

David Burch

He | Him | His

Deputy Managing Partner

Syracuse

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Education

- Albany Law School, *Cum Laude*, JD
- State University of New York at Albany, *Summa Cum Laude*, BA

Practices & Industries

- Commercial Litigation & Complex Trials
- White Collar & Government Investigations
- Energy
- Project Development
- Oil & Gas
- Higher Education
- Semiconductor

Admitted to Practice

- New York

Court Admissions

- US Court of Appeals for the Second Circuit
- US District Court for the Eastern District of New York
- US District Court for the Northern District of New York
- US District Court for the Southern District of New York
- US District Court for the Western District of New York

Biography

David serves as co-chair of the firm's White Collar & Government Investigations Practice Area.

David is an experienced litigator who routinely handles complex disputes, particularly in commercial litigation, internal investigations, and white collar defense. Whether the final goal is a negotiated settlement or a complete victory after trial, he strives to keep clients' business goals and challenges at the forefront when designing paths to a final resolution. David has served as lead counsel in situations ranging from governmental investigations to multi-action matters with industry-wide import.

As an advocate for clients before regulators, in the courtroom, and those facing criminal accusations, David litigates in state, federal, and administrative courts and has handled countless administrative tax hearings and appeals and Article 78 proceedings as well as state and federal civil and criminal cases and private arbitrations. He has represented clients challenging decisions made by the US Department of Transportation, the US Department of Health & Human Services, the NY Attorney General, the NYS Public Service Commission, the NYS Department of Taxation & Finance, the NYS Department of Environmental Conservation, and the Department of Economic Development as well as additional federal and state agencies.

David has extensive experience representing businesses in energy industry disputes before state regulators and between private parties in a wide range of areas, with clients that include Energy Service Companies (ESCOs), renewable- and fossil-fuel-generation asset owners and operators, utilities, and others. He routinely handles securities litigation and arbitration matters, contract disputes, environmental litigation, and trade secret litigation, among other areas. David also handles criminal matters involving health care fraud, federal and state tax issues, securities laws, environmental crimes, the federal False Claims Act and state analogues, and mail and wire fraud. He additionally

conducts internal investigations and counsels companies on implementing and improving compliance plans.

Bar Associations

- New York State Bar Association
- Northern District of New York Federal Court Bar Association, Trustee, Membership Committee and Public Relations Co-Chair

Selected Memberships & Affiliations

- Law360 Native American Editorial Advisory Board, Member

Representative Experience

Commercial Litigation

- Handles appeals for minority and women-owned business enterprise (MWBE) certifications.
- Represented a cable television provider in a dispute regarding millions in late fees assessed by municipalities. Won a favorable judgment following trial, reducing penalties by over 95 percent. Settled on favorable terms while the appeal was pending.
- Represented a food-production company investor with respect to embezzlement by an officer. Obtained a temporary restraining order, followed by a negotiated resignation.
- Represented a business owner in the break-up of numerous interconnected operating and partnership agreements. Settled on favorable terms.
- Obtained the summary dismissal of a federal civil-rights complaint against an individual in district court and on appeal to the circuit court.
- Represented medical professionals involved in litigation regarding an asset-purchase agreement and alleged defamation.
- Resolved numerous disputes regarding student discipline and academic fraud through both negotiated settlements and final judgments in litigated matters.
- Successfully defended appeal of estate matter regarding the disposition of liquid and real estate assets.
- Represented an international electric company against agreement breach claims.

Energy

- Represents an industry group of Energy Service Companies (ESCOs) in ongoing proceedings before the NY Public

Service Commission (PSC) and in parallel judicial proceedings.

- Led negotiations on behalf of an industry group under supervision of the NY PSC regarding cybersecurity issues and terms of data-security agreements.
- Represented a solar developer in arbitration regarding breaches of a development agreement by an engineering, procurement, and construction (EPC) contractor. Settled on favorable terms.
- Represented a utility company in a challenge by a developer to tariff the reimbursement rate. Obtained summary dismissal of the complaint by the court.
- Represented a municipally owned power plant in wide-ranging litigation regarding breaches of an operating agreement by a private operator. Settled on favorable terms.
- Successfully defended an adversaries' appeal of a lower court's denial of an Article 78 petition that sought to reverse the Public Service Commission's denial of retroactive reimbursements to a group of residential developers for certain trenching work used to install utility service. The Appellate Division's decision to affirm the lower court order was particularly important to the utility client because an adverse decision would have potentially caused other developers to also seek retroactive reimbursements, opening the client up to additional claims and damages.

White Collar

- Represented a business under criminal investigation by the NY Attorney General’s Antitrust Bureau for numerous violations of antitrust laws under threatened penalties of millions, incarceration for top executives, and forced closure of business. Negotiated a civil resolution favorably with no criminal charges imposed.
- Represented a business owner charged with 21 felony counts of criminal sales-tax fraud involving amounts approaching $750,000. Successfully reduced the counts to one misdemeanor charge of failure to maintain adequate records, and successfully negotiated the abatement of civil-fraud penalties.
- Represented a physician accused of health care fraud, including fraudulent billing and falsification of records. Successfully negotiated a civil resolution with no criminal charges imposed. Assisted in instituting a practice-wide compliance program.
- Represented a law firm partner accused of fraud by the US Department of Justice and US Department of Labor. No charges or civil penalties were imposed.
- Represented a private NYS university in connection with criminal investigations involving accusations against staff members.

