



**Richard N. Kessler**

**Member**

**Chicago**

**P: 312.642.2210**

“ I am an experienced trial attorney who builds relationships by learning about my clients, their businesses and their goals. My guiding principal is: People don’t care how much you know until they know how much you care. ”

**Practice Focus**

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- Trade secret, non-compete and unfair competition
- Business litigation

Richard is a well versed and experienced trial attorney having tried numerous jury trials to verdict as well as more than 100 bench trials. A former prosecutor with the Lake County State’s Attorney’s office, Richard brings extensive trial experience to bear in a variety of complex disputes. He has prosecuted and defended shareholder and member disputes, defended consumer class action cases and extensively litigated non-compete cases in various state and federal courts throughout the United States. Richard has been consistently recognized as an Illinois Super Lawyer since 2010 as well as being rated AV, the highest rating available, from the Martindale–Hubbell rating service.

Richard, a founding member of a prior law firm, understands the effort and stamina required to run a business, whether it be public or private, and the dynamics of litigation and its human and capital impacts on a business. Richard’s experience and knowledge, along with his skill as a listener, set Richard apart from other trial attorneys who too often work their own agenda at the expense of the client. He also served as the managing member of McDonald Hopkins' Chicago office for 10 years.

Richard has authored numerous articles and frequently lectures in the areas of employment agreements and the enforceability of covenants restricting competition, shareholders’ statutory rights and civil and criminal contempt. He was featured in the Crain's Chicago Business article, "Open to the public," regarding the expansion of the definition of business records under the Illinois Business Corporation Act.

Richard earned a J.D. from Illinois Institute of Technology's Chicago-Kent College of Law in 1982. He received a B.A. from University of Illinois in 1979.

**Representative Cases/Matters**

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**Reported cases**

- *Mississippi State and School Employees’ Life and Health Plan v. KCC, Inc.*, 108 S.3d 932 (2013)
- *The Residences of Riverbend Condominium Association v. City of Chicago*, 5 F. Supp. 3d 982 (N.D.Ill. 2013)
- *Corwin v. Abbott Laboratories*, 353 Ill. App. 3d 848 (2d Dist. 2005)

- *Poeta v. Sheridan Point Shopping Plaza Partnership*, 195 Ill. App. 3d 852 (2d Dist. 1990)
- *Goldstein v. Mitchell*, 144 Ill. App. 3d 474 (2d Dist. 1986)

### **Complex Commercial Litigation**

Representative trial and litigation matters:

- Represented members of various limited liability companies that owned numerous businesses in claims of breach of fiduciary duty and fraud brought by fellow member. Prevailed on behalf of clients on a motion for a directed finding following seven day hearing on emergency motion for appointment of a receiver.
- Represented tenant in a lease dispute. Following a two day trial, court ruled in favor of our client.
- Represented medical billing company in claims involving breach of contract and defamation. Case resolved after three days of trial.
- Represented public company in a class action in District Court, California asserting various claims relating to product labeling. Motion practice resulted in our obtaining a dismissal of the claims.
- Represented public company in a class action in District Court, California asserting various claims relating to product labeling. Motion practice resulted in the dismissal of the federal court claims and transfer to state court resulting in a favorable resolution of the claims.
- Represented client in a claim arising out of personal guarantees on defaulted loans secured by property situated in Nevada. Summary judgment granted in favor of our client resulting in a judgment in excess of \$2,700,000.
- Represented defendants in state court action asserting claims for breach of contract, tortious interference with business relations, and breach of fiduciary duty. Verdict for our client following a three week jury trial.
- Represented large financial services firm in claims against former shareholder, director/employee in breach of fiduciary duty and fraud claims. Three day arbitration resulting in decision for client inclusive of an award of punitive damages.
- Represented clients in contested estate involving claims of undue influence and declaratory judgment as to interpretation of serial trust amendments. Following a five day trial, court ruled in favor of our clients resulting in a multi-million dollar swing in disposition of trust assets to our client.
- Represented defendants against claims of breach of contract claim involving the development of a residential subdivision. Obtained a directed finding following a four day trial and a judgment for our attorney's fees in the sum of \$320,000 on our counterclaim.
- Represented owner of historic landmark building in a breach of lease. Following a three day trial, judgment was entered in favor of our client in the sum of \$270,000.

### **Labor and Employment – Restrictive Covenant Cases**

Trials and TROs:

- Represented individual who was sued for alleged violation of employment agreement; client left employer to join a competitor. Company sought preliminary injunction and claims for breach of contract. Prevailed in a motion to dismiss where the court found the restrictive covenant unenforceable as a matter of law.
- Represented defendant corporation and individuals in suit brought by public company asserting claims for violation of non-solicitation provision of various agreements. Motion practice resulted in favorable disposition of the litigation.
- Represented public foreign corporation in district court on petition for entry of TRO and claims against

multiple defendants arising out of breach of restrictive covenants. TRO was entered in favor of our client resulting in a successful resolution to the litigation.

