



JAMES N. (NICK) BOEVING

Partner

boeving@wtotrial.com | P 303.244.1938

Nick Boeving—a former Assistant U.S. Attorney in the Southern District of New York—represents clients in high-exposure professional liability matters, government investigations, and complex commercial disputes. His clients include multiple national healthcare companies and health systems, Fortune 500 companies, technology and pharmaceutical companies, and insurance carriers.

EDUCATION

Columbia School of Law, J.D., 2005, James Kent Scholar
Columbia Journal of Transnational Law, Editor-in-Chief, Philip C. Jessup International Law Moot Court

University of Arkansas, B.A., 2002, Political Science, *summa cum laude*

GOVERNMENT SERVICE

Assistant United States Attorney, United States Attorney's Office for the Southern District of New York

Trial Attorney, United States Department of Justice, Civil Rights Division

Law Clerk to The Honorable Debra A. Livingston, United States Court of Appeals for the Second Circuit

Law Clerk to The Honorable Diana E. Murphy, United States Court of Appeals for the Eighth Circuit

ADMISSIONS

Colorado
New York

HIGHLIGHTS

- Won a defense verdict for a psychiatrist in a \$34 million trial in Iowa.
- Obtained a favorable ruling from the Colorado Department of Regulatory Agencies ("DORA") rejecting a complaint of discrimination against a healthcare provider.
- Served as co-counsel to a hospital system in one week jury trial in Pennsylvania. Prepared fact and expert witnesses for trial and briefed and argued numerous motions. The case settled favorably after the first week of trial.
- Won a complete defense verdict following a week-long jury trial rejecting the plaintiff's claim of employment discrimination by a federal agency.
- Served as co-counsel to a healthcare provider in two week jury trial in Colorado. Prepared witnesses to testify, examined witnesses at trial, and briefed and argued numerous motions in limine.
- Successfully defended summary judgment wins before the U.S. Court of Appeals for the Second Circuit in multiple employment discrimination cases.
- Represent healthcare providers before various licensing boards and regulatory agencies.

INDUSTRIES

- Healthcare
- Professional Services
- Financial Services
- Consumer Products & Services

PRACTICE AREAS

- Healthcare Professional Liability
- Catastrophic Injury Defense
- Investigations & Compliance
- Commercial Litigation
- Appellate
- Employment

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BIOGRAPHY

Nick Boeving—a former Assistant U.S. Attorney in the Southern District of New York—represents clients in high-exposure professional liability matters, government investigations, and complex commercial disputes. His clients include national healthcare companies and health systems, Fortune 500 companies, technology and pharmaceutical companies, and insurance carriers.

In the U.S. Attorney's Office in the Southern District of New York, Nick managed and litigated numerous affirmative and defensive matters including investigations of fraud under FCA and FIRREA, commercial and tax shelter litigation, administrative law, medical malpractice and other torts, employment discrimination, and Bivens actions.

Nick also worked as a trial attorney in the civil rights division of the United States Department of Justice in Washington, D.C., and was hired through the Attorney General's Honors Program. While there, he investigated and litigated potential violations of various Federal voting rights statutes including the Voting Rights Act, the Help America Vote Act, and the National Voter Registration Act.

Nick served two year-long judicial appellate clerkships, first for The Honorable Diana E. Murphy of the United States Court of Appeals for the Eighth Circuit, and then for The Honorable Debra A. Livingston of the United States Court of Appeals for the Second Circuit.

Nick earned his law degree from Columbia University School of Law, where he was the editor-in-chief of the Columbia Journal of Transnational Law and a James Kent Scholar. He was also awarded the David Berger Memorial Prize for excellence in international law and received the Parker School Certificate in International Law.

CASES

Professional Liability

- Won a complete defense verdict for a psychiatrist serving an Iowa county jail in a \$34 million medical malpractice trial.
- Served as co-counsel to a hospital system in one week jury trial in Pennsylvania. Prepared fact and expert witnesses for trial and briefed and argued numerous motions. The case settled favorably after the first week of trial.
- Served as co-counsel to a healthcare provider in two week jury trial in Colorado. Prepared witnesses to testify, examined witnesses at trial, and briefed and argued numerous motions in limine.
- Represent healthcare providers before various licensing boards and regulatory agencies.

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- Represent prison healthcare professionals in multiple 42 U.S.C. § 1983 matters for multiple private prison staffing companies.
- Hired by the Department of Justice to represent a prison guard in a § 1983 case involving alleged inmate-on-inmate sexual assault.
- Defeated a motion to compel a hospital's internal quality control review following the death of a patient, establishing a federal peer review privilege, and defeated a motion to compel the hospital's plan of correction.

