

BRIAN K. ESSER

433 3rd Street #8 Brooklyn, NY 11215 • (202) 271-6538 • bkesser@gmail.com

EXPERIENCE

BAKER & HOSTETLER LLP, New York, NY

Senior Associate

October 2005 – Present

- Managed discovery process for the bankruptcy liquidation of Bernard L. Madoff Investment Securities LLC. Managed the preservation, collection, processing, review and production of electronic evidence, including legacy and back up systems. Negotiated scope of document discovery, including search terms, with financial institutions, broker-dealers, and other parties; negotiated and drafted confidentiality agreements and protective orders. Developed and maintained web-based review tools for tracking discovery requests and responses. Retained and prepared electronic discovery expert for testimony on issues related to collection, preservation and authentication of various forms of evidence. Advised on issues related to bank secrecy, US and foreign data privacy, and HIPAA. Instituted vendor management and case management procedures. Oversaw a team of fifty discovery attorneys.
- Part of team that monitored compliance with three non-prosecution agreements The Bank of New York Mellon (“BNYM”) entered into with the Southern and Eastern Districts of New York and Western District of Pennsylvania. Reviewed compliance programs analyzing policies, procedures, work flows, staff resources, and escalation and reporting structures. Conducted testing of compliance and legal department processes including subpoena responses, and compliance component of annual performance reviews. Recommended improvements to policies, training materials, reporting lines and processes to in-house counsel and compliance and ethics staff. Reported on BNYM’s compliance with the NPAs to the three United States Attorney’s Offices.
- Conducted investigation of a Foreign Corrupt Practices Act (“FCPA”) violation. Reported violation to outside auditors, the Securities and Exchange Commission (“SEC”) and United States Department of Justice (“DOJ”). Neither the SEC nor the DOJ pursued the violation and closed their files without bringing an enforcement action. Drafted FCPA policy and procedures for client and advised on reporting structures.
- Represented clients under subpoena from the SEC, DOJ and Department of Health and Human Services in matters ranging from securities fraud based on channel stuffing, violations of U.S. export control laws, and Medicare fraud.
- Monitored and reported on compliance with Financial Industry Regulatory Authority (“FINRA”) settlements with mutual fund distributors regarding past deficiencies in sales practices. Assisted in-house counsel and remediation team to develop appropriate procedures to ensure that all investors were adequately compensated for past violations.
- Assisted Derrick Mason, a habeas petitioner on death row in Alabama, in all phases of federal habeas proceedings. Conducted two fact-gathering trips to Alabama, including visits with Mr. Mason in Holman Correctional Facility. Drafted appellate briefs, petitions for certiorari, and clemency petition.
- Successfully obtained asylum for a Russian national fleeing persecution on the basis of his sexual orientation. Representing transgender woman from Guyana in her petition for asylum.
- Assisting lesbian couple with second parent adoption.

BRIAN K. ESSER

433 3rd Street #8 Brooklyn, NY 11215 • (202) 271-6538 • bkesser@gmail.com

ARNOLD & PORTER LLP, Washington, D.C.

Associate

September 2001 – September 2005

- Represented clients in a variety of in-court appearances, mediation conferences, and administrative hearings; served as lead attorney in an evidentiary hearing involving direct and cross-examination.
- Drafted deposition outlines; prepared witnesses for deposition; interviewed employees for factual development and witness development purposes. Prepared interrogatories and document requests; prepared responses to written discovery, including interrogatory responses and objections and objections to document requests. Researched and drafted discovery motions.
- Drafted *amicus curiae* briefs submitted to the U.S. Supreme Court, U.S. Court of Appeals for the Third Circuit, and the New York Supreme Court Appellate Division Second and Third Departments.

THE HONORABLE RAFAEL DIAZ, D.C. SUPERIOR COURT, Washington, D.C.

Judicial Law Clerk

August 2000 – September 2001

- Managed all aspects of high volume civil calendar for five months and misdemeanor calendar for seven months. Reviewed motions and provided recommendations regarding rulings. Drafted orders and wrote opinions.

EDUCATION

THE AMERICAN UNIVERSITY, WASHINGTON COLLEGE OF LAW, Washington, D.C.

Juris Doctor, *magna cum laude*, May 2000

GPA 3.62 Top 10%

American University Law Review, *Note & Comment Editor*

Civil Practice Clinic

NORTHWESTERN UNIVERSITY, Evanston, Illinois

Bachelors of Arts in History, *cum laude*, June 1997

President, International Studies Residential College, 1994-1995

UNIVERSIDAD DE SEVILLA, Seville, Spain, 1995-1996

Coursework in Spanish and Latin American history and literature

PUBLICATIONS

Judy Selby and Brian Esser, *What to Expect When Applying for Cyberinsurance*, Corporate Counsel (Feb. 25, 2013).

Judy Selby, Brian Esser and Josh Rog, *Courts Allowing Expedited Discovery in Emergencies*, National Law Journal (Dec. 3, 2012).

Judy Selby and Brian Esser, *Chasing Ghosts: Ephemeral Data Can Pose Unique Challenges for Defense and Plaintiffs Lawyers*, American Lawyer (Fall 2012).

Judy Selby and Brian Esser, *E-discovery: The 5 Questions to Ask Yourself Before You Negotiate*, InsideCounsel.com (Aug. 14, 2012).

BRIAN K. ESSER

433 3rd Street #8 Brooklyn, NY 11215 • (202) 271-6538 • bkesser@gmail.com

Brian Esser and Judy Selby, *Challenges of Conducting E-Discovery on Ephemeral Data*, Law Technology News (Aug. 2, 2012).

Judy Selby and Brian Esser, *E-discovery: Managing Litigation Vendor Costs and Information Flow*, InsideCounsel.com (July 31, 2012).

Judy Selby and Brian Esser, *E-discovery: How to Draft and Implement an Effective Document Retention Policy*, InsideCounsel.com (July 17, 2012).

Judy Selby and Brian Esser, *E-discovery: 8 Questions to Ask When Selecting a Review Tool*, InsideCounsel.com (July 3, 2012).

Judy Selby and Brian Esser, *E-discovery: Preserving, Collecting and Using Internet Histories*, InsideCounsel.com (June 19, 2012).

Judy Selby and Brian Esser, *E-discovery: How to Avoid Document Review Traps*, InsideCounsel.com (June 5, 2012).

Lauren J. Rensick and Brian K. Esser, *Failed Compliance and False Comfort—Unwarranted Reliance on Corporate Affiliates and Anti-Money Laundering Risks: The HSBC Case Study*, 3 Financial Fraud Report 333 (2011).

John J. Carney and Brian K. Esser, *The Expanding Consequences of an FCPA Violation*, 2 J. of Payment Systems Law 360 (2006).

SPEAKING ENGAGEMENTS

“iDetective: Tracking Digital Footprints in the Litigation of Tomorrow,” Computer and Cyberspace Law Seminar, University of Dayton (June 8, 2012).

HONORS

Super Lawyers – New York Rising Stars 2011 and 2012

BAR ADMISSIONS

Illinois, 2001; District of Columbia, 2002; New York, 2006