



DAVID FERGUSON

Partner

1 West Las Olas, Suite 500
Fort Lauderdale, FL 33301
Main: 954-525-4100
Direct: 954-449-4300
Fax: 954-525-4300
Email: ferguson@kolawyers.com

David L. Ferguson chairs the firm's litigation department. He practices primarily in the areas of employment law, complex business litigation, consumer class actions, product liability, catastrophic personal injury, and civil rights.

Mr. Ferguson is AV Preeminent rated by Martindale-Hubbell, a testament to the fact that his peers (lawyers and judges in this community) have ranked him at the highest level of professional excellence. He became a lawyer in 1993 and is admitted to practice before the United States District Court for the Middle and Southern Districts of Florida, and all state courts in Florida. Mr. Ferguson is well regarded as a formidable advocate in court and for providing creative and insightful strategic advice, particularly in emergency and extremely complex situations.

Mr. Ferguson attended North Carolina State University and later received his undergraduate degree in Legal Studies from Nova Southeastern University. He received his law degree from Nova Southeastern University Law School. While in law school, Mr. Ferguson served as a Staff Member of the Nova Law Review. He was also a member of the Moot Court Society and the winner of the Moot Court Intramural Competition.

Employment, Human Resources, and Related Matters

Mr. Ferguson has represented numerous business and individuals in employment and human resource related matters. Mr. Ferguson has represented several Fortune 50 companies, including Pratt & Whitney/UTC, Home Depot, and Office Depot in all phases of employment related matters. His experience includes drafting and revising employee

handbooks, drafting noncompetition and nondisclosure agreements, negotiating and drafting executive severance agreements, conducting internal investigations, promulgating remedial measures, addressing requests for reasonable accommodations, assistance with reductions in force and layoff selections, responding to charges of discrimination before the EEOC and/or FCHR, providing full spectrum human resources advice, and defending litigation brought by present or former employees. Mr. Ferguson has litigated virtually every type of discrimination and employment related claim, including claims based upon race, pregnancy, disability, national origin, religion, age, sexual preference, sexual harassment, worker's compensation, unemployment, FMLA leave, FLSA overtime, unpaid wages, whistleblower, and retaliation.

Mr. Ferguson primarily represents companies, but also represents select individuals who have claims against their present or former employers. In addition to the wide variety of employment claims discussed above, as plaintiff's counsel Mr. Ferguson has also handled claims brought by individuals arising under the federal False Claims Act (Qui Tam) and the Foreign Corrupt Practices Act.

Business Disputes

Throughout his legal career, as counsel for plaintiffs and for defendants, Mr. Ferguson has handled a myriad of commercial cases involving all types of business disputes, including claims for breach of partnership agreements, breach of shareholder or limited liability company operating agreements; dissolution of limited liability companies; appointment of receivers; breaches of fiduciary duty; conversion; constructive trust; theft; negligent or intentional misrepresentation or omission/ fraudulent inducement; tortious interference; professional negligence or malpractice; derivative actions, breach of contract, real estate disputes, and construction disputes.

Noncompetition and Trade Secret Litigation

Mr. Ferguson routinely represents companies and individuals in commercial disputes involving unfair and deceptive trade practices, unfair competition and/or tortious interference with contracts or valuable business relationships. Often these cases involve the enforcement of noncompetition agreements and protection of valuable trade secrets. Mr. Ferguson has extensive experience representing businesses seeking to enforce their noncompetition agreements and/or protect trade secrets through suits for injunctive relief and damages, and representing subsequent employers and individuals defending against such claims. He has obtained numerous injunctions for his clients and has also successfully defended against them numerous times, including getting injunctions dissolved that were entered against his clients without notice or prior to his representation. Mr. Ferguson has also obtained contempt sanctions and entitlement to punitive damages against individuals and entities who have stolen trade secrets from his clients. He recently provided substantial information to and cooperation with the Broward Sheriff's Office over a period of weeks, culminating with a concerted raid of a

competitor by BSO and the U.S. Secret Service to confiscate trade secrets and sensitive data stolen from his client by several former employees. The case quickly resolved after the raid.

