

## MVP: Cohen Milstein's Kalpana Kotagal

*Law360 (November 26, 2018)* -- Kalpana Kotagal of Cohen Milstein Sellers & Toll PLLC became one of the legal faces of the #MeToo movement after actress Frances McDormand name-dropped the "inclusion rider" initiative Kotagal co-authored at this year's Academy Awards, earning Kotagal a spot among Law360's 2018 Employment MVPs.

### **HER BIGGEST ACCOMPLISHMENT THIS YEAR:**

The inclusion rider is a provision in an actor's or filmmaker's contract requiring the production company hiring them to commit to diverse hiring. The rider was the brainchild of University of Southern California professor Stacy Smith, who workshopped the idea with producer Fanshen Cox DiGiovanni.

The pair needed an attorney's help and were referred to Kotagal by Cohen Milstein counsel Anita Hill. The trio started work in 2016, Kotagal said.

"We had no idea that [McDormand] even knew about the inclusion rider, much less that she was going to win the Oscar and then talk about it ... that came as a huge surprise to us, but that came at a time when we had been working for the better part of 18 months, the three of us, to turn Stacy's original thinking into a legal document that could be used," Kotagal said.

"The level of interest in the strategy just exploded" after McDormand's speech, Kotagal said. The rider made headlines in several publications the next day and has driven a conversation about inclusion in Hollywood. Recently, "Black Panther" star Michael B. Jordan, who is working with WarnerMedia on his new movie "Just Mercy," and his team persuaded the studio to be more inclusive.

"They were able to work with Warner Media to adopt a company-wide set of practices around diversity and inclusion that flowed originally from the inclusion rider," Kotagal said. "Here is this situation where



this contractual tool is being used to drive structural change in the industry."

Although it's geared toward filmmaking contracts, the rider has also made waves outside Hollywood. Arbitration company JAMS has said it will offer inclusion riders to clients aimed at diversifying its slate of arbitrators, and it has amplified ongoing conversations about workforce diversity.

"It's been a bullhorn ... it's made that conversation more urgent, it's connected challenges in Hollywood to challenges in a lot of other industries and allowed us to make a broader argument about diversity and inclusion across American workplaces and American society," Kotagal said.

"It's been a powerful tool, not just sort of for what it is as a contractual tool, but also to really provide an anchor for this necessary conversation," Kotagal said.

#### ***WHY SHE IS AN EMPLOYMENT ATTORNEY:***

Kotagal worked as an organizer during and after college, focusing on environmental issues. After a few years in that work, she took the next step: going back to school to become a class action litigator.

"I think it's almost a sort of litigation equivalent of organizing" because it leverages collective power to create change, Kotagal said. "With my background in organizing and longtime commitment to anti-racism and to gender equity in my own life and work, that's how I found myself sort of doing that."

Kotagal said she decided to specialize in employment in large part because of her upbringing, as the child of Indian immigrants in Ohio.

"As somebody who had watched my parents, immigrants, people of color — my mom, a woman of color — make their way in a Midwestern city in the 70s and 80s and 90s ... working around workplace equity issues and employment issues felt like the right place to be."

#### ***ADVICE SHE HAS FOR JUNIOR ATTORNEYS:***

Attorneys need to develop cases and new clients to have a successful legal practice. But these are secondary to the central pillar of legal success, Kotagal said.

"What you have to do as a junior lawyer [is] you have to become a really good lawyer," Kotagal said.

Kotagal said she tries to emphasize the importance of developing fundamental legal skills to new hires at Cohen Milstein.

"Learn how to write a brilliant brief, develop the strong analytical skills, the litigation skills, learn how to take depositions, learn how to manage complex cases in discovery, don't shy away from those hard and concrete litigation skills in favor of trying to do something that's flashy," she said.

"The exciting stuff comes when you really have mastered the fundamentals, and that is what enables you to serve your clients," Kotagal said.

**NOTABLE CASES SHE'S WORKED ON:**

In addition to pressing Hollywood and beyond to implement the inclusion rider, Kotagal has kept busy with litigation work this year.

Kotagal is a lead attorney in a proposed class action accusing AT&T of discriminating against pregnant retail workers by penalizing them for pregnancy-related absences or lateness. Kotagal's Cohen Milstein team, along with the ACLU Women's Rights Project, filed an amended complaint in May adding class allegations to what had been an individual suit. The suit challenges an attendance policy that assigns workers points when they miss work.

"AT&T's attendance policy lists 13 different reasons an absence might be excused: jury duty, bereavement, etc. Pregnancy is nowhere on that list," Kotagal said.

Kotagal has also been busy preparing for trial in a long-running class arbitration accusing Sterling Jewelers of sex discrimination. A New York federal judge kicked about 70,000 women out of the case in January, and Kotagal's Cohen Milstein team in May urged the Second Circuit to reverse that ruling. The appeals court's opinion could come down any time, Kotagal said.

"Fingers crossed, that will come back in a way that's favorable for our clients," Kotagal said. "If that happens, we'll be on the road to trial. We're ready to go after 10 years."

— *As told to Braden Campbell*

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2018 MVP winners after reviewing nearly 1,000 submissions.*

---

All Content © 2003-2018, Portfolio Media, Inc.

[WWW.COHENMILSTEIN.COM](http://WWW.COHENMILSTEIN.COM)

**COHENMILSTEIN**

Powerful Advocates. Meaningful Results.

Chicago, IL | New York, NY | Palm Beach Gardens, FL

Philadelphia, PA | Raleigh, NC | Washington, DC