



## Kelby Thomas Gray

Partner  
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Kelby focuses his practice on labor and employment law and has guided companies through multiple employment and general litigation issues.

In his practice, he has handled dozens of cases involving allegations of discrimination under the West Virginia Human Rights Act, including allegations of age, race, gender and disability discrimination, and has represented banks, restaurants, coal companies, oil and gas companies and Fortune 500 companies. He also regularly represents and counsels employers regarding hiring and firing issues, disciplinary issues, workers' compensation issues and employment policies and procedures, including employment handbooks. He has significant experience defending employers against deliberate intent claims. In addition to the circuit courts in West Virginia, he has practiced before the Fourth Circuit Court of Appeals, the West Virginia Human Rights Commission and the West Virginia Unemployment Compensation Board of Review.

Kelby also has significant experience defending mine companies in Mine Safety and Health Administration (MSHA) matters. His experience includes guiding companies through the MSHA citation process, including 104(a) and 104(d) citations. With a thorough knowledge of the mining industry, encompassing both surface and underground operations, he is adept at researching and analyzing the facts of a case before crafting a strategy that meets his client's needs. He works quickly and efficiently to examine all facets of the case, and has spent significant time on site at mines, enabling him to gain a unique perspective into mine safety matters. He has successfully secured hundreds of settlements for his clients, and has successfully defended mine operators before Administrative Law judges. Kelby also represents and counsels mining clients in 105(c) discrimination claims and investigations conducted by the United States Department of Labor.

### Services

- Labor
- Employment
- Mine Safety & Health Administration
- Workplace Safety
- Employment Discrimination Litigation

- Wrongful Discharge
- Litigation
- Occupational Safety & Health Administration
- Natural Resources Industry

## Education

- Ohio Northern University, Claude W. Pettit College of Law (J.D., *with distinction*, 2010)
  - Ohio Northern University Law Review, associate editor
- University of Charleston (B.A., *cum laude*, 2007)
  - Psychology

## Bar Admissions

- West Virginia

## Court Admissions

- West Virginia Supreme Court of Appeals
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Court for the Southern District of West Virginia

## Affiliations/Memberships

- West Virginia State Bar Association
- Defense Research Institute

## Distinctions

- Difference Maker Award in Honor of Alice J. Neeley (2014)
- West Virginia *Rising Stars*®
- *Best Lawyers*®
  - Employment Law - Management (2021-2024)

## Experience

### Obtained Summary Judgment in Disability Discrimination Case

We represented a coal company in federal court on multiple employment discrimination claims in a failure to hire case following the company's asset acquisition of an operating mine. We obtained summary judgment a month before the scheduled jury trial. The court ruled for defendant for two reasons: 1) Even if plaintiff could prove a prima facie case, he did not produce evidence to rebut the employer's legitimate business reasons for its decision; and 2) The West Virginia Human Rights Act does not require an employer to provide, as an

accommodation, the less physically demanding communications job the plaintiff sought when the buyer filled the job with the same person who was working in that communications job immediately before the sale took place.

### **Decertification Defense**

When a miner was facing decertification proceedings from the West Virginia Office of Miners' Health Safety and Training, he turned to Dinsmore. Our client was accused of not properly locking and tagging a piece of equipment, which violates state law. As a result, the state of West Virginia sought permanent decertification of the miner. We conducted on-site research at the mine, interviewing witnesses and examining the company's safety policies, procedures and records. We determined the alleged violation did not rise to the level of permanent decertification and entered into negotiations with the state of West Virginia. We reached a settlement favorable to our client, allowing him to avoid permanent decertification and return to work.

## **Publications**

July 8, 2024

**Risky Business: OSHA Investigation Warns Healthcare Providers of Liability for Patient Assaults**