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## Q&A With Perkins Coie's Katie O'Sullivan

Law360, New York (September 24, 2009) -- Kathleen (Katie) M. O'Sullivan is the co-chair of the Perkins Coie LLP's appellate practice group. Her practice focuses on complex business litigation, class action defense, constitutional litigation and appellate litigation.

### **Q: What is the most challenging case you've worked on, and why?**

A: King v. King, 174 P.3d 659 (2007), a pro bono case I argued and lost. We were retained on appeal to represent a woman who had represented herself in a child custody proceeding. At trial, a GED went up against a JD, the lawyer representing her ex-husband. Not surprisingly, she fared poorly.

On appeal, we raised "civil Gideon" arguments: Given the fundamental rights at stake, our client had a state constitutional right to counsel. Rather than arguing that every indigent civil litigant has a right to appointed counsel, we tried an incremental approach based on a balancing test.

Unfortunately, the court rejected our arguments, with one justice dissenting. The saving grace was that our client later obtained pro bono family law counsel and succeeded in winning more time with her children.

### **Q: What do you do to prepare for oral argument?**

A: I think about how to answer the toughest questions I'm likely to face. I develop some questions on my own, but I also talk with other lawyers on the case, hold moot courts with lawyers unfamiliar with the case, and explain the case to nonlawyers such as my husband.

Judges often pose tough questions — especially off-the-wall hypotheticals — so I like to prepare with creative people who come up with unusual hypos. I also spend a lot of time rereading the cases and becoming intimately familiar with the record. In doing so, I'll often

create a one-page time line of key events with citations to the record.

**Q: What are some of the biggest problems with the U.S. appeals process?**

A: I don't see great problems, but there is room for improvement. It can take a long time from the notice of appeal to the final decision, with much of the delay coming between completion of the briefing and submission of the case. Delay can have real-world effects on the litigants whose rights are at stake and on the lawyers, who need to relearn the case by the time oral argument rolls around.

**Q: Aside from your own cases, which cases currently on appeal are you following closely, and why?**

A: I most closely follow cases involving class certification issues, consumer protection claims, and the standards for qui tam lawsuits. I typically follow civil cases in the U.S. and Washington Supreme Courts. Schnall v. AT&T Wireless Services is an interesting class certification/choice of law case pending in Washington.

**Q: Outside your own firm, name one lawyer who's impressed you and tell us why.**

A: Carter Phillips. The diversity of the legal issues he works on — from corporate to constitutional issues — is very impressive, as is his commitment to pro bono work. I was fortunate to work with Carter in *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003), which upheld the constitutionality of IOLTA funding of legal services for the poor.

**Q: What advice would you give to a young lawyer interested in getting into your practice area?**

A: First, if you can, get a clerkship. Second, work on your persuasive writing: It's the lifeblood of an appellate lawyer.

Third, once in practice, seek out work on appellate cases. The Seventh and Ninth circuits (among others) have great pro bono programs.

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