



**Donald S. Smith**  
Attorney

141 East Washington St.  
Fourth Floor  
Indianapolis, IN 46204

[DSmith@RBELAW.com](mailto:DSmith@RBELAW.com)  
Phone: 317-636-8000  
Fax: 317-955-7146

## Biography

Don Smith's practice is limited to representing employers and executives in labor and employment matters. He defends employers in cases pending before state and federal courts, the National Labor Relations Board, Equal Employment Opportunity Commission, Indiana Civil Rights Commission, U. S. Dept. of Labor, OSHA, IOSHA, Indiana Dept. of Workforce Development, and Indiana Worker's Compensation Board. Don advises employers concerning various employment issues such as employee handbooks, employment agreements, severance agreements, covenants not to compete, restrictive covenants, wrongful termination, collective bargaining, labor arbitration, unions, discrimination, harassment, wage and hour matters, unemployment compensation and worker's compensation.

## Practice Area Experience

- Prosecuted and defended numerous requests for temporary and permanent injunctions in restrictive covenant cases on behalf of employers.
- Defended an insurance company in employment discrimination case that set the standard for determining whether an insurance agent is an independent contractor: *Knight v. United Farm Bureau Mut. Ins. Co., Inc.*, 950 F.2d 377 (7th Cir. 1991).
- Defended county employer at trial and on appeal against wrongful discharge claim: *Moulton v. Vigo Co.*, 150 F.3d 801 (7th Cir. 1998).
- Represented employer in a religious discrimination case, in which employee unsuccessfully sought a preliminary injunction permitting employee to use the phrase "Have a blessed day" in the workplace: *Anderson v. U.S.F. Logistics*, 274 F.3d. 470 (7th Cir. 2001).
- Represented employer in a wage case, in which the Indiana Court of Appeals reversed the trial court's award of vacation pay to the employee, and enforced the employer's written policy that vacation pay was not earned until the employee's anniversary date: *Damon Corp. v. Estes*, 750 N.E.2d 891 (Ind. Ct. App. 2001).
- Represented employer hospital in a worker's compensation case, in which the Indiana Supreme Court ruled that the Worker's Compensation Board lacked the statutory authority to award interest on worker's compensation benefits, including overdue medical bills: *Christopher R. Brown, DDS, Inc. v. Decatur Co. Memorial Hospital, Inc.*, 892 N.E.2d 642 (Ind. 2008).
- Defended employer in a class action in a wage and hour case: *Artis v. First Revenue Assurance, LLC*, (1:09-cv-01555, S. D. Ind. 2009).

## Publications

### **Walking a Mile in His Moccasins, Indiana Lawyer, Vol. 28, No. 9 (June 28, 2017)**

- An American-Indian proverb goes something like this: “Never criticize a man until you have walked a mile in his moccasins.” As a defense attorney, I may be better able to empathize with the challenges of being a plaintiff’s attorney if I can imagine myself in his or her “moccasins.” Likewise, a plaintiff’s attorney may benefit from a better understanding of the defense attorney’s challenges. This article will help explain the defense attorney’s “moccasins” when it comes to defending workers’ compensation cases.

### **U.S. Department of Labor Announcement, RBE Blog (May 2016)**

- May 19, 2016: The U.S. Department of Labor has announced its regulations for the salary level of employees considered “exempt” from the overtime regulations. Previously, a salaried employee could be considered exempt under the regulations as long as the employee fit one of the exemptions (such as executive, administrative, professional, or outside salesperson) and had a weekly salary of at least \$455 (\$23,660 annually)

### **Undocumented Worker’s Injury Suit Puts Major Issues Before Justices, Indiana Lawyer, (November 2, 2016)**

- An undocumented immigrant’s workplace injury — and how much he may be entitled to — has put the rising number of foreign-born workers, the rights they can expect, and the responsibilities of employers squarely before the Indiana Supreme Court. [Read More](#)

### **Is the Definition of a Work-Related Accident Being Changed?, RBE Blog (2015)**

- An employee was assigned the responsibility of cleaning an area of a large utility plant. He climbed several flights of open stairs and claimed that he dusted the stairways leading to the roof. To let the dust settle, he and a co-worker exited a door at the top of the stairs that led to an open roof. Instead of waiting in the open air on a clear day, the employee and his co-worker walked 70 feet to an abandoned smoke stack. There was an access hole six feet above the roof level.

### **Still Learning After All These Years in Practice, Indiana Lawyer, Vol. 25, No. 26, p. 9 (February 25, 2015)**

- The practice of law is still exciting and challenging for me, even as I approach my 34th year of practice. It has been the right career for me (even though a recent opportunity to attend a press conference after an IU basketball game reminded me of my earlier desire to become a television sportscaster). I am not so sure I would still be learning after all these years if I had chosen another path.

