



# Nathaniel G. Foell

ASSOCIATE

TAMPA

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## Overview

Nathaniel Foell is a litigator who handles challenging legal issues whenever they may arise in litigation, whether that be spotting a rarely-litigated subject-matter jurisdiction defense at the outset of a case, crafting jury instructions on a novel issue as the case proceeds to trial, or briefing a tangled question of personal jurisdiction when the case is on appeal.

At the appellate level, Nathaniel has briefed cases before federal and state courts of appeals, including the United States Supreme Court. He clerked for the Honorable David F. Hamilton of the U.S. Court of Appeals for the Seventh Circuit.

At the trial level, Nathaniel has a broad background in complex commercial litigation. He has experience not only with motions practice but also with developing a factual record and engaging with expert witnesses. He approaches the discovery process with a focus on two aims: minimizing costs for his clients while at the same time maximizing their chances of prevailing at class certification, summary judgment, or, if necessary, trial.

Nathaniel has significant experience litigating class actions, including class actions related to cybersecurity, food labeling, health insurance, automated calls, and drug pricing.

Nathaniel maintains a robust pro bono practice with a focus on criminal justice matters. Most recently, he represented an indigent client asserting excessive force claims in a federal jury trial. He has earned awards and recognitions in Florida, Washington, D.C., and New York for his commitment to pro bono service.

## Experience

### Appellate Litigation

- *Argentina v. NML Capital*, 573 U.S. 134 (2014). Counsel for trade association as amicus curiae in support of respondent in a foreign sovereign immunity dispute. Respondent prevailed, with the U.S. Supreme Court holding that the Foreign Sovereign Immunities Act does not limit the scope of discovery available to a judgment creditor in a federal post-judgment execution proceeding against a foreign sovereign.
- *Lifsey Real Estate and Holdings v. Starwood Capital Group L.P.*, Case No. 2D19-669, 2020 WL 865066 (Fla. 2d DCA Feb. 21, 2020) (per curiam). Counsel for defendants. Plaintiff argued that the trial court erred in a number of respects,

including on a tangled question of personal jurisdiction, by dismissing plaintiff's claims with prejudice. The Florida Second District Court of Appeal affirmed the trial court's dismissal of plaintiff's claims.

- *Zubik v. Burwell*, 136 S. Ct. 1557 (2016). Counsel for health policy experts as amicus curiae in support of respondents in a dispute regarding the Affordable Care Act's contraceptive coverage mandate, and in particular the adequacy of the mandate's accommodation for non-profit religious employers with religious objections to contraceptive coverage. The U.S. Supreme Court requested supplemental briefing. After receiving that briefing, the Court vacated the judgments under review and remanded for further proceedings.
- *Reed v. Stephens*, 574 U.S. 973 (2014). Counsel for eight retired judges as amicus curiae in support of petitioner. Petitioner sought U.S. Supreme Court review of a Fifth Circuit Court of Appeals decision denying his ineffective assistance of counsel claims. The amicus brief argued that the Fifth Circuit usurped the role of the trial court by resolving factual questions that had not been decided by the trial court, rather than remanding so that the trial court could develop the factual record and evaluate that record in the first instance. The Supreme Court denied the petition for a writ of certiorari.

### **Class Actions**

- Defended *Fortune* 500 health insurer in multidistrict litigation relating to one of the largest data breaches in history.
- Defended *Fortune* 500 food company against product labeling class action. Prevailed on discovery stay and dismissal motions.

### **All Insights**

06.12.2020	Considerable Deference With a Caveat: Third Circuit Addresses Fee Awards
11.14.2019	When Is a Defense "Available"? Avoiding Waiver by Being Bold When Asserting Defenses
10.28.2019	Cow Manure Meets Insurance Law: Seventh Circuit Addresses Breach of Contract Exclusions in Malpractice Insurance
09.16.2019	Ninth Circuit Affirms Certification of Class Alleging Biometric Privacy Violations
09.09.2019	Hearsay What? EDNY Finds That Class Certification Evidence Must Be Admissible
05.20.2019	A Unicorn Sighting? Fourth Circuit Affirms Certification of Defendant Class
05.15.2019	Oral Argument as an Opportunity to Deliberate With the Court
04.02.2019	Split Over Impact of Bristol-Myers Squibb on Class Actions Deepens

## All News

05.02.2018 Nathaniel G. Foell Joins Carlton Fields in Tampa

## Recognition

- Carlton Fields Pro Bono Publico Award for serving as a member of the William Kelley capital defense team (2018)
- Recognized at the Thirteenth Judicial Circuit Pro Bono Service Awards Ceremony for exceeding the Florida Bar's aspirational goal of providing at least 20 hours of pro bono service (2018–2019)
- Capital Pro Bono High Honor Roll for attorneys who provided 100 hours or more of pro bono service (2017)
- Empire State Counsel for attorneys who provided 50 hours or more of pro bono service (2016)
- Capital Pro Bono High Honor Roll for attorneys who provided 100 hours or more of pro bono service (2015)

## Professional & Community Involvement

- Carlton Fields
  - United Way Campaign Committee (2018–2019)

## Speaking Engagements

- "Federal Appellate Practice in 2019: Trends, Pitfalls, and Hot Topics," CLE Presentation, Tampa, FL (December 6, 2018)

## Credentials

### EDUCATION

- New York University School of Law (J.D., cum laude, 2013)
  - Articles Editor, *New York University Law Review*
- Harvard University (A.M., 2010)
- University of Oklahoma (B.A., summa cum laude, 2005)
  - Phi Beta Kappa

### COURT ADMISSIONS

- U.S. District Court, Middle District of Florida
- U.S. District Court, Southern District of Florida
- U.S. District Court, Eastern District of Texas
- District of Columbia Courts
- Florida State Courts
- New York State Courts

### BAR ADMISSIONS

- District of Columbia
- Florida
- New York

### CLERKSHIPS

- Hon. David F. Hamilton, U.S. Court of Appeals, Seventh Circuit

## Background

- Associate, Hogan Lovells, Washington, D.C. (2013–2014, 2015–2018)
- Law Clerk to the Honorable David F. Hamilton, U.S. Court of Appeals for the Seventh Circuit (2014–2015)

## Areas of Focus

### PRACTICES

- Administrative Litigation and Appeals
- Appellate & Trial Support
- Class Actions
- Cybersecurity and Privacy
- Litigation and Trials
- Mass Tort and Product Liability
- Securities and Derivative Litigation