

John Kincade

Principal

Dallas

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John Kincade is a principal in the Financial Institutions practice group.

His practice focuses at all levels of federal and state securities litigation, arbitration and regulatory enforcement disputes. John represents a wide range of financial services clients including investment advisers, banks, and their registered persons in complex FINRA arbitrations, FINRA Enforcement proceedings and investigations, and SEC and State enforcement matters. John's practice also includes financial industry and commercial litigation, fiduciary and trust litigation, and Constitutional litigation, including first amendment, defamation, 1983, election, and other matters.

Prior to joining the firm, John was Co-Chair of Winstead's Securities Litigation & Enforcement Practice Group.

John graduated from St. Marys University School of Law *with distinction*. While at St. Marys University, John was an Articles & Symposium Editor for the *St. Mary's Law Journal*. John received his B.A., Government, from University of Texas at Austin.

Awards & Accolades

- Included in the list of the *Best Lawyers in America*[®], 2024
- Included in the list of *Texas Super Lawyers*, 2012, 2018-2021
- Selected to the list of The Best Lawyers in Dallas, D Magazine, 2013-2014, 2018-2022

No aspect of this or any advertisement has been approved by the Supreme Court of New Jersey. A description of the award methodologies can be found here.

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AREAS OF PRACTICE

Alternative Dispute Resolution

Business & Commercial
Litigation

Cybersecurity, Privacy &
Technology

Financial Institutions

Financial Institutions
Enforcement Defense

Financial Institutions Litigation
and Arbitration

Senior & Vulnerable Investor
Group

EDUCATION

- St. Marys University School of Law, J.D., 1986
- University of Texas at Austin, B.A., Government, 1983

ADMISSIONS

Texas

U.S. Court of Appeals, Fifth
Circuit

U.S. District Court Northern,
Southern, Eastern and Western
Districts of Texas

U.S. Supreme Court

Experience

- *Anton v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Russell Norwood*, 355 S.W. 3d 251 (Tex. App. – Austin 2001, pet. denied). In a case of first impression, the appellate court held that an IRA account custodian and its employee have no duty to notify an intended beneficiary of a change in beneficiary designation made by the IRA account owner.
- *In re Performance Nutrition, Inc.*, (Mims, Trustee v. Kennedy Capital Management, Inc., 239 B.R. 93 (N.D. Tex. Bankr. 1999)). Obtained a judgment in favor of client bankruptcy trustee on claims for breach of fiduciary duty, self dealing, failure to maximize value, and conspiracy/aiding and abetting, following a 21-day trial.
- *Holley v. Kitty Hawk, Inc.*, 200 F.R.D. 275 (N.D. Tex. 2001). Established further parameters and requirements for notice by a proposed lead plaintiff/lead counsel in Rule 10b-5 action.
- *Nat'l Converting v. Bankers Trust*, 134 F. Supp. 2d 804 (N.D. Tex. 2001). In an issue of first impression, established that a non-employee/non-shareholder family member may act as a client representative of a closely held, family corporation with regard to the receipt of privileged attorney client communications.
- *Clapsaddle v. Telescape Intl.*, 50 F. Supp. 2d 1086 (1998). Summary judgment under Texas fraud in a stock transaction.
- *Gilliland v. Taylor Invs.*, No. 11-03-00175-CV, 2004 WL 2126755 (Tex. App.-Eastland, September 23, 2004). Compelling FINRA arbitration involving non-signatory.
- *Janvey v. Algire*, 846 F. Supp. 2d 662 (N.D. Tex. 2011).
- *Roth v. Mims, Trustee*, 298 B.R. 272 (N.D. Tex. 2003). Monetary judgment in favor of client Trustee for fraud and fiduciary duty against former CEO and control groups.
- *Weber v. Merrill Lynch, Pierce, Fenner & Smith*, 455 F. Supp. 2d 545 (N.D. Tex. 2006). Customer's unsuccessful appeal of adverse arbitration award.
- Defended National Bank against fraud and breach of ISDA Master Agreement claims relating to failure to hedge energy-commodity prices.
- Negotiated a complex securities-account privacy agreement (GLB Act & PII) between the country's largest investment management firm and a high-net-worth oil industry customer and its family and ranch office.
- Successful resolution of Chapter 11 Bankruptcy Receiver's state court breach of fiduciary duty derivative claim lawsuit against former management and board of directors of publicly traded company related to pre-insolvency financing arrangements and later Chapter 11 liquidation of retail distribution company.
- Defense of alter ego and contract interference lawsuit against BVI Trust client. Prosecuted client's breach of exclusive license and patent agreement.
- Defend and advise corporate and individual clients in SEC, state, and regulatory investigations and actions, Wells Submissions, and creative settlement agreements, regarding accounting practices, internal controls, related party transactions, insider trading, and other activities.
- Successful prosecution of client's breach of contract lawsuit following interface-app developer's disclosure of client's user interface source code and communications and dispatch software.
- Led team defending country's largest broker dealer in over 20 high-profile, media reported, securities fraud claims stemming from the actions of one stockbroker.

- Defended an international investment advisor/brokerage firm in a high-profile FINRA arbitration regarding alleged wire transfer fraud scheme, achieving successful settlement while minimizing public reputational damage in the face of difficult facts. Achieved settlement of less than 100% of the theft and minimized public reputation damage in the face of difficult facts.
- Two-year representation of former associated person while serving as Government's lead witness in federal prosecutions of Stanford Financial Ponzi-scheme defendants and defended same client against SEC charges.
- Directed confidential external and third-party investigation of business-technology competitor regarding anti-competitive business practices.
- Representation of higher education public institution relating to third party administrator and advisor, recordkeeping, and custodian parties regarding 403(b) related Ponzi scheme.

News & Alerts

52 Bressler Attorneys Recognized by Best Lawyers in America 2024, Including 2 "Lawyer of the Year" and 16 "Ones to Watch"

Firm News, 08.17.2023

Speaking Engagements & Events

Arbitration v. Litigation: Which Forum Better Serves Your Business

Webinar, 10.18.2023

John Kincade and Don Littlefield to speak on *Protecting Senior & Vulnerable Clients and New FINRA Expungement Rules*

Speaking Engagement, Arts District Mansion 2101 Ross Avenue, Dallas, 09.26.2023

FINRA Expungement - The Latest on Recent Rule Changes Effective 10/16/2023

Webinar, 09.20.2023

Civic Involvement

- Member, Dallas Zoological Society
 - Member board of directors 2003-2014
 - Executive Committee and Chair of Governance Committee 2009 - 2014
 - Chair of Compensation Committee 2011 - 2014
- Volunteer, Visiting Nurses Association, Meals on Wheels

Professional Affiliations

- Member, Securities Industry Association (Compliance & Legal Division)
- Member, American Bar Association (Section of Litigation - Class Actions and Derivative Suits, Securities Litigation, and Litigation Technology)

- Member, Dallas Bar Association, Securities Section (1996 - Present)
 - Section Officer (2010 - 2014)
 - Section Chair (2014)
- Member, State Bar of Texas, Antitrust and Business Litigation, Consumer and Commercial Law, and Corporate Counsel Sections
- Fellow, Texas Bar Foundation
- Member, Dallas - Fort Worth (DFW) Compliance Roundtable