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**Kenney & Sams, P.C.**

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## **Fall 2021 Newsletter**

*Many thanks to our clients, colleagues, and friends for their confidence, trust, and support over the last 15 years.*

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**K&S Lawyers Included In 2022 Best Lawyers In America® and Best Lawyers: Ones to Watch\***

KENNEY & SAMS, P.C.

2022

RECOGNIZED BY  
**Best Lawyers®**



Nathan Cole



Michelle De Oliveira



Chris Kenney



David Kerrigan



Mike Sams



Alex Zwillinger\*

## FIRM HAPPENINGS

### Chris Kenney Elected to IADC Board of Directors



CHICAGO – September 2, 2021 – The International Association of Defense Counsel (IADC) has elected **Christopher A. Kenney**, a partner at Kenney & Sams, P.C. in Boston, Massachusetts, as a new member of the IADC Board of Directors for 2021-22. The election was announced at the IADC's 2021 Annual Meeting. The IADC is the preeminent invitation-only global legal organization for attorneys who represent corporate and insurance interests.

A member of the IADC since 2003, Mr. Kenney served as director of the organization's Trial Academy at Stanford University Law School in 2018. He also is a member of the IADC's Construction Law and Litigation and Insurance and Reinsurance committees.

Mr. Kenney is a nationally recognized litigator and advocate who has successfully tried cases and argues appeals before state and federal courts in Massachusetts and several other states. He advises and defends companies,

organizations, and individuals locally and nationally on contracts and agreements, construction and development, workforce management, and product integrity and safety. His clients span industries as diverse as real estate, construction, manufacturing, health care, pharmaceuticals, medical devices, and food service. He also represents public officials and political candidates on election law and public policy matters.

Mr. Kenney served as the 2018-2019 president of the Massachusetts Bar Association and was an adjunct faculty member at Boston University School of Law. He also frequently writes and lectures for business groups, trade associations, and bar associations.

Mr. Kenney received his J.D. from Boston University School of Law and his Bachelor of Arts from Holy Cross College.

The IADC board oversees activities that benefit the organization's members and their clients, as well as the civil justice system, the legal profession, and society in general. In addition to its core purpose involving professional development for members, the IADC takes a leadership role in many areas of legal reform. IADC members are among the world's leading corporate and insurance lawyers at large and small law firms and senior counsel in corporate law departments, as well as corporate and insurance executives. Members represent the largest corporations around the world, including many of the companies listed in the FORTUNE 500.

#### **About the International Association of Defense Counsel**

The IADC is the preeminent invitation-only global legal organization for attorneys who represent corporate and insurance interests. Founded in 1920, the IADC has members who hail from six continents, 49 countries and territories, and all 50 U.S. states. The core purposes of the IADC are to enhance the development of skills, promote professionalism, and facilitate camaraderie among its members and their clients, as well as the broader civil justice community. For more information, visit [www.iadclaw.org](http://www.iadclaw.org).

## **Laura Raisty Joins K&S As Of Counsel**



Laura handles the full range of employment-related litigation, arbitration, and mediation matters before courts, administrative agencies, and other tribunals around the country, in addition to the MCAD and Massachusetts state and federal courts. Her well-rounded practice also includes representing individuals in connection with employment contract negotiations such as severance arrangements, non-competition agreements, and executive compensation packages. Welcome Laura!

## **K&S Welcomes Associate Attorney Sarah Nyren**



The firm is pleased to welcome Sarah Nyren as an Associate. Sarah is a civil trial lawyer focusing on complex business matters, real estate disputes, and construction litigation. She uses her litigation experience to counsel companies on how to limit their liability and exposure and general risk management.

K&S is pleased to welcome Sarah to our growing group of outstanding professionals.

## Speaking Engagements



Mike Sams will be part of the Massachusetts Building Congress panel discussion on September 30, 2021 entitled, "Escalating Construction Costs - Part II." The program will deal with rising costs and how to address them from the perspective of lawyers and construction professionals. [More details here.](#)

Mike will also be speaking at the Associated Builders and Subcontractors of Massachusetts program concerning payment recovery strategies and mechanisms. The program will

be held on September 23, 2021, 8:00 a.m., at the Hilton Garden Inn, Waltham. [More details here.](#)

On September 30, 2021, 10:00 a.m., Mike will be a speaker at the American Bar Associations Forum on Construction program, regarding Construction Fundamentals, "Players in Construction." [More details here.](#)



Nate Cole recently moderated a panel on "Reverse Engineering Contract Clauses for Effective Risk Management of Delay Claims" at the 2021 Annual Meeting of the International Association of Defense Counsel in Chicago, Illinois.

Nate is currently the Program Chair of the IADC's Construction Law Committee and serves on the Massachusetts Defense Lawyers Association's Board of Directors.

**Chris Kenney and Dave Kerrigan Honored by  
Massachusetts Lawyers Weekly As  
"2020 Lawyers of the Year"**



# WE CONGRATULATE OUR COLLEAGUES

CHRIS KENNEY AND DAVE KERRIGAN



AND ALL OF THIS YEAR'S  
"LEADERS IN THE LAW" HONOREES



**KENNEY  
& SAMS**

## ARTICLES OF INTEREST

### Fall Means Return to the Office For Many: What Employers Should Know About Current COVID-19 Guidance From the CDC, EEOC, & OSHA



By: [Julianne Fitzpatrick](#)

For generations of children, fall has signified a return from summer vacation and the start of new school year. This year, many adults are heading "back to the office" too, with a mix of hope instilled by the success of widespread vaccination, and trepidation given the rise of the Delta variant. The country's leading authorities on COVID-19 workplace guidance weigh in on what employers can do, at this stage of the pandemic, to continue to protect their workforce while maintaining and increasing productivity.

