



Francis J. Burke

Francis J. Burke, Jr., is a partner in the Phoenix and Los Angeles offices of Steptoe & Johnson LLP, and serves as Practice Group Leader of the firm Securities Litigation and Enforcement Practice Group. His practice emphasizes complex civil and criminal litigation and trials including individual, multiparty and class action claims. Before joining the firm, Mr. Burke served as an Assistant US Attorney, concentrating on white-collar criminal prosecutions.

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AREAS OF PRACTICE

Class Action

Commercial Litigation
Insolvency & Creditors'
Rights

Corporate Compliance,
Investigations, &
Responsibility

E-Discovery & Document
Retention

Intellectual Property

IP Litigation

Litigation

Professional Liability

Securities &
Directors/Officers
Litigation

Trade Secrets

White-Collar Criminal
Defense

EDUCATION

Harvard Law School, J.D.,
1975

Securities Litigation and Enforcement

Mr. Burke has handled individual, multiparty, and class-action litigation and arbitration matters involving issuers, underwriters, broker-dealers, officers, directors, attorneys, accounting firms, banks, and insurance companies. These matters have included allegations of civil and criminal violations of federal and state securities and racketeering laws, corporate fraud, breach of fiduciary duty, and derivative claims. Several of the cases have included applying accounting principles to complex financial transactions. One matter included representing 11 broker-dealers in a putative national class action seeking to compel the payment of interest on free credit balance and to enjoin account transfer practices that had been approved by the SEC.

Mr. Burke has also handled litigation and arbitrations arising from failed or underperforming merger and acquisition transactions arising from stock or acquisition agreements, and claims arising from deferred purchase price payments through earnout agreements.

Corporate Responsibility, Investigations, & Compliance

Mr. Burke represents public and private companies seeking to adopt corporate fraud prevention, detection, and compliance programs. He advises clients regarding the requirements for programs that will comply with the revised organizational sentencing guidelines, state fiduciary duty laws, and relevant government enforcement policy directives that impact corporate compliance. These include the Department of Justice Thompson memorandum, and enforcement directives implemented by diverse agencies such as the SEC, CFTC, and FERC. He is well versed in the procedures, responsibilities, and duties added by the Sarbanes-Oxley Act of 2002; recent rules and regulations of the SEC, NYSE, NASD, and PCAOB. He knows the latest developments in the law governing corporate fiduciary duties, audit committee membership duties and responsibilities, including audit committee responses to whistleblower hotline complaints and internal audit reports.

Mr. Burke represents clients in a variety of settings concerning officer and director duties and liabilities including internal investigations, responses to shareholder demands and in derivative and shareholder litigation. When problems arise, Mr. Burke can act as independent counsel in confidential internal investigations for companies, boards of directors, audit committees, or special litigation committees. He also serves as counsel in litigation involving alleged

Cornell University, A.B. in
Economics, *magna cum
laude*, 1972

**BAR & COURT
ADMISSIONS**

Arizona

California

Colorado

District of Columbia

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violations of federal and state law, including alleged financial and accounting irregularities affecting numerous statutes and regulations. Many of the matters he has handled involved the restatement of financial data.

Professional Malpractice Litigation

Mr. Burke has handled individual, multiparty, and class-action cases and license proceedings alleging accounting and attorney and malpractice arising from auditing work, tax advice, IT consulting, legal advice, and litigation handling.

White-Collar Crime

Mr. Burke has represented individuals, partnerships, and corporations in federal and state grand jury investigations, agency investigations and trials. He has handled matters involving the Bank Secrecy Act and other money-laundering issues, securities fraud, mail and wire fraud, tax fraud, antitrust violations, federal and state program fraud, and environmental health and safety violations. He has also conducted internal corporate investigations and lectured and advised clients on corporate compliance programs.

Commercial Litigation, Business Torts, & E-Commerce

Mr. Burke's commercial litigation case mix includes individual, multiparty, and class-action litigation and arbitration matters involving diverse allegations including breach of contract, breach of fiduciary duty, theft of trade secrets, employee raiding, trademark infringement, fraud, and various business torts. These matters have included adversary proceedings in or related to bankruptcy proceedings. Clients have included a bankruptcy trustee, a major petroleum refiner, a major utility, banks and insurance companies, sureties, corporations, software companies, service firms, franchisors, and partnerships. Mr. Burke's e-commerce experience includes the Federal Computer Fraud & Abuse Act, the Electronic Communications Privacy Act, and issues concerning the discovery and admissibility of electronic evidence.

Antitrust Investigations & Litigation

Mr. Burke has handled a variety of antitrust cases, including grand- jury investigations, civil investigations, class actions, and individual actions that involve allegations of price fixing, unlawful distributorship terminations, group boycotts, other horizontal and vertical restraints, and alleged violations of Clayton Act Section 7. He also advises clients concerning the antitrust aspects of various transactions, sales arrangements, and licensing arrangements.

Technology

Mr. Burke has considerable experience involving applying technology to the practice of law, particularly involving computerized trial presentations and graphics systems, electronic discovery, electronic document management and retention, litigation support databases, computerized transcript management, document management, case management, and evidence management.

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Other

Mr. Burke has experience in working with a variety of experts, including economists, accountants, appraisers, environmental, mining, electrical and computer engineers, and real estate experts.

