



RAISING THE BAR

Five new Shareholders Named

With over 90 active attorneys, GableGotwals has announced the promotion of three associate attorneys and two of counsel attorneys to shareholder status.

Recent Awards

- Twelve GableGotwals attorneys and the Firm have been recognized by Benchmark Litigation for 2015. Dale Cottingham, Sid Dunagan, Oliver Howard, Scott Rowland, David Bryant, David Keglovits, Graydon Dean Luthey, Jr., James Sturdivant and Rob Robertson are Local Litigation Stars. Erin Dailey, Amy Stipe, and Bradley Welsh were included as Future Stars.
- Overall, GableGotwals has been named a Highly Recommended Firm by Benchmark Litigation.
- GableGotwals has been awarded a Tier 1 ranking in the 2015 "Best Law Firms" list in the U.S. News--Best Lawyers magazine.
- Employee's Choice Awards: Tulsa's Best Places to Work.
- Deborah Shallcross was named as one of 100 Women of Moxie by the YWCA. The event highlighted women who have truly made a difference in the Tulsa community.



Ellen A. Adams' practice primarily consists of prosecuting and defending corporate and individual clients in a wide variety of complex business litigation in state and federal courts. Her representation has been focused on clients in a wide variety of matters including environmental disputes, breach of contract, labor and employment issues, lease cancellation, and royalty disputes.

EAdams@gablelaw.com · (405) 235-5520



Jeffrey A. Curran's practice focuses on product liability defense, insurance matters, intellectual property litigation and commercial litigation. He also maintains an entertainment law practice, representing motion picture production companies, musicians and recording companies in contract negotiation, licensing and related areas.

JCurran@gablelaw.com · (405) 235-5537



Alicia J. Edwards' practice areas include environmental law and intellectual property. Prior to joining GableGotwals, she was an environmental scientist from 1999 until 2004.

AEdwards@gablelaw.com · (405) 595-4809



Thomas J. Hutchison maintains a general business practice, advising clients on entity selection and formation, mergers and acquisitions, energy and natural resources, securities and corporate finance, commercial and contract issues, and corporate governance. In addition, Tom counsels health care providers regarding business and regulatory issues and has extensive experience advising financial institutions.

THutchison@gablelaw.com · (405) 595-4858



Diana T. Vermeire has extensive experience in the corporate and nonprofit sectors, including state and federal litigation, labor and employment law, administrative, regulatory and legislative advocacy, policy analysis and management. She brings a unique skill in the area of compliance review for companies that includes an analysis of work place policies and procedures, identifying areas of exposure for potential litigation, and offering solutions.

DVermeire@gablelaw.com · (405) 235-5519



GableGotwals is pleased to welcome new attorneys to both Tulsa and Oklahoma City offices

Steve Adams



Experienced trial lawyers Steve Adams, John Russell and Ryan Pittman have joined the Tulsa office and Jay Walters joined the Oklahoma City office. Formerly with the Fellers Snider Blankenship Bailey & Tippens law firm, the group practices complex litigation in the areas of energy, insurance, antitrust, commercial litigation, white collar crime, Indian law and appellate practice.

Steven J. Adams is a shareholder in the Tulsa office whose primary practice will focus on litigation including class actions, energy, insurance law and commercial law. Steve is experienced in complex civil litigation in state and federal courts and before regulatory agencies. Steve served as an Oklahoma District Judge from 1987-1993 and presently serves on the Oklahoma Supreme Court Civil Jury Instruction Committee.

sadams@gablelaw.com · (918) 595-4876

John D. Russell



John D. Russell is an experienced commercial litigator who has handled cases across a variety of business industries. He has represented clients before trial and appellate courts as well as federal and state regulatory agencies. John is a former federal prosecutor and served as the Criminal Division appellate coordinator for the U.S. Attorney's Office for the Northern District of Oklahoma. He has extensive experience in white collar criminal cases in the courts and before state and federal investigative and regulatory authorities. He is also a former trial attorney with the U.S. Department of Justice's Tax Division. John is a shareholder in the Tulsa office.

Jrussell@gablelaw.com · 918-595-4806

Jay P. Walters



Jay P. Walters brings wide-ranging experience as a shareholder to the Oklahoma City office. A veteran attorney, Jay has represented business, individual and tribal clients in a variety of complex civil cases before federal and state courts as well as arbitration panels. Jay has litigated cases before courts at all levels involving energy, antitrust, securities, derivative actions, insurance, business torts, contracts, tribal gaming, and cultural litigation, in addition to other areas of law. He has worked on both trials and appeals and is experienced in class and shareholder actions as well. He also served as a Judicial Law Clerk for U.S. District Judge Robin Cauthron.

