

## James A. McKee

### Partner

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James McKee is a partner and litigation lawyer with Foley & Lardner LLP. James's practice is concentrated primarily in the areas of complex commercial litigation, constitutional law, appellate law, regulatory matters, marijuana/cannabis law and litigation, governmental procurement, administrative rule challenges, and Sunshine Law and public records disputes. He is a member of the firm's Commercial Litigation and Appellate Practices.

### **Commercial and Administrative Litigation**

James represents clients in a variety of matters before state and federal trial and appellate courts, as well as administrative tribunals. In addition, James represents clients in numerous aspects before governmental agencies.

James has appeared in numerous administrative proceedings, representing a wide variety of clients before state agencies in numerous procurement challenges, administrative rule challenges, and challenges to agency action.

### **Appellate Representation**

James has appeared in more than 80 Florida appellate proceedings representing clients throughout all of Florida's District Courts of Appeal and the Florida Supreme Court. James has additionally represented clients before the United States Supreme Court and the Eleventh Circuit Court of Appeals.

### **Cannabis Regulation and Litigation**

The cannabis industry is rapidly expanding throughout the nation and the sale of cannabis has been legalized in numerous states. James guided one of Florida's first licensed medical marijuana treatment centers through substantial litigation and the regulatory process to obtain their license and he has also assisted other entities through the licensure process. James's representation of the cannabis industry extends to all aspects of such businesses, including cultivation, processing and dispensing, as well as the unique legal issues faced by such

enterprises. As the legal and regulatory landscape is rapidly evolving, James remains in close contact with regulators and monitors statutory and administrative rulemaking developments affecting the cannabis industry.

### **Sunshine Law and Public Records Compliance**

James has counseled both government agencies and private parties on Sunshine Law and public records compliance, and has successfully resolved numerous public records and Sunshine Law disputes. Additionally, he has successfully litigated public records cases both to protect records from disclosure, as well as to obtain records. Likewise, James has litigated and defended cases alleging Sunshine Law violations.

### **Prior Experience**

Prior to joining Foley, James served as deputy counsellor to the Governor of Florida advising the Governor on matters of law and policy. He also served as a deputy solicitor general in the Office of the Attorney General, where he briefed numerous cases before the United States Supreme Court and co-chaired an oral argument before the court, and presented oral arguments before the Florida Supreme Court and various District Courts of Appeal.

Earlier in his career, James served as a judicial law clerk to Florida Supreme Court Justice Kenneth B. Bell from 2003-2004.

### **Representative Experience**

- Successfully represented bidder in numerous challenges to Florida's multi-billion dollar procurement of Medicaid services.
- Obtained reversal on appeal of all counts of trial court order finding Sunshine Law and public records violations. *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172 (Fla. 1st DCA 2017).
- Successfully defended district court decision on review to Florida Supreme Court in case interpreting PIP statutory discovery requirements. *State Farm Mutual Automobile Ins. Co. v. Shands Jacksonville Medical Center, Inc.*, 210 So. 3d 1224 (Fla. 2017).
- Successfully defended *forum non conveniens* order on appeal involving claim brought against Italian corporation sued for claims relating to Bolivian dam project. *GLF Constr. Corp. v. Credinform Int'l, S.A.*, 225 So. 3d 377 (Fla. 3d DCA 2017).
- Successfully defended winning bidder against appeal challenging rejection of the incumbent losing bidder's protest in case involving substantial state contract. *AT & T Corp. v. Dep't of Mgmt. Servs.*, 201 So. 3d 852 (Fla. 1st DCA 2016).
- Successfully defended on appeal \$25 million fee award made to the trustees of the Robert Rauschenberg Revocable Trust. *Robert Rauschenberg Found. v. Grutman*, 198 So. 3d 685, 686 (Fla. 2d DCA 2016).
- Successfully defended winning bidder against appeal challenging dismissal of the losing bidder's protest in case involving \$143 million contract. *Partnership for Community Health, Inc. v. Dep't of Children and Families and Broward Behavioral Health Coalition, Inc.*, Case No. 1D12-1866 (Fla. 1st

DCA August 8, 2012).

- Obtained reversal of agency final order dismissing formal bid protest petition challenging agency decision to award a multi-year contract worth tens of millions of dollars to a competitor; On remand the agency's decision was reversed and Pro Tech was awarded the contract. *Pro Tech Monitoring, Inc. v. Dep't of Corrections*, 72 So. 3d 277, 278 (Fla. 1st DCA 2011).
- Counsel to the State of Florida in *Florida v. Georgia*, an original action in the United States Supreme Court seeking an equitable apportionment of water flowing from the Apalachicola-Chattahoochee-Flint River Basin.
- Represented the Executive Office of the Governor in Florida Supreme Court proceeding on petition for writ of *quo warranto* disputing governor's authority to enter into Indian gaming compact. *Florida House of Representatives v. Crist*, 999 So. 2d 601 (Fla. 2008).
- Obtained reversal of order granting summary judgment in favor of the Department of Financial Services in a reinsurance contract dispute; on remand to the trial court achieved summary judgment in favor of Imagine. *Imagine Insurance Co. LTD v. Department of Financial Services*, 999 So. 2d 693 (Fla. 1st DCA 2008).
- Successfully represented the State of Florida in a case involving the tolling of statute of limitations periods under the Anti-Terrorism and Effective Death Penalty Act. *Lawrence v. Florida*, 127 S.Ct. 1079 (2007).
- Successfully represented the Florida Department of Revenue in a challenge to the constitutionality of Florida's sales tax exemption for religious publications. *Wiccan Religious Co-op. of Fla, Inc. v. Dep't of Revenue, et. al.* 944 So. 2d 233 (Fla. 2006).
- Successfully litigated public records case against the Florida Department of Corrections and succeeded in obtaining records alleged by the Department to be exempt from public records disclosure. *MHM Correctional Services, Inc. v. Dep't of Corrections* (Leon County Circuit Court Case No. 2009-CA-2105).
- Successfully defended state statute recognizing right of certain individuals to carry firearms in certain circumstances against constitutional challenge. *Florida Retail Federation, Inc. v. Attorney General of Florida and National Rifle Association* (N.D. Fla. No. 4:08 CV 179).
- Represented the Florida House of Representatives against a suit seeking to enjoin operation and enforcement of Florida's expanded lobbyist gift ban and compensation disclosure law. *Florida Association of Professional Lobbyists v. Bense, et al*, (N.D. Fla. No. 4:06 CV 123).
- Represented the Florida Department of Highway Safety and Motor Vehicles in a case seeking to prevent the Department from using hearing officers in all DUI cases. *Department of Highway Safety and Motor Vehicles v. Tidey*, 946 So. 2d 1223 (Fla. 4th DCA 2007).

## Awards and Recognition

- *Chambers USA*, Cannabis Law: Eastern United States (2021-2025)

## Sectors

- Cannabis

## Practice Areas

- [Appellate](#)
- [Commercial Litigation](#)
- [Litigation](#)
- [State Attorneys General](#)

## Education

- University of Florida Fredric G. Levin College of Law (J.D., 2002)
- University of Florida (M.S., 2002)
  - Accounting
- Florida Atlantic University (B.S., cum laude, 1999)
  - Accounting
- Certified Public Accountant

## Admissions

- Florida Supreme Court
- U.S. Supreme Court
- U.S. Court of Appeals for the 11th Circuit
- U.S. District Court for the Northern District of Florida
- U.S. District Court for the Southern District of Florida