

## ROBB S. HARVEY

Partner



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Robb Harvey has more than 30 years of trial experience, appearing in lawsuits in dozens of federal and state courts across the country. His practice focuses on complex intellectual property, entertainment, media, commercial and franchise litigation involving substantial damages claims. A strategist and problem-solver, he has established a reputation among clients and peers as the professional to turn to for expedited results, especially when the stakes are high and involve pressing issues such as prior restraints, trade secret allegations, or other immediate threats.

A seasoned litigator, Robb has cultivated a depth of experience in intellectual property, entertainment and media disputes involving:

- Publication torts, including defamation, privacy and right of publicity
- Trademarks, including TTAB proceedings
- Computer fraud and abuse
- Copyrights involving music, movies, broadcasts and software
- Trade secrets
- First Amendment and public records disputes and reporter's shield laws
- Counterfeiting
- Internet disputes
- Patents
- Data breaches and ransomware
- Software disputes and technology licensing

Robb's experience also covers a variety of commercial disputes including:

- Contract disputes
- Unfair trade practices and product disparagement/advertising
- Fraud and other commercial torts
- Franchise rights
- Civil RICO
- Non-competition/solicitation provisions
- Class action disputes including multi-district litigation proceedings

Many of his engagements have resulted in ongoing, long-term relationships, in some cases for nearly three decades. He thrives on helping companies address the daily challenges their businesses encounter. As a result of his tenacious representation, Robb has been responsible for a number of

precedent-setting cases, including disputes leading to the identification of persons posting false information concerning public companies, applying the Tennessee Supreme Court's Rule 30 concerning cameras in courtrooms, applying the fair use doctrine, recognizing that Tennessee Newspersons' Shield Law extends to non-confidential materials, and opening access to records for state-wide media coalitions.

In 2016, Robb was part of litigation teams that achieved victories in three (3) separate cases in the U.S. Court of Appeals for the Sixth Circuit, covering right of publicity, antitrust, libel, and Section 230 immunity issues. In addition, he was lead counsel in a major music copyright case which was dismissed on summary judgment, and received national press. To read the court's ruling, click [here](#).

In 2016, Robb was elected as one of three lawyers in the country to serve a three-year term on the Governing Board of the American Bar Association's Forum on Communications Law. The Forum includes more than 2,200 attorneys from throughout the United States who focus on the representation of the print media, the telecommunications industry and the electronic media. He has served as Chair of the Trial Committee and as a faculty leader for the Media Law Resource Center, and is the incoming Chair of the Tennessee Bar Association's Communications Law Section.

*Chambers USA* recognizes Robb as a leading attorney in Media and Entertainment (Tennessee-Band One). *Best Lawyers* named Robb Nashville's 2016 Lawyer of the Year in Intellectual Property Litigation. Previously, he was named 2012 Lawyer of the Year in Franchise law. He is also listed in *Best Lawyers* in twelve categories:

- Commercial Litigation
- Litigation - Intellectual Property
- Litigation - First Amendment
- Franchise Law
- Advertising Law
- Copyright Law
- Media Law
- Entertainment Law-Theatre
- Trademark Law
- Litigation-Patent
- Trade Secrets Law
- First Amendment Law

Additionally, Robb was named to the "Best of the Bar" by the *Nashville Business Journal* in the inaugural year 2006 and each year through 2016, which is based on surveys and interviews with peers and inside counsel. And has recently been listed as as "2017 Mid-South Super Lawyer."

## Education

- J.D., Vanderbilt University Law School, 1985
  - Associate Editor - Vanderbilt Law Review
- B.S., *magna cum laude*, Vanderbilt University, Engineering Science, 1982
  - James Stewart Honor Scholar
  - President - Student Government Association
  - Tau Beta Pi engineering honor society

## Bar Admissions

- Tennessee

## Court Admissions

- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court, Florida
- U.S. District Court, Eastern District of Michigan
- U.S. District Court, Western District of Pennsylvania
- U.S. District Court, All Districts of Tennessee

## Experience

### Entertainment and Media – Representative Experience

- Defends publishers, broadcasters, authors, artists, songwriters, entertainers, labels, publishers, content creators, websites, advertising agencies and others as lead counsel in trademark, right of publicity, copyright, idea submission, and defamation/privacy matters
- Represents television networks and affiliates and newspapers as well as non-media clients in a broad range of issues such as defamation, privacy, newsgathering, access, prior restraint, reporter's shield laws, Freedom of Information Act/Public Records/Open Meetings, copyrights, promotion, access, and related business and legal issues
- Counsels a regional daily newspaper and a network television affiliate on a daily basis, including prepublication review
- Counsels in the creation and defense of reality and other programs
- Obtained summary judgment in a precedential case involving publicity, trademark and privacy issues regarding a movie and soundtrack, which was affirmed on appeal by the Court of Appeals for the Sixth Circuit
- Represented a statewide media coalition in obtaining records involving child fatalities under the Public Records Act

