Brian M. Nichilo

Counsel

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Brian guides clients navigating complex regulatory issues and related litigation. With a distinctive combination of federal law enforcement and auditing experience, he helps clients resolve their toughest challenges and mitigate risk.

OVERVIEW

Brian represents clients facing regulatory enforcement actions and litigation brought by the government for clients in a diverse range of sectors, including pharmaceutical, medical device, and financial services. He offers particular experience handling sophisticated internal investigations and complex enforcement actions brought by federal and state regulators.

Brian is well-versed in the False Claims Act, Anti-Kickback Statute, Disadvantaged Business Enterprise (DBE) regulations, and various states' lending laws. Brian also advises individuals and companies on federal, state, and local campaign finance laws and regulations.

Brian's professional background and experiences informs his thorough approach and unique insights into government actions. Before entering the practice of law, he served as a special agent with the Federal Bureau of Investigation (FBI) where he conducted investigations of public corruption involving state and local government officials. His work included assisting the U.S. Attorney's Office for the Eastern District of Pennsylvania in the prosecution of numerous fraud and corruption cases. Additionally, Brian is a licensed Certified Public Accountant (inactive status) and worked as a financial statement auditor for an international accounting firm.

Brian maintains an active pro bono practice, including representing refugees and asylum seekers in matters involving the U.S. Citizenship and Immigration Services and the Board of Immigration Appeals.

REPRESENTATIVE MATTERS

- Representing a physician-owned anesthesiology practice in a False Claims Act suit brought in the U.S. District Court for the Eastern District of Tennessee for alleged Medicare and Medicaid fraud. Helped persuade the court to grant our motion to dismiss the claims for allegedly billing for prolonged anesthesia.
- Conducting an internal investigation on behalf of one of the world's leading tobacco merchants relating to concerns of potential embezzlement by a senior finance employee at an African subsidiary.
- Led motions practice in the representation of an assisted living facility in a qui tam suit alleging fraudulent

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Medicare and Medicaid billing and retaliation against an employee for reporting the alleged fraud. The U.S. District Court for the Eastern District of Pennsylvania granted our client's motion to dismiss the False Claims Act retaliation claim with prejudice and granted in substantial part our motion for summary judgment on the remaining False Claims Act claims, leading to a favorable resolution for our client.

- Represented one of the nation's leading general contractors in a qui tam action alleging that our client defrauded the government on various federally funded construction projects by falsely obtaining certifications of minority-owned businesses. Our team prevailed on the motion to dismiss the federal False Claims Act suit brought in the U.S. District Court for the Central District of California. The decision was affirmed by the U.S. Court of Appeals for the Ninth Circuit, which amounted to a complete victory for our client.
- Defending a pharmaceutical company in a qui tam action alleging violations of the False Claims Act and the Anti-Kickback Statute, including responsibility for drafting and responding to motions to exclude expert testimony on causation and damages, and evidentiary motions in limine.
- Represented several consumer lending companies in responding to inquiries and enforcement actions by the Pennsylvania Office of Attorney General, Pennsylvania Department of Banking and Securities, and Delaware Office of the State Bank Commissioner, including successfully opposing motions for contempt brought by the attorney general against two separate clients.
- Represented a consumer lending company in more than fifteen arbitrations before AAA and JAMS brought by individuals alleging violations of state lending laws, which, following dispositive motions, hearings, and/or an appeal, resulted in findings in favor of our client in the majority of matters.
- Represented a tribal lending entity in negotiations and settlements with individuals alleging violations of state and federal debt collection laws.
- Conducted an investigation into alleged manipulation of net asset value in a real estate investment trust merger.
- Conducted an accounting fraud investigation for a national restaurant group.
- Served as counsel for the court-appointed receiver in a Securities and Exchange Commission enforcement action filed in the U.S. District Court for the District of Oregon, which, among other things, included assisting in the resolution of related enforcement matters involving the Consumer Financial Protection Bureau and multiple state attorneys general.
- Served as counsel for the court-appointed Special Master of the Deepwater Horizon oil spill multidistrict litigation, investigating fraudulent claims filed with the court-supervised settlement program by individuals and businesses.
- Responsible for trial and post-trial briefing in defense of an academic official in first-ever prosecution of college rankings fraud.
- Represented general counsel for an investment group as a witness in a securities fraud prosecution.
- Conducted investigations of employee and vendor misconduct as an embedded team member in the compliance department of an international online retailer.
- Assisted a manufacturer uncover and terminate a years-long employee theft scheme.
- Advised a digital security system company on limitations under the Stored Communications Act for responding to subpoenas issued as part of government investigations and private civil litigation.

AWARDS

Best Lawyers in America®: Ones to Watch, Criminal Defense: White-Collar (2024-2027)

TOP AREAS OF FOCUS

- False Claims Act + Other Whistleblower Actions
- Fraud + Abuse Litigation + Investigations
- White Collar Litigation + Investigations

ALL AREAS OF FOCUS

- Consumer Financial Services
- Due Diligence + Corporate Compliance
- False Claims Act + Other Whistleblower Actions
- Financial Services
- Fraud + Abuse Litigation + Investigations
- Health Care + Life Sciences
- Litigation + Trial
- White Collar Litigation + Investigations

PROFESSIONAL/COMMUNITY INVOLVEMENT

- Hearing Committee member, Disciplinary Board of the Supreme Court of Pennsylvania

EDUCATION AND CERTIFICATIONS

EDUCATION

- Temple University Beasley School of Law, J.D., *magna cum laude*, member, Order of the Coif; note/comment editor, *Temple Law Review*
- University of Illinois Urbana-Champaign, B.S., *with honors*, accounting

BAR ADMISSIONS

- Pennsylvania
- New Jersey

COURT ADMISSIONS

- U.S. District Court, Eastern District of Tennessee
- U.S. District Court, Eastern District of Pennsylvania
- U.S. District Court, District of New Jersey
- U.S. Court of Appeals, Fourth Circuit

CLERKSHIPS

- Hon. Joel H. Slomsky, U.S. District Court, Eastern District of Pennsylvania, 2012-2013

PUBLICATIONS

- Co-author, "Does the Government Retain Control of False Claims Act Cases?," *Troutman Pepper*, June 21, 2023.
- Co-author, "SEC Adopts Final Clawback Rules," *Troutman Pepper*, November 8, 2022.
- Co-author, "FINRA Publishes New Annual Report on FINRA's Examination and Risk Monitoring Program," *Troutman Pepper*, March 3, 2021.