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- OHIO SUPER LAWYERS: 2004–2009, 2011–2013



Champion of Diversity

EMPLOYMENT ATTORNEY CARL D. SMALLWOOD
IS ALL ABOUT OPENING DOORS

BY KATHRYN DELONG
PHOTOGRAPHY BY ROSS VAN PELT

WATCHING A NINTH-GRADER AT THE PODIUM DURING A packed mock trial at the state Supreme Court, Carl D. Smallwood's thoughts turned to his own high school experience.

"I was not the most talented 10th-grade speaker in high school, by a long shot," says Smallwood, a partner in the Columbus office of Vorys, Sater, Seymour and Pease. "The idea that this young man is standing up in front of God and everybody he knows, and a whole bunch of people he doesn't know, and is having words come out of his mouth, is—to me—somewhat amazing. I've tried cases in a number of courtrooms around Ohio, and I've never had a full gallery." He laughs. "So I'm just saying. These young people are doing something amazing."

Under the auspices of the Law and Leadership Institute, of which Smallwood is a past president and current board member, these teenagers may represent the future of the legal profession. Through the institute's four-year summertime academic-enrichment program, high school students from underserved communities in Ohio's six major cities learn analytical thinking, problem-solving and a host of other skills for professional success.

Not only do they get a jump on the tools they need for a future career, they have the potential to bring much-needed diversity to whatever profession they choose.



Smallwood accepts the gavel from outgoing Columbus Bar Association president John Hartranft in 2000.

Smallwood hopes many will choose law. "The legal profession ought to be more diverse than it is if it is to continue to be prominent, to be respected, to be trusted with resolving our disputes, protecting our rights, dispensing justice," he says.

He has volunteered long hours in the pursuit of that goal, first with the Managing Partners' Diversity Initiative, which he instituted after becoming the first African-American president of the Columbus Bar Association in 2000; and, more recently, with the Law and Leadership Institute.

"I've always felt we've got a responsibility to do something for the people who come behind so there will be opportunities for them that were available to me," he says.

A graduate of Ohio State University's law school, Smallwood took a week off after graduation before starting at Vorys in 1980. He has spent his career there, representing

employers in litigation, arbitration and mediation of employment-related injury, wrongful termination, professional negligence and toxic-exposure disputes, among other complex cases. He is particularly adept at assembling the right expertise and sifting through mounds of conflicting scientific theories.

Smallwood developed an interest in law in high school, when his teachers saw beyond his 10th-grade public speaking anxieties and tapped him for the debate team.

"Carl's one of the finest lawyers I've had the opportunity to litigate a case against," says David Barnhart, with Philip J. Fulton Law Office, who has been on the opposing side from Smallwood many times over the years. "He makes me a better lawyer because I know my preparation has to be top-notch."

Barnhart also appreciates that going up against Smallwood means that it will be a fair, civil and professional battle. "With Carl, it's not a win-at-all-costs, scorched-earth policy," he says. "He's a straight shooter. You can always trust what he says."

Adds Judge R. Guy Cole Jr., with the U.S. Court of Appeals for the 6th Circuit: "[Smallwood] doesn't beat his chest or blow his own horn."

Cole was Vorys' second African-American associate when he joined the firm in 1975 and became its first black partner in 1983. He points to the Managing Partners' Diversity Initiative as a project on which Smallwood worked for a decade or more, cajoling law firms into becoming more diverse, while seeking little public attention or approval. "A lot of the success of the initiative is a result

of Carl's deft touch, through quiet and effective persuasion that the initiative was something they should consider and embrace. That's his style."

Prior to Smallwood's call to action in 2000, there was no unified effort to increase the diversity of Columbus' legal profession, says Cole. "Every employer thought it was its own decision to diversify the workforce in terms of African-Americans, women. It was Carl who took all those independent bodies—some more diligent than others—and pulled them together. He got them in the same room and put structure to the general commitment that was evolving. Diversity was a goal to be achieved. It was the right thing to do."

The Managing Partners' Diversity Initiative focused on law school graduates just beginning their careers. Now, with the Law and Leadership Institute, Smallwood's focus has shifted further down the pipeline.

