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BIOGRAPHY

Gerald Hilsher is a seasoned trial attorney with experience in a variety of substantive areas of the law. Currently, his practice is primarily trial and appellate work in complex commercial and intellectual property litigation, breach of asset purchase agreements and other contracts, intentional interference with contracts and other business torts, environmental litigation (civil and administrative), and select white collar criminal defense, including environmental crimes, Medicare fraud, bank fraud, and violations of the False Claims Act. His experience includes representation of plaintiffs and defendants, large and small companies, and individuals as clients. He tries cases in state court, federal court and before administrative agencies and has successfully argued significant appellate matters of interest before the Oklahoma Court of Civil Appeals, Oklahoma Court of Criminal Appeals, Oklahoma Supreme Court and U.S. Court of Appeals for the Tenth Circuit. Gerald is also licensed to practice in the state courts of Texas, federal district courts for the Western, Northern and Southern Districts of Texas, and the 5th Circuit Court of Appeals.

His achievements have earned him inclusion in *The Best Lawyers in America* (commercial litigation and environmental litigation) and *Oklahoma Super Lawyers* (business litigation, environmental litigation and white collar criminal defense). In 2011, he was named to The Journal Record's list of Leadership in Law Award honorees.

Early in his career, Gerald was a criminal prosecutor, first as an Assistant District Attorney in Austin, Texas, and then as an Assistant United States Attorney in charge of the Organized Crime Drug Enforcement Task Force in Tulsa, Oklahoma. He also served as Deputy Assistant Secretary for Law Enforcement at the U. S. Treasury Department where his responsibilities included the administration of the Bank Secrecy Act regulations and other anti-money laundering initiatives of the federal government, and departmental oversight of U.S. Customs, U.S. Secret Service, the Bureau of Alcohol, Tobacco & Firearms, and the Federal Law Enforcement Training Center. This law enforcement experience provides Gerald with a unique perspective in responding to government inquiries and investigations including grand jury investigations and qui tam proceedings. His practice today includes select white collar criminal defense work (both trial and appellate), including environmental crimes, Medicare fraud, bank and wire fraud, and alleged civil and criminal violations of the False Claims Act. Gerald has also assisted companies experiencing embezzlement by employees with referrals to law enforcement authorities and representation for payment of restitution.

In addition to his litigation practice, Gerald is also an experienced mediator. He is a member of both the Commercial Mediation Panel and Commercial Arbitration Panel of the American Arbitration Association and has served as a federal adjunct settlement judge for the Northern District of Oklahoma since 1992 and for Tulsa County's Early Settlement Program since 2009. He has also previously served as a temporary judge on the Oklahoma Court of Appeals (attorney-staffed panels) and as a special master in federal court reviewing documents seized pursuant to search warrant for attorney-client privilege.

Gerald serves as the chair of the Oklahoma Bar Association's Environmental Law Section, an author of the Oklahoma Environmental Law Handbook chapters on criminal enforcement and civil liability of officers and directors, and a frequent lecturer at environmental seminars. He is a gubernatorial appointee of the Oklahoma Scenic Rivers Commission, having been first appointed by Governor Frank Keating and re-appointed by Governor Brad Henry. He has been active in the Tulsa County Bar Association, serving several years on the board of directors. In 2006, the Tulsa County Bar honored him with the Neil E. Bogan Professionalism Award. He is a member of the American Bar Association, Oklahoma Bar Association, and the State Bar of Texas.

REPRESENTATIVE EXPERIENCE

Business Torts/Commercial Litigation/Product Liability:

- Obtained confidential settlement as lead attorney on behalf of individual plaintiff alleging co-authorship and joint ownership in copyrightable computer software and for breach of fiduciary duties and other business torts arising from alleged unfulfilled promises to share proceeds upon sale of controlling interest in computer software company.
- Successfully appealed to the Oklahoma Supreme Court an arbitration decision enforcing a non-compete provision of a cardiovascular surgeon's employment agreement under Oklahoma's restraint of trade statute. *Cardiovascular Surgical Specialists, Corp. v. Mammana*, 2002 OK 27, 61 P.3d 210.
- Obtained dismissal of a petrochemical defendant in a products liability case brought in the Eastern District of Oklahoma in a suit involving the death of a two-year-old child who ingested Tiki torch lamp fuel for which the petrochemical company supplied a petroleum distillate.