Investigations & Compliance

- Successfully represented a leading global chemical company in an investigation involving multiple federal agencies and international trade compliance issues.
- Successfully represented a Fortune 500 international electronics company in an investigation concerning international immigration compliance issues. The United States opted not to pursue civil or criminal penalties.
- Conducted an internal investigation for a multi-state healthcare system concerning billing fraud allegations under the False Claims Act by a former employee turned whistleblower.
- Represented former employees of a Fortune 500 national pharmaceutical company in federal multidistrict civil investigation involving potential Controlled Substances Act and False Claims Act violations.
- Represented a Fortune 500 international beverage company in investigations by the Bureau of Alcohol, Tobacco, Firearms, and Explosives concerning alleged improper market activities and kickbacks.
- Represented an individual physician in a criminal and civil health care fraud investigation. The United States declined to intervene in the civil qui tam action and no criminal charges were filed.
- Conducted an internal investigation for a hospital into claims of sexual assault by an employee and advised the hospital concerning the criminal indictment and subsequent prosecution of the employee.
- Represented a large local manufacturer in a Colorado Consumer Protection Act investigation by the Colorado Attorney General's Office. The State declined to file suit.

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- Conducted an investigation of a major national bank's foreign exchange program. Brought civil fraud action under FIRREA asserting claims of mail and wire fraud against the bank and an individual employee of the bank. Defeated the defendants' motions to dismiss the complaint. This was a case of first impression concerning the scope of FIRREA, and the court's opinion has since been followed by other judges.
- Investigated a major FHA lender's mortgage lending and underwriting practices, and brought a civil fraud action under the FCA and FIRREA against the lender, its owner and CEO, and another senior employee. Defeated defendants' motions to dismiss the FCA and FIRREA claims.

Employment

- Obtained a favorable ruling from the Colorado Department of Regulatory Agencies ("DORA") rejecting a complaint of discrimination against a healthcare provider.
- Won a complete defense verdict following a week-long jury trial rejecting the plaintiff's claim of employment discrimination by a federal agency.
- Successfully defended summary judgment wins before the U.S. Court of Appeals for the Second Circuit in multiple employment discrimination cases.
- Won summary judgment in numerous cases in which plaintiffs alleged some form of employment discrimination or retaliation by a federal agency under Title VII or the Rehabilitation Act.

Commercial Litigation

- Won summary judgment in arbitration for a nation-leading telecom provider in an indemnification dispute with a former subcontractor whose employee filed a class action lawsuit in the Southern District of New York. Though the plaintiff was one classmember among thousands, WTO demonstrated that the subcontractor was liable to indemnify WTO's client for all of its attorneys' fees related to the class action and a pro rata share of the resulting settlement.
- Obtained dismissal for an insurance company client facing a civil RICO lawsuit in federal court, with risk of treble damages, for issuing a surety bond to a marijuana business as required by state regulations. The judge granted our client's motion to dismiss because the plaintiffs failed to plausibly allege injury sufficient to establish RICO standing.
- Served as trial counsel in a multimillion dollar tax shelter trial involving what was once one of the largest investment banks in the United States. Successfully moved in limine to preclude and limit the scope of the expert testimony proffered by the plaintiff. The case concerned the interpretation of a decades-old bilateral tax treaty and the interplay of that treaty with U.S. tax laws and regulations.

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- Defeated a summary judgment motion by a national insurance company in a multimillion dollar tax shelter case involving numerous cross-border structured finance transactions. Co-authored the appellate brief defending the denial of summary judgment in the U.S. Court of Appeals for the Second Circuit. The case involved overlap of the foreign tax credit regime established by Congress and common law doctrines, such as economic substance, as well as the underlying contours of the economic substance doctrine.
- Won reversal of a TRO that had been issued *ex parte* at the close of business on a Friday, effectively shutting down operations for a major manufacturing and distribution client, and subsequently won rejection of the injunction against WTO's client.

TEACHING POSITIONS

Fordham Law School

Adjunct Professor, Fall 2013

BAR & COURT ADMISSIONS

Colorado

New York

U.S. Court of Appeals, 10th Circuit

U.S. Court of Appeals, 8th Circuit

U.S. District Court, D. Colorado

U.S. District Court, E.D. Missouri

U.S. District Court, S.D. New York

ARTICLES & PRESENTATIONS

- Presenter, "Civil Suits & DORA Investigations: Navigating Parallel Proceedings," Colorado Defense Lawyers Association, (March 28, 2020).
- Presenter, "High Times: Marijuana and the Changing Landscape for Healthcare Providers and Hospital Administrators," The Colorado Bar Association Health Law Section , (January 18, 2017).
- "The Right to Be Present Before Military Commissions and Federal Courts: Protecting National Security in an Age of Classified Information," 30 Harv. J. L. & Pub. Pol'y 463, (2007).
- "Aggression, International Law and the ICC: An Argument for Withdrawal of Aggression from the Rome Statute," 43 Colum. J. Transnat'l L. 557, \ (2005).
- "Half Full...or Completely Empty?," Environmental ATS Claims Post-Sosa v. Alvarez-Machain, 18 Geo.Int'l Envtl. L. Rev. 109, (2005).

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