

## Kenneth Breen

### Partner

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Kenneth (Ken) Breen has earned a national reputation as a leading advocate and trial attorney who consistently delivers favorable outcomes for his clients. Major corporations and executives frequently choose Ken to handle their civil and criminal litigation and regulatory enforcement defense matters, and to direct their internal and external investigations, across a wide range of specialized subject matters, including securities and commodities fraud, health care fraud, consumer protection, money laundering, anti-corruption, digital assets and crypto — many of which involve law enforcement and regulatory agencies from multiple jurisdictions and cross-border legal issues. He regularly represents clients in court and before the United States Department of Justice (“DOJ”), the Securities and Exchange Commission (“SEC”), the Commodity Futures Trading Commission (“CFTC”), the Federal Reserve, state attorney generals, state financial services departments, FINRA and other self-regulatory organizations, other federal agencies, and international regulators. Ken has defended clients in many investigations in which no charges were brought, or where favorable settlements were achieved, often by leveraging his reputation as a winning trial and appellate attorney and former federal prosecutor. Ken also has substantial experience as a business litigator, representing clients in high-stakes civil litigation matters in federal and state courts and arbitration proceedings.

Ken is widely recognized for his legal achievements, including by *Chambers USA* in Litigation: White Collar Crime & Government Investigations, *The Legal 500*, *Benchmark Litigation* — “*Litigation Star*,” *Lawdragon* — “*Leading Litigator*,” *National Law Journal* — “*Criminal Law Trailblazer*,” *The American Lawyer* — “*Litigator of the Week*,” and *Law360* — “*Legal Lion*.”

In ranking Ken among the leaders in White Collar & Government Investigations, *Chambers USA* notes that his clients regard him as —

“a fantastically talented lawyer who is extremely strategic,”

“an extraordinarily effective trial counsel” who “comes with the experience, gravitas and intellect” that lets the other side know that he will be “really prepared to try the matter.”

“a very strong advocate,” “an extremely clear thinker,” “great communicator,” “highly focused and results-oriented,”

“phenomenal – [...] very good at his craft and [...] a great strategist.”

“dedicated, tireless and [someone who] can quickly and effectively understand legal issues and the business needs of his clients,”

“[having the] ability to look across the full spectrum of white-collar issues.”

Ken has tried 50 cases to verdict and argued 12 appeals as a federal prosecutor and defense attorney.

Notably, in January 2022, as lead counsel at trial and on appeal, Ken secured a precedent-setting appellate victory in the Second Circuit in *U.S. v. Connolly, et al.*, where all counts of conviction were overturned against his client, Matthew Connolly, and judgments of acquittal directed. Mr. Connolly’s win represents the only LIBOR-related criminal case in the U.S. or U.K. to be overturned on sufficiency of the evidence and has received world-wide attention. The complete appellate victory in *U.S. v. Connolly, et al.* led to Ken’s recognition by *The American Lawyer* as its “Litigator of the Week,” which also credited the decision as the “second white-collar appellate reversal Kenneth Breen and Phara Guberman...have won in as many years.” The team’s win in this case was also highlighted by *Global Investigations Review (GIR)*, with the case’s nomination for Most Important Case of the Year in 2019 for its impact on future investigations.\*

The prior year, as lead counsel at trial and on appeal, Ken obtained a landmark appellate victory in the Third Circuit in *U.S. v. Gibson, et al.*, where all counts of conviction against David Gibson, the former Chief Financial Officer of Wilmington Trust Corporation, were overturned in a matter of first impression, and the two remanded counts were subsequently dismissed. *The American Lawyer* deemed it “a stunning reversal of criminal convictions for four executives of Wilmington Trust Corp. in a case dating back to the Great Recession.” Ken was nominated twice as *The American Lawyer*’s “Litigator of the Week” for his more than 10 years of work in *Gibson*.

Ken is a former federal prosecutor who previously served as an Assistant U.S. Attorney and Deputy Chief of the Business and Securities Fraud Section in the U.S. Attorney’s Office for the Eastern District of New York. Prior to that role, he worked as a trial attorney in the U.S. Department of Justice Tax Division. Before joining Foley, Ken was partner in the New York office of an international law firm and was the global chair of the investigations and white collar defense practice at another global firm.

