

**Labor and Employment Law Program Offered in conjunction with Cornell Law School**

**Criminal Prosecution of**

**Wage Theft and OSHA Violations**

**February 6, 2019**

**Speaker Bios**

**Diana Florence**

**Diana Florence** is the Attorney-in-Charge of the Manhattan District Attorney's Construction Fraud Task Force, in which she collaborates with major city, state, and federal agencies in order to more effectively target fraud and corruption within the construction industry.  She has been a prosecutor in the Manhattan District Attorney's Office for over 23 years and has won awards for her large-scale, industry-wide prosecutions. Ms. Florence, who has successfully taken numerous cases to jury trial, achieved an industry-changing victory in the high-profile case of People v. Kancharla, where the executives of the largest materials testing company in the tristate area were convicted after trial of racketeering and enterprise corruption and sent to state prison. The cases involved over 200 public and private construction projects, including the World Trade Center, the new Yankee Stadium, and the Second Avenue Subway.   As a result of these convictions and the related investigation into the Concrete industry, the NYC Building Code has been changed, enforcement by public agencies has been heightened, and reforms have become center stage.   She is also the co-author of a 2014 New York County Grand Jury report on Minority and Women Business Enterprise fraud.  Most recently, she obtained homicide convictions against two supervisors and two corporate defendants—a  general contractor/construction manager and superstructure subcontractor—for the death of a laborer on its multi-million dollar construction site, one of the first convictions of its kind in New York.

Other notable cases include: convictions after trial in a 33 defendant racketeering case involving a motorcycle and gun trafficking ring, which operated between New York and the Caribbean; a conviction after trial in a World Trade Center fraud case, where the defendant claimed a (fictitious) son had died on 9/11 and collected over $250,000 in charitable monies meant for victims’ families.  Despite three of his children testifying on the defendant’s behalf that their brother existed and died that day, the defendant was convicted and is currently serving 11 to 33 years incarceration, the longest sentence of any 9/11 fraud defendant.

Diana graduated with honors from the University of North Carolina at Chapel Hill with a BA in Art History and Spanish in 1992, and a JD in 1995.  She has taught trial advocacy for over 20 years to lawyers in the DA’s Office and has lectured investigators and lawyers from around the world on topics ranging from inter-agency cooperation, prosecuting construction fraud and racketeering.

**Brian L. Gardner**

**Brian Gardner** is chairman of the Construction Services Department and a member of the Litigation Department.  He is a former federal prosecutor, who, while an attorney at the United States Attorney’s office in the Eastern District of New York, tried numerous federal cases and was honored for his work by the Justice Department and commended by District Court Judges.

Mr. Gardner has engaged in a complex civil and criminal litigation practice, including commercial, construction, regulatory, environmental and white collar criminal litigation.

Mr. Gardner joined the firm in 2014 and has played a prominent role in the representation of a variety of clients, including:

* Heavy Construction Contractors, including utility, road builders and Con Edison area contractors, as well as residential and commercial structure and high rise builders, along with entitles engaged in waste management and recycling, demolition, trucking, concrete, and numerous general contractor firms in the New York metropolitan area
* Represented the trucking industry in its litigation against the MTA’s imposed bridge limitations, successfully defended the first large-scale environmental prosecution brought by a District Attorney’s office
* Obtained relief for construction entities owed funds regarding their heroic work at the World Trade Center
* NYS Labor Department against a construction related entity
* Representation of a president of one of the largest New York labor unions
* Representation of a trustee of one of the largest construction labor organizations and trade associations in a federal criminal prosecution

Mr. Gardner also regularly acts as New York litigation counsel for a multinational public oil services company, one of the largest New York entertainment venues, and numerous individuals in both federal and state court matters. He has extensive knowledge of construction litigation, government regulation, environmental law, heavy construction, waste and debris, immigration detention, fraud, RICO, and general commercial law.

Mr. Gardner tries and argues matters in both federal and state trial and appellate courts, in addition to his representation of clients before the numerous government agencies. A significant portion of his practice is before the appellate courts. Indeed, he was recently featured on the front page of the New York Law Journal regarding his successful representation of an individual in overturning a 15 year-old conviction. This case was successfully argued by him before the New York State Court of Appeals. He has also received numerous accolades for obtaining the release of an individual in immigration detention in a published and often cited opinion. Brian’s work has been the subject of numerous news stories in both the legal and general press.

Mr. Gardner is the attorney in countless published opinions before the Appellate Courts, and Trial courts. He also served as an Assistant District Attorney in Queens County, where he tried many cases and handled and argued a large number of appeals.

