Daniel M. Kolkey

Retired Partner

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San Francisco

Daniel M. Kolkey has served as an Associate Justice on the California Court of Appeal, Third Appellate District, as Counsel to the Governor of California, and as a negotiator for another California Governor. A retired partner in the San Francisco office of Gibson Dunn, Mr. Kolkey chaired the firm's California Appellate Law Practice Group for over a decade, served as President of the California Supreme Court Historical Society from 2022 to 2025 (at which he remains a board member), and drafted California's current international commercial arbitration statute in 2024. His talent lies in developing and drafting persuasive legal arguments.

Ranked in the first tier for California Appellate Litigation by Chambers USA in 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018, and awarded the prestigious Clay Award as an Attorney of the Year in the fields of (i) Government/Public Policy, (ii) Appellate law, (iii) Real Estate and Development, and (iv) Sports Law for "extraordinary achievement" in the years 2004, 2006, 2015, and 2016, respectively, Mr. Kolkey's practice has focused on appellate litigation. He served for five years (1999-2003) as an Associate Justice on the California Court of Appeal, Third Appellate District, in Sacramento, served as Legal Affairs Secretary and counsel to Governor Pete Wilson for four years, advised four different governors on legal issues, and acted as Governor Arnold Schwarzenegger's lead negotiator for tribal-state compacts under the Indian Gaming Regulatory Act. The Daily Journal named him as one of the top 100 lawyers in California in 2018.

In May 2010, the California Chief Justice appointed him to the California Judicial Council's Appellate Advisory Committee, and in September 2013 and September 2016, the Chief Justice reappointed him to a second and third term, respectively. In October 2013, he was named as chair of the Appellate Advisory Committee's Appellate Rules subcommittee, which recommends revisions to the appellate rules for the California Courts.

As a litigator (before and after his government service from 1995 to 2003), Mr. Kolkey has handled class and shareholder actions; construction, insurance, real estate, employment, and contract disputes; Proposition 65 litigation; unfair competition litigation; legal malpractice defense; California environmental law litigation; administrative law cases; and political law litigation, including ballot litigation, Voting Rights Act claims, and redistricting matters.

Representative Matters

- Successful appeal in the California Court of Appeal, reversing a $34 million judgment and directing a judgment in favor of our client in a contract dispute over an earn-out clause in connection with the acquisition of a technology company. (*SEP II V. Riverbed Technology, Inc.*, case no. A148043 (2018).)
- Successful appeal in the California Court of Appeal, reversing a legal malpractice verdict of $34.5 million against a national law firm. (*Sabadia v. Holland & Knight LLP*, case no. BZY2773 (2018).)

Capabilities

Appellate and Constitutional Law
Administrative Law and Regulatory Practice
Crisis Management
International Arbitration
Law Firm Defense
Litigation
Sports Law

Credentials

Education

Harvard University - 1977 Juris Doctor
Stanford University - 1974 Bachelor of Arts

Admissions

California Bar

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- Successful appeal in the California Court of Appeal under the California Environmental Quality Act which reversed the principal grounds for disapproving the construction of a $500 million rail facility near the Port of Los Angeles. (*City of Long Beach v. City of Los Angeles*___Cal.App. 5th __ (2018).)
- Successful defense in the California Court of Appeal against statutory and tort law challenges to the activities of an online rental marketplace. (*Housing Rights Committee of San Francisco v. HomeAway*, Inc. (2017).)
- Successful representation of the Governor of California against a challenge to a ballot initiative. (*League of Women Voters v. Eu*, 7 Cal.App 4th 649 (1992).)
- Successful defense in the California Court of Appeal in an appeal under the California Environmental Quality Act and related laws challenging the approval of an arena for the Golden State Warriors. (*Mission Bay Alliance v. Office of Community Investment and Infrastructure et al.*, 6 Cal.App 5th 160 (2016).)
- Successful appeal in the California Court of Appeal, resulting in the reversal of an adverse judgment that had invalidated the election of corporate directors. (*Morrical v. Rogers*, 220 Cal.App.4th 438 (2013).)
- Successful defense of a national e-commerce client in the California Supreme Court, which held that the Song-Beverly Credit Card Act does not apply to on-line purchases of electronically downloadable products. (56 Cal.4th 128 (2013).)
- Successful appeal in support of a national drugstore chain's equal protection challenge to a municipal ordinance in the California Court of Appeal. (*Walgreen Co. v. City and County of San Francisco*, 185 Cal.App.4th 424 (2010).)
- Successful reversal of a multimillion dollar legal malpractice judgment against a client in the California Court of Appeal. (*Blanks v Seyfarth Shaw LLP*, 171 Cal.App.4th 336 (2009).)
- Successful defense against a claim under the California False Claims Act in the California Supreme Court. (*Harris v. PricewaterhouseCoopers*, 39 Cal.4th 1220 (2006).)
- Successful defense of Proposition 77 – a redistricting measure – in the California Supreme Court. (*Costa v. Superior Court*, 37 Cal.4th 986 (2006).)
- Successful representation of business interests over the validity of a referendum petition in the California Court of Appeal. (*Zaremberg v. Superior Court*, 115 Cal.App.4th 111 (2004).)
- Successful representation of a corporation in a proxy dispute before the federal district court and Ninth Circuit. (*Acosta v. Pacific Enterprises*, 950 F.2d 682 (9th Cir. 1993).)
- Successful representation of a government contractor in a bankruptcy dispute before the bankruptcy court, federal district court, and Ninth Circuit. (*Softwaire Centre International, Inc.*, 994 F.2d 682 (9th Cir. 1993).)
- Successful representation of the Governor of California in the redistricting litigation before the California Supreme Court. (*Wilson v. Eu*, 1 Cal.4th 707 (1992).)
- Successful representation of the Arizona House of Representatives in the trial over Arizona's congressional districts. (*Arizonans for Fair Representation v. Symington*, 828 F.Supp. 684 (D. Ariz. 1992), affirmed, 113 S.Ct. 1573 (1993).)
- Successful representation of the Governor of California against a challenge to a ballot initiative. (*League of Women Voters v. Eu*, 7 Cal.App 4th 649 (1992).)

