



Michael D. McKay

Senior Of Counsel

Seattle
+1.206.370.7613

Mike.McKay@klgates.com

OVERVIEW

Michael McKay is a partner in the firm's Seattle office. With his experience as a former United States Attorney, Michael focuses his practice on white collar criminal defense, commercial litigation, and internal investigations, both corporate and government.

As U.S. Attorney for the Western District of Washington in Seattle, Michael supervised many prominent lawsuits filed by and against the United States. He made the charging decision in the first flag burning case in America, an action granted direct review by the United States Supreme Court. He reorganized the office to more efficiently handle specific cases including fraud, environmental crime, and drugs, mainstays of that office today.

Michael has significant experience assisting clients facing legal problems with federal and local governments, including civil, criminal and administrative matters. He represents corporations and executives, as well as physicians and dentists, facing governmental investigations. In addition, he has represented a variety of clients in complex commercial litigation.

Private companies and municipal corporations have hired Michael to conduct internal investigations. On rare occasions, the investigation results are made public:

- In 2008, the Port of Seattle hired Mr. McKay to serve as counsel for the Special Investigative Committee, which conducted an internal investigation into Port contracting practices. Mike's team found evidence of civil fraud and other instances where state laws and Port policies were violated, which were documented in the Report of the Special Investigative Team, issued on December 3, 2008. The Report provided a set of recommendations that the Port CEO implemented to improve the Port's compliance practices and deter fraud.
- In 1999, the City of Seattle asked Mr. McKay to investigate police policies and procedures in the wake of allegations that a detective stole money from a homicide victim. Mr. McKay served as Vice Chair of a four-member Citizens Review Panel which, after a thorough investigation, made over twenty recommendations to improve the Seattle Police Department's procedures and oversight. In 2008, Mr. McKay served on the Seattle Police Accountability Review Panel, which reviewed the 1999 model and made 29 recommendations, all of which were accepted by the mayor.

PROFESSIONAL BACKGROUND

Michael was a founding member of a prominent boutique law firm in Seattle, where he served as its managing partner until he closed that office to join K&L Gates.

Michael began his career in the King County Prosecuting Attorney's Office, where he served for five years and became a Senior Deputy Prosecuting Attorney, handling cases in the criminal, juvenile, fraud, and civil divisions. He represented the Kingdome in the first major litigation with the Seattle Mariners and was lead prosecutor in the investigation and prosecution of a juvenile prostitution ring. He also played a principal role in the implementation of the innovative Washington State Juvenile Justice Act.

ACHIEVEMENTS

- Rated by Martindale-Hubbell® Peer review as AV® Preeminent™ 5.0 out of 5*
- Selected to Washington Super Lawyers list
- Listed in *Best Lawyers in America*® in Commercial Litigation, Municipal Law, and Criminal Defense: White Collar
- Listed in *America's Top 100 Civil Defense Litigators*®
- Listed in *America's Top 100 Criminal Defense Litigators*®
- Charles A. Goldmark Award for Distinguished Service (along with John McKay, awarded by the Legal Foundation of Washington), 2008
- Alumni Merit Award, Creighton University School of Law, 2001
- Who's Who Legal: Investigations

PROFESSIONAL / CIVIC ACTIVITIES

- United States Attorney for the Western District of Washington, 1989-1993
- Board of Directors, Legal Services Corporation, 2003-2009
 - Vice Chair, 2008-2009
- President, National Association of Former United States Attorneys (NAFUSA), 2009
- President, NAFUSA Foundation, 2013-2019
- U.S. Attorney General's Advisory Committee, 1990-199
 - Vice Chair, 1991-1993
- Vice-Chair, Washington Citizens Commission on Salaries for Elected Officials, 1999-2001

- Co-Chaired numerous committees charged with assessing applicants for federal judge, Western District of Washington, 1997-present
- Vice Chair, Review Board (advised the Archbishop of Seattle on clergy molestation allegations), 2002-2004
- President, Creighton University National Alumni Association, 1989-1991
- Chaired numerous political campaigns at the county, state and federal levels