Mr. Gardner is a board member of the Heavy Contractors Association of NY and the Construction Trucking Association. He is also a member of the Construction Lawyers Society of America. He earned his B.A. from State University of New York Stony Brook and his J.D. from Rutgers School of Law.

**Gail Kelner**

**Gail Kelner**, Partner at Kelner & Kelner, handles construction accident litigation, trucking accident cases, catastrophic injury cases, and other complex litigation. She handles complex appeals and has appeared multiple times before the New York Court of Appeals.

Ms. Kelner has been involved in dozens of cases that have resulted in recoveries of over $1,000,000. Many of these have been construction accident injury cases. Significant among them have been a $9,000,000 recovery for a worker who fell from a forklift at the American Airlines Terminal. She was recently involved in a $10,400,000 verdict against the City of New York with Robert Kelner in a case involving the collapse of a sidewalk bridge in Bronx, New York. Other multi-million dollar recoveries in her cases have included the death of a bridge painter when a box lift truck overturned; a ladder collapse necessitating the amputation of an electrician's leg; a construction worker seriously injured when a scissor lift overturned; and a window washer whose ladder collapsed.  With Robert Kelner, obtained a $16.5 million result for construction worker who fell from a sidewalk bridge during demolition; $9.7 million  result for worker who fell from ladder (after winning case in Court of Appeals); $9 million for worker who fell from a forklift; $9 million for death of a window washer who fell 13 stories to his death (after a significant decision in the Appellate Division with respect).

Ms. Kelner has represented construction workers in many trades, including ironworkers, electricians, laborers, plumbers, roofers, masons, carpenters, building superintendents and window cleaners. She has won summary judgment in many of these cases, both at the trial and appellate levels. One of her ironworker clients obtained recoveries of over $1,000,000 in two different accident cases. She has also been involved in paralysis and brain injury cases resulting from other types of accident cases. For example, she handled a case resulting in a $9,000,000 recovery for a 64 year old man severely injured in an auto accident.

Ms. Kelner is a co-author, with her husband Robert Kelner, of the Trial Practice column in the New York Law Journal and has written extensively on many issues in personal injury trial practice. All of these columns have addressed developments in New York law in the field of personal injury litigation. She writes extensively on the New York Labor Law that protects workers in the construction, demolition, and trade fields.  She has lectured for the New York State Bar Association as well as the New York County Lawyers Association and the New York State Trial Lawyers Association in the areas of construction site litigation and other areas of personal injury litigation. She has also addressed the court attorneys in the Appellate Division, First Department on aspects of the New York Labor Law in construction accident cases.

Ms. Kelner received her J.D. degree from New York University School of Law in 1973 and a B.A.from Tufts University in 1970 (Phi Beta Kappa). She is admitted to the New York StateBar and the Federal District Courts in both the Southern and Eastern Districts. She has argued appellate cases before the Appellate Division, First Department, the Appellate Division, Second Department, and the New York State Court of Appeals.

**James Rogers**

**James (Jim) Rogers** is the Deputy Commissioner for Worker Protection at the New York State Department of Labor. Worker Protection includes the Division of Labor Standards, The Division of Safety and Health, the Division of Immigrant Policies and Affairs, the Bureau of Public Work, the Office of Special Investigations and the Joint Task Force on Worker Exploitation and Misclassification, a multi-agency effort to protect particularly vulnerable workers.

Before joining the Department of Labor, Mr. Rogers was Senior Advisor and Special Counsel to New York State Attorney General Eric T. Schneiderman. Prior to serving in that role, he served as Deputy Attorney General for Social Justice under former Attorney General Andrew M. Cuomo where he managed the Labor Bureau, Environmental Protection Bureau, Health Care Bureau, Civil Rights Bureau, Charities Bureau, and Tobacco Compliance Bureau.

From 2003-2007, Mr. Rogers was President of the Association of Legal Aid Attorneys (United Auto Workers Local 2325), a professional union with a membership of 850 attorneys who represent poor families in New York City. He was also a member of the Executive Board of the UAW's statewide Community Action Program and a founding member of the coalition that overhauled New York's laws governing the representation of children in family court. Previous to that, he was a public defender for the Legal Aid Society's Criminal Defense Division in Bronx County for nearly 10 years. Prior to that, he served as counsel to the National Coalition for Haitian Refugees. He began his career as an associate at the law firm of Fried, Frank, Harris, Shriver and Jacobsen.