

# KELLY HART

ATTORNEYS AT LAW

## TOBY M. GALLOWAY Partner

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*Fort Worth*



### BIOGRAPHY

Fort Worth native, Toby M. Galloway, earned a B.B.A. in Finance, with high honors, from the University of Texas at Austin in 1991, and graduated from the University of Texas School of Law, with honors, in 1994. Before joining Kelly Hart & Hallman, LLP as a partner, Mr. Galloway served as an attorney with the United States Securities and Exchange Commission, in roles of increasing responsibility, for more than 11 years.

During his last four years at the SEC, Mr. Galloway was the chief trial counsel for the Commission's Fort Worth Regional Office. In this capacity, he supervised all litigation for a four-state region. In addition, he handled his own caseload, prosecuting civil enforcement actions involving alleged violations of the federal securities laws. He also served as a Special Assistant United States Attorney for the Northern District of Texas, prosecuting white-collar crime.

Mr. Galloway's practice focuses on government investigations and white-collar defense. He practices before the SEC, CFTC, FINRA, DOJ, Texas State Securities Board, and other state securities regulators, as well as the CFPB, FDIC, FTC, PCAOB and other regulatory and law-enforcement agencies. Mr. Galloway represents public companies, audit committees and special committees, hedge funds and asset managers, accountants and lawyers, and other institutions in government investigations, securities law enforcement and litigation. Mr. Galloway also represents aggrieved investors, and handles complex commercial litigation and has experience in healthcare fraud.

### EXPERIENCE AND HIGHLIGHTS

Lead trial counsel in many securities fraud matters including:

- Obtained unanimous defense jury verdict in securities fraud case in Texas State court in which the plaintiffs sought \$24 million in actual damages and unspecified punitive damages from nine former officers and directors of a public company previously listed on the NYSE. Claims included alleged violations of the Texas Securities Act and various common-law claims.
- Obtained punitive damages in FINRA arbitration on behalf of aggrieved investor.
- Represent clients in SEC, DOJ and FINRA investigations.
- Lead counsel in federal court lender-liability and usury litigation.

- Lead counsel in purported federal shareholder derivative litigation. Negotiated walk-away settlement in which the plaintiffs took nothing.
- Represent major international airline in intellectual property disputes.
- Secured Texas State Securities Board approval to register offering of shares under "fair, just and equitable" standard set forth in Section 7 of the Texas Securities Act.
- Tried securities fraud case against issuer of fraudulent notes in what the court described as a "quintessential Ponzi" scheme.
- Successfully handled an administrative proceeding involving fraud and failure-to-supervise claims against principal of captive broker-dealer fraudulently selling interests in oil-and-gas wells.
- Represented SEC in three-day bench trial involving deceptive market-timing mutual fund transactions executed by broker-dealer for its hedge-fund client. Court granted all relief sought by SEC.
- Lead counsel in securities fraud case against former senior executives at a prominent software company. The case involved billion-dollar restatement of financial results compounded by extensive insider trading. Secured favorable settlement for the SEC.
- Lead counsel in securities case involving five-billion-dollar round-trip energy-trading scheme by two Fortune 500 companies.
- Lead counsel in securities fraud case arising from highly structured, complex off-balance-sheet transaction by Fortune 500 company. The transaction involved improper accounting for derivatives that enabled the company to manufacture \$300 million of operating cash flow.
- Lead trial counsel in emergency action involving \$170 million Ponzi scheme targeting evangelical Christians. Obtained full relief sought by Commission. Parallel criminal case resulted in multiple convictions.
- Successfully prosecuted emergency insider-trading case against foreign nationals residing in Panama. Prompt action and international cooperation led to freezing \$900,000 in Panamanian bank account. Obtained \$1.3 million judgment resulting in recovery of 100% of insider-trading proceeds.
- Lead counsel in case involving international market-manipulation scheme. Obtained full injunctive relief, officer-and-director and penny-stock bars and disgorgement of \$840,000 from Canadian citizen.
- Lead trial counsel in first insider-trading case involving the "misappropriation" theory of liability in the Fifth Circuit.
- Serving as a Special Assistant United States Attorney, prosecuted tax professional for making false statements to the SEC.
- Local counsel in misappropriation insider trading case against owner of NBA basketball team.
- Lead trial counsel in emergency action against hedge fund engaged in fraudulent foreign currency scheme. Obtained full relief and assisted criminal authorities with parallel prosecution. Recovered and returned 100% of fraudulent proceeds to investors. Given United States Attorney's Award for the District of Connecticut for work on this case.
- Lead counsel in emergency action involving fraudulent T-Bill trading program by, among others, a former Dallas Cowboy player. Obtained full relief and returned 75% of fraudulent proceeds to investors.
- Lead counsel in emergency action against former CEO of investment firm for perpetrating Ponzi scheme that used former NFL players and Heisman Trophy winners to deceive investors. Obtained full relief for SEC. Defendant

sentenced to 17 years in prison in parallel criminal proceeding.