Environmental Litigation/Civil and Administrative:

- Obtained dismissal at pleading stage in Department of Environmental Quality administrative law proceeding of citizen group challenges to proposed hazardous waste treatment and storage permits for cement manufacturing facility allowing use of hazardous waste-derived fuel in cement kilns.
- Served as coordinating counsel and lead negotiator for 44-member group of potentially responsible party (PRPs) in CERCLA (Superfund) action in Oklahoma City, including an appeal before the 10th Circuit Court of Appeals.
- Obtained a confidential settlement on the courthouse steps for plaintiff's group comprised of 40 riparian (creekside) landowners in an environmental nuisance action against a poultry-processing / protein-rendering plant.
- Concluded Oklahoma DEQ Brownsfields Voluntary Redevelopment project for Claremore Regional Hospital's Medical Office Building. This project remediated a former municipal landfill to allow for construction of a medical office building and parking facilities. An interesting feature of the remediation plan was the use of a methane monitoring and mitigation system for the building.
- Obtained declaratory judgment, affirmed on appeal, that struck regulations promulgated by the Oklahoma Wildlife Department with regard to the "fish introduction rule" allowing stocking of non-native, predator fish species (e.g., trout) in Oklahoma streams. The regulations were determined to be invalid due to the administrative agency's failure to meet substantial compliance with the public comment requirements of the Administrative Procedures Act. (A big win for native fish species, including small mouth bass, the plains top minnow, and the Arkansas darter).

White Collar Crime/Grand Jury Investigations/False Claims Act:

- Represented prime contractor against \$1.5 million False Claims Act demand brought by U.S. Attorney on behalf of the Drug Enforcement Administration (DEA) for return of monies paid on contracts that were allegedly not completed in full compliance with the government contract. The claim was settled for a “walk away” (i.e., no money changing hands) prior to the suit being filed, due to threat of contractor’s bad faith counterclaim and client’s exacting record of communications with agency throughout contractual relationship.
- Obtained dismissal of administrative action brought by the Federal Aviation Administration to revoke aerospace industry client’s license/certification as an FAA-approved repair station and succeeding criminal investigation.
- Representation of clients in federal court on criminal charges, grand jury investigations, and civil administrative proceedings involving alleged violation of environmental laws, Medicare fraud, bank fraud, wire fraud and False Claims Act.
- Obtained reduction of federal bank fraud sentence from U.S. Probation’s presumptive 86-month sentence and \$3 million restitution order to 30-month sentence and no restitution through aggressive examination and argument at sentencing hearing. (Trial on guilt or innocence had been handled by other counsel.)
- Successfully appealed a federal sentence in which the district court denied consideration of extraordinary substance abuse rehabilitation efforts under the U.S. Sentencing Guidelines. In making its decision, the U.S. Court of Appeals for the Tenth Circuit overruled *United States v. Ziegler*, opening up an avenue for more judicial discretion in federal sentencing decisions.

ADMISSIONS

- Texas, 1979
- Oklahoma, 1979
- U.S. District Courts for the Western, Northern and Eastern Districts of Oklahoma
- U.S. District Courts for the Western, Northern and Southern Districts of Texas
- U.S. Courts of Appeal for the Tenth Circuit and D.C. Circuit
- U.S. Supreme Court

EDUCATION

- J.D., University of Texas, 1979
- B.S., Northeastern State University, 1976

PROFESSIONAL ORGANIZATIONS AND MEMBERSHIPS

- Tulsa County Bar Association (Former Director)
- Oklahoma Bar Association (Chair, Environmental Law Section)
- American Arbitration Association (Commercial Arbitration Panel and Commercial Mediation Panel)
- Council Oaks/Johnson-Sontag Chapter, American Inns of Court (Master)
- Air and Waste Management Association
- University of Texas Law School Reunion (Co-Chair)

CIVIC INVOLVEMENT AND LEADERSHIP

- Oklahoma Scenic Rivers Commission (Chairman)
- Save the Illinois River, Inc. (Director)
- Governor's Animal Waste and Water Quality Protection Task Force (1997)
- Fellowship Congregational Church (Chair, Board of Trustees)
- Oklahoma Blood Institute (Member for Life)