

Oral Revocation of Consent Insufficient Where Contract Required Writing



A post on the website of [Manatt, Phelps & Phillips](#) discusses a case in which an Ohio federal court found that, where a contract required written revocation of consent to be contacted, a consumer's attempt to orally revoke consent failed.

As part of the cardholder agreement between Carlton Barton and Credit One Bank, Barton provided his explicit consent to be contacted on his cellphone number in any way (such as prerecorded message, autodialer or text message), explain [Diana L. Eisner](#) and [Christine M. Reilly](#). Barton later claimed that he revoked his consent by telling a representative of Credit One not to call him anymore.

Barton sued under the Telephone Consumer Protection Act, but the court found that the plaintiff provided his cellphone number to the defendant when he filled out his application form and “‘a party who gives an invitation or permission to be called at [a certain] number’ has given ‘prior express consent’ to be contacted.”

[Read the article.](#)

White House Withdraws Judicial Nominee; GOP Didn't Have Votes for Confirmation

The GOP's bid to transform the federal bench with conservative judges hit its first significant snag Thursday as the White House withdrew the nomination of Ryan Bounds to serve on the powerful and famously liberal 9th Circuit appeals court, reports [The Washington Post](#).

After an hour-long delay on the vote, Senate Majority Leader Mitch McConnell announced that the nomination had been withdrawn. Two Republican senators planned to vote against the confirmation.

"The nomination drew widespread criticism over articles Bounds wrote in the Stanford Review as an undergraduate that ridiculed multiculturalism and groups concerned with racial issues," writes [Karoun Demirjian](#). "Bounds attempted to apologize for those writings earlier this year, but his apology – which focused more on his rhetoric than his views – failed to convince Democrats or satisfy all Republicans."

[Read the Post article.](#)

Former Baylor Coach Rips Pepper Hamilton, Calls Out Ken Starr



Ken Starr

A former football coach who lost his job at Baylor University had some harsh words for former Baylor president Ken Starr, but his strongest words are for Pepper Hamilton, whose investigation led to Baylor's decision to part ways with almost anyone even tangentially involved in allegations of sexual misconduct by football players.

[Above the Law](#) details the saga, based in part on an interview with Baylor's former defensive coordinator and interim head coach Phil Bennett published by the [Fort Worth Star-Telegram](#).

"Bennett rips the firm as clueless about the basics of running a college football team – allegedly suggesting to him that the school's lawyers should have gotten involved as soon as a student showed up late for practice – and prone to inserting some disturbing racial observations," writes editor [Joe Patrice](#).

[Read the Above the Law article.](#)

Lawyer Suspended for False Advertising, 'Gross Incompetence'

Bloomberg Law is [reporting](#) that a lawyer who put the logo of a law school more prestigious than the one he actually attended on his website was indefinitely suspended July 11.

“Daren Allen Webber’s incompetent representation of bankruptcy clients and violations of the rules on attorney advertising merit indefinite suspension, the Supreme Court of New York, Appellate Division, Second Department found,” writes reporter [Mandy L. Rattan](#). “The suspension was based on an identical sanction by the U.S. District Court for the Southern District of New York.”

Weber, who attended New York Law School, displayed the seal of the more prestigious New York University on his website. The court also listed conduct including filing incorrect or incomplete documents, missing or being late to meetings with creditors, failing to communicate with his clients, and missing deadlines.

[Read the Bloomberg Law article.](#)

Netflix v. Winston & Strawn Spotlights Advance Conflict Waiver

An order resolving a bitter disqualification fight between Netflix Inc. and its lawyers at Winston & Strawn LLP is the latest example of the acrimony that “advance conflict waivers” can engender between corporations and the law firms they hire, reports [Bloomberg Law](#).

Reporter [Samson Habte](#) explains: “The order disqualifying Winston—issued by a federal bankruptcy judge presiding over a high-stakes licensing dispute between Netflix and a financially troubled film studio—could emerge as a blueprint for a particularly contentious category of disqualification motions: those alleging law firms betrayed existing clients by bringing cases against them on behalf of newer clients.”