jwalters@gablelaw.com · 405-235-5517

2015 Officers and Directors for GableGotwals

*David Keglovits
Chair and CEO*

*Sid Swinson
President*

*Dale Cottingham
Treasurer*

*Amy Stipe
Secretary*

John Dale

Terry Ragsdale

Rob Robertson

Scott Rowland



Casey Cooper joins the Tulsa office as a new shareholder



Casey's primary focus will be on complex litigation, corporate services, environmental services, oil and gas matters and higher education. Prior to coming to GableGotwals, Casey worked at Hall Estill. Casey began his 30+ year career in the U.S. Navy's Judge Advocate General's Corps. Casey is active in the community, serving as president and trustee of the Mervin Bovaird Foundation and immediate past chair of the board of trustees of the Philbrook Museum of Art. He also serves as a trustee at The University of Tulsa and the Tulsa Arts Management Consortium. He has served as trustee of Bacone College, Tulsa Philharmonic Orchestra and Tulsa Opera.

ccooper@gablelaw.com · (918) 595-4845

Stacy M. Brklacich joins the Tulsa office as an Of Counsel attorney



Stacy's primary focus will be health care law. Prior to joining the firm, Stacy served in various in-house legal and management positions in the health care industry as well as serving as a member of the health care team at GlassWilkin. She is also a former Tulsa County Assistant District Attorney. Stacy earned her Juris Doctor from the University of Tulsa College of Law in 2008. She earned her Bachelor of Science in 2000 from the University of Central Arkansas.

sbrklacich@gablelaw.com · (918) 595-4853

Ryan A. Pittman



With more than six years working as a landman, Ryan A. Pittman brings valuable energy industry experience and knowledge to his legal practice at GableGotwals. Focusing on civil litigation, Ryan's practice includes a range of oil and gas matters including catastrophic oil field events, surface and subsurface damage issues, lessor-lessee disputes, contracts, and operator and interest owner concerns. Ryan is an associate in the Tulsa office.

rpittman@gablelaw.com · 918-595-4874

Congratulations and Thank YOU!



Renee De'Moss, a 30 year attorney with GableGotwals, recently concluded her term as President of the Oklahoma Bar Association. She will now serve a one year commitment as Past President. Under Renee's leadership, the OBA addressed the issue of judicial elections, added new programs and enhanced existing services.

GableGotwals is honored to have several shareholders who have served as OBA President. In addition, the Firm as a whole is active in various committees.

Thank you Renee for a job well done!



A Journal Record Viewpoint by Diana Tate Vermeire

Gavel to Gavel: Employers should heed FLSA rules



The Fair Labor Standards Act can be broken down into three basic components: classification of employees, establishing the workweek and calculation of overtime. Understanding the overarching concepts for these areas is important for employers to remain compliant with the law's requirements.

Classifying employees under FLSA is a fact-intensive determination that must be made on a case-by-case basis. A proper classification must be based on the functions/duties an employee actually performs in the day-to-day job as opposed to what her job description says her duties are.

When determining if an employee is exempt or non-exempt from FLSA protection, there are six primary exemptions that employers may consider: executive, administrative, professional, computer-related occupations, outside sales and highly compensated employee. Each of these exemptions carries specific criteria as specified by the statute.

Because employees are entitled to overtime pay for work performed in excess of 40 hours per workweek, defining a workweek is essential for the proper calculation of overtime. By law, a workweek is defined as 168 hours over seven consecutive 24-hour periods.

While a workweek does not have to coincide to a calendar week, it must remain fixed. Further, a business can establish a company-wide workweek that covers the entire company and all employees or it can fix separate workweeks for groups of employees. Also, there is no limit to the number of work hours an employer can require in any week.

When considering calculations for overtime, it's important to note that under the law overtime begins only after 40 hours, even if a company's workweek consists of fewer hours. Voluntary work and interrupted meal times count for the purposes of determining whether overtime pay is due, but vacation time, sick time or paid time off do not, unless dictated by an employer's policy.

Overtime pay is not required simply because an employee worked on a weekend, holiday or regular time off. It should be noted that a policy requiring employer approval for overtime work does not prevent an employee from being entitled to overtime pay.

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Diana Tate Vermeire is shareholder with the firm who practices labor and employment law. Diana can be reached at (405) 235-5519 or dvermeire@gablelaw.com.



A Journal Record Viewpoint by Tim Carney

Gavel to Gavel: Social media and privacy



As of November 1, 2014, Oklahoma employers may not require an employee or applicant to disclose user names, passwords or other authentication information relating to online social media accounts. The new law further prohibits, with certain exceptions, an employer from accessing an online social media account in a manner that allows the employer to observe content on the account that is otherwise unavailable to the general public. Employers are also prohibited from taking adverse employment action against an employee or applicant who refuses to provide this type of authentication information.

