

Kimberly Kanoff Berman

Shareholder

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Kimberly is a shareholder in the firm's Appellate Advocacy and Post-Trial Practice Group in the Professional Liability Department and is Board-certified in Appellate Practice by the Florida Bar. She has litigated numerous appeals in Florida state and federal appellate courts across a wide variety of subject matters in cases including but not limited to cases involving, medical malpractice, construction defect, condominium and homeowner association matters, insurance coverage, bad faith, maritime, aviation and premises liability. Kimberly handles the brief writing, motion practice and oral arguments. In addition to her extensive appellate practice, Kimberly provides litigation support in insurance coverage, construction defect, premises liability, casualty, professional malpractice and bad faith cases.

Kimberly has an AV Preeminent rating by Martindale-Hubbell, the highest rating for professional competence. From 2015-2020, Kimberly was recognized as a Super Lawyers Rising Star, a designation given each year to only 2.5 percent of lawyers in the state of Florida. She has also been recognized as a Top Lawyer for Appellate Law by the South Florida Legal Guide. Kimberly was selected to Florida Trend Legal Elite Notable Women Leaders in Law.

Kimberly is actively involved in bar association and related legal societies. She is a member of the Board of Trustees of the Florida Supreme Court Historical Society and currently serves as Treasurer and Communications Chair. An active member of the Florida Bar, she is Vice Chair (Live Programs) of the Appellate Practice Section's CLE Committee and past chair of the Pro Bono and Programs Committees. She has been a member of the Broward County Bar Association, the Dade County Bar Association, the Defense Research Institute, the Florida Defense Lawyers' Association, the Third District Court of Appeal Historical Society and the Rosemary Barkett American Appellate Inn of Court. She has served as the president of the Third District Court of Appeal Historical Society and as co-chair of the Dade County Bar Association's Appellate Practice Section.

Practices

- Appellate Advocacy & Post-Trial Practice
- Insurance Services – Coverage & Bad Faith Litigation

She has spoken on appellate and litigation support topics and written multiple articles on important issues impacting appellate and trial lawyers. Kimberly has also served as adjunct faculty at three law schools: Nova Southeastern Shepard Broad College of Law in Davie, Florida; Ave Maria School of Law in Naples, Florida; and St. Thomas University Benjamin L. Crump College of Law in Miami Gardens, Florida.

Prior to joining the firm, Kimberly was the head of the appellate division at a local defense firm. Before entering private practice, Kimberly served as a Career Research Attorney for the Honorable David M. Gersten of the Third District Court of Appeal in Miami, Florida. She also interned at the Third District and at the Florida Supreme Court in Tallahassee, Florida, while in law school.

Kimberly graduated from the University of Florida, Gainesville, with a Bachelor of Science in Public Relations with high honors. She subsequently attended the University of Miami School of Law in Coral Gables, Florida, where she obtained her *juris doctor*.

Education

- University of Miami School of Law (J.D., 2005)
- University of Florida (B.S., 2002)

Admissions

- Florida, 2005
- U.S. District Court Southern District of Florida, 2006
- U.S. District Court Middle District of Florida, 2011
- U.S. Court of Appeals 11th Circuit, 2011
- U.S. District Court Northern District of Florida, 2013
- U.S. Court of Appeals 3rd Circuit, 2019

Representative Cases & Matters

- Succeeded in obtaining an affirmance by the Second District Court of Appeal of a final judgment in a slip-and-fall premises liability matter, for a business establishment and property owner. The plaintiff was a business invitee who sued the property owner for negligence after she fell while riding her electric bicycle through its landscaped parking lot. During discovery, the plaintiff claimed the fall occurred while she was traversing through a section “covered heavily in leaves.” The plaintiff, however, could not identify how she fell nor whether there were any objects or foreign substances causing her fall. The property owner moved for summary judgment, asserting the accumulation of leaves on the parking lot was an open and obvious, naturally occurring condition that could not constitute a dangerous condition to impose liability on a property owner. The court granted summary judgment in the property owner’s favor. After oral argument, the Second District Court affirmed per curiam the final judgment in the property owner’s favor. *Carrie Collier v. Cars MTI-4 L.P. d/b/a Lazydays RV Resort*, No. 2D2025-1980 (Fla. 2d DCA May 13, 2026).
- Succeeded in obtaining an affirmance by the Fourth District Court of Appeal of a final judgment entered in favor of a law firm and managing lawyer. The law firm and lawyer issued an opinion letter on behalf of his clients as part of a commercial loan transaction for \$7.5 million. After the client defaulted on the loan, the plaintiffs, sophisticated lenders, sued 20 different named defendants involved in the transaction.

