



# Kenneth A. Cushing

**Associate**

**Philadelphia**

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## Practice Areas

- Commercial Litigation
- Construction Law

## Industry Sectors

- Real Estate & Construction

## Education

- Wake Forest University School of Law, J.D.
- University of Notre Dame, B.A.
- Southwest Minnesota State University, M. Ed.

## Bar Admissions

- New Jersey
- Pennsylvania

## Court Admissions

- U.S. District Court -- Eastern District of Pennsylvania

Kenny focuses his practice on construction law. He counsels and represents project owners, developers, contractors, and design professionals in all phases of public and private construction projects, agency appeals, and the dispute resolution process. Kenny represents clients on a wide range of projects from traditional vertical construction to some of the largest linear infrastructure projects. He has experience navigating clients through challenges in project management, litigation, arbitration, appeals, and bankruptcy, as well as in bond claims, insurance claims, and mechanics' liens claims. He also counsels clients through the contract negotiation and drafting process, and has drafted and negotiated construction services agreements for various six and seven figure construction projects in several states including Pennsylvania, New York, Florida, Texas, and California.

Kenny serves the Philadelphia community through his pro bono work, most notably serving as trial counsel for Breastcancer.org in a commercial dispute, and drafting and negotiating construction services agreements for the Kimmel Center.

Kenny was a law clerk to The Honorable Federico A. Moreno in the U.S. District Court for the Southern District of Florida. Before that, he was an associate in the construction practice group at the Philadelphia office of a national law firm. Prior to studying and practicing law, Kenny was a college football coach for four years following one year of service as an AmeriCorps volunteer teacher in Massachusetts.

Kenny earned his bachelor's degree from the University of Notre Dame. He also earned his master's degree in education — sports leadership from Southwest Minnesota State University. Kenny then earned his law degree, *cum laude*, from Wake Forest University School of Law where he was a member of Order of the Coif and symposium editor for the *Wake Forest Law Review*. While earning his law degree, Kenny was a judicial intern to The Honorable Gene E.K. Pratter in the U.S. District Court for the Eastern District of Pennsylvania.

## Experience

Representing a general contractor in prosecution and defense of claims totaling more than \$22 million asserted among and between the owner, designers contractor, subcontractors, sureties, and insurance carriers arising out of alleged construction defects, design deficiencies and repair work on a \$60 million waste water treatment facility in Texas.

Project counseling for a general contractor during construction of a \$97 million residential tower in Philadelphia.

Drafted and negotiated a construction services agreement for a \$1.8 million renovation at the Academy of Music in Philadelphia.

Representing the owner of a \$3 million residential project in a successful appeal of a Delaware Department of Natural Resources and Environmental Control decision that temporarily halted construction.

Project counseling and dispute resolution for a Fortune 500 natural gas and propane company related

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to design and construction issues arising during the installation of a projected \$2.4 billion interstate natural gas liquids pipeline in Pennsylvania, West Virginia, and Ohio, including negotiation of change orders totaling nine to ten figures, negotiation of insurance and indemnity claims in defense of a landowner class action, defense of a \$55 million claim by a terminated general contractor, and defense of a subcontractor payment claim.

Secured a significant victory in the Commonwealth Court of Pennsylvania on behalf of Allan Myers, LP, a non-union construction company that filed a bid protest with the Pennsylvania Department of Transportation (PennDOT) challenging a provision in a project solicitation requiring that all contractors execute a Project Labor Agreement (PLA) with local unions, hire labor through local unions, and be bound by the unions' collective bargaining agreements. PennDOT dismissed the bid protest, and we successfully appealed that decision, with the Commonwealth Court unanimously holding that the PLA violated Pennsylvania's competitive bidding laws and setting a new standard for the use of PLAs. This is the first case in which a Pennsylvania court has not upheld a PLA.