



## JOHN J. (MIKE) MCKETTA III

Of Counsel

**APPELLATE LAW, CIVIL LITIGATION**

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## ABOUT

Mike has been trying cases before Central Texas juries and judges since 1982. Before that he practiced in Washington, D.C. at the firm of Covington and Burling.

Mike's typical cases have involved clients facing jury trials or other proceedings in controversies of major importance to those clients. In selecting Mike as one of the "Best of the Bar" in 2003, the *Austin Business Journal* wrote: "Articulate and observant. Good at oral examinations and oral argument. Knowledgeable, affable, honorable, excellent memory. He has completely mastered the art – and it is an art – of cross examination. He works unceasingly for pro bono causes to which he is committed. He is a consummate professional."

In 2005, Mike was selected as the Commercial Litigation winner in the *Austin Business Journal's* Best of Business Attorneys and Corporate Counsel Awards. The *Austin Business Journal* wrote: "McKetta brings a grasp of big-picture issues, an eye for detail, and an ability to think on his feet to his work as a trial and appellate attorney."

In 2005, The Austin Bar Association and The Texas Center for Professionalism and Ethics awarded Mike the Professionalism Award. That award is given annually to the lawyer "who best exemplifies, by conduct and character, truly professional traits, who others in the bar seek to emulate, who all in the bar admire."

In 2010, The Texas Bar Foundation selected Mike for the Ronald D. Secrest Outstanding Trial Lawyer Award. That award is given annually to "an active trial lawyer who, by his or her practice,

has demonstrated outstanding trial and advocacy skills, has demonstrated high ethical and moral standards, and has demonstrated exceptional professional conduct, thus enhancing the image of the trial lawyer.”

In 2012, the Austin Bar Association selected Mike as one of its Distinguished Lawyers. The award recognizes selected attorneys who have practiced for 30 years or more and have significantly contributed to the profession and the community.

Mike is also active as a leader in matters affecting the legal profession and in civic matters related to his hometown Austin.

## **PROFESSIONAL QUALIFICATIONS**

- Admitted: Texas, 1977; District of Columbia, 1978.
- Education: Harvard College in 1969; University of Texas School of Law (with high honors) in 1977 (Order of the Coif and a Chancellor).
- President of Graves, Dougherty, Hearon & Moody, P.C. (1998-2008). Associated with the firm since 1982.

## **REPRESENTATIVE EXPERIENCE**

### **CLASS ACTIONS/DERIVATIVE ACTIONS/RICO:**

- Representation of a mutual insurance company in a class action lawsuit in South Texas, in which the plaintiffs sought to require a several billion dollar distribution from surplus to the mutual policy holders;
- Representation of a former Enron director, and president of two international subsidiaries of Enron, in class action lawsuits in Houston;
- Representation of directors of a cable television company in a derivative action alleging damages in excess of \$100 million;
- Recovery of a substantial judgment after a several-week trial in Georgia, representing investors in Mexico in a RICO and fraud suit against land promoters;
- Internal investigation on behalf of a special litigation committee of a public company concerning shareholder complaints of numerous transactions and events.

## **TRIALS REFLECT A VARIETY OF DISPUTES:**

- Recovery of substantial judgment after a several-week trial in a products liability wrongful-death case against a manufacturer of ephedra products;
- The take-nothing defense of a patent-contract case for the manufacturer of a newly introduced medication, which also included successful recovery of a damage award and a permanent injunction against the plaintiffs by way of counterclaims on behalf of the manufacturer;
- Representation of a nonprofit healthcare corporation in a lawsuit against the Government, determining that the Internal Revenue Service had wrongfully revoked the corporation's tax-exempt status following formation of a partnership owning four hospitals;
- Defense of a small governmental entity against constitutional allegations by an environmental group that the entity had been improperly formed; and recovery of litigation expenses and sanctions against the plaintiff and its attorney;
- Declaratory judgment against the City of Austin determining that the firm's clients owned a 20-foot strip of property underneath a building recently constructed by the City;
- Torts and contract claims between a national fraternal organization and the local student fraternity that withdrew from the national organization;
- Recovery of a substantial judgment, including punitive damages, based on defamation by one landfill corporation against a competitor.