[Read Full Article Here](#)

## Reminder: “Willful” Safety Violations May Lead to Criminal Penalties for Employers



By: **Benjamin Hinks**

In May 2017, a trench collapsed at a construction site in Pennsylvania, leading to a worker’s death. The construction contractor that employed that worker was criminally charged by federal prosecutors in the Western District of Pennsylvania for violating the Occupational Safety and Health Act (the “OSH Act”). For construction industry employers, this will resonate as a stern reminder of the need to pay close attention to OSHA

compliance— not only for the safety of their employees, but to avoid the devastating impacts that hefty fines and a criminal history could have on their businesses.

[Read Full Article Here:](#)

## Adverse Possession: How To Prevent Your Neighbor From Taking Your Land



By: **Dan Conroy**

Do good fences make good neighbors? In “Mending Wall,” by Robert Frost, the neighbor thinks so. Frost, though, was not so sure. He has the narrator say: “Before I built a wall I'd ask to know / What I was walling in or walling out, / And to whom I was like to give offense.” Frost was right.

[Read Full Article Here:](#)

## Recent State and Federal Developments on Use of Noncompetition Agreements



By: **Laura Raisty**

Many Massachusetts employers use noncompete agreements to protect their business interests, including confidential information, trade secrets, and good will. Due to recent developments regarding the use of these agreements on both the state and local level, employers should revisit their

noncompetition agreements to ensure they comply with Massachusetts law and to evaluate whether other methods or strategies to protect those business interests may be appropriate in light of President Biden's recent executive order seeking limitation of or prohibition on the use of noncompetition agreements.

[Read Full Article Here:](#)

## Webinars



**KENNEY  
& SAMS**

# 30 Minute Construction Risk Series

K&S continues to offer our clients substantive updates on key issues affecting the construction industry. Join us live at one of our upcoming webinars or if you missed any, you can view past webinars here: <https://kslegal.com/webinars/>

On September 16, 2021, [Mike Sams](#) and [Nate Cole](#) presented on *Liquidated Damages and Consequential Damages*. You can view their LD presentation here: [K&S LD and Consequential Damages Webinar](#)

### Upcoming Webinars:

*Mastering Prompt Pay Traps and Applications*: October 21, 7:30-8:00 a.m.

*Hot Employment Issues Impacting Contractors*: December 16, 7:30-8:00 a.m.

*Mastering Claims Processes and No Damage for Delay Clauses*: January 20, 7:30-8:00 a.m.

## GETTING RESULTS FOR OUR CLIENTS

[Mike Sams](#) and [Dan Conroy](#) recently defeated a motion for summary judgment filed by a local municipality in a bid protest case. Kenney & Sams represents a

contractor alleging that the city acted illegally in refusing to award a contract and the court has now cleared the way for the matter to proceed to trial.

Mike Sams and Michelle De Oliveira recently received a lack of probable cause decision from the Massachusetts Commission Against Discrimination in favor of our client. In short, an employee was terminated for poor performance shortly after disclosing the possibility that she was pregnant to her supervisor. Although the termination was performance-based, the employee filed a complaint at the MCAD, alleging that her termination was both discriminatory and retaliatory because of her gender and/or pregnancy. In issuing the lack of probable cause decision, the MCAD found that the employee could not meet all of the *prima facie* elements necessary to support her claims (e.g., that she is a member of a protected class; that she was adequately performing her job; that her employment was terminated; and that she was replaced by someone outside of her protected class or that her employment was terminated under circumstances that give rise to an inference of discrimination based on sex and pregnancy). Specifically, the complainant could not show that she had been adequately performing her job, and there was ample evidence from the employer that she had not been adequately performing her job. The MCAD went further, noting that even if complainant could show that she had been adequately performing her job, the employer had shown with both “photographic and testamentary” evidence that the employer had legitimate, non-discriminatory reasons for terminating her employment. As to the retaliation claim, the MCAD determined that the complainant could not establish a causal connection between disclosing her pregnancy and the termination, and therefore, the evidence was insufficient to support her retaliation claim.

## GET TO KNOW YOUR K&S TEAM MEMBER: EMYR REMY



### **Best advice you were ever given as a professional:**

When the rubber meets the road, nothing can replace putting your head down and working hard to get things done—you will obtain the result you want if you put forth a good faith effort along the way.

### **Favorite part about working for K&S:**

K&S has demonstrated confidence in its attorneys to handle complex matters, both with autonomy and as a cohesive team as required by the matter at hand.

### **Best non-legal job you've ever had:**

Working at Boston College in Residential Life for two summers after my junior and senior years was a lot of fun, as I encountered a lot of great people and made new friends that I otherwise would not have met during the school year.

### **Something we may not know about you:**



Many people do not realize that my first name is an anagram of my last name (meaning they contain the same four letters).

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## **JPK Annual Golf Tournament**

K&S Team Members [Drew Colby](#), [Nate Cole](#), [Anthony da Fonseca](#), and [Dave Kerrigan](#) competed outside the office in the 2nd Annual JPK Golf Tournament to benefit [The Barton Center for Diabetes Education](#).

Don't quit your day jobs,  
counselors!