- Represented defendant corporation in claims and petition for TRO brought by a domestic public corporation for breach of restrictive covenants. Litigation resulted in a successful resolution for our client.
- Represented physician in a claim brought by employer alleging breach of a restrictive covenant. Following a four day trial, court granted our motion for a directed finding.
- Represented professional service corporation in claims and TRO brought against former physician for breach of restrictive covenant. TRO was entered resulting in a successful resolution to the litigation.
- Represented defendant physician in claims for breach of restrictive covenant and petition for entry of TRO. Successfully defeated entry of TRO resulting in a successful resolution of the litigation.
- Represented defendant physician and his professional service corporation in claims brought by public corporation for breach of restrictive covenant and petition for entry of TRO. Successfully defeated entry of TRO resulting in a successful resolution of the litigation.

Other recent representative matters:

- Represented clients in state court in a contested estate involving trust interpretation and claims of professional malpractice against attorney in drafting of trust instruments. As a result of motion practice and discovery, case resolved favorably for our clients who under the trust instruments were to receive \$250,000 while resolution resulted in \$5,000,000 to our clients.
- Represented physician in limited liability company member dispute involving claims as to value of limited liability company. Case resolved favorably for our client.
- Represented physician professional service corporation in claim brought by former shareholder challenging the efficacy of a restrictive covenant. Case resolved favorably for our client.
- Representing company in a claim for breach of contract and fraud in case pending in Florida state court involving the sale of improved but undeveloped land. Case remains pending.

### Admissions - Court

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- Seventh Circuit Federal Trial Bar
- U.S. District Court for the Northern District of Illinois
- Court of Appeals for the Federal Circuit
- U.S. Supreme Court

### Admissions - State

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- Illinois

### Education

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- Illinois Institute of Technology - Chicago-Kent College of Law
- University of Illinois

### Honors and Awards

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## Richard Kessler

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- Recipient of the *Distinguished Member Award* from the Lake County Bar Association (2012)
- Selected for inclusion in *Illinois Super Lawyers* (2010-2019)
- AV Peer Review Rated by Martindale-Hubbell
- Voted Volunteer “Lawyer of the Year” by the Lake County Volunteer Lawyer Program (1992)
- Honored as a Jaycee Outstanding Young Man of the Year (1984)

### Professional Membership

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- Illinois State Bar Association
- Lake County Bar Association - Treasurer (2014-2018)
- Lake County Bar Association - Chair of Civil Trial and Appeals Committee (2008-2014)
- Jefferson Inns of Court

### Blog Posts

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- Words matter: “ANY REASON” may mean “SOME REASON” in triggering a post-employment restrictive covenant
- Seventh Circuit expresses frustration over Illinois law post-employment restrictions
- In consideration (or lack thereof) - Employment agreements and post-employment restrictions in Illinois...the saga continues
- More is less (confusion) in offer letters

### News

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- McDonald Hopkins attorneys recognized as 2020 Illinois Super Lawyers and Rising Stars
- Four attorneys at McDonald Hopkins named Illinois Super Lawyers
- Six attorneys at McDonald Hopkins named Illinois Super Lawyers and Rising Stars

### Podcasts

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- Non-compete agreements: Understanding the basics

### External Publications

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- *Ramifications for Employers and Lawyers resulting from Lawlor v. North American Corporation of Illinois, 2012 IL 112530 (Ill. 2012)* – Lake County Docket, May 2013
- *E-discovery Preparation: The Rule 26(f) Conference – Knowledge is Half the Battle*, The Journal, Fall 2008
- *Non-Reliance Clauses as a Bar to Fraud Claims – How to Reduce Your Risk of Liability in a Transaction*, Lake County Docket, July 2007
- *The Harsh Reality of Illinois Supreme Court Rule 216 and Federal Rule 36 – Requests for Admission of Fact or of Genuineness of Documents – The Movement to Increase Flexibility in its Application*, Lake County Docket, June 2006
- Featured in the Crain's Chicago Business Article *Open to the public*, June 6, 2005
- *Shareholder's Right to Inspect Books and Records under the Illinois Business Corporation Act* – Lake

County Docket, June 2004

- *Anatomy of a Covenant – A Look at Restrictive Covenants in Illinois*, Lake County Docket, June 2003

### Speaking Engagements

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- How to Secure Non-Dischargeability in Bankruptcy of a settlement sum – Lake County Bar Association Civil Trial and Appeals Committee, December 2013
- Anatomy of a Covenant – Employment Law Committee and the Civil Trial and Appeals Committee of the Lake County Bar Association, November 2012
- Direct Examination, Young Lawyers Division of the Lake County Bar Association, October 2012
- Prosecuting a Successful TRO – Employment Agreement Restrictive Covenants, Lake County Bar Association Spring Seminar, May 2012
- Electronic Discovery – A Brave New World, Lake County Bar Association Spring Seminar, Lake Geneva, WI, May 2007
- How to Protect Your Business and Employees from Walking Out The Door Through Effective Employment Agreements, University of Illinois at Champaign/Urbana, February 2007
- Illinois Supreme Court Rule 216, Requests for Admissions of Fact, Lake County Bar Association Spring Seminar, Lake Geneva, WI, May 2006
- Shareholders' Rights Under Illinois BCA Sec 7.75, Lake County Bar Association Spring Seminar, Lake Geneva, WI, May 2004