NOTEWORTHY

- Listed in *Best Lawyers in America 2007* for White-Collar Criminal Defense
- *Business Journal of Phoenix—Who's Who in Law* (2006): Corporate/Professional Liability/Securities Litigation
- *Arizona's Finest Lawyers* (2006): Business Litigation
- Frequently speaks on diverse topics, including securities litigation, electronic discovery, retention of electronic documents, electronic and digital evidence, the use of technology pretrial and in trial, trade secrets, corporate internal investigations, securities liability of officers and directors, computer crimes, environmental crimes, developing corporate compliance programs, representing high-technology companies, international litigation, partnering between inside and outside counsel, alternative and value billing, litigation management techniques, using experts, accountant malpractice, and basic trial and deposition skills.

REPRESENTATIVE MATTERS

He has represented national accounting firms in the following matters:

- *Class-action securities and professional malpractice litigation* arising from the bankruptcy of a major national homebuilder. Alleging errors in accounting for net realizable value write-offs and deferred tax asset estimates among other issues, plaintiffs sought \$95 million in actual damages and \$1 billion in punitive damages. After a 66-day jury trial, the matter ended in a defense verdict. Mr. Burke also represented the firm and two of its partners in related State Board of Accountancy proceedings.
- *Professional malpractice stockholder lawsuit* arising out of the failure of a life insurance company and an associated insurance service agency, involving alleged failures in accounting for life insurance premiums and calculating required reserves.

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- *Professional malpractice action* brought by foreign investors in British Virgin Islands corporations that owned US real estate, alleging professional negligence, breach of fiduciary duty, fraud, and racketeering arising from alleged improper disclosures regarding asset sales, erroneous financial statements, and erroneous tax planning and advice.
- *Professional malpractice action* filed by a bankruptcy trustee of a NASDAQ-listed national distributor of personal care products. Plaintiff sought over \$100 million in damages, alleging the improper auditing and application of revenue recognition criteria and errors in the installation of a major ERP system impacting financial statements, customer relationship management, and supply chain management.

SPEAKING ENGAGEMENTS

Frank Burke Co-Chairs, Speaks at 10th Annual Discovery & Records Retention Conference (12/7/2006), December 7, 2006

Phoenix Attorneys Offer Key Employees in Transition Workshop (2/8/2006),
(*A Steptoe-Sponsored Event*)

Frank Burke Co-Chairs, Speaks at E-Discovery Conference (12/8/2005)

Frank Burke Co-Chairs, Speaks at E-Discovery Conference (11/17/2005)

Frank Burke to Speak in London (11/11/2005)

Frank Burke Co-Chairs, Speaks at E-Discovery Conference (10/27/2005)

PUBLICATIONS

Corporate Fraud Defense Report (Vol 1 No 6) (6/2006)

Trade Secrets & Employee Raiding Update (4/2006)

"Protecting Corporate Trade Secrets in a Digital Network Environment"
(12/2005)

1 Privacy & Data Security Law Journal 56

Managing Email: Risks in the Preservation, Production, and Retention
(10/2004)

October 22, 2004, *American Lawyer Supp.* at 11

Protecting Trade Secrets in a Digital World (6/18/2003)

Tools of the Trade for Today's Litigator (7/2001)
The Practical Litigator

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Chapter on Environmental Criminal Enforcement (2/1995)
February 1995, *Arizona Environmental Law Manual*

Arizona's New Zlaket Rules and the Private Practitioner: Death of Rambo?
(4/1993)
April 1993, *Arizona State University Law Review*

PROFESSIONAL AFFILIATIONS

American Bar Association (1975–Present): Standing Committee on Continuing Education of the Bar, Member (1997–2000); Subcommittee on Technology, Chair (1998–2000)

Section of Litigation (1980–Present): Committee on State Justice Initiatives, Co-Chair (2000–2001), Committee on CLE and Audiovisual Recordings, Co-Chair (1997–2000), Committee on Corporate Counsel, Co-Chair (1994–1997), Vice Chair for Programs and Subcommittees (1991–1994), Subcommittee on Litigation Management Techniques, Co-Chair (1989–1991), Subcommittee on Corporate Laws, Co-Chair (1988–1989), Subcommittee on The Corporate Litigator, Co-Chair (1986–1989);

Securities Litigation Committee (1986–Present), Annual Survey on Broker-Dealer Litigation, Contributor (1987); Antitrust Litigation Committee (1980–Present), Civil Investigative Demand Monograph Project, Participant (1980); Computer Litigation Committee (1995–Present)

Section of Business Law (1989–Present): Committee on Federal Regulation of Securities, Subcommittee on Civil Liabilities and SEC Enforcement (1994–Present); Committee on Business and Corporate Litigation (1997–Present)

Antitrust Section (1977–Present): Industry Regulation Committee, Subcommittee on Financial Markets and Institutions, Assistant Chairman (1978–1980); Computer Litigation Committee (2000–Present); Internet Committee (2000–Present)

Criminal Practice and Procedure Committee (2000–Present):

Criminal Law Section (1980–Present); Committee on Prosecution and Defense of RICO Cases (1980–1984). Participated in committee action which eventually became an ABA legislative proposal regarding the RICO statute.

Tort and Insurance Practice Section (1994–Present): Distance Learning Coordinator (2000–Present); Business Torts Committee (1994–Present); Professionals, Officers, and Directors' Liability Committee (1994–Present)

State Bar of Arizona (1986–Present): State Bar Technology Task Force, Member (1995–2001)

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Maricopa County Bar Association (1986-Present)

Arizona Bar Foundation, Fellow (1989-Present)

Securities Industry Association: Compliance & Legal Division, Member
(1993-Present)

American Intellectual Property Law Association (1993-Present)