Nancy Rogers, professor emeritus of OSU's Moritz College of Law, was instrumental in establishing the Law and Leadership Institute while on an advisory group to Ohio Supreme Court Chief Justice Thomas Moyer. Rogers remembers a group discussion with Moyer to decide who would be the best person—out of all the legal professionals in Ohio—to be the institute's first leader. "Everyone agreed," she says.

Smallwood didn't need persuasion. He accepted the position right away, and proceeded to volunteer "hundreds, if not thousands of hours," Rogers says. "He could immediately understand the importance of getting this right."

Rogers has known Smallwood since she taught his civil procedure class his first year of law school. "I remember him very well, how dedicated he was to excellence and so generous to other people," she says, adding that he hasn't lost any of that. "When you hear about someone being excellent, Carl is always on the list."

In March of 2012, the Moritz College of Law awarded Smallwood its inaugural Public Interest Law Foundation (PILF) Excellence in Public Service Award. PILF is a student-run organization. The students at the law school are well aware of the Law and Leadership Institute because they

teach some of its classes. Also, Rogers says, "Students want, in their fondest dreams, not only to be good lawyers but to make a difference. They clearly saw this in Carl."

Smallwood makes a difference outside the legal profession as well. Along with being 2013 president of the National Conference of Bar Presidents, he's vice chair of development at the Gladden Community House, a social service agency on the Near West Side of Columbus. He helps raise funds for its preschool, food pantry, after-school activities, homelessness prevention and other programs.

"This is where the rubber meets the road," he says. "There are people who won't have food on their tables or shelters over their heads if these services aren't available."

Smallwood's volunteer activities—along with family and physical exercise—serve as a balance to the stress of litigation. He played league soccer until early this year, when he pulled both hamstrings and began to think: "I'm a little too old to be playing with 20-year-olds."

The complexity of his cases is seen in *Kerns v. Hobart Bros. Co.*, involving a young man born with chromosomal rearrangements. "The child was so severely disabled that by age 20, he had a mental age of perhaps 9 months," Smallwood says. "He was physically able to crawl, but that's about it. The assertion, that his mother had been exposed to chemicals in her workplace while she was pregnant, was made 18, 19 years after the child was born. So we were doing this in the mid-2000s, and the child was born in the 1980s."

Smallwood was the lead lawyer representing the company; Liza Kessler, now partner-in-charge for the Columbus office of Jones Day, represented the maker of the product containing the chemicals. To effectively marshal the evidence, they worked with scientists who could explain the chemistry involved, and they called upon experts in genetics and birth defects, epidemiology and other medical disciplines.

The nature of the disability was "profound and very sad," Smallwood says.

Still, "it came down to the other side's experts presenting theories that didn't hold up," says Kessler. The mother worked in an office, not the plant where the chemicals were used. "We felt really strongly about our case."

The case ended in a summary judgment for Smallwood's client, upheld on appeal. "We had a great defense team. No egos; we worked cooperatively," Kessler says. "A lot of it is a testament to Carl. He's a gem. He's focused and professional and very, very thoughtful. He's not going to be flying off the handle."

Says Smallwood, "I've got two beautiful kids, but I know friends who have had miscarriages and children with serious disabilities, and there are just some things we don't understand. And with respect to some of the causes for those types of genetic damages, we just scratch our heads."

Smallwood's wife, Connie, was a year behind him in law school. She worked for the state attorney general's office before being tapped to be the chief regulator of Ohio's savings and loans after the 1980s savings and loans crisis.

Smallwood has lived in Columbus since the 1970s, when his father was head of international studies at Ohio State. Osborn T. Smallwood had also served as a cultural information officer in Germany for the U.S. Information Agency, now part of the Department of State. Smallwood attended German schools for eight years.

As for his early debating skills, Smallwood's four-person team finished second in the state his senior year of high school. And in his freshman year at Ohio State, he won a national novice debate as part of a two-person team.

Though he's an expert litigator, Smallwood knows the courtroom is not always the perfect place to settle a conflict. "Trial is often a zero-sum game: Somebody wins and somebody loses," he says. "If you resolve a matter, both sides can win. You can meet both sides' needs. That's something maybe you learn after 20, 30 years." 