They sued the law firm and lawyer for negligent misrepresentation and breach of fiduciary duty for its role in issuing the third-party opinion letter. The trial court granted summary judgment in the law firm and lawyer's favor, finding in an arm's length transaction, there is no duty owed to nonclients. The lender appealed, phrasing the issue as a pure legal question of an attorney's professional responsibility: "When an attorney issues an opinion letter – (i) knowing that the letter is attendant to a transaction in which a non-client party to that transaction will necessarily rely on the letter (as a condition precedent to the transaction); and (ii) invites reliance on the letter without qualification—does that attorney owe any duty of care to the intended non-client recipient? After oral argument, the Fourth District rejected the lender's arguments attempting to extend a duty in these circumstances and affirmed the final judgment. *FVP Opportunity Fund III, LP v. Graner Law Group, P.A.*, --So. 3d--, 2026 WL 172694 (Fla. 4th DCA Jan. 22, 2026).

- Succeeded in obtaining an affirmance by the Second District Court of Appeal of a final judgment on a cross-claim for defense and indemnity in a construction defect matter for a window and door subcontractor. The plaintiffs were residential homeowners who sued the general contractor for construction defects following the construction of their luxury home. They also sued the window and door subcontractor for negligent misrepresentation in its recommendation to install windows and doors manufactured by a German manufacturer. The general contractor filed a cross claim against the window and door subcontractor and third-party claims against the other subcontractors involved in the construction for defense and indemnification. During litigation, the case was referred to nonbinding arbitration, where the arbitrator found that the general contractor was not negligent but that it breached the contract and warranties. The arbitrator also found there was no negligent misrepresentation on behalf of the window and door subcontractor. The arbitrator awarded the plaintiffs \$3.1 million in damages. The general contractor moved for trial de novo on the cross claim and third-party claims only, accepting the \$3.1 million award entered against it. Thereafter, the window and door subcontractor moved for summary judgment on the cross claim, asserting there was no obligation to defend or indemnify based on the express terms of the indemnification clause in the subcontract. The court granted summary judgment in the window and door subcontractor's favor. After oral argument, the Second affirmed the final judgment in the window and door subcontractor's favor. *Monogram Builders, Inc. v. Architectural Products Sales, Inc.*, --So. 3d--, 2026 WL 391003 (Fla. 2d DCA Feb. 11, 2026).
- Obtained an affirmance by the Sixth District Court of Appeal of a final judgment in a premises liability claim, stemming from a slip and fall on Main Street in Disney's Magic Kingdom. The appeal attempted to conflate the burdens of proof on summary judgment. The court rejected the appellants' arguments and affirmed the final judgment entered in favor of Disney without oral argument. *Cote v. Walt Disney World Parks and Resorts, Inc.*, 6D2023-4212 (Fla. 6th DCA November 10, 2025).
- Obtained summary judgment in a foodborne-illness wrongful death case. The plaintiff brought a wrongful death action against multiple parties, including the seafood supplier, asserting that the Decedent died after consuming raw oysters containing vibrio vulnificus. Our attorneys represented the supplier and argued that there was no evidence the oysters were defective when they left the supplier's control. Their expert provided an affidavit outlining the applicable harvesting, processing, and transportation standards and confirmed that the supplier met all relevant duties. Faced with this record, plaintiff's counsel ultimately conceded that the evidence did not support a claim against the supplier. The Court granted summary judgment in the supplier's favor. The case continues against the remaining defendants, who face multimillion-dollar demands.
- Succeeded in obtaining a reversal of a nonfinal order granting leave to amend to an estate to assert a claim for punitive damages and gross negligence against a dive

captain, dive master, and the corporate entity dive companies. *Duff v. Racine*, 2025 WL 1646730 (Fla. 4th DCA June 11, 2025).

