

1-1-2012

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Recommended Citation

Peters, Andy (2012) "Walking the line: O'Day finds the right eco-balance," *Furman Magazine*: Vol. 54 : Iss. 4 , Article 28.
Available at: <https://scholarexchange.furman.edu/furman-magazine/vol54/iss4/28>

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WALKING THE LINE: O'DAY FINDS RIGHT ECO-BALANCE

IN THE WORLD OF ENVIRONMENTAL LAW, there are two types of attorneys — those who sue the polluters, and those who defend them.

Then there's Steve O'Day.

The 1976 Furman graduate has managed to build a career in which he does both. One day, he might represent a company that operates oil pipelines. The next, his client could be a nonprofit group that advocates for tougher laws to protect streams and rivers.

"I don't know any other environmental lawyer who's been able to walk that fine line between defense work representing corporations and also representing aggressive environmental organizations," says Sally Bethea, an Atlanta environmental activist who attended Furman from 1969 to 1971.

O'Day was a political science major at Furman and wrote his senior thesis on an environmental controversy related to the trans-Alaska pipeline. He went on to Harvard Law School, where he became a member of the environmental law society.

Afterward he joined the firm of Smith, Gambrell & Russell, an association he maintains to this day. In 1991 he established the Atlanta firm's environmental practice. Now, O'Day chairs the firm's environmental law and sustainability practice groups, as well as its real estate and construction services group.

To illustrate the dichotomy of his practice: In 2002 he successfully defended Hickson Corp. in a lawsuit that said the chemical-trucking company was liable for the majority of cleanup costs for an arsenic acid spill in a Chattanooga, Tenn., railyard. For the Southern Environmental Law Center, he challenged the construction of a bridge across sensitive marshlands near Savannah, Ga.

O'Day probably couldn't maintain this incongruous balance if he were affiliated with a different firm, Bethea says. He and his group have represented her organization, the Upper Chattahoochee Riverkeeper, in several lawsuits filed against city and county governments to block permits for things like waste-water discharge.

"These permit appeals are the heart of the problem in Georgia," she says.

Smith Gambrell openly supports the work that O'Day and his team conduct. "We are one of the few large law firms willing to work with public interest



Steve O'Day received the Ogden Doremus Award for Excellence in Environmental Law at the GreenLaw Environmental Heroes Celebration in October. GreenLaw supports environmental causes in Georgia. Photo by Kay Hinton.

clients, as well as private clients," says managing partner Steve Forte. "This rare combination illustrates our belief in the importance of improving the environment."

For large firms, the client base typically consists of big companies and their executives. The filing of environmental lawsuits on behalf of plaintiffs is usually handled by small firms or nonprofit legal clinics.

"If you look at large law firms in Atlanta, we're the only one that does *pro bono* work for environmental advocacy groups," O'Day says. "Some firms feel if they represent environmental advocacy groups, their paying clients might not like that too much because it might be adverse to their business interests."

If the economy recovers and metro Atlanta returns to the turbo-charged growth of the 1990s and 2000s, the Upper Chattahoochee Riverkeeper should be able to keep O'Day busy. UCR is especially vigilant about monitoring real estate development and the local governments that issue permits for new projects. Often, with O'Day's legal advice, UCR challenges development permits on the grounds that they favor developers at the expense of clean water.

Together O'Day and UCR won just such a battle last June, when they challenged a permit issued to Forsyth County to discharge sewage into the Chattahoochee River. O'Day successfully argued that the state did not consider the high levels of phosphorus and bacteria present in the sewage, and therefore should not have issued the permit.

Smith Gambrell represented UCR in the case for free, and there is no possibility for the firm to be awarded attorney fees at the end of the case. Says

Bethea, "We've funded all the out-of-pocket costs and we've probably spent \$40,000 on this case, but Smith Gambrell has probably spent four times that amount."

In the unlikely event that the litigation faucet dries up, O'Day also oversees an entirely different type of environmental practice at Smith Gambrell. He and his team advise schools and companies on how to collect rainwater and on sustainability initiatives such as writing requirements for green construction. The sustainability practice group is also involved in projects to develop alternative energy sources.

Protecting the environment is not the most popular pastime in some quarters. Presidential candidates have even taken dead aim at environmental causes, proposing to temporarily moth-ball various regulations or to shut down the Environmental Protection Agency because of what they see as its job-killing regulations.

O'Day, who was recently named chair of the board of the Southern Environmental Law Center, describes these proposals as "penny-wise and pound-foolish. When you truly look at the economics of environmental regulations, they save a lot more money than they cost. If you're not just focused on one company or one industry's out-of-pocket costs, and you look at society as a whole, environmental regulations are always beneficial."

— ANDY PETERS

The author, a 1992 graduate, lives in Decatur, Ga., and writes for American Banker, a financial services industry publication.