### Intellectual Property – Representative Experience

- Served as counsel in a number of precedent-setting cases, including identifying persons posting false information about a public company, applying the Tennessee Supreme Court's Rule 30 concerning cameras in courtrooms, recognizing that Tennessee Newspersons' Shield Law extends to non-confidential materials, and applying the fair use doctrine.
- Successfully defended a manufacturer against a trademark "bully," defeating a motion to dismiss a declaratory action
- Successfully resolved a copyright/contract case in New York against a healthcare patient payment processing company over computer software
- Obtained the dismissal of trademark case against an entertainment company from a California federal court, affirmed by the Court of Appeals for the Ninth Circuit
- Defended a gaming licensor in a Texas suit in which a competitor was required to abandon its trademark

- Served as local counsel for software manufacturer in trademark dispute successfully resolved in client's favor
- Regularly consult and present on data intrusion issues

## Franchise/Distribution – Representative Experience

- Represents national franchisors, manufacturers and distributors in suits to enjoin trademark infringement and enforce termination of franchise
- Serves as defense counsel against claims of franchise disclosure violations and a variety of tort and statutory claims
- Successfully defended a distributor in bet-the-company litigation involving the attempted termination of an agreement by an importer-manufacturer; resulted in an expanded distribution arrangement and significant payment to the distributor
- Defended a national franchisor when another company refused to complete its acquisition

## Other Representative Experience

- Represented the nonprofit entity which operates the home of President Andrew Jackson and surrounding properties in a real estate/contract dispute involving reverter issues; obtained two summary judgment decisions, both affirmed on appeal
- Part of a trial team in federal jury case involving competitors that resulted in a sizeable compensatory and punitives verdict
- Successfully defended several shareholder derivative suits, including serving as lead counsel in a New York suit against a healthcare company to prevent the sale of the company
- Part of team in multi-million dollar consumer protection and contract case against Internet reseller, resulting in substantial settlement
- Obtained substantial judgments against foreign makers and guarantors for a finance corporation for marine and agricultural equipment, and successfully collected judgments in multiple foreign countries
- Served as court-appointed Special Master to address computer issues regarding the Stored Communications Act

## Professional

- Member, Governing Board, American Bar Association Forum on Communications Law (one of three members elected in 2016).
- Vice-Chair, Tennessee Bar Association Forum on Communications Law (Chair in 2017)
- Media Law Resource Center (Facilitator/ Intellectual Property 2016 bi-annual conference; Facilitator/Publication Torts session for 2014 bi-annual conference; Presenter/Newsgathering/2012; Past Chair, Trial Committee)
- Served on ABA Litigation Section Subcommittee that drafted Model Trademark Jury Instructions published by ABA (2008)
- Member, Defense Research Institute (Commercial Litigation, IP, Electronic Discovery committees)
- Past Chair, Media Law Committee and Member of the Federal Courts and Intellectual Property Committees of the Nashville Bar Association

- Member, American Bar Association (Forum on Franchising; Forum on Communications Law; Litigation and IP Sections)
- Member, ABA First Amendment and Media Litigation Committee of the Section of Litigation
- Master Benchler, Belmont University American Inn of Court (current)
- Member, Tennessee Bar Association (Intellectual Property and Litigation Sections)
- Fellow, Nashville Bar Foundation
- Past Member, Harry Phillips American Inn of Court
- Contributor to *The Encyclopedia of the First Amendment* and *The Encyclopedia of the Fourth Amendment*, CQ Press
- Contributor to Media Guide to Tennessee's Legal System, Tennessee Supreme Court and First Amendment Center
- Voting Member, Country Music Association
- Member, National Academy of Recording Arts & Sciences
- Member, American Health Lawyers Association
- Member, International Association of Defense Counsel

### Prior Affiliations

- Law clerk to the Honorable Thomas A. Wiseman, Jr., then Chief Judge of the United States District Court for the Middle District of Tennessee, 1985-1986
- Associate and partner, Farris Warfield & Kanaday, Nashville Tennessee, 1986-1994
- Founding member, Yopp & Sweeney, PLC, Nashville, Tennessee, 1994-2000

### Community

- Tennessee Advisory Committee on Open Government, appointed by the State's Comptroller
- Vanderbilt University Bill Wilkerson Hearing and Speech Center, Advisory Board Member
- Boy Scouts of America, Middle Tennessee Council Executive Committee and Chair of the Membership Standards Committee
- Tennessee Coalition for Open Government, Inc., Organizing Member and Board Member
- The Contributor, Inc., Board Member
- Center for Youth Ministry Training, Inc. (nonprofit in partnership with Princeton Theological Seminary, Duke Divinity School, Martin Methodist College and Vanderbilt Divinity School), organizer and former board member
- Former Elder and Deacon, Chair of Personnel Committee and Child Protection Task Force, First Presbyterian Church
- Downtown Rotary Club, Member
- Recipient of the Paragon Award for Community Service, 2008, presented by the Junior League of Nashville

### Up Close

In Robb's free time, he enjoys outdoor sports and spending time with his family. Robb also spends time working with several non-profit organizations.