EDUCATION

- J.D., Creighton University School of Law, 1976
- B.A., University of Washington, 1973 (*with distinction*)

ADMISSIONS

- Bar of Washington
- Supreme Court of the United States
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Eastern District of Washington
- United States District Court for the Western District of Washington

THOUGHT LEADERSHIP POWERED BY HUB

- 26 August 2021, Voluntary Disclosure: Special Edition - Staying Out of Trouble
- 24 August 2021, Staying Out of Trouble: The Basics Every Civil Litigator Should Know About Staying Civil Proceedings When One of the Parties Faces Criminal Exposure
- 3 November 2020, Qui Tam Quarterly - Uncertain Relief: Navigating CARES Act Provider Relief Fund Guidance and False Claims Act Risks
- 3 June 2020, COVID-19: Multiple Investigations of Coronavirus Fund Recipients Underway
- 1 April 2020, COVID-19: Washington State Institutes Statewide “Stay Home – Stay Healthy” Order to Combat COVID-19
- 14 February 2019, K&L Gates Triage: When the Feds Come Knocking on Your Door
- 18 December 2018, The Revised Manual for Federal Prosecutors

OTHER PUBLICATIONS

- Chapter 10: Government Investigations of Health Care Providers, Washington State Society of Healthcare Attorneys, Washington Health Law Manual, Fourth Edition, 2022

NEWS & EVENTS

- 18 August 2022, More Than 350 K&L Gates Lawyers Named Among 2023 Best Lawyers in America, Ones to Watch
- 19 August 2021, Nearly 300 K&L Gates Lawyers Named Among 2022 Best Lawyers in America, Ones to Watch
- 24 August 2020, K&L Gates Hosts Town Hall Featuring DOJ's Fraud Initiatives as a Result of COVID-19 and How Health Care Providers Should Prepare

AREAS OF FOCUS

- White Collar Defense and Investigations
- Commercial Disputes
- Federal, State, and Local False Claims Act
- Health Care and FDA
- Health Care Fraud and Abuse (U.S.)
- Health Care Payor-Provider Disputes (U.S.)
- Internal Investigations
- Public Policy and Law
- U.S. Congressional Investigations
- U.S. National Security Law and Policy

REPRESENTATIVE EXPERIENCE

- White Collar Criminal Defense -- A prominent London businessman was arrested and jailed in Argentina after an Interpol Red Notice was issued based upon a federal charges filed in 2011 for fraudulent activity alleged to have occurred in 2006. Mike and his team at K&L Gates were able to quickly collect enough information to show that the U.S. Government had ample opportunity to find his client, who did not know that charges had been filed against him since the indictment had been sealed. Mike convinced the U.S. Attorney in Seattle that this delay in prosecuting its case violated the U.S. Speedy Trial Rule. The U.S. Attorney dismissed the charges and Mike's client was released from confinement, free to return to his home in London.