Because ethics rules prohibit law firms from taking a case against a current client unless both clients waive the conflicts created by the law firm’s concurrent representation.

The waivers—often broadly worded and vague—have become a regular feature of retainer agreements that large law firms execute with corporate clients.

[Read the Bloomberg Law article.](#)

Jury Needed Only 45 Minutes to Agree on Punitives in Johnson & Johnson Talc Case



Image by [Open Grid Scheduler / Grid Engine](#)

A lawyer for plaintiffs in the case against talcum-powder maker Johnson & Johnson said the company had spent 40 years covering up evidence of asbestos in some of its talcum-based products and should mark those products with warning labels or focus on powders made with cornstarch.

[The New York Times](#) quoted Mark Lanier of The Lanier Law Firm as saying the jury's award of \$4.14 billion in punitive damages is among the largest ever awarded in a product liability case. He added that the jury deliberated over compensatory damages for eight hours but decided on the punitive damages in roughly 45 minutes.

Times reporter [Tiffany Hsu](#) writes: "Johnson & Johnson was ordered Thursday to pay \$4.69 billion to 22 women and their families who had claimed that asbestos in the company's talcum powder products caused them to develop ovarian cancer."

The jury's award included \$550 million in compensatory damages for the women, who had accused the company of failing to warn them about cancer risks associated with its baby and body powders.

[Read the NY Times article.](#)

Democrats' Long-Shot Plan to Stop Trump's Supreme Court Pick

The Los Angeles Times [reports](#) that Democrats, though narrowly outnumbered in the Senate, are embarking on a Hail Mary campaign to block President Trump's pick for the U.S. Supreme Court.

Reporter [Sarah D. Wire](#) explains: "Flipping a moderate Republican is probably their only hope. And that only works if they can keep Democrats who represent red states that Trump won from breaking ranks."

Democrats are planning to stress Trump's repeated promises to only appoint justices who would overturn *Roe v. Wade*.

Wire quotes Brian Fallon, Hillary Clinton's former press secretary, who now runs the liberal advocacy group Demand Justice: "While these litmus-test-style commitments may have

been politically sensible for Donald Trump at the time when he was running in the campaign in 2016, we believe they will come back to haunt his nominee in this summer's confirmation battle."

[Read the *LA Times* article.](#)

IADC Calls for Class Action Reforms in Ontario, Canada

The [International Association of Defense Counsel](#) (IADC) recently submitted to the Law Commission of Ontario (LCO) recommendations for reform to the Ontario Class Proceedings Act (CPA) that could eventually affect class action legislation in Ontario and other Canadian provinces.

The IADC began the initiative in 2014 by forming its Canadian Class Actions Task Force to study and develop positions on key issues that the Ontario government asked the LCO to consider. The LCO has described the project as the most comprehensive assessment of the CPA in more than 25 years.

In a release, the organization said the Task Force is made up of IADC members who are lawyers with class action experience in Canada, the United States and Australia. The Task Force also includes representation from Lawyers for Civil Justice, DRI – The Voice of the Defense Bar and the Federation of Defense and Corporate Counsel, all of which have members who represent and serve as in-house attorneys with companies

exposed to class actions in Ontario. All of these organizations, along with the Canadian Defence Lawyers and the Product Liability Advisory Council, supported the Task Force's submission to the LCO.

The release continues:

"The IADC is committed to improving civil justice, and to positive reform of the civil justice system. This includes ensuring fairness in the judicial process and a proper balance between plaintiffs and defendants in litigation procedures in the United States, Canada and other countries as well," said Gordon McKee, an IADC board member, chair of the Canadian Class Actions Task Force, and a partner at Blake, Cassels & Graydon LLP in Toronto. "When the Law Commission of Ontario requested stakeholder input as part of its review of class action procedures, the IADC committed to responding on behalf of its members who represent corporate defense interests."