## **SIGNIFICANT COMMERCIAL DISPUTES:**

- Representation of a power-plant owner in a lawsuit brought by an electric cooperative that complained of a \$200-million transaction;
- Representation of the owner of a building in a lawsuit to recover several million dollars due to construction and design problems.
- Obtained take-nothing summary judgment against a \$255 million antitrust and disparagement claim, brought against a leading provider of defect-inspection tools for integrated circuit manufacturers.

## **PROFESSIONAL LIABILITY:**

- Representation of a national engineering firm in a lawsuit brought complaining of \$7 million in repair costs associated with a 17,000-foot water pipeline;
- Representation of a national engineering firm in a lawsuit brought complaining of \$20 million in repair costs associated with a 20-mile water pipeline;
- Representation of a national accounting firm in suit brought by the receiver of a failed insurance company, defending against a claim in excess of \$60 million;

- Substantial recovery for receiver of a failed bank, in malpractice suit against the bank's professionals and the bank's former directors
- Frequent representation of lawyers in professional malpractice suits.

#### **EMPLOYMENT:**

- Representation of various employers in disputes with employees, including lawsuits concerning non-compete agreements, concerning claims of wrongful discharge or discrimination, concerning post-termination contractual disputes, concerning post-employment trade-secret protection, and other disputes; such as defeating injunction efforts by a former employer who wished to prevent its director of engineering from becoming employed by the industry leader.

#### **NATURAL RESOURCES:**

- Representation of a city in a dispute with a water supply company concerning a long-term water contract.

#### **GOVERNMENT:**

- Representation of various property owners and developers from time to time in litigation against cities relating to the transition impacts when various cities in Central Texas have adopted new and more restrictive water-quality regulation;
- Defense of municipal utility district against constitutional challenges as to its formation.

#### **PRO BONO:**

- Representation of the State Commission on Judicial Conduct in a 2-week trial for the removal of a Dallas judge from office;
- Representation of the State Commission on Judicial Conduct in a 1-week trial concerning conduct of an appellate judge;
- Representation of State Bar of Texas Commission for Lawyer Discipline in suit to disbar a trial attorney.
- Litigation to seek DNA testing and exoneration of a criminal incarcerated for 20 years.

#### **CLIENTS HAVE INCLUDED:**

- Advanced Micro Devices, APP Pharmaceuticals, Arthur Andersen, Austin American-Statesman (Cox Texas Newspapers, L.P.), Austin Police Association, Bank of America, BMC Software, Inc., Buffington Land, Ltd., CH2M Hill, Inc., Circuit of the Americas, Cirrus Logic, Inc., City of Bryan, City of Lampasas, City of Pflugerville, Corinthian Colleges, Inc., Dell, Inc., DiAthen, LLC, Financial Industries Corporation, Freescale Semiconductor, Inc., General Land Office of the State of Texas, Gray Engineering, Great American Insurance Company, HDR Engineering, Inc., Highland Resources, Inc., Hill Country Texas Galleria LLC, Hunt Properties, Inc., KLA-Tencor Corp., Kronkosky Charitable Foundation, Lazy Nine Municipal Utility District, Main Street Homes, Motorola, Inc., National Alliance Securities Corp., National Instruments Corporation, National Council on Compensation Insurance, PNB National Bank, Pulte Homes of Texas, Sheshunoff Consulting & Solutions, St. David's Healthcare System, State Farm Mutual Insurance, Tenaska, Inc., Texas Disposal Systems Landfill, Inc., Texas Mutual Insurance Company, Texas Wind Power Company, Toll Brothers, Trammell Crow, United States Anti-Doping Association, various local and national law firms.

