

The New President of the American College of Trial Lawyers Talks Shop on Judicial Independence and COVID-Era Justice

Michael O'Donnell, the chair of Denver-based Wheeler Trigg O'Donnell, became the 72nd president of the American College of Trial Lawyers last weekend.

By Ross Todd
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This past weekend **Michael O'Donnell**, the chair of Denver-based **Wheeler Trigg O'Donnell**, was inducted as the 72nd president of the American College of Trial Lawyers. No more than 1% of the lawyers in any U.S. state or Canadian province make up the fellows in the elite North American trial advocacy group.

O'Donnell, whose national trial practice includes work for GE and Michelin, is the first lawyer from Colorado to hold the post. Yesterday the *Litigation Daily* caught up with him to discuss the role and his plans for the coming year. He anticipates taking 40 or 50 trips this year to meet with fellows, including members of the U.S. Supreme Court who are all honorary fellows. The following has been edited for length and clarity.

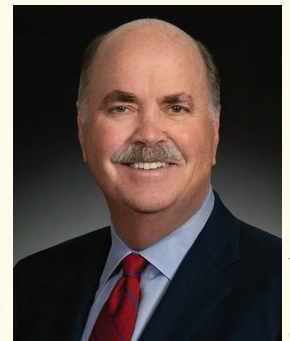
Litigation Daily: Your predecessor **Rodney Acker** at **Norton Rose Fulbright** came out with some **forceful statements a handful of times** when government officials, be it the former president or the current governor of California, made comments targeting the independence of judiciary. I was wondering if that's something you see as part of the role?

Michael O'Donnell: Absolutely. The independence of the judiciary is central to a right-functioning judiciary. The executive and legislative branches are political. The judiciary on the federal

side is political only to the extent that the Senate has to approve federal trial court, appellate and Supreme Court justices. But after that, it's lifetime service and they are not beholden in any respect. And most of the justices and judges in the country work very hard to keep their independence.

Of course, all human beings have their life experiences. We have biases and prejudices as a result of our own life experiences. Judges can't be expected to not have their opinions on any subjects. But they are not beholden to any political party. You may have seen recent comments by several justices in those respects, including Justice Breyer and Justice Alito.

Most judges don't really feel comfortable speaking out on these subjects. So the College is an organization that can speak on their behalf about the importance of the judiciary. We have a rapid response team as part of our **judicial independence committee** to review personal attacks on judges. There's no problem with a politician or anybody commenting on whether they agree or disagree with a decision. It's the personal attacks. It's calling judges names. It's citing their race or ethnicity or



Michael O'Donnell
of **Wheeler Trigg**
O'Donnell.

Courtesy photo

religion, or anything else that's not relevant to the decision. When it's consistent with our mission and policies, we'll make public statements in support of judges facing personal attacks because they are not in a position normally to fend those off.

What does your personal trial docket look like this year? Will the position of president affect your trial workload in any way?

Well, at **Wheeler Trigg O'Donnell** we have about 105 lawyers, all trial lawyers. It's all we do. So my partners are going to help. I have a full docket of cases. You never know which ones are going to go, or which ones will get settled, which ones will be resolved on motion to dismiss or motion for summary judgment. So yeah, I'm practicing full time. But I've made a commitment to those clients and made a commitment to the College.

I think I will have the help of the past couple presidents **Rodney Acker** and **Doug Young** [of **Farella Braun + Martel**], whose tenures were negatively impacted by the pandemic. They didn't really travel as much. You know I think they each had maybe 10 or 20 trips. So they both volunteered to help. It'll be fun, but it'll be very busy.

But you do have trial dates on the calendar, right?

Oh yes I have ones in November, January, March. A number of cases. Which is one reason why I kept one eye open most of last night.

There's a lot of concern in certain circles about the decreasing number of civil cases that are actually making it to trial. So how does the College see its role in preserving the jury trial as a fundamental part of our judicial system? And what can the trial lawyers do themselves? A lot of these decisions are not in their hands right?