IADC members include lawyers with large and small law firms, senior counsel in corporate law departments, and corporate and insurance executives. A significant number of IADC members are Canadian, and many other IADC members represent multinational companies with subsidiaries that do business in Canada and/or that have been defendants in class actions in Ontario and other parts of Canada.

"Our corporate defense perception is that class action procedures in Ontario currently are unbalanced and unduly tilted in favor of plaintiffs, and a more level procedural playing field between plaintiffs and defendants is required to achieve fairness and judicial economy," said Peter J. Pliszka, also a member of the IADC and its Canadian Class Actions Task Force, as well as a partner with Fasken Martineau DuMoulin LLP in Toronto. "We want to help ensure access to just outcomes that are not driven by matters extraneous to the merits of a case."

McKee added that, for example, the current regime in Ontario can create undue pressure on companies to settle class actions for extraneous reasons such as the high cost of defense, potential impact on shareholder value or business transactions, and negative publicity surrounding a claim regardless of its lack of merit.

The IADC's Canadian Class Actions Task Force recommendations for more fair and efficient class proceedings in Ontario include:

- Adding a merits analysis prior to or at certification, and giving the court more ability to critically review evidence, to weed out class actions with little or no merit, and to narrow overly broad class actions at an early stage;
- Requiring the court to consider coordinated case management and discovery as an alternative to a class action where there are a small number of cases, to allow more timely and proportionate resolution of the claims of the putative class members;
- Allowing plaintiffs and defendants equal opportunities to appeal certification decisions, and discouraging wasted resources and costs caused by material changes to the class claims/issues/definition on appeal;
- Codifying transparency and other requirements for third-party litigation funding to prevent unfairness to the parties or the class members and to remove incentives to fund claims with little or no merit; and
- Adopting provisions to address overlapping class proceedings in multiple provinces, including requiring a certification judge to consider whether he or she should defer to an overlapping class action in another jurisdiction.

After considering input from the IADC and other submissions,

the LCO says it plans to issue a final report to the Ontario government at the end of this year or in early 2019. It is expected that the LCO's report will also be carefully considered by governments in other Canadian provinces.

Texas Lawyers React to Justice Anthony Kennedy's Retirement

U.S. Supreme Court Justice Anthony M. Kennedy announced his plans to retire this summer after serving 30 years on the nation's highest court. Widely known for his swing vote on a range of issues, Justice Kennedy will leave at the end of July.

Attorneys like [Larry Vincent](#) of Dallas-based Burns Charest, who once clerked for Justice Kennedy, provide their reactions in a post on the website of [Androvett Legal Media & Marketing](#).

"It's disappointing that he chose to retire at this time. I've always been proud of his opinions regarding individual liberty grounded in the Fifth and 14th amendments. Given what we know about the list of potential replacements already circulated by this administration, I think his legacy in those areas will be eradicated. I hope he doesn't look back in a few years and regret his decision to leave the court at this juncture.

"I've spent much of my legal career, including my time here at Burns Charest, working to help people and companies recover

for losses caused by negligence or the breach of a legal duty. Given the ideological shift at the court to restrict the ability of parties to use the courts to recover the amount they are due for the harm done to them, the loss of a compassionate conservative like Justice Kennedy is particularly frustrating.”

[Philip Hilder](#), founder of Houston’s Hilder & Associates, P.C.: “Retirement of the swing justice will energize voters from all political stripes to come out this mid-term. Voters now realize the significance that a Supreme Court Justice has over their daily lives. Any nominee will need Senate confirmation and those elections this fall will be red hot battlegrounds unlike any in recent memory.”

[Lara Hollingsworth](#), appellate lawyer and Of Counsel at Houston’s Rusty Hardin & Associates, LLP: “The court will never be the same. The era of moderate appointments has passed never to be seen again. The Merrick Garlands of the world don’t stand a chance. It’s a sad day for justice and our country.”

[Chip Babcock](#) of Jackson Walker: “Justice Kennedy will be recorded by history as one of the great justices of the United States Supreme Court. It was regular practice in close cases for entire briefs and oral arguments to be tailored just for him. He was that important. That cannot be said of many, if any, other members of the court in its history.”