## Articles

- "10 ways you can protect your company from a cyberattack," co-authored by Robb Harvey and Elizabeth Pitman, Waller Healthcare Blog
- "Economic and Insurance Risk Considerations for Hospitals and Healthcare Providers in Dealing with Ebola," by Robb Harvey, Neil Krugman, Mark Bell and Mike Fant, ABA Health Law Section eSource, Vol. 10, No. 3
- Economic and Insurance Risk Considerations for Hospitals and Healthcare Providers in Dealing with Ebola - Part One
- "Sixth Circuit Upholds Dismissal of All Claims Related to "Soul Men" Film and Soundtrack," by William F. Wilson and Laura P. Merritt, MLRC MediaLawLetter
- "Medical Devices and Malware: The Latest Hospital-Acquired 'Infection'," by Robb S. Harvey, Kim Harvey Looney and E. Andrew Norwood, Healthcare Informatics
- "Avoiding a Health Care Data Breach," By Colbey B. Reagan and Robb S. Harvey, Health Care Law Roundtable
- LEXIS NEXIS, "Electronic Discovery and Inevitable Litigation"

## Bulletins

- To Qualify for Liability Safe Harbor, Internet Service Providers Must Now Register Designated Agents Online
- Waller Updates Ebola Legal Resource Website

## Media Mentions

- "In Vanderbilt rape records case, sides appeal to law, emotions," Robb Harvey quoted in The Tennessean
- "Tennessee to provide lawmaker health cost records," Robb Harvey quoted in The Tennessean
- "Media orgs: Blanket seal 'too broad'," Robb Harvey quoted by ESPN
- "Vanderbilt rape case dispute in appeals court," Robb S. Harvey quoted in The Tennessean
- "The Tennessean Sues Metro Over Vanderbilt Rape Case," Robb Harvey quoted in the Nashville Post
- "Healthcare IT Security Is Difficult, But Not Impossible," Robb S. Harvey quoted in CIO magazine
- "Pricey Record Production Alarms Media Group," Robb Harvey quoted in Courthouse News Reports
- "Agency asks Tennessee newspaper to pay \$35,000 for records on deaths and near deaths," Robb Harvey quoted by Reporters Committee for the Freedom of the Press (RCFP)
- Bob Boston, Robb Harvey, Chase Cole and George Bishop Named to NBJ's "Best of the Bar"
- "State Ordered to Release Information on 50 Child Deaths," Robb Harvey pictured and quoted in The Tennessean
- "TN Reduces Fee for Providing DCS Files to Media to \$34,225," Robb Harvey quoted in Tennessean
- "Judge Orders DCS to Provide Child Death Records," Robb Harvey quoted in The Tennessean
- "Suit Demands DCS Records on Children Who Died," Robb Harvey quoted in The Tennessean

- "DCS Withholds Files on Child Deaths," Robb Harvey quoted in The Tennessean
- "Cigar Start-Up Fights Back Against National Group In Trademark Case," Robb Harvey and Todd Hambidge mentioned in The Nashville Post
- Robb Harvey mentioned in THE NATIONAL LAW JOURNAL, "Soul Survivor"
- Robb Harvey in THE HOLLYWOOD REPORTER, "How the Weinsteins Beat 'Soul Man' Singer Sam Moore in an Important Lawsuit"
- Robb Harvey quoted in TIMES FREE PRESS, "Judge rules Russian adoption case will be open to the public"
- Robb Harvey quoted in CHICAGO TRIBUNE, "ACLU Challenges Illinois Eavesdropping Act"
- Robb Harvey quoted in NASHVILLE BIZ JOURNAL, "Mouthing Off Online Can Bring Lawsuits"
- Robb Harvey quoted in REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, "States Applying Wiretap Statutes to Personal Videos"

## Events

- "Franchise Litigation," Presented by Robb S. Harvey and Jeremy A. Oliver, Tennessee Bar Association
- Healthcare Briefing Series
- "Mitigating the Risk of Health Care Data Breaches: A Practical Guide for the Industry," Robb Harvey, Panelist for Live Webcast for The Knowledge Group

