

Kevin A. Burke

Partner

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Kevin Burke is a partner and litigator in the New York office of Foley & Lardner LLP. He is a member of the firm's Securities Enforcement & Litigation Practice Group.

Kevin represents clients in their most significant corporate governance matters, internal and government investigations, and complex litigations relating to fiduciary duty, professional liability, securities and regulation, competition, and employment law. He has represented individual and institutional clients in all phases of pre-trial and trial proceedings in federal, state, and administrative courts throughout the U.S., as well as in arbitrations. His experience covers a range of industries, including accounting, banking, finance, health care, telecommunications, and transportation.

Kevin has significant experience representing major accounting firms and has litigated many complex commercial and securities law cases. He has represented clients in government and regulatory enforcement investigations commenced by the U.S. Securities and Exchange Commission, the Public Company Accounting Oversight Board, the U.S. Department of Justice, the U.S. Commodity Futures Trading Commission, the Federal Trade Commission, the New York State Attorney General, and numerous state enforcement agencies.

Representative Experience*

- Represented the Board of Directors and Ethics Committee of an institutional client in conducting an internal investigation following purported whistle blower reports.
- Represented a professional services firm in civil litigation brought by applicants for dispensary licenses issued by the State of Illinois, alleging professional negligence with respect to the scoring of applications on behalf of the State.
- Represented a telecommunications and mass media company in advising with respect to environmental, social, and governance programs.

- Represented an institutional client in multi-pronged investigations by the U.S. Department of Justice Public Integrity Section, the U.S. Attorney's Office for the Southern District of New York and the U.S. Securities and Exchange Commission.
- Represented an individual auditor in a public administrative proceeding brought by the U.S. Securities and Exchange Commission relating to the failure of a bank holding company during the Great Recession.
- Represented the Board of Directors of an association of health insurance organizations in advising with respect to governance and risk management initiatives.
- Represented a national accounting firm and its managing partner in civil litigation brought by a former client alleging, among other causes of action, fraudulent inducement and breach of contract.
- Represented the Board of Directors of a federal credit union in advising with respect to leadership initiatives, corporate acquisitions/dispositions, and related trade secret dispute resolution.
- Represented a broker-dealer in multi-pronged regulatory enforcement investigations by the U.S. Securities and Exchange Commission and Financial Industry Regulatory Authority relating to compliance with the Customer Protection Rule (17 C.F.R. 15c3-3).
- Represented the directors of a foreign corporation in a breach of contract action with respect to a Cayman Islands investment vehicle formed purportedly to buy and sell exchange-listed financial derivatives.
- Represented a Big Four accounting firm in a putative securities fraud class action arising from fraud committed by the principals of a regulated broker-dealer.
- Represented an institutional client in an arbitration brought by its former client relating to losses incurred on foreign currency hedge transactions.
- Represented an employer in a New York Labor Law putative class action and Fair Labor Standards Act collective action seeking purported overtime payment to associates in the mergers and acquisitions advisory services industry.
- Represented an institutional client in a U.S. Securities and Exchange Commission investigation relating to the formation, operation, and sale of a seller of credit default swaps.
- Represented a professional services firm in an action brought by a Litigation Trustee based on financial due diligence performed in the leveraged buy-out of a brokerage and clearing services firm.
- Represented a private Canadian corporation and related officers and individual investors in an action asserting, among other claims, breach of shareholder agreement, breach of fiduciary duty and trade secret misappropriation arising from a failed telecommunications joint venture.
- Represented a foreign airline in a Department of Justice antitrust investigation concerning alleged price fixing with respect to various charges and fees for international freight forwarding services regarding air cargo destined for the United States.
- Represented a Big Four accounting firm in a putative securities fraud class action arising from management fraud committed at a distributor of health, beauty, and pharmaceutical products.
- Represented investment banks in state securities fraud actions and a separate RICO action brought by an individual purchaser involving the resale of securities issued by a national telecommunications

carrier to qualified institutional buyers pursuant to Rule 144A.

- Represented outside directors of a bankrupt franchisor in an adversary proceeding brought by a Committee of Unsecured Creditors alleging breaches of fiduciary duty with respect to capital raisings.
- Represented the organizing membership entity, a United Kingdom company limited by guaranty, within a Big Four global accounting network in various putative securities fraud class actions asserting “one firm” liability premised on alter-ego or agency theories.
- Represented a biotechnology corporation in a putative securities fraud class action relating to clinical trials performed in advance of an initial public offering.
- Represented a software manufacturer in a putative consumer class action brought pursuant to New York GBL § 349 regarding rebate policies.
- Represented an investment bank in a putative securities fraud class action arising from a roll-up initial public offering in the aircraft leasing industry.
- Represented a technology corporation in a portfolio of civil actions to enforce non-competition and claw-back provisions in employment agreements with respect to former executive personnel.

**Certain of these matters were handled prior to joining Foley.*

Presentations and Publications

- Author, “Managing the Company’s Relationship with its Auditors,” “Internal Controls,” and “Deficiencies and Weaknesses in Internal Controls” chapters in the Director’s Handbook, *A Field Guide to 101 Situations Commonly Encountered in the Boardroom*, Corporate Governance Committee ABA Business Law Section (2017)
- Co-author, “Law and Practice under Rule 102(e),” *The Review of Securities and Commodities Regulation* (2015)

Practice Areas

- [Government Enforcement Defense & Investigations](#)
- [Litigation](#)
- [Securities Enforcement & Litigation](#)

Education

- Columbia Law School (J.D., 1995)
 - Harlan Fiske Stone Scholar
- Columbia College (A.B., cum laude, 1991)

Admissions

- New York
- Second Circuit U.S. Court of Appeals
- Eastern District of New York
- Southern District of New York