

Mark K. McCulloch

Special Counsel

MKMcCulloch@mdwcg.com

Orlando – 407.362.1000



Mark McCulloch is Special Counsel in our Casualty Department. Mark defends clients in matters involving premises liability, focusing on trip and falls on “foreign transitory substances”, and auto liability, including rideshare liability. In addition to his representation at the trial level, Mark is an accomplished Appellate advocate and counselor with proven experience at all levels of state and federal appellate practice, including in the United States Supreme Court.

Mark is able to provide legal counsel and advice to clients on a wide range of complex legal issues related to liability and risk management. He is skilled at identifying potential claims and defenses based upon comprehensive review of case facts, present controlling legal authority, and his experience as a trial and appellate advocate to assist clients fashion an appropriate litigation strategy tailored and designed to achieve the best outcome for the client.

Prior to joining Marshall Dennehey, Mark defended Florida cities, counties, and other public entities such as Community Development Districts protected by Florida’s statutory limited waiver of sovereign immunity in a variety of areas including land use and development code compliance, claims involving public records and open meeting law, claims involving access to public services under the Americans with Disabilities Act, civil rights claims under the federal and state civil rights acts. His significant experience in these areas also included providing pre-suit investigation support and analysis, risk management analysis, and responses to public inquiries following high-profile events. Mark also spent several years as a solo practitioner representing criminal defendants in federal and state appellate courts.

Mark received his Bachelor of Science in Journalism from Emerson College and spent 15 years as a newspaper reporter and editor. During this time, he received his Master's Degree in Public Administration from American International College. He received his *juris doctor* from Barry University Dwayne O. Andres School of Law.

Practices

- First-Party Property
- Automobile Liability
- Premises & Retail Liability
- Appellate Advocacy & Post-Trial Practice

He is admitted to practice in Florida and Pennsylvania, including all state and federal districts. He is also admitted to practice in United States Supreme Court, and the U.S. Courts of Appeals for the First, Second, Third, Fourth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits.

Education

- Dwayne O. Andreas School of Law (J.D., 2008)
- American International College (M.P.A., *magna cum laude*, 2004)
- Emerson College (B.A., 1992)

Admissions

- Florida
- Massachusetts
- Pennsylvania
- U.S. Court of Appeals 1st Circuit
- U.S. Court of Appeals 2nd Circuit
- U.S. Court of Appeals 3rd Circuit
- U.S. Court of Appeals 4th Circuit
- U.S. Court of Appeals 6th Circuit
- U.S. Court of Appeals 8th Circuit
- U.S. Court of Appeals 9th Circuit
- U.S. Court of Appeals for the 10th Circuit
- U.S. Court of Appeals 11th Circuit
- U.S. District Court Middle District of Florida
- U.S. District Court Northern District of Florida
- U.S. District Court Southern District of Florida
- U.S. District Court District of Massachusetts
- U.S. District Court Eastern District of Pennsylvania
- U.S. District Court Middle District of Pennsylvania
- U.S. District Court Western District of Pennsylvania
- Supreme Court of the United States

Results

Dismissal Obtained in Case Involving Alleged Constitutional Violations

We secured dismissal of a lawsuit which alleged constitutional violations pursuant to 42 U.S.C. §1983. He argued that the claim was not ripe because the plaintiff's conviction had never been vacated or terminated in the plaintiff's favor. Under the "favorable termination" requirement pronounced in *Heck v. Humphrey*, 512 U.S. 477 (1984), and later discussed in *McDonough v. Smith*, 588 U.S. 109 (2019), 42 U.S.C. §1983 cannot be used to pursue alleged constitutional violations unless and until the underlying criminal conviction was vacated or otherwise terminated.

Summary Judgment Secured in Premises Liability Case

We successfully won summary judgment on behalf of our client, a vendor who did work for a national bank. The plaintiff alleged our client created a dangerous condition in the parking lot that caused her to trip and fall. Plaintiff's counsel was initially presented with evidence disputing the claims in his complaint, including specific work orders that identified and limited the scope of our client's work of replacing nine concrete car stops at the bank branch location nine months prior to the plaintiff's accident. Following initial discovery, the plaintiff testified during her deposition that the car stops had nothing to do with the trip and fall. Having failed to produce any evidence to support her claim in opposition to our motion for summary judgment, the court granted summary judgment from the bench following oral argument.

Per Curiam Affirmance Obtained in Florida Fire-Loss Subrogation Case

We succeeded in obtaining a *per curiam* affirmance in the First District Court of Appeal of a final order dismissing the plaintiff's fire-loss subrogation claim against our client, a tenant in a leased property the plaintiff insured. The First District affirmed the trial court's finding that the specific fire-loss provisions in the lease shifted the risk of loss to the landlord, the plaintiff's insured. As a result, our client was a co-insured under the plaintiff's policy. An insurance company cannot sue its own insured.