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Practice Area Snapshot, Part One ...

A Confluence of Factors Keep Elder Law Attorneys Hopping

The following is the first installment of a two-installment feature as Of Counsel examines the dynamic and growing elder law area and a related area, trusts and estates law. Look for part two in the May issue.

While the legal profession has experienced a demand boost in many areas of the law, perhaps none has grown as consistently and substantially as elder law. Of course, much of this uptick can be traced to sheer demographics. That is, the graying of the Baby Boomers contributes the most to this growth, and many of those from the Woodstock generation seek out different living arrangements.

“Clients, as they age, are downsizing and transitioning more frequently into senior communities to age in place or they need to explore assisted living options,” says Kimberlie Fiero, a partner at New Jersey-based Timothy Rice Estate and Elder Law Firm, which also serves clients in eastern Pennsylvania. “This creates a need for detailed estate and elder law plans.”

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Of Counsel Interview, Part One ...

Appellate Lawyer Helps Shape the Law While Also Supporting Women in the Profession

When Mary-Christine (MC) Sungaila talks about her work as an appellate lawyer, you leave that conversation energized ... and smarter than before you talked to her. While Sungaila's the recipient of numerous awards, including California Lawyer of the Year—twice!—and widely recognized for her legal acumen and creativity, she's as modest and down-to-earth as they come.

In January, Sungaila joined California-based Complex Appellate Litigation Group, after practicing at two AmLaw 150 firms. Bringing extensive experience and a reputation for innovative and strategic thinking combined with strong writing skills, she has briefed or argued more than 170 appeals. This includes handling cases in the US Supreme Court, multiple state supreme courts, federal

and state appellate courts, as well as in the Inter-American Court of Human Rights.

Many of these appeals involved complex and cutting-edge issues in employment, class action, product liability, franchisor, probate, and constitutional law. She has also developed special expertise in appeals involving Holocaust art recovery.

What's more, Sungaila is a vigorous proponent of pro bono work and has donated her time and knowledge in serving many people and causes in need. In recognition of her community service, she was awarded in 2017 the Ellis Island Medal of Honor, whose recipients include seven US Presidents, Nobel

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Of Counsel Profile

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Prize winners, athletes, industry leaders, artists, and others whose work has made a “lasting impact on humanity.”

An active advocate for the hiring and promotion of women in the legal profession, Sungaila created and hosts an award-winning podcast, “The Portia Project.” The twice-weekly podcast honors and explores the accomplishments of trailblazing and leading women judges and lawyers, in the hopes of inspiring the next generation of women lawyers and law students. In its first year, Sungaila has already brought on and interviewed multiple state supreme court justices and heads of large law firms, as well as general counsel for large organizations and non-profit executives. In March she conducted her 100th podcast.

Recently *Of Counsel* spoke with Sungaila about why she chose to become a lawyer, her career path, what she disliked about trial work, why and how she shifted her focus to appellate matters, women in the law, and other topics. For the second time in the 25-plus-year history of this feature, the following interview is part one, as Sungaila has agreed to a second interview. Part two will run in the May issue of this publication. (The only other two-part *Of Counsel* Interview, published in the spring of 2017, was with prominent immigration lawyer and author Susan Cohen, who founded the immigration law practice at Boston-based Mintz Levin more than 30 years ago.)

Practicality over Poetry

Of Counsel: MC, what influenced your decision to pursue a career in law? What was the source of your career path?

MC Sungaila: I discovered my original career aspiration when I was probably eight. I thought I would be a writer, a poet. But I recall immediately after having that great idea that I saw an image of myself starving in a garret. At that age, I’m not sure I even knew what a garret was. [laughter] And then I thought, *Well, maybe I could do that for myself on the side. But I have to have a roof over my head so what am I going to do?*

I seriously pondered it for awhile. People ask kids, “What do you want to be when you grow up?” Because, well, that’s what you ask kids. But usually they don’t really want your serious answer. I’d say, “I’m considering it and when I decide, I’ll let you know.” And they’re thinking, *Yeah, sure, okay. Let’s move on to the next kid.*

But I thought about it and came up with lawyer. I have no idea where that came from. There are no lawyers in my immediate family. But back in Lithuania, I understand that one of my great-great grandparents was a judge. But that was a long time ago and nobody that I knew was a lawyer. While I don’t know how I came up with that idea, I learned that the law is so wide-ranging. There are so many things you can do with it.