### **What Happened to Practicing “Civil” Litigation?, Indiana Lawyer, Vol. 25, No. 1, p.9 (March 12, 2014)**

- It is unusual to open a lawyers’ magazine without seeing an article about civility. What happened to “civil” litigation? It must be like the weather – a lot of people are writing about it, but no one seems to be doing anything about it. My remarks are not based on scientific studies, and I have no empirical data to support them.

### **Early Mentors Influenced Me as an Attorney, Indiana Lawyer, Vol. 24, No. 1, p. 9 (March 13, 2013)**

- How did I turn out like this? After practicing law for 32 years, I decided it was time to look back and examine the reasons that I behave certain ways. As a second-year law student, I was fortunate to land a job as a law clerk with the management labor law firm of Roberts Ryder Rogers & Neighbours.

## Seminars/Presentations

- “Collective Bargaining,” DePauw University (January 16, 2012)
- “Physicians’ Employment Agreements: What You Don’t Know Could Hurt You!”, Indiana University School of Medicine (April 12, 2012)
- “What Does ‘Obamacare’ Mean to an Employer with a Collective Bargaining Agreement?”, DTCI Annual Meeting (November 15, 2012)

- “Ethical Dilemmas in Worker’s Compensation,” ICLEF (November 5, 2014)
- “The Birds and the Bees of Sexual Harassment in the Workplace,” presentations to trade groups as well as individual corporations (2016)

## Rankings and Awards

### **Martindale-Hubbell AV Rated**

- Martindale-Hubbell® Peer Review Ratings™ are the gold standard in attorney ratings. An “AV” rating is the most prestigious rating.

### **First Baptist Athletics Hall of Fame inductee (2006)**

- Don was inducted into the First Baptist Athletics Hall of Fame after coaching basketball there for years. He continues to referee youth basketball. First Baptist Athletics’ motto is “The Place for Good Sports.”

### **Indiana Super Lawyers (2004-2006 and 2009-Present)**

- Super Lawyers is a rating service of outstanding lawyers who have attained a high-degree of peer recognition and professional achievement. The selection process includes independent research, peer nominations and peer evaluations.

## Community Activity

- Board of Directors of the International School of Indiana, Board Member (2016 - Present)
- Legal Lines (IndyBar’s Ask-A-Lawyer Program), Volunteer Attorney
  - Don answers calls from the general public through the Ask-A-Lawyer program that gives callers the opportunity to ask legal questions free of charge.
- Washington Township Football, Inc., President (2001)
  - After coaching his sons’ youth football teams, Don accepted the call to head the organization.
- Westlane Delaware Trail Little League, Vice President (2002)
  - Don coached Little League baseball players and was involved in the administration of their local Little League (now Washington Township Little League).
- North Central Football Fanatics, President (2002-2004)
  - Don renamed the North Central High School football boosters the “Football Fanatics,” led a resurgence of spirit among parents and fans, and organized events for players and their families.
- Pony Express Baseball, Inc., Board of Directors (2003-2006)
  - As one of the original organizers of this travel baseball entity, Don coached and served as a board member.
- North Central High School football, Public Address announcer (2002-2011)
  - Tapping into his penchant for sportscasting, Don was “the voice of the Panthers” at home football games for 10 years and would surprise the crowd by using creative words to describe the action on the field.
- Washington Township Baseball, Inc., Secretary (1999-2005); Vice President (2009-2010); President, (2010-2011)
  - Don was not just a “fan in the stands.” He was actively involved in the leadership of the governing board of the high school’s baseball program.
- Westminster Legal Ministry Chairman, (1988-2011)
  - Through its affiliation with Don’s home church, Second Presbyterian, Don headed a group of volunteer attorneys who provided legal guidance to needy families on Indy’s near Eastside.

## Beyond the Office

Don and his wife, Debbie, are the proud parents of three sons. Two of their sons are in their residency programs for orthopedics and radiology and their third is attending medical school at Indiana University. Don remains a huge sports fanatic, with special interests in his Indianapolis Colts, Indiana Pacers, Indianapolis Indians, and Chicago Cubs (with whom he has played in two fantasy camps). During the college football season, Don

particularly roots for DePauw, Miami (FL), and Alabama, teams he “adopted” as a result of his sons attending school there. Don recently has been struck by the “golf bug” and has been taking lessons to cure a seemingly incurable slice off the tee, but it is that “one shot” each round that keeps him coming back for more.

## Associations

- Indianapolis Bar Association
- Indiana State Bar Association
- American Bar Association
- Defense Trial Counsel of Indiana
- Defense Research Institute

## Education

- DePauw University, B.A., cum laude (1978)
- Indiana University Robert H. McKinney School of Law, J.D., cum laude (1981)

## Bar Admission

- Indiana (1981)
- U. S. District Courts for the Southern and Northern Districts of Indiana
- U.S. District Court for the Eastern District of Kentucky
- U. S. Courts of Appeals for the Sixth and Seventh Circuits