privacy is ever-evolving. It's a very intellectually challenging space," Rogers said. "It requires a great deal of creativity and problem-solving to think about and advocate for how existing and new privacy laws apply to new businesses and their new practices. It is truly an area where you can be part of shaping the law."

She noted that she loved attending Stanford Law School in California and then working in Silicon Valley before relocating in 2014 to Dallas, where Gibson Dunn has an office.

"I knew I wanted to litigate, but nothing beyond that, and then I ended up being a summer associate at Gibson Dunn's Palo Alto office," Rogers said. "I just walked in and immediately wanted a variety of experiences. One of my first assignments was with a partner there, Ashlie Beringer, and it was a data privacy-related assignment. This was in 2011, when data privacy was a nascent new concept and not that many people were practicing. I fell in love with the subject matter."

Her proudest moment as an attorney:

Rogers remembers with pride the first time a good client — Meta — reached out to her directly to hire her to lead an important regulatory investigation. That "incredibly meaningful" request by the company years ago gave her a boost of confidence, she said.

"And it also put pressure on me to perform, which I really relish," Rogers said. "I have been the beneficiary of different clients who place a lot of trust in me, which is not often the case for young female attorneys. But in the technology space particularly, clients are really pushing the legal industry and their outside counsel to offer more female-led and diverse teams. I was proud of that moment; it's seared in mind because it was a signal of good things to come."

How she stays motivated:

A love of the work keeps Rogers motivated. She savors the challenges that arise in her practice area and enjoys problem-solving for her clients.

"I love being in a position to be able to see around corners and to get results," she said. "In the technology context, these are often results that are meaningful for a client's ability to operate successfully."

Just as important, Rogers said, encouraging the success of younger lawyers is a big motivator. She helps cultivate talent at Gibson Dunn by serving on the firm's national hiring committee and its professional development committee. She also served as the summer associate coordinator for the Dallas office.

In addition, she volunteers with education nonprofit Teach for America and has helped coordinate Girls Who Code events for Texas participants at Facebook's Austin offices.

"I would not be where I am without the very generous support of men and women at my firm and the clients I've had. I feel obligated to pay that forward, particularly for up-and-coming women," Rogers said.

--As told to Joyce Hanson.

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2023 Rising Stars winners after reviewing more than 1,350 submissions. Attorneys had to be under 40 as of May 1, 2023, to be eligible for this year's award. This interview has been edited and condensed.