An Arbitrator's Power May Be Greater Than That of a Judge

Arbitration is a creature of contract, and an arbitrator's powers are in effect defined by the parties' arbitration agreement, points out a post on the Mintz, Levin, Cohn, Ferris, Glovsky and Popeo blog [ADR: Advice From the Trenches](#).

"Paradoxically, although an arbitration agreement can be written (double-spaced) on one side of a cocktail napkin, in some cases it may grant greater authority to an arbitrator than a judge has," writes [Narges Kakalia](#).

In the post, she discusses *Timegate Studios, Inc. v. Southpeak Interactive, LLC*, in which the Fifth Circuit confirmed an arbitration award in which the arbitrator substantially reformed the parties' commercial agreement by, among other things, awarding one a broad perpetual license to certain of the other's intellectual property, despite the fact that the original agreement had granted only a more narrowly drawn ten-year license.

[Read the article.](#)

Dallas Firm Secures \$166M

Verdict in Fort Worth Murder-for-Hire Case

Attorneys for Dallas-based Fears Nachawati Law Firm have secured a [\\$166 million verdict](#) against the daughter and son-in-law of a North Texas woman who was killed in 2014 for the proceeds of life insurance policies totaling \$5 million.

Jurors in Tarrant County's 141st Judicial District Court determined Mark and Virginia Buckland were central figures in the conspiracy that led to the stabbing death of Anita Fox that was carried out by two members of a nomadic ethnic clan known as Irish Travellers. The multimillion-dollar verdict is believed to be among the largest in Tarrant County this year, according to the firm.

Though the couple has never been charged criminally in the murder, the jury found that they had crafted an insurance scheme in which they would be the sole beneficiaries of a series of policies, in part without the knowledge of the 69-year-old Ms. Fox.

[Read details of the case.](#)

Federal Suit Claims Systemic

Failures to Pursue Rape Cases by Travis County DA, Austin Police

Three women have filed a federal class action lawsuit claiming that the Travis County District Attorney's office and the Austin Police Department have violated the constitutional rights of women and discriminated based on gender in the manner in which they handle sexual assault cases.

The lawsuit notes that while more than 1,000 women report a sexual assault to Austin police each year, the number of cases actually taken to trial annually are in the single digits, according to a post on the website of [Androvett Legal Media & Marketing](#).

The lawsuit alleges that Travis County DA Margaret Moore has ratified the discriminatory policies publicly, making statements that acquaintance rapes are really more "traumatic occurrences" than criminal acts. Moore has also indicated that the testing of the backlog of thousands of rape kits in Austin is for "informational purposes" and not for prosecution, confirming her office's intent not to seek justice for those victims.

The lawsuit also notes that the Austin Police Department's sexual assault unit at one time had a wall with photos of victims whose claims had been "debunked" by officers as "trophies of their investigations which determined allegations by purported victims were unsubstantiated."

Finally, the lawsuit notes that while women make up 91 percent of sexual assault victims, the only case taken to trial in 2017 involved a male victim. In that instance, the Travis County Sheriff's Office and the DA were aware of allegations by multiple women in previous years against the same

perpetrator, but those cases were never prosecuted.

“[The] unconstitutional conduct by Defendants subjects both victims and all the women of Austin to continued risk at the hands of perpetrators who are never held accountable,” according to the complaint, filed in the U.S. District Court for the Western District of Texas. The lawsuit, which seeks class-action status, claims that the dominant culture and ongoing and historical failures by local law enforcement to pursue sexual assault cases establishes a conspiracy to violate the civil rights of an estimated 6,000 sexual assault victims, while also violating their constitutional rights for equal protection.

“It is shocking that the vast majority of women who survive sexual assault are provided so little protection or recourse, and are essentially blamed for the refusal of law enforcement to seek justice in their cases,” says Jennifer Ecklund of [Thompson & Knight](#) and lead counsel for the plaintiffs. “Women go to authorities in order to seek justice and to protect other women, but the policies and practices of law enforcement instead re-traumatize survivors while allowing their attackers to walk free.”