- Represented a private NYS university in connection with a NCAA investigation.
- Defended an owner of an employee-leasing company charged with tax evasion and failing to pay withholding tax.
- Represented a not-for-profit development corporation charged with federal tax evasion through sentencing and post-sentencing supervision.
- Represented countless witnesses in connection with interviews and testimony in state and federal criminal investigations.
- Represented a business under criminal investigation by the NY Attorney General's Antitrust Bureau for numerous violations of antitrust laws under threatened penalties of millions, incarceration for top executives, and forced closure of the business. Negotiated a civil resolution favorably with no criminal charges imposed.
- Represented a business owner charged with 21 felony counts of criminal sales-tax fraud involving amounts approaching $750,000. Successfully reduced the counts to one misdemeanor charge of failure to maintain adequate records and successfully negotiated the abatement of civil-fraud penalties.
- Represented a law firm partner accused of fraud by the US Department of Justice (DOJ) and US Department of Labor (USDOL). No charges or civil penalties were imposed.
- Represented a physician accused of health care fraud, including fraudulent billing and falsifying records. Successfully negotiated a civil resolution with no criminal charges imposed. Assisted in instituting a practice-wide compliance program.

Tax Controversies

- Represented numerous companies in litigation with the NYS Department of Taxation & Finance to protest notices of deficiency arising out of denial of Empire Zones program credits. Obtained reductions in assessments following a hearing before the Division of Tax Appeals aggregating in tens of millions.
- Represented numerous companies in litigation regarding the denial of Qualified Emerging Technology Company tax credits (QETC). Settled cases on favorable terms.
- Represented a power-plant developer in an audit of Brownfield Tax Credits. Resulted in payment of a multi-million credit as claimed by the taxpayer.
- Represented a manufacturer of automotive parts in negotiations and litigation with the NYS Department of Taxation & Finance regarding income taxes with respect to disputes over Empire Zone tax credits.

- Represented a real estate developer in a real-property-tax dispute, leading to a 60 percent reduction in real-property-tax assessments.
- Represented a boat dealer in civil tax litigation on parallel course with criminal tax prosecution involving the collection and remittance of sales tax.

Regulatory and Compliance

- Represented numerous businesses in summary Article 78 proceedings resulting in the reversal of the actions of numerous New York State agencies.
- Represented individuals in the closing of the purchase of all the assets of a trucking company in a heavily regulated industry and in ensuring the new owners were in full compliance with federal, state, and local regulations.
- Represented a nursing home operator in the correction of 401(k) plan tax-qualification failures under the IRS' Employee Plans Compliance Resolution System (EPCRS).
- Represented a software company in the correction of breaches of fiduciary duties under the Department of Labor's Voluntary Fiduciary Correction Program (VFCP).
- Assisted in compliance and termination of a paper-products manufacturer's employee benefit plans ESOPs, 401(k) plans, and 403(b) plans—each with more than 100 participants.
- Represented a health care provider in a government audit of Medicare and Medicaid billing practices.
- Defended a health care provider against an assessment for overpayment of Medicaid reimbursement.
- Represents universities and individuals in connection with National Collegiate Athletic Association (NCAA) compliance matters.

Cannabis

- Represented a federally recognized tribal sovereign government in preparing, submitting, and securing approval from the USDA on its tribal hemp administration and production plan.

Prior Experience

- Hiscock & Barclay, LLP, Partner
- Green & Seifter, Attorneys, PLLC, Associate
- Office of Federal Magistrate Judge David R. Homer, Intern

Selected Community Activities

- Cazenovia Preservation Foundation, Former Vice President and Board of Directors Member

Selected Honors

- *The Best Lawyers in America*®: Commercial Litigation, 2024–2027
- Selected to *Super Lawyers* Upstate New York: Business Litigation, 2025 and 2026
- New York State Bar Association, Empire State Counsel, 2024
- Selected to *Super Lawyers* Upstate New York Rising Stars: Business Litigation, 2015–2017, 2020–2022
- *Central New York Business Journal*, 40 Under 40, 2019

Selected Speaking Engagements

- New York State Society of CPAs, “Tax Litigation”
- Syracuse Annual Tax Conference and Accounting & Auditing Update, “New York Consolidated Funding Application Process and Incentives”
- NYSSCPA Syracuse Chapter Annual Tax Conference, “Available NYS Incentives With a Focus on START-UP NU Program”
- NDNY Federal Court Bar Association, “Discovery Updates and Trends”
- Annual Tax Conference for the Syracuse Chapter of the New York State Society of CPAs, “Economic Incentives and Tax Controversy Issues”

Selected Media

- Law360 Pulse, "Barclay Damon Elects Deputy Managing Partner"
- *Oswego County Business Magazine*, "On the Job: The Outlook for 2025: What's in Store for Area Businesses?"
- *Corporate Compliance Insights*, "Top Stories of 2024"
- *Central New York Business Journal*, "Barclay Damon Names Burch Syracuse Office Managing Director"
- Politico, "Energy Retailers Face Off Against Regulators Before State Court of Appeals"
- *Marijuana Venture*, “Banking Considerations and the Law of Unintended Consequences”
- *Albany Business Review*, “Not So Fast, Attorney Says Potential Change in New York Tax Law Doesn’t Guarantee Tax Credits”

Selected Alerts & Blog Posts

- Distance Learning and Higher Education: Stemming the Tide of COVID-19 Liability
- COVID-19 and Higher Education: Regrouping to Support Off-Campus Students
- NYS Division of Minority and Women's Business Development Announces Proposed Regulations for Enterprise Certification and Appeal Processes
- New York State Extends MWBE Certification Window, Increases Personal Net-Worth Cap
- The Supreme Court Clarifies the Meaning of a Personal Benefit in Insider Trading Cases