

## R. Joseph Burby, IV

Partner

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Drawing on his over 20 years of experience as both a prosecutor and defense attorney, Joey Burby represents corporate and individual clients in criminal and civil investigations by the Department of Justice as well as regulatory investigations and enforcement actions by the SEC and other federal and state agencies. He has significant experience handling matters involving securities fraud, insider trading, health care fraud, the False Claims Act, antitrust violations, bribery, the Foreign Corrupt Practices Act, money laundering, tax fraud, and environmental violations. He has served as lead counsel in over 30 jury trials, including, most recently, a federal case in which the jury acquitted his client of all crimes charged in the indictment.

Joey also conducts internal investigations on behalf of public and private organizations and their boards, counseling them on remedial actions and disclosure decisions.

Joey previously served as an assistant U.S. attorney in the U.S. Attorney's Office for the Northern District of Georgia, focusing primarily on fraud and public corruption. He tried numerous cases, including the first criminal securities fraud trial in Georgia and a capital murder case in which the jury returned a death sentence. He was also a member of the team that prosecuted Centennial Olympic Park bomber Eric Rudolph, for which he received The John Marshall Award, the Justice Department's highest honor.

### *Representative Experience*

- Engaged by the Florida Board of Governors to lead an independent investigation into the University of Central Florida's improper use of restricted state funds for capital projects. The investigation uncovered UCF's misuse of nearly \$100 million in state funds on over a dozen capital projects during a 10-year period.
- Represented a former Equifax executive in a widely publicized insider trading case brought by the U.S. Attorney's Office in Atlanta and the SEC, in which the government alleged that the executive had traded on material nonpublic information before the company's announcement that it had suffered a massive data breach.
- Represented a leading health care IT company in a landmark False Claims Act case involving the federal government's "Meaningful Use" electronic health record (EHR) incentive program. The case marked the first time the DOJ had brought FCA claims against an EHR vendor under the program. Resulted in a favorable nonadmission civil settlement and first-of-its-kind corporate integrity agreement involving a software quality-assurance monitor.
- Represented an executive and board member of a billion-dollar poultry producer in a DOJ Antitrust Division criminal investigation of alleged price fixing and parallel private antitrust class actions.
- Represented a major financial institution in an SEC investigation of its proprietary trading division for allegedly mismarking CDS portfolios during the financial crisis to conceal millions of dollars in losses. No action was filed by the SEC, and the investigation was closed.

- Represented the director of a hospital department (and professor of medicine) at a major university health center in a False Claims Act investigation involving alleged Medicare overbilling. The DOJ declined to intervene, and the whistleblower's complaint was voluntarily dismissed.
- Represented a major broker-dealer in a FINRA investigation related to a financial advisor who misappropriated over \$5 million in client funds.
- Represented the managing member of an investment adviser in SEC and DOJ investigations concerning alleged misrepresentations to investors and the misuse of investor proceeds for personal expenses.
- Conducted an internal investigation into the financial activity of a nationwide originator of residential mortgage loans to identify and evaluate potentially illicit payments to affiliates and other counterparties for compliance with the Real Estate Settlement Procedures Act (RESPA), as well as HUD and FDIC rules and regulations, across a multibillion-dollar loan portfolio. Our investigation found instances of fraud that were reported to regulatory authorities and resulted in action against certain individuals. The regulatory investigation into our client was resolved without significant enforcement action being taken.
- Represented an orthopedic surgeon in a DOJ investigation of a pharmaceutical company's research grants and consulting fees paid to the surgeon purportedly as kickbacks for his use and promotion of the company's product in violation of the Anti-Kickback Statute. There was no action taken against client.
- Represented an executive director of a hospice company in a False Claims Act investigation and parallel criminal investigation by the U.S. Attorney's Office into alleged Medicare overbilling and violations of the Anti-Kickback Statute. The client was not charged.
- Represented an aircraft parts distributor in parallel FAA and DOJ investigations into the shipment of hazardous material. Negotiated a favorable settlement with the FAA for a modest fine and nonprosecution agreement with the DOJ, such that neither the company nor any of its employees were criminally prosecuted.
- Represented the wealth management division of a major bank in an SEC insider trading investigation into the trader's purchase of bonds shortly before their redemption by the issuer at a higher price. No action was filed by the SEC, and the investigation was closed.
- Represented a technology company in a False Claims Act investigation by the DOJ and Department of Defense into an alleged violation of the Small Business Administration's 8(a) regulations. After a lengthy investigation, the DOJ declined to file suit, and the investigation was closed.
- Represented foreign executives of a major auto parts manufacturer in a criminal investigation by the DOJ Antitrust Division and a related investigation by the European Commission.
- Counseled a major international corporation on FCPA compliance and an internal legal risk assessment of global operations.
- Represented the CFO of a nationwide department store chain in a formal SEC investigation of accounting errors that resulted in restatement. No action was filed against the client.
- Conducted an internal investigation on behalf of the audit committee of a bank into allegations that the bank president caused certain assets to be overvalued, including reports to the committee, board of directors, and banking regulators. No action was taken by regulators.
- Represented a food manufacturer in a DOJ False Claims Act investigation and parallel criminal investigation into allegations it conspired to defraud the U.S. military in connection with contracts to supply food to troops stationed in the Middle East. No charges were filed against the company or any of its employees.