The case is *Amy Smith, Julie Ann Nitsch and Marina Conner v. City of Austin, Travis County District Attorney Margaret Moore, Rosemary Lehmborg and Travis County, Texas.*

Oil Firm, Once Called 'Wolf of Wall Street Type' Company, Sued By SEC for Fraud

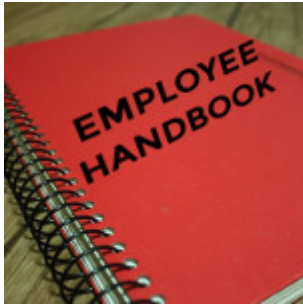
The Dallas Morning News is [reporting](#) that Dallas-based Texas Coastal Energy Company defrauded 80 oil and gas investors out of more than \$8 million, according to a lawsuit filed Tuesday by the Securities and Exchange Commission, the stock market regulator.

The SEC alleges the company, its co-founder, Jefferey Gordon, and his sales representatives misrepresented the company's finances, exaggerated a geologist's background and inflated the reserves and expected production of its wells in Texas and Kansas, according to reporter [Jeff Mosier](#).

"In an offering fraud, people who seek to steal investors' hard-earned money will often use cold calls and inflated promises to carry out their schemes," said Shamoil T. Shipchandler, director of the SEC's Fort Worth regional office. "Their self-serving statements are no substitute for an investor's due diligence."

[Read the Dallas News article.](#)

Are Your Employees' Electronically-Signed Agreements Enforceable?



[Drew York](#), writing in Gray Reed & McGraw's [Tilting the Scales](#) blog, offers some advice on how to “failsafe” electronic agreements with employees.

He describes a scenario in which a company requires its employees to electronically acknowledge receiving, reviewing and agreeing to abide by the company's employee handbook. One of the workers later is injured on the job, and the company wants to invoke the handbook 's arbitration agreement.

“In several recent cases, employees have disputed that they electronically acknowledged an agreement with their employer,” writes York. “This raises an intriguing question: how do employers prove that an employee ‘signed’ an agreement when there is no written signature?”

[Read the article.](#)

\$17M Target Data Breach Settlement Affirmed on Second Try



Image by [Mike Mozart](#)

Target Corp.'s \$17 million class settlement to resolve consumer claims over a 2013 data breach passed Eighth Circuit scrutiny on its second trip to the appeals court, reports [Bloomberg Law](#).

The court rejected an objector's challenge that the named plaintiffs weren't adequate representatives for the whole class because they received compensation while others didn't, according to reporter [Perry Cooper](#).

He explained:

"All class members had the ability to register for credit monitoring, and all of the compromised payment cards undoubtedly were canceled and replaced by the issuing banks," Judge Bobby E. Shepherd wrote for the U.S. Court of Appeals for the Eighth Circuit.

"Any risk of future harm is therefore entirely speculative," the court said.

[Read the Bloomberg Law article.](#)

Dallas Attorney Indicted for Allegedly Stealing From Client

Dallas attorney Walter Thomas Finley was indicted after police said he stole \$365,000 from a client, according to Dallas-Fort Worth NBC affiliate [KXAS](#).

“The indictment came weeks after the FBI seized money from the lawyer in a separate case, according to forfeiture.gov, a government website that posts seizure notices,” writes reporter [Scott Gordon](#).

Finley, 70, is charged with felony theft in a case involving the trust fund of an East Texas woman. The woman’s family gave Finley \$416,000 in late 2012 to set up the fund and make quarterly payments to her, but he stopped after a year, according to a Highland Park police report and court records.

[Read the KXAS article.](#)

VA Nurses' Class-Action Overtime Lawsuit Could Open Door to More Plaintiffs

A lawsuit accusing the U.S. Department of Veterans Affairs of failing to pay overtime to nurse practitioners and physician assistants since December of 2006 has been certified as a class action, according to a web post by [Androvett Legal Media & Marketing](#). The certification is listed as an opt-in class, opening the door for more plaintiffs.