## PROFESSIONAL AFFILIATIONS

- American Law Institute (ALI) <https://www.ali.org/>. Mike served as a member of the governing board, known as the Council of the ALI from 1998 to 2018 and is now a member of Council Emeritus. He is currently Chair of its Investment Committee. His prior service for the ALI included participating on its Executive Committee, as an Adviser for the Restatement of the Law Third, Agency, as an Adviser for the Restatement of the Law Third, Economic Torts and Related Wrongs, and on the Members Consultative Groups for the Restatement of the Law Third, The Law Governing Lawyers, the Restatement of the Law Third, Torts: Apportionment of Liability, the Complex Litigation Project, and the restatement of the Law, Liability Insurance.
- American Bar Association Standing Committee on the Federal Judiciary [http://www.americanbar.org/groups/committees/federal\\_judiciary.html](http://www.americanbar.org/groups/committees/federal_judiciary.html). Mike was appointed by the President of the ABA to serve from 2014 to 2017 as the member from the Fifth Circuit on this committee which investigates and evaluates the professional qualifications of all nominees to Federal courts.
- Texas Board of Disciplinary Appeals (BODA) <http://www.txboda.org/>. Appointed by the Texas Supreme Court to serve from 2014 to 2020, Mike is one of 12 members of the adjudicatory board charged with hearing appeals from attorney discipline decisions throughout Texas and performing other functions related to professional discipline.
- ALI-ABA Continuing Professional Education. Mike was a member of ALI-ABA's board of directors from 2005 to 2011 and was Chair of its Budget Committee.

- Mike serves on the Disciplinary Committee for the United States District Court for the Western District of Texas, appointed by the Chief Judge of the Court.
- Mike co-chaired a United States Magistrate Judge Selection Committee and served on other such committees, appointed by the United States District Judges in the Western District of Texas.
- In 2006, Mike was Course Director of The Texas Trial Academy, which serves as an educational resource to public-interest lawyers and which is co-sponsored by The Texas Access to Justice Commission and The American College of Trial Lawyers.
- Mike chaired the Advertising Review Committee of the State Bar of Texas from 2010 to 2014. His appointment was by the President of the State Bar. The committee is charged with overseeing compliance with ethical rules promulgated by the Texas Supreme Court.
- Mike is a member of the State Bar of Texas; the Austin Bar Association (for which he has chaired several committees, including the Ethics and Professionalism Committee and the Continuing Legal Education Committee); the Bar Association of the Fifth Federal Circuit; is a Fellow of the American College of Trial Lawyers (emeritus) (<http://www.actl.com/>), the American Board of Trial Advocates (emeritus) (<https://www.abota.org/>), the International Academy of Trial Lawyers (<http://www.iatl.net>); is a Master (emeritus) of the Bench of the Lloyd Lochridge Inn of Court (for which he served as President in 2013-14); and is a Fellow of the Texas Bar Foundation.
- Mike was selected to serve from 2014 to 2017 on the Executive Committee of the University of Texas Law Alumni Association.

## AWARDS AND HONORS

- Honored as a Distinguished Lawyer by the Austin Bar Association, 2012
- Listed in *The Best Lawyers in America*<sup>®</sup> published by Woodward/White, Inc., Commercial Litigation and Bet-the-Company Litigation, (1987 – 2018). In 2012, he was selected as the Austin Bet the Company Litigation of the Year.
- **AV<sup>®</sup> Preeminent<sup>™</sup> Peer Review Rating, Martindale.com**
- *Texas Monthly*, Super Lawyers<sup>®</sup>, published by Thomson Reuters, 2003-2017
- Recipient of Ronald D. Secrest Outstanding Trial Lawyer Award, 2010

## COMMUNITY

- Executive Chair of the Board of Trustees of St. Stephen's Episcopal School (2002-2008, 2013-2014), Chair of the St. Stephen's Endowment Corporation (since 2016).

- Has served on the boards of various civic and community organizations, including the Central Texas Chapter of the Arthritis Foundation, the Austin Child Guidance Center, Headliner's Club, Trine University, Trinity Episcopal School, and Volunteer Legal Services of Central Texas

## **PUBLICATIONS AND PRESENTATIONS**

Mike is asked to appear at Continuing Legal Education functions and Bar functions from time to time. Presentations have typically been oral and also have included papers on voir dire, cross-examination, closings, damages, ethics in negotiations, bankruptcy experts, disgorgement, fiduciary duties of corporate directors, intellectual-property litigation, preparation of attorney-malpractice lawsuits, preparing real-estate professionals as witnesses, Federal-lawsuit discovery, post-foreclosure-deficiency lawsuits, vested-rights and related property-rights litigation, litigating in bankruptcy court, Sarbanes-Oxley issues for lawyers, pleadings topics in large damages cases, joint-defense agreements, and choice of law in bankruptcy courts.