Other Injunctive and Prejudgment Relief

In addition to extensive experience with injunctions in the context of noncompetition and trade secret cases, Mr. Ferguson often litigates other types of cases involving requests for injunctive and prejudgment relief. Mr. Ferguson has obtained and successfully opposed motions for prejudgment writ of attachment to freeze funds and property prior to trial. In one instance, Mr. Ferguson represented a large mortgage broker with hundreds of employees across Florida that had its bank accounts frozen without notice by an out of state bank. At an emergency hearing, Mr. Ferguson convinced the judge to dissolve the writ and, as a result, the client was able to make payroll for hundreds of employees the week before Christmas. Additionally, Mr. Ferguson often litigates claims for prejudgment writ of replevin on behalf of lenders, involving property and equipment such as restaurant equipment, jewels, and aircraft. In addition to representing court appointed receivers, he has also successfully opposed and obtained receivers over businesses on behalf of his clients.

Intellectual Property Disputes

Mr. Ferguson has litigated many cases involving intellectual property disputes, including trademark, trade name, trade dress, Lanham Act, advertising injury, cybersquatting, copyright, and patent infringement. While the majority of these intellectual property cases have been in federal district court, Mr. Ferguson has also handled claims arising under state statute and common law in state court, including common law trade name infringement, common law unfair competition, statutory unfair and deceptive practices, and unauthorized use/publication of name and likeness.

Arbitrations

Mr. Ferguson often handles all types of claims in arbitration, including large contract disputes and employment claims that are subject to arbitration agreements. Mr. Ferguson successfully defended one of his clients in the internet billing industry against a claim for \$20 million in arbitration for breach of contract. After a 5 day final hearing, the claimant was awarded nothing. Mr. Ferguson also recently defended a large regional automobile distributor in an arbitration brought by a former employee seeking in excess of \$1.5 million. After a 5 day final hearing, the former employee was awarded nothing and ordered to pay Mr. Ferguson's client's attorney's fees and costs.

Administrative Actions, Professional Regulation and Licensure

Mr. Ferguson often represents professionally licensed individuals responding to administrative investigations and complaints before the Florida Department of Business and Professional Regulation. Mr. Ferguson has also defended companies involved in administrative investigations or accused of violating administrative rules and regulations, including investigations and actions brought by the FDBPR and the Florida Department of Agriculture and Consumer Services. He has also negotiated with various administrative agencies and departments to work out issues his clients may have in order to insure compliance.

Large Fraud and Ponzi Cases

Mr. Ferguson has a great deal of experience litigating cases involving massive fraud claims, most often for victims, but also for select defendants. Mr. Ferguson's clients have included individual victims who have lost multiple millions of dollars in fraud schemes to large businesses with tremendous damages, including one international lending institution with damages in excess of \$150 million. Additionally, Mr. Ferguson has represented court appointed receivers charged with the task of locating assets and bringing claims for the benefit of multiple victims. While acting as counsel for two receivers appointed by federal judges in different fraud cases, Mr. Ferguson obtained and provided information to law enforcement that resulted in the arrest and long term federal incarceration of several scammers who had victimized numerous individuals and businesses. Mr. Ferguson has also obtained orders sanctioning opposing parties for spoliation of evidence, including sanctions against the now defunct accounting firm Arthur Anderson for intentionally shredding evidence (prior to the ENRON scandal breaking) in a Ponzi scheme case, and against opposing parties and their counsel for discovery abuses.

Mr. Ferguson has also successfully represented individuals and entities subjected to significant clawback and fraudulent transfer related demands and suits by receivers, bankruptcy trustees, as well as the United States in criminal forfeiture actions.