While the statute places restrictions on employer access to private social media accounts, it does provide for exceptions. For example, the law permits employers to conduct an investigation if it receives specific information about activity on an employee's personal online social media account to ensure compliance with laws, regulatory requirements, etc., or information regarding the unauthorized disclosure of a company's proprietary, confidential or financial information.

Further, if a computer system, network or device is provided by or subsidized by the employer, the law permits the employer to request or require an employee to disclose authentication information. This also applies to accounts or services provided by the employer.

An employee or applicant who believes a company has violated the statute can bring a civil action for injunctive relief and damages of up to \$500 per violation. The statute does not allow for punitive or emotional damages. A suit must be filed within six months of the alleged violation.

It's important to note that an employer is not liable for possessing authentication information it inadvertently obtains by virtue of its access to employer-provided devices.

If a computer system, network or device is provided by or subsidized by the employer, the law permits the employer to request or require an employee to disclose authentication information.

Tim Carney is a shareholder with the firm who practices labor and employment law. He can be reached at (918) 595-4810 or tcarney@gablelaw.com.

Judicial reform: Let's finish the job and appoint district judges

Fifty years ago, Oklahomans were humiliated by revelations that three state Supreme Court justices had accepted bribes. Former Justices N.S. Corn, Earl Welch and N.B. Johnson served jail time for their criminal actions.

Corn, Welch and Johnson had been elected, and re-elected, to their high positions by the people. The shame cast on our state by their misconduct was the fuel for a judicial reform movement led by former University of Oklahoma College of Law Dean Earl Sneed.

The Sneed Plan, calling for the appointment, not election, of our appellate judges, passed as a constitutional amendment in 1967. Missing from the Sneed Plan were district court judges who remain elected officials to this day.

The Sneed Plan established the Judicial Nominating Commission, composed of 15 members. It has six lawyers, elected by the lawyers, six laypersons appointed by the governor, plus three more laypersons, one selected by the members of the commission, one selected by the House speaker and one selected by the president pro tem of the Senate.

When a vacancy occurs on any court, the commission carefully screens all applicants and submits a list of three qualified people to the governor who must name one person from that list. All appointed appellate judges are on a retention ballot every four years. A bad apple can be removed. If a district court judgeship becomes vacant by death, resignation or removal, that vacancy is filled in the same manner by the commission.

Why were district judges not included in the Sneed Plan? The answer is simple, political sausage. In 1967, rural Oklahoma was suspicious of a commission in Oklahoma City and the governor having a big say in who their local judges would be. That opposition was deemed substantial, so supporters of the Sneed Plan decided that half a loaf was better than none and, as a political expedient, they excluded the district judges from the plan submitted to the voters.

The time has come to further amend the law to provide for the appointment of district judges in the same manner as appellate judges. The 1967 compromise has served its purpose. At least 12 members of the commission must live in what was formerly our six congressional districts so the rural vs. urban tension is reduced.

The practice of law has changed and lawyers now routinely travel statewide to appear in court. Half of the presidents of the Oklahoma Bar Association have historically come from counties other than Oklahoma and Tulsa. It is a different world from 1967.

Electing judges is simply a bad idea. In Tulsa County we recently elected five district judges. Incumbent judges had to take time from their important work to campaign and, yes, raise money. It is not surprising that some candidates raised and spent more than \$100,000 campaigning.

Most of these campaign funds come from lawyers who practice before those same judges. This is an unfortunate by-product of electing judges.

Unlike most political races, ethical restrictions limit what judicial candidates can do in a campaign, e.g., they cannot say “verdicts are too high (or too low)” or “I’m for the little guy.”

When we have judicial elections, lawyers get many questions from good people who ask how they should vote. The average conscientious voter has no reliable means of making an informed decision on who will be a good judge. Judges go to work every day and handle the cases they are assigned. Most of their work is without fanfare or notoriety. Occasionally, a judge will draw a case that gets media attention but that is the exception, not the rule.

Oklahoma is one of 32 states that still elects some or all judges. Retired U.S. Supreme Court Justice Sandra Day O’Connor recently said, “in too many states, judicial elections are becoming political prize fights where partisans and special interests seek to install judges who will answer to them instead of the law and the Constitution.” Or, as Alexis de Tocqueville predicted more than a century ago, the election of judges will “sooner or later, have disastrous results.”

For these and other reasons, it is time to change our laws, get it right and provide for district judges to be appointed, and be subject to removal, in the same manner as appellate judges.

James M. Sturdivant is a shareholder who has been practicing law in Tulsa with the law firm of GableGotwals for 50 years. He served as a member of the Judicial Nominating Commission from 1981 to 1987. Jim can be reached at (918) 595-4800 or jsturdivant@gablelaw.com



Q&A with The Oklahoman:

The Oklahoman talks with Tom C. Vincent II about small businesses and their need to plan for data security issues.

Data Security is Everyone's Issue

Q: I've seen a lot about larger businesses and data security breaches. Why should small business owners be concerned about such breaches?