Class representatives Stephanie Mercier, Audricia Brooks, Deborah Plageman, Jennifer Allred and Michele Gavin brought the lawsuit on behalf of nurse practitioners and physician assistants from VA facilities across the country. Attorneys estimate as many as 10,000 VA employees nationwide ultimately could be represented in the class action.

According to the lawsuit, nurse practitioners and physician assistants were required to process electronic and computer patient records after work hours using VA facility computers, laptops and sometimes their own personal home computers without compensation. The work is vital to the treatment of patients and is considered mandatory by VA supervisors.

[Provost Umphrey](#) attorneys [Michael Hamilton](#) of the firm's Nashville office and [Guy Fisher](#) in the Beaumont, Texas, office are among the attorneys working on the lawsuit along with counsel David Cook and Clement Tsao of Cincinnati's Cook & Logothetis, LLC, Douglas Richards of Lexington, Kentucky and Robert Stropp of Mooney Green, P.C. in Washington, D.C.

"These are medical professionals who are taking care of our veterans," said Hamilton. "If we aren't paying them properly, what sort of statement does that make about the importance of caring for those who watched over us and our rights?"

“Ultimately, it’s about patient care,” said Cook. “We need to do our utmost for those who have put on the uniform and defended our rights. And, we can start by properly paying the medical professionals who care for them when they need it.”

Trump’s Lawyer Michael Cohen Expects to Be Arrested Any Day Now: Reports

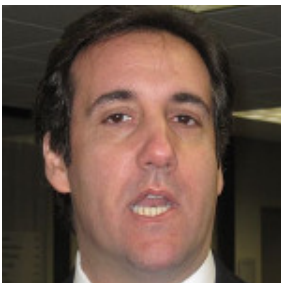


Image by IowaPolitics.com

President Donald Trump’s long-time lawyer Michael Cohen has been telling pals he expects to be arrested soon, according to new reports Tuesday.

CNBC [reports](#) that a Vanity Fair article also quoted an ex-White House official saying that “Trump should be super worried about Michael Cohen” deciding to cooperate with federal prosecutors against the president.

“If anyone can blow up Trump, it’s him,” the source told Vanity Fair about Cohen, who is under criminal investigation by federal prosecutors in New York City.

Federal Judge Kimba Wood had given attorneys for Cohen and Trump until Monday to raise any objections they had to a special master’s findings on whether seized documents were privileged. She later rejected their request to be allowed to file their objections under seal.

[Read the CNBC article.](#)

Defrauded Students of For-Profit Schools Will Stay Indebted, Judge Rules

Courthouse News Service [reports](#) that Education Secretary Betsy DeVos need not provide full debt relief to more than 60,000 defrauded students, but she must stop collecting on their loans, a federal judge said in court Monday.

A proposed class of borrowers had asked U.S. Magistrate Judge Sallie Kim to revive an Obama-era policy that promised full debt forgiveness to students defrauded by the now-defunct, for profit Corinthian Colleges, according to reporter [Nicholas Iovino](#).

Kim sided with the federal government’s position that returning to the “status quo” means delaying processing claims

for debt relief, not going back to the Obama-era policy of forgiving all loan debt. She acknowledged that borrowers will still suffer harm to their credit and interest growing on their loans, even though she has ordered the government to stop collecting.

[Read the CNS article.](#)

Texas Family Sues U.S. Over Church Massacre

Reuters [is reporting](#) that a couple whose nine relatives were among the 26 people fatally shot in a Texas church massacre in November has sued the U.S. government for \$50 million, saying its “institutional failures” played a part in the murders.

The lawsuit in federal court claims the U.S. Air Force acted negligently when it failed to report the criminal record of gunman Devin Kelley to a U.S. database, which could have prevented him from legally purchasing an assault rifle used in the killings, reports [Jim Forsyth](#).

He writes that legal experts have said the Air Force would not be able to claim federal immunity in the case, but cautioned any lawsuits faced a prolonged battle.

[Read the Reuters article.](#)