As it turns out, as an appellate lawyer, I’m essentially a writer. That’s mainly what we do. We persuade through writing legal briefs, and of course we do oral advocacy. We talk to the judges, not the juries, and that suits me very well. I worked for several great judges and I really liked talking with them and working on issues.

It seems like poetry writing is quite far from serving as an appellate lawyer but actually it isn’t because good writing is good writing. I really like being in the real world with the writing. I’m making an impact, an immediate impact that you can see when you persuade a court. And, as an appellate lawyer you’re creating not just the good results for your clients; you’re creating law for others. It worked out very well.

I'll tell you, I had an early mid-life crisis. I went back to school for creative writing and thought that maybe I should have done this. I enjoyed it. I learned a lot of techniques that I now use in my legal writing. But I realized that I actually made the right decision to become a lawyer—because I like being out in the real world and seeing the impact of my writing in an immediate way. When you write a book or something else, you usually don't really know if you're having an impact from that writing.

Appeal of Appellate Law

OC: You received your law degree from UCLA. Where did you go after that? What did you do?

MCS: I had two courtships. One was with Judge Alicemarie Stotler, the judge for the U.S. District Court for the Central District of California District Court. And then I clerked for Judge Ferdinand Fernandez of the United States Court of Appeals for the Ninth Circuit. In between those clerkships and then afterwards for a few years, I practiced at (LA-based) Irell & Manella and at the time it wasn't all IP-heavy. It was litigation and all kinds of things. [Sungaila also clerked for Ninth Circuit Judge Dorothy Nelson, who will be discussed next month in part two of this interview.]

OC: And how did you get into appellate work?

MCS: In about my fourth year of practice, I had an epiphany. I had a trial and was a significant member of the trial team in federal court. And I was able to recognize that this was not my thing. You're working all kinds of hours. You're doing all kinds of work. There needs to be a pay-off for doing all that work.

Well, I saw that trial lawyers had that pay-off and it was largely in cross-examining

people. They really enjoyed that part. I found that I really felt uncomfortable—even when others were doing the cross-examination. Even for those who were being cross-examined and clearly were not being totally above board, I felt badly for them ... as people. They were being eviscerated on the stand and I felt empathetic for them.

I had this moment where I felt that I was a different animal in the zoo. The trial lawyers really enjoyed that pay-off. I felt that I may not be able to do that work very well. I thought, *Uh-oh, this was my plan and it's not looking very good. What am I going to do next?*

About a month or two later, I was asked to write a brief for a case before the US Supreme Court, the first appellate brief I've ever written. It was a particularly high-profile case involving a judge who sexually assaulted female court employees and litigants in a small town in Tennessee. He was convicted but the conviction was overturned by the Sixth Circuit. The government was seeking US Supreme Court review, and they went into court for that. I wrote an amicus brief to support it, and then we wrote a brief on the merits and we won! Nine to zero. And the guy had to go back to jail. [The case, *United States v. Lanier*, was the subject of a true crime book and many media stories and broadcast segments.]

That was very exciting and gratifying. I loved it. I essentially locked myself in a room and wrote it for six days because as with most amicus briefs, it's always the last minute. So I was asked: "Can you write this brief for the Supreme Court—and you have six days?" I said, "No problem." (laughter) And I didn't mind it. It was very different than trial work and I felt I had an instinct for it. I thought, *Gee, if I really got trained up and understood this more, I could probably do some more good with this kind of practice.* So, that's how I came to do appellate work.