- Represented a quality assurance manager of a major food manufacturer in a criminal investigation by the DOJ and FDA into a nationwide salmonella outbreak. The client was not charged.
- Represented a former CEO of a hospital in a criminal investigation by the U.S. Attorney's Office into alleged violations of the Anti-Kickback Statute based on a relationship between the hospital and a large physician group. The client was not charged.
- Represented a food distributor in a criminal investigation by the U.S. Attorney's Office and Department of Homeland Security into the alleged employment of undocumented workers. Negotiated a deferred prosecution agreement. No employees were charged.
- Represented a defense contractor in a nonintervened False Claims Act case involving allegations that the client overbilled for services provided at a military base. The case settled for a nominal sum after a motion to dismiss was filed.
- Represented a bank in a threatened FDIC enforcement action for alleged violations of Section 5 of the Federal Trade Commission Act and a parallel DOJ civil fraud investigation into the bank's former ACH processing division. No action was filed by the FDIC or DOJ.
- Represented a former CEO of a hospital and two in-house attorneys as third-party witnesses in a False Claims Act lawsuit.
- Represented the CFO of a failed bank in a prosecution of an alleged \$90 million bank fraud scheme brought by the U.S. Attorney's Office. Client's guideline range was 97–121 months; negotiated a plea deal that resulted in a 20-month sentence.
- Represented a manufacturing company in a criminal investigation by the U.S. Attorney's Office and EPA of alleged Clean Water Act violations. The client was not charged or fined.
- Represented an individual in a DOJ Antitrust Division criminal investigation of alleged bid rigging in real estate foreclosure auctions. The client was not charged.
- Represented employees of a home health care company in a DOJ False Claims Act investigation into alleged Medicare and Medicaid overbilling.
- Represented an individual charged with trafficking in counterfeit goods and various intellectual property crimes. The client was acquitted of all charges following a two-week jury trial in federal court in Atlanta.
- Represented the employees of a hospice company in a False Claims Act investigation by the U.S. Attorney's Office into billing for services rendered to allegedly ineligible patients.
- Represented an executive of a cigarette distributor in an investigation by the U.S. Attorney's Office and ATF alleging the diversion of millions of dollars of cigarettes to avoid various federal and state taxes. The client was not charged.
- Represented a defense contractor accused of disclosing classified information in a criminal investigation by the U.S. Air Force Office of Special Investigations. No charges were filed.

## ***Publications & Presentations***

### ***Publications***

- "FCPA Shield for Foreign Nationals May Extend to US Cos.," *Law360*, August 17, 2020.

### ***Presentations***

- "The Future of Healthcare Technology and Cybersecurity Enforcement," Health Care Compliance Association (HCCA), webinar, August 31, 2021.

- “The Intersection of Covid-19 & the FCA,” Second Annual False Claims Act (Virtual) Summit, webinar, December 9, 2020.
- “A New Frontier: DOJ Enforcement Involving Health IT,” American Health Law Association Fraud and Compliance Forum 2020, webinar, October 2, 2020.
- “PPP Enforcement & Litigation Trends,” TBA Bankers Legal Conference and Southwest Association of Bank Counsel Convention 2020, webinar, September 18, 2020.
- “Electronic Medical Records and the False Claims Act,” Health Care Fraud Institute, Georgia ICLE Seminar, Atlanta, GA, December 5, 2019.
- “Electronic Medical Records and the False Claims Act,” 29th Annual ABA National Institute on Health Care Fraud, New Orleans, LA, May 8-10, 2019.
- “Successfully Mediating Healthcare False Claims Act Cases,” Health Care Fraud Institute, Georgia ICLE Seminar, Atlanta, GA, December 7, 2017.
- “Damages and Liability to Federal Health Programs,” 3rd Annual HCCA Healthcare Enforcement Compliance Institute, Washington, D.C., October 23-26, 2017.
- “Medicaid Fraud Enforcement,” 26th Annual ABA National Institute on Health Care Fraud, Palm Springs, CA, May 12, 2016.
- “Hot Topics in White Collar Crime,” White Collar Crime CLE, Georgia ICLE Seminar, Atlanta, GA, February 12, 2016.
- “When State and Federal Health Care Laws Collide: Application of the Stark Law to Medicaid Claims and Advice on Protecting a State Law-based Peer Review Privilege During a Federal Health Care Fraud Investigation,” West LegalEdcenter, webinar, September 30, 2015.
- “Medicaid Fraud Enforcement,” 25th Annual ABA National Institute on Health Care Fraud, Miami Beach, FL, May 13-15, 2015.

### ***Professional & Community Engagement***

- Cooper Inn of Court, president
- American Bar Association, Criminal Justice Section, White Collar Crime Committee
- Federal Bar Association, Atlanta Chapter
- State Bar of Georgia, Criminal Law and Health Law sections
- Atlanta Bar Association, Criminal Law and Litigation sections
- Emory Law School’s Kessler-Edison Program for Trial Techniques, faculty
- Federal Defender Program Inc., board of directors
- *The Best Lawyers in America*® – Criminal Defense: White-Collar
- *Chambers USA* – White-Collar Crime & Government Investigations

### ***Education***

- University of North Carolina (J.D., 1996)
- University of North Carolina at Chapel Hill (B.A., 1993)

## *Admitted to Practice*

- Georgia

## *Related Services*

Litigation | White Collar, Government & Internal Investigations | FDA Compliance & Enforcement | Colleges & Universities | Health Care | Securities Litigation | Financial Services Litigation | Foreign Corrupt Practices Act (FCPA) Violations