A: Data security breaches can cause problems that do not depend upon the size of the business, such as slowed/stopped commerce because of a computer shutdown. In addition, various laws and regulations govern such breaches for businesses of all sizes. Under Oklahoma's Security Breach Notification Act, if your business involves the collection of customers' "personal information" (as little as a first initial, last name and driver's license number) you may well be subject to the law. Additionally, if you have information on customers who are residents of other states, your business may be subject to the requirements of the notification laws of those states.

Q: I know the risks to my customers — what could happen to my business in the event of a breach?

A: Liability under Oklahoma's law may be as high as \$150,000 for each breach, and this does not include potential additional costs for other items including customer remuneration/other damages or the inability to continue operating because of infected technology. The additional reputational damage may end your business as concerned customers leave. There are websites dedicated to publicizing data security breach "horror stories" which provide information and commentary on the breaches impacting different businesses.

Q: What can I do before a breach to protect my customers and my business?

A: The Federal Communications Commission provides several suggestions for small business cybersecurity, including "Ten Cybersecurity Tips for Small Businesses," at www.fcc.gov/cyberforsmallbiz. In addition, a business should have a plan to be followed in the event of a breach. Most state statutes require that customers affected by a breach be notified either within a specific number of days or, per the Oklahoma statute, "without reasonable delay." Having a plan in place will help you meet that requirement.

Q: What should I do if I think my system has been breached?

A: Follow your plan. Many state statutes, including Oklahoma's, deem a business to be in compliance with the statute's notification requirements if the business has an appropriate plan and follows it. Also, it's a good idea to establish a dedicated line of communication for your customers to contact you with questions. If a customer is worried that doing business with you has put them at risk, the last thing they want to hear is a sales pitch from hold music as they wait to talk to someone.

Tom C. Vincent II is an of counsel attorney with the firm and a former bank compliance officer. He currently serves as a federal regulatory compliance resource for the Community Bankers Association of Oklahoma. Tom can be reached at (918) 595-4857 or tvincent@gablelaw.com

A Journal Record Viewpoint by Erin Dailey

Gavel to Gavel: Put policies in writing

A thoughtful and comprehensive employee handbook can help protect an employer from liabilities regarding a myriad of personnel issues. A well-crafted employee manual will not only convey to new hires the culture and philosophies a business wishes to project, but also can guide employees in the conduct expected in the workplace.

There are certain components that are appropriate for almost any company. Anticipating and addressing key issues early is the goal.

For example, smart phones, tablets and laptop computers mean employees can be connected any place, any time. As technology continues to advance, employee handbooks must follow suit. Policies regulating the use of these technologies should include a warning that employees have no expectation of privacy regarding the use of company equipment, including email. A technology policy might also address appropriate Internet usage, including social media networks, although employers must proceed with caution in this area to ensure they are not running afoul of laws protecting employees' rights to collective action.

Screening for drugs and alcohol is also an important component. Among other things, the policy should include the circumstances under which testing may be required, confidentiality requirements and methods and procedures to be used. It may also be wise, depending on the industry and the type of work being performed, to require certification that the use of a prescription drug is safe for the work environment. State law requires at least 30 days' notice before a new drug and alcohol policy can be implemented or an existing policy changed.

If a business wishes to prevent employees from bringing firearms to the workplace, the handbook should clearly state that, whether concealed or unconcealed, they are not permitted. As per state law, the policy can't prohibit an employee from keeping a firearm in a locked vehicle.

Every employee manual should include a statement that ensures the handbook and policies it contains don't alter the at-will nature of an individual's employment. Every employee should be required to acknowledge, in writing, that they have received a copy of the handbook.

Meaningful policies and procedures, coupled with their fair and consistent application, can be a true asset to any employer facing litigation over personnel issues.

Erin Dailey is a shareholder in the Tulsa office of GableGotwals. Her practice includes labor, employment and insurance law as well as employee benefits matters. She can be reached at (918) 595-4863 or edailey@gablelaw.com.

About Us

GableGotwals is a full-service law firm of over 90 attorneys representing a diversified client base across the nation. Though Oklahoma-based, our connections and reach are global. Fortune 500 corporations, entrepreneurs, privately owned companies, foundations and individuals entrust us every day with the stewardship and strategic management of their legal challenges. GableGotwals is well known for its high quality legal services provided by a highly experienced group of litigators and transactional attorneys who have been recognized by Chambers USA, Best Lawyers In America, Oklahoma Super Lawyers and a number of federal, state and county bar associations.

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Connect with us:



Oklahoma City One Leadership Square, 15th Floor · 211 N. Robinson · Oklahoma City, OK 73102 · (405) 235-5500
Tulsa 1100 ONEOK Plaza · 100 W. Fifth Street · Tulsa, OK 74103 · (918) 595-4800

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