## Representative Experience

Ken has successfully advised clients on and represented clients in numerous significant matters, most recently including:

### **Internal Investigations**

- Conducted an internal investigation for the Audit Committee of a public international pharmaceutical company of allegations related to the Company's financial statements, public statements, and management integrity.\*
- Conducted an internal investigation for the Audit Committee of a public real estate development and management company of whistleblower allegations related to the Company's financial statements and corporate expenditures.\*
- Conducted an internal investigation for a multi-billion dollar fund related to potential fraud and conversion by a former executive officer.\*
- Conducted an internal investigation of a public automotive supply company involving whistleblower allegations of accounting fraud.\*
- Conducted internal investigations for a leading state university system involving issues of accounting, disclosures, and documentation.\*
- Conducted an internal investigation for a not-for-profit institution involving alleged misuse of charitable resources.\*
- Conducted an internal investigation for a major financial institution involving allegations of fraud relating to the institution's credit lending and audit practices.\*
- Conducted an internal investigation for a not-for-profit corporation involving allegations of accounting fraud.\*

### **State, Federal, and Global Investigations and Enforcement Matters**

#### **Companies**

- Represented an international financial services company in an investigation by the CFPB regarding its loan servicing platform and other technology services provided. The matter was concluded without any enforcement action brought against our client.\*
- Represented a hedge fund advisor in investigations by the DOJ and SEC regarding foreign account issues. The investigation was concluded without any charges being brought against our client.\*
- Represented a large real estate investment firm in an investigation by the NYAG involving "pay-to-play" practices in connection with public pension fund investments. The investigation was kept confidential and concluded without any charges being brought against our client.\*
- Represented multiple fintech apps in investigations by the CFPB, NY Department of Financial Services, and other state regulators on issues involving online lending, interest rates categorized as "tips," monthly memberships at lending companies, and other consumer fees.\*
- Represented a Middle Eastern oil and gas company in large-scale and well-publicized FCPA investigations by the SEC and DOJ. The investigation was kept confidential and concluded without any

charges or civil claims being brought against our client.\*

- Represented a real estate investment firm in a joint investigation by the DOJ and the Federal Housing Finance Agency Inspector General's Office. The investigation was kept confidential and concluded without any charges or civil claims being brought against our client.\*
- Represented an international financial services company in an investigation by the CFPB regarding its loan servicing platform and other technology services provided. The investigation was concluded without any charges being brought against our client.\*
- Represented a major construction company in an EDNY U.S. Attorney's Office investigation of the company's billing practices, which was resolved by a deferred prosecution agreement, and also in state and federal qui tam cases related to the same conduct, which were dismissed on motion after briefing and arguments.\*
- Represented a futures, options and equity trading firm and its principal in a Regulation SHO investigation by the SEC and SROs. The investigation was concluded without any charges being brought against our client.\*
- Represented a prominent proprietary trading firm and registered broker-dealer in *SEC v. Galleon Management, LP, et al.* and *SEC v. Cutillo, et al.*, insider trading cases in the SDNY.\*
- Represented the Swiss banking operations of a major international bank as Independent Examiner in connection with a DOJ Tax Division Program offering Non-Prosecution Agreements for Swiss banks.\*

### **Executives and Other Individuals**

- Represented a former senior executive of a financial institution in an investigation by U.S. and global law enforcement authorities of potential criminal conduct involving the alleged theft of over \$3.5 billion from the Malaysian government-owned 1MDB investment company, and related civil litigations. The investigation and litigations were concluded without any criminal or civil charges being brought against our client.\*
  - Represented a senior officer of the private banking division of an international investment bank in an investigation by the SEC related to accounting and disclosure issues. The matter settled favorably.\*
  - Represented a former portfolio manager of the hedge fund division of a U.K. alternative investment company in an investigation by the SEC and FCA. The investigations were concluded without any charges being brought against our client.\*
  - Represented a hotel owner in an investigation by the U.S. Department of Justice Fraud Section involving alleged mortgage fraud in excess of US\$500 million. The investigation was concluded without any charges being brought against our client.\*
  - Represented former New York City Police Commissioner Bernard Kerik in criminal cases in the Bronx and U.S. District Court for the SDNY.\*

### **Criminal Trials and Appeals**

- Represented Matthew Connolly, former manager at Deutsche Bank, in *U.S. v. Connolly, et al.* as lead counsel at trial and appeal in a matter involving allegations of wire fraud in connection with LIBOR submissions brought by the Department of Justice in the Southern District of New York. Following a split jury verdict, our client was not sentenced to any term of incarceration after a significant sentencing departure. The Second Circuit ultimately overturned all counts of conviction and directed judgments of acquittal. Our precedent-setting victory was recognized by *The American Lawyer*. Our work in this case was nominated by *Global Investigations Review (GIR)* as Most Important Case of the Year for its impact on future investigations and by *Law360* for initially securing a sentencing ruling without any period of incarceration.\*
- Represented David Gibson, former Chief Financial Officer of Wilmington Trust Corporation, in *U.S. v. Gibson, et al.* as co-lead counsel at trial and on appeal in a matter involving allegations of accounting and securities fraud brought by the U.S. Attorney's Office for the District of Delaware. Our client's conviction was overturned on all counts in a matter of first impression for the Third Circuit and the remanded counts were dismissed by the District of Delaware. The related SEC litigation was settled favorably. Our victories in this case have been recognized by *The American Lawyer*.\*

### Civil Cases

- Represents financial institutions, investment advisors and executives in a wide array of pre-litigation investigations and civil court proceedings.