OC: It sounds like empathy was one of the reasons why you decided to shift your focus to appellate law. When you write the book about your career you can call it *The Empathetic Appellate Lawyer*. [laughter] You talked about what you don't like about trial work, and what you like about appellate work. But what do you dislike. What would you like to see changed about appellate law?

MCS: One thing is that it is changing and has been changing slowly over the last 10 to 15 years, and that is the stage at which the appellate lawyers are involved in the case. It used to be that the judgment would be handed down, then there'd be an appeal, and then they called you. So you come in afterwards and see the battlefield on which the war has been fought.

Now, it's much earlier, and I like that change because if I'm collaborating with the trial lawyer early in the litigation at the major motion stage or even across multiple cases, it allows me to see which cases to proceed with because those have a better chance of success on an institutional issue than others. I can help them develop the record and the facts to position the case in the best way possible for an appeal later on. I look at it through a legal lens and trial lawyers look at it through the evidentiary lens and sometimes we can bring those perspectives together and create something better than each of us would on our own. I like that collaboration and the ability to be much more pro-active.

A Step Backward

OC: Okay, and now what's one you'd like to see change?

One trend that I'd like to see swing back is this: When I first entered the appellate area, there weren't many big law firms that had appellate departments. And, the specialty had just started to be recognized in states like

California and Texas. Early on, as is often the case [in the development of a] practice area, it was mostly women doing this work. It wasn't as prestigious. You wouldn't get paid as much as you would if you were practicing in other areas. But it had the benefit of interesting work and a little more of a predictable schedule than if you were doing trial work. So it attracted a lot of smart women. There were many more women when I started 30 years ago.

Now as I look around, there are not many of us women arguing cases, taking the lead in cases. In US Supreme Court cases you see the advocates who appear the most regularly and have the most appellate arguments. The women will get the experience in government work but the private practices are definitely led by men. That's one trend I'd like to see swing back. I'd like to see more women work across the spectrum at different levels as lead attorneys in appellate practice.

OC: Why is that the case and how can the profession change this lack of gender diversity? We've made some progress but clearly more needs to be done in the hiring of women lawyers but maybe even more in the promotion of women to leadership positions.

MCS: Yes, I've been involved in the National Association of Women Lawyers surveys and a lot of other annual surveys to try to measure progress. At some level, it's doing pretty well. But I would say at the equity partner level it remains static over the years and that's very frustrating. It sounds like you track this so maybe you know about a study a few years ago that was very eye-opening to me and I think to others as well. It was a study by the ABA about senior women in the law and the pace by which they were leaving. Many were leaving in their 50s, which is where you're at the maximum of your potential, generally. They're walking out the door of major firms after having been their quite some time.

Why is that? You can't say, "Oh they have kids." They're past the point of having small children. So what is going on? Some of those interviews were pretty interesting. Some people said, "Hey, I've been here fighting the good fight for a long time and it just doesn't seem like it's going to change. I'm a little discouraged. Why should I continue to be the front-line warrior on this?"

I think that has downstream effects because, unlike our generation, the newer generation really looks for role models being in those positions. And it just turns out to be this constant hamster wheel of problems. If senior women leave, the younger women say, "Did I not get a memo? Maybe I should leave too. It just looks like there's not a sustained path for me." So they move off to other places where they have more freedom, more respect, whatever you want to call it.

I think a lot of firms focus on the entry level, having more women in the pipeline. That's important but if you don't carry that

through, the pipeline is going to run dry at a key junction in people's careers.

OC: And if I recall that survey correctly, it came out years before the pandemic, before The Great Resignation. So it's not like COVID and its ramifications were a factor at all.

MCS: Yes, it was well before the pandemic.

OC: MC, you've been doing a lot to help women in the legal profession, particularly with the work you do with "The Portia Project." When we speak again next month, let's talk about the genesis of that podcast, some of the guests you've interviewed as well as your pro bono work and other subjects. Thank you for talking with *Of Counsel* today and agreeing to a second interview.

MCS: It's my pleasure, and thank you as well. ■

—Steven T. Taylor