Mr. Kolkey has also drafted California initiative measures, including Proposition 20 (congressional redistricting reform), which was adopted by the voters in 2010, and Proposition 54 (the Legislature Transparency Act), which was adopted by the voters in 2016. In 2017-2018, he drafted and facilitated enactment of California Senate Bill 766, which authorized foreign and out-of-state attorneys to represent their clients in international commercial arbitrations held in California. In 2024, he updated California's

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international commercial arbitration code (having been one of the two original drafters of the measure in 1988).

He has also maintained an international arbitration practice that has included matters under the English Arbitration Acts and before the International Chamber of Commerce, the American Arbitration Association, and the Iran-United States Claim Tribunal.

As a judge, Mr. Kolkey's representative decisions include *FNB Mortgage Corp. v. Pacific General Group*, 76 Cal.App.4th 1116 (1999) (tolling of statute of limitations); *Bank of America v. Jennett*, 77 Cal.App.4th 104 (1999) (Full Faith and Credit Clause); *Marin Healthcare District v. Sutter Health*, 103 Cal.App.4th 861 (2002) (application of statute of limitations to public use property); *Intel Corp. v. Hamidi*, 94 Cal.App.4th 325 (2001) (dissenting opinion regarding e-mail trespass that became the majority decision in the California Supreme Court); and *Pacific State Bank v. Greene*, 110 Cal.App.4th 375 (2003) (parol evidence rule).

I In his capacity as Legal Affairs Secretary and counsel to Governor Pete Wilson, Mr. Kolkey was responsible for all of the legal advice within the Governor's Office; approving all state agency appeals; supervising and directing litigation strategy with respect to lawsuits brought against the Governor in his official capacity; drafting the Governor's civil justice reform legislation; and negotiating tribal-state compacts under the Indian Gaming Regulatory Act.

Appointments

Appointed by the Governor to the California Law Revision Commission (1992-94), and elected chair of the Commission (1994).

- Appointed by the Chief Justice of the California Supreme Court to chair a working group to recommend to the Court whether to authorize out-of-state and foreign attorneys to represent their clients in international commercial arbitrations held in California. The working group's report was unanimously endorsed by the California Supreme Court (2017).
- Appointed by the California Judicial Council's Appellate Advisory Committee as Chair of its Rules Subcommittee (2013 – present).
- Appointed by the California Chief Justice to the California Judicial Council's Appellate Advisory Committee (2010 – present).
- Elected to the Board of Directors of the California Supreme Court Historical Society (2013 – present); elected Vice President in 2018.
- Elected to membership in the American Law Institute (2003 – present).
- Appointed to the California State-Federal Judicial Council (2001-2003).
- Appointed by the California Judicial Council to the Blue Ribbon Commission on Jury System Improvement (1996).

Educational History

Mr. Kolkey received his J.D., *magna cum laude*, from Harvard Law School in 1977 and his B.A., with distinction and departmental honors, from Stanford University in 1974.

Affiliations

Mr. Kolkey is co-editor of The Practitioner's Handbook on International Arbitration and Mediation (Juris Publishing) and was an adjunct professor teaching international arbitration at McGeorge Law School from 2001-2004, and an adjunct professor teaching judicial opinion writing at the University of California, Berkeley, School of Law in 2023.

He is admitted to practice in all California state and federal courts, the United States Court of Appeals for the Ninth Circuit, the United States District Court for the District of Arizona,

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and the United States Supreme Court.

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