## AFFILIATIONS AND HONORS

- Texas Bar Foundation, Fellow
- Frequent speaker on securities enforcement, accounting fraud, and related topics
- SEC's Excellence in Information Technology Award, 2013
- Pro Bono College of the State Bar of Texas, Member, 1996-1997
- College of the State Bar of Texas, Member, 2003
- Completed Department of Justice's National Advocacy Center Criminal Trial Advocacy Course, 2007
- SEC Enforcement Division Director's Award, 2007-2008 and 2008-2009
- United States Attorney's Award, District of Connecticut, 2010
- American Bar Association
- Tarrant County Bar Association
- Dallas Bar Association
- Rated AV® Preeminent™ by Martindale-Hubbell, 2013
- Selected as "Top Attorney" by *Fort Worth, Texas* magazine, 2014-2016
- Named a "Top Attorney" in Securities Law by *360 West Magazine*, 2017

## EDUCATION

- University of Texas, B.B.A., with high honors, 1991
- University of Texas School of Law, J.D., with honors, 1994

## ADMISSIONS

- State Bar of Texas, 1994
- U.S. District Court, Northern District of Texas
- U.S. District Court, Eastern District of Texas
- U.S. District Court, Southern District of Texas
- U.S. District Court, Western District of Texas
- U.S. Court of Appeals, Fifth Circuit

## SPEECHES & PUBLICATIONS

- Co-Author, "Tippee Insider Trading After *Newman* and *Salman*: Why Knowledge is Not Always Your Friend," American Bar Association White Collar Crime Committee Newsletter, Winter/Spring 2017
- Panelist, NACD Luncheon, January 2017
- Author, "Securities Enforcement Actions Trends and Why Investment Advisors Should Take Note," Red Oak Securities Compliance Blog, October 2016.
- Interviewed in *Fort Worth Business* article, "Preparation key to thwarting cyber attacks", September 21-27, 2015.
- Speaker, "Enforcement Action Cases: Spoofing, Disruptive Trading Practices, and More," American Conference Institute National Advanced Summit on Swaps & Derivatives, June 30, 2015.
- Speaker, "Securities Enforcement Update," SMU Dedman School of Law Securities Regulation Class, April 8, 2015.
- Panelist, "Energy Securities and Investing," Texas A&M Law School Energy Symposium, April 3, 2015.
- Panelist, "Private Funds: Their Exams and Enforcement Issues," 37th Annual UT Law Conference on Securities Regulation and Business Law, Dallas, Feb 12-13, 2015.
- Panelist, "The Forensic Forum: Fraud and Your Responsibility."
- Panelist, The Forensic Forum: Fraud in the Global Marketplace. Webcast on FCPA and other international corruption and fraud issues, February 19, 2014.
- Speaker, "SEC Enforcement Update," University of Texas at Dallas's 9th Annual Fraud Conference, March 28, 2014

- Co-Author, "Home-Court Advantage: How the SEC's Intention to Bring More Administrative Proceedings Could Affect You," Texas Lawbook (Oct. 2013)
- Panelist, Eighth Annual ABA National Securities Fraud Institute. (Oct 24-25, 2013). Topic: Going to Trial Against the Government
- Presenter and Co-Author, "Financial Crimes and Misdemeanors: The Dark (er) Side of Insolvency Proceedings," August 18, 2013.
- Co-Author, "Consumer Financial Protection Bureau", July 25, 2013
- Co-Author, "SEC's Policy Shift on No-Admit, No-Deny Settlements Could Impact You," The Texas Lawbook, July 17, 2013.
- Co-Author, "Fifth Amendment Privilege: Shield or Sword in White-Collar Cases?" The Texas Lawbook, June 29, 2013.
- Panelist, Federal Bar Association, Dallas and Fort Worth chapters, Federal Practice Seminar. (Jan. 2013).
- Panelist, ABA Securities Fraud Institute (Nov. 2012). Topic: Criminal Referrals.
- Panelist, 36th Annual SW Enf. Conf. (Sept. 2012). Topic: Emergency Enforcement Actions.
- Panelist, 34th Annual SW Enf. Conf. (Sept. 2010). Topic: Major Litigated Enforcement Actions.
- Panelist, State Bar Convention in Fort Worth, Texas. (June 2010). Topic: SEC Enforcement Trends.
- Panelist, Dallas CPA Society (May 2009). Topic: SEC Enforcement Trends.
- Guest Lecturer, Neeley Graduate School of Business at TCU (November 2008). Topic: SEC Enforcement Trends.
- Panelist, 32nd Annual SW Enf. Conf. (September 2008). Topic: Handling Difficult Issues at Trial
- Author of section of official SEC Enforcement Manual titled "Cooperating with Criminal Authorities." (Feb. 2008).
- Moderator, 31st Annual SW Enf. Conf. (September 2007). Topic: Suing Gatekeepers.
- Speaker, U.S. Attorney's Office for the Northern District of Texas, Federal Litigation Update (May 2007). Topic: Securities Enforcement Trends and Developments.
- Speaker, State Bar of Texas CLE, Federal Court Practice (May 2006). Topic: Service of Process, Pleadings and Extraordinary Remedies.
- Speaker, Tarrant County Bar Association Corporate Counsel Meeting (Summer 2005). Topic: Securities Enforcement Trends and Developments.
- Panelist, 28th Annual SW Enf. Conf. (September 2004). Topic: Securities Litigation.
- Speaker, Institute of Internal Auditors (May 2004). Topic: Investigating Corporate Accounting Fraud.
- Panelist, Northern District of Texas Securities Fraud Task Force Seminar (March 2004). Topic: Investigating Corporate Accounting Fraud.
- Panelist, 27th Annual SW Enf. Conf. (September 2003). Topic: Accounting Fraud.
- Panelist, 26th Annual SW Enf. Conf. (September 2002). Topic: Financial Frauds Post-Enron