Torts and Individual Claims

Mr. Ferguson has successfully represented many individuals in the pursuit and defense of tort and individual claims, including negligence, catastrophic personal injury, wrongful death, medical malpractice, accountant malpractice, legal malpractice, libel, slander, defamation, invasion of privacy, battery, infliction of emotional distress, and conversion. Mr. Ferguson obtained a jury verdict in excess of \$3.6 million for one client who was seriously injured in an accident and another for \$8 million in coverage against a national insurance carrier for negligence on behalf of the estate of a prominent Miami businessman and lawyer run down by an uninsured driver.

Disputes with Government

Mr. Ferguson routinely represents individuals and entities involved in disputes against the government, including municipalities, school boards and counties. Mr. Ferguson has handled numerous administrative proceedings and subsequent litigation involving code and ordinance violations. Additionally, Mr. Ferguson has successfully represented numerous businesses in bid protests. Mr. Ferguson has won numerous bid protests involving school board and county contracts. Also, his practice has included representing entities in litigation with counties, school boards and various tax collectors over the award or wrongful termination of public contracts. One of Mr. Ferguson's clients came to him with disputes against the School Board and Broward County for wrongful termination of various construction contracts. The contracts contained termination for convenience clauses and the client was advised by a well respected law firm that it had no viable claims. Mr. Ferguson filed two suits on his client's behalf and eventually obtained settlements from the School Board and Broward County in excess of \$5 million. Along the way, Mr. Ferguson was able to have many of the School Board's defenses stricken as a sham, which helped facilitate the eventual settlement. Mr. Ferguson has also successfully represented individuals in the pursuit of claims for wrongful deprivation of civil and property rights under color of state law brought in federal court pursuant to 42 U.S.C. 1983. Also, Mr. Ferguson has had great success litigating on behalf of a large waste company against numerous cities in various lawsuits.

Criminal Matters

While the main focus of his practice is civil/commercial litigation, Mr. Ferguson does represent select clients in criminal prosecutions, including state and federal cases involving serious white collar crime charges of wire fraud, mail fraud, conspiracy, and state prosecutions for felony narcotics and murder. Mr. Ferguson has also represented individuals and business being investigated by state and federal law enforcement for possible criminal conduct. Mr. Ferguson has successfully handled investigations that have resulted in no criminal charges for his clients and has negotiated plea deals on behalf of individuals facing state and federal prosecution.

Appellate

Mr. Ferguson has handled disputes in every phase, including at the appellate level. Mr. Ferguson has handled civil and criminal appeals. Mr. Ferguson has prepared appellate briefs and has presented oral argument on behalf of his appellate clients. In one case brought by the former Sheriff of Broward County against his client for damages in excess of \$12 million over delays in the construction of a jail, Mr. Ferguson convinced the trial court to dismiss the Sheriff's claim with prejudice by a motion to dismiss. The Sheriff appealed to the Fourth District Court of Appeals. Mr. Ferguson prepared the response brief and presented oral argument to the Panel and his client's victory at trial was preserved.

Class Actions

Mr. Ferguson has vast experience representing plaintiffs and defendants in class action and proposed class action lawsuits and MDLs around the country filed against numerous large corporations, including Bayer, UTC/Pratt & Whitney, Dow Corning, DuPont, Florida Crystals, A.H. Robins, U.S. Borax, and Comcast. Those cases involved product liability claims (silicon breast implants, Benlate, contaminated blood products, defective Dalkon Shield I.U.D.s, and arsenic exposure) and civil rights class claims (gender, race, national origin, and age).

Previous Employment

Prior to joining the firm, Mr. Ferguson worked for two nationally known and respected law firms: Steel Hector & Davis, LLP and Berger Singerman, PA.

Primary Practice Area

Commercial & General Civil Litigation
Labor & Employment Law

Secondary Practice Area

Class Action Litigation

Bar Admissions

Florida Bar

Court Admissions

U.S. Dist. Ct., Southern District of Florida
U.S. Dist. Ct., Middle District of Florida
U.S. Dist. Ct., Northern District of Florida

Education

North Southeastern University, B.S., J.D.