- Internal Investigation, Crime Victim Advocacy – The client, an industrial business, discovered evidence that an employee might have embezzled more than \$1 million while working on a large project for the federal government. Mike, along with a team of forensic accountants, collected evidence that the employee submitted false invoices for work never performed. Mike organized his team's findings and presented it to the FBI. The employee was charged with wire fraud, to which he eventually pled guilty.
- Corporate Criminal Defense, Pharmaceuticals – Successful pre-charging white collar criminal defense of a major international pharmaceutical company under investigation by federal prosecutors for alleged wrongdoing in the dissemination of information on the safety and efficacy of pharmaceutical medications. After a five-year investigation, review of hundreds of thousands of documents, and presentations to the government, the investigation was closed with no criminal charges or any other governmental enforcement action.
- Drug Diversion, Civil Penalty Resolution – Successful representation of a surgeon investigated by Drug Enforcement Agency (DEA), the Department of Justice (DOJ), and local law enforcement for diverting prescription medications. A major defense investigation was conducted after the client enrolled in Washington Physicians Health Program (WPHP). The matter was resolved after negotiation by way of a civil penalty with no criminal charges brought.
- Drug Diversion, Misdemeanor Resolution – Successful representation of anesthesiologist investigated for diversion of pain medication. After a two-year federal investigation, the felony allegations were ultimately resolved as one misdemeanor with no time in prison and two years of probation. Mr. McKay also successfully advocated for early termination of supervised release and reinstatement of the anesthesiologist's Drug Enforcement Agency registration so he could return to his active practice.
- LLC Ownership Dispute – Successful civil litigation defense of members of a real estate holding company who were sued in federal court by past members for alleged theft, business torts, and civil violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act. The plaintiffs demanded \$58,000,000.00 in damages. Mr. McKay successfully obtained dismissal of the lawsuit and an order requiring plaintiffs to pay for defendants' attorney's fees and costs, totaling over \$140,000.00.
- Civil Defense, Parallel Government Investigation - Successful representation of the CEO of a prominent international com in defense against a lawsuit alleging violations of Washington state employment law. Mr. McKay defended the CEO in depositions that attempted to develop facts that could have criminally inculpated the CEO. After a successful defense of the depositions and a presentation to the Department of Justice suggesting that criminal charges would be unwarranted, the civil lawsuit against the client and the company was resolved. No criminal charges were filed.
- Civil Litigation, Crime Victim Advocacy – Successful representation of real estate developer who was defrauded by his business partner. Mr. McKay filed suit and secured a \$2,600,000.00 judgment for the client. In proceedings to enforce the judgment, he assisted law enforcement in prosecuting the defendant. The defendant was convicted by state prosecutors and was sentenced to prison.
- Civil Defense, Recoupment of Overpayments – Successful representation of local property investor against a large institutional lender who sought over \$3,000,000.00 in damages and alleged violations of 18 U.S.C. 1962, the civil Racketeer Influenced and Corrupt Organizations (RICO) Act. Mr. McKay prevailed in a motion

for summary judgment dismissing the plaintiff's claims and recouping overpayments made by the client to the institutional lender. Instead of facing liability in excess of \$10,000,000.00, the client recovered significant funds from the lender.

- **FINRA Arbitration** – Along with prominent New York litigators, Mr. McKay successfully represented local non-profit corporations, two hospitals and a private university, in confidential FINRA arbitrations against large, institutional banks. The clients alleged various misrepresentations and breaches of statutory and fiduciary duty to the underwriters of their Auction Rate Securities.
- **Municipal Corporation Internal Investigation** – Successfully served as legal counsel for the Special Investigative Committee to the Port of Seattle and conducted an internal investigation into Port contracting practices. Mr. McKay issued the Report of the Special Investigative Team, which found evidence of fraud in the Port's contracting practices and other instances where state laws or Port policies were violated. The Report provided a set of recommendations to improve the Port's practices, which the Port CEO implemented in full.
- **Public Agency Internal Investigation** – At the request of a regional public agency, conducted an internal investigation into allegations of deficient internal practices and procedures that potentially exposed to agency to criminal liability. Mr. McKay reviewed the client's established procedures and interviewed employees. After a thorough review of applicable statutes and regulations, it was determined that while the client faced no criminal liability, its practices and procedures were deficient and made recommendations to the board of directors that enhanced the agency's performance and improved its internal culture of compliance.
- **Individualized Corporate Compliance Program** – Successfully crafted a comprehensive and tailored compliance program for a prominent international corporation which facilitated its efforts to remain in compliance with federal, local, and industry regulations in numerous heavily-regulated industries. Mr. McKay worked with the company to develop a corporate compliance structure that not only ensured that it would remain in compliance with numerous regulatory bodies, but would ensure that the client and its employees could cultivate an environment of high ethics and efficiency. The recommendations, including appointing an independent senior Compliance Officer, creating a Compliance Committee with oversight responsibilities over all aspects of the company, and adopting a Code of Ethics and Standards of Conduct, were adopted in full by the client.