### Pro Bono Counsel

- Pro bono counsel to Kaiser's Room, a non-profit organization focused on providing arts programming to children with varying developmental profiles.\*

*\*Matters handled prior to joining Foley.*

### Awards and Recognition

- *Chambers USA*, Litigation: White Collar Crime & Government Investigations (2010-2025)
- *The Legal 500*
  - Dispute Resolution-Corporate Investigations and White-Collar Criminal Defense: Advice to Corporates (2015-2024)
  - Dispute Resolution-Corporate Investigations and White-Collar Criminal Defense: Advice to Individuals (2015-2024)
  - Dispute Resolution-Financial Services Litigation, Dispute Resolution-Securities Litigation: Defense (2015-2024)
- *Lawdragon*
  - 500 Leading Lawyers in America (2023, 2024)
  - 500 Leading Litigators in America (2022, 2024)
  - 500 Leading Global Litigators (2023)

- *National Law Journal*, Criminal Law Trailblazers (2020)
- *The American Lawyer*
  - Litigator of the Week for securing a “remarkable turnaround” and complete appellate victory in *S. v. Connolly, et al.* (Second Circuit) with a precedent-setting opinion (2022)
  - Litigator of the Week nominee for work as trial and appellate counsel securing a landmark appellate victory in *S. v. Gibson, et al.* (Third Circuit) and following the dismissal of the remaining remanded counts (2021)
- *Law360*, recognized as a “Legal Lion” for securing a sentencing ruling without any period of incarceration in *S. v. Connolly, et al.* (S.D.N.Y.) (2019)
- *Global Investigations Review* (GIR), recognized as lead trial counsel in *S. v. Connolly, et al.* (SDNY), shortlisted by GIR as “Most Important Case of the Year” for its impact on future government investigations (2019)
- *Benchmark Litigation*, Litigation Star in White Collar Crime

## Presentations and Publications

- Co-author, “[Rule 10b5-1 Insider Trading Plans: Increased DOJ Emphasis Checklist](#),” *LexisNexis*, Aug. 23, 2024
- Presenter, Jarkesy Supreme Court Ruling Limits SEC’s Enforcement Ability, Harvard Law School Forum on Corporate Governance, July 11, 2024
- Co-author, “[Off-Channel Communications: Remote and Hybrid Work Environment Checklist](#),” *LexisNexis*, July 11, 2024
- Presenter, Insider Trading and Off-Channel Communications in the Age of Remote and Hybrid Work Environments, Harvard Law School Forum on Corporate Governance, May 12, 2024
- Co-author, “[First 10b5-1 Insider Trading Case Raises Compliance Issues](#),” *Law360*, Apr. 17, 2024
- Co-author, “DOJ Announces Formal Expansion of Corporate Policy to Incentivize More Self-Reporting,” *Wolters Kluwer Insights: The Corporate and Securities Law Advisor*, Vol. 37 No. 4, April 2023
- Co-author, “[SEC Actions Up the Ante for Cybersecurity Disclosures](#),” *Bloomberg Law*, Sept. 14, 2021
- Co-author, “[Prosecutions of Bitcoin Mixers Raise Crypto Privacy Questions](#),” *New York Law Journal*, May 18, 2021
- Co-author, “[Current Attempts to Define Regulator Roles in Cryptocurrency Enforcement Actions](#),” *New York Law Journal*, Mar. 19, 2021
- Co-author, Musk’s Crypto Tweets Likely Didn’t Violate SEC, CFTC Rules, *Law360*, Mar. 5, 2021
- Co-author, “[GameStop Stock Trading Poses ‘Manipulation’ Challenge for Regulators](#),” *Bloomberg Law*, Jan. 29, 2021
- Co-author, 2020 SEC Risk Alert Provides Guidance for Private Fund Advisers, *Journal of Investment Compliance*, Vol. 21, Issue 1, Dec. 16, 2020
- Co-author, “[How Criminal Rule 4 Is Changing](#),” *Law360*, Mar. 27, 2016
- Co-author, “[‘Omnicare’ and Opinion Statements Liability in Securities Cases](#),” *New York Law Journal*, Mar. 17, 2015
- Co-author, “[Expect More SEC Scrutiny of Defense Attorney Conduct](#),” *Law360*, Jan. 7, 2014

## Practice Areas

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

## Education

- Boston College Law School (J.D., 1992)
- Boston College (B.A., cum laude, 1989)
  - Order of the Cross and Crown Honor Society

## Admissions

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