Sure. Organizations like ours advocate. We do believe that the jury trial in the United States is the fairest form of jurisprudence that man has come up with so far. It's not perfect. It takes time. It

can be expensive. But there are organizations like ours, including **IAALS**, which **Colorado Supreme Court Justice Rebecca Kourlis** founded, that are looking at this issue.

We promote training and advocacy. We distribute **white papers**. We have an **Advocacy in the 21st Century Committee** we started a year ago, which addresses the numerous challenges facing trial attorneys and judges in courts today, including

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the new COVID reality. So we've come up with the state of the art suggestions for judges to follow in courtrooms around the country to keep jurors, parties, witnesses, judges and lawyers safe. That committee has published **interim guidelines**.

But it's really, I think, about education. We try to educate both lawyers and the public about the importance of jury trials. When you get six or 12 people in a room, it's amazing how those life experiences combine to create a really knowledgeable source. I'm always amazed at jurors, when you're allowed to talk to them, what they've glommed onto. Even though the lawyers have spent months and in some cases years preparing for trial, there's always some nuance that someone thinks about because of their own life experience. And I do believe that the juries, if the case is presented to them properly, almost always get to the right decision. And to the extent someone doesn't think that the evidence came in right that's what the appellate courts are for.

What does the College consider best practices when it comes to remote legal proceedings and the potential changes in technology in case management coming to the courts?

So shortly after the pandemic onset, we formed this task force which has now become a committee.

And they looked at many different items: What you can do effectively by Zoom, or one of the other applications remotely? I have a trial in November in South Carolina and the judge is going to have us pick that jury in-person. I have one in March in Utah, and that judge is going to have the jury chosen remotely and then do the trial in-person. So there's all sorts of different ways to do it.

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A lot depends on what part of the country you're in. I was supposed to start a trial in South Carolina about three weeks ago and the sheriff and bailiffs in the courthouse had all gotten COVID, so the courthouse was shut down and that's why the case was continued to November. So it's continued to be a real problem. Hopefully, it will diminish. But our work isn't just COVID-related. It's about providing access to all Americans and Canadians to the judicial system in as cost effective manner as is reasonably possible.

You're the first president of the College in its 70-plus year history from Colorado. I gather that's a point of pride in the local trial bar. What are you hearing from your colleagues on that front?

Well, it was announced pretty widely in Colorado on Monday amongst the bar. I've been fielding just lovely emails the last two days. I grew up in Chicago and I moved out to Colorado for law school 40 years ago and stayed. It was certainly not as sophisticated a city, or sophisticated a legal community. It's just completely changed at this point. One example would be our firm, Wheeler

Trigg O'Donnell. There would not have been 40 years ago 100 lawyers practicing only litigation. And most of that litigation is around the country, out of state. So, I hope I do my Colorado colleagues proud.

But I think my election is really reflective of the respect that the College has for Colorado. We have some just incredibly bright young people coming to our firms and other firms from around the country. Colorado is a great place to live. It's got cultural additions to the community. All those main sports teams, operas, theaters. So it's attracting some of the best and brightest lawyers in the country and we're very proud of that.

What would you want people to know about your local trial bar in the Centennial State?

I have never walked into a Colorado courtroom and felt the judge was going to do anything other than try to fairly apply the law to the best of his or her ability. Without naming states, I have particular cases I have in some places, clearly a minority of places, where that is not the case. You have lawyers making donations to judicial campaigns. I'm very proud that Colorado has this system where each county has a committee that consists of lawyers and non-lawyers. When a position opens up for a particular county makes three recommendations to the governor. The governor then interviews those three people and picks from that. So you take a lot of the politics out of it. You take 100% of the campaigning out of it. You take 100% of the money out of it. And so there's a purity to it that we're very proud of.

The other thing I'd say about my colleagues in Colorado is, with a very few exceptions, I take the word of every Colorado lawyer I deal with on a handshake basis. And finally, I'm proud that, win or lose, most Colorado lawyers will go have a beer or shake hands after the case.