- Succeeded in convincing the Fifth District Court of Appeal to quash an amended discovery order to compel a church to identify church members and produce membership lists in a suit for exploitation, theft, conversion, declaratory relief, and other causes of action brought by a church member against the church. The court agreed with the church's arguments that the trial court's order was deficient in that it failed to address the church's claims of associational privilege under the First Amendment and that there was a disputed issue below as it related to the incorporation status of the church. *St. Paul's Catholic Church v. Hilt*, 5D23-0955 (Fla. 5th DCA Mar. 1, 2024).
- Obtained a per curiam affirmance in the Fifth District Court of Appeal of an order declaring the children dependent due to their father's drug use and overdose in front of his children. Kimberly served as pro bono counsel for the statewide Guardian ad Litem program to represent the interests of the child as part of the Defending Best Interests Project. *S.M. v. Dep't of Children & Families*, 5D23-3142 (Fla. 5th DCA February 1, 2024).
- Obtained an affirmance by the Fifth District Court of Appeal for the firm's client in an appeal of a nonfinal order denying plaintiff's motion to disqualify counsel. Plaintiff's counsel moved to disqualify our firm and defense counsel for their communications with a post-incident treating physician employee/agent of the client's owner during the course of a premises liability lawsuit. Our client argued there was no conflict of interest and no violation of the patient-physician privilege to communicate with a post-incident treating physician, who was also an employee/agent of our client. The trial court agreed and denied the motion, and the Fifth District affirmed the denial of the nonfinal order on appeal and granted our client's motion for appellate attorney's fees on a provisional basis. *Figueroa v. OHRI, LLC*, 5D22-1894 (Fla. 5th DCA Jan. 16, 2024).
- Obtained an affirmance by the Fourth District Court of Appeal of a venue order obtained by our client, a school board member. Plaintiff/Petitioner/Appellant, a convicted felon had run for a seat on a school board before his rights had been restored and won the election but refused to be sworn in with the other newly elected board members. Since he failed to qualify and refused to accept the seat within thirty days, the Governor issued an executive order that declared a vacancy and appointed our client to the school board instead. The Plaintiff filed a writ of quo warranto and a declaratory judgment action in Broward County urging the trial court to void the executive order and order that the Plaintiff take and hold the office of the school board immediately. The Governor and our client moved to transfer the case to Leon County based on the home venue privilege. The trial court granted the motion, and the Fourth District affirmed the nonfinal order on appeal. *Velez v. DeSantis*, 2023 WL 8636899 (Fla. 4th DCA Dec. 14, 2023).
- Obtained a per curiam affirmance by the Sixth District Court of Appeal of a motion for summary judgment entered in favor of a rental manager. In granting summary judgment, the trial court found that the rental manager, which did not own the premises, did not owe the Plaintiff a non-delegable duty and had no duty to maintain the exterior of the premises pursuant to the owner agreement with the homeowner. The trial court also found that the guest failed to establish any genuine issue as to any material fact regarding an insufficiency or issue with the operation of the lighting of the porch on the property which would give rise to a breach of any possible duty. The Court also provisionally granted the rental manager attorney's fees upon the determination of the trial court at the conclusion of the case, pursuant to a proposal for settlement. *Janice Dillard v. VHC Hospitality LLC d/b/a Vacation Home Collection, Luciana Pinto, and Terra Resort Villa Homeowners Association Inc.*, No. 6D23-1256

(Fla. 6th DCA May 16, 2023).

- Obtained an affirmance by the Third District Court of Appeal of a nonfinal order dissolving a temporary injunction initially entered against a multi-condominium association following the erroneous entry of a temporary injunction. Three unit owners contended the Association improperly passed a special assessment to be used toward reconstruction of one of the buildings following a fire. The unit owners obtained a preliminary injunction invalidating the special assessment, halting construction, and mandating the Association convene a membership meeting and community-wide vote. The Association swiftly moved to dissolve the injunction, which the trial court granted, recognizing that it committed clear legal error and a misapprehension of the facts when it entered the injunction. In affirming the order below, Judge Miller commended the trial judge for acknowledging its error and found there was a sufficient basis in law and fact for the dissolution and that allowing the injunction to stand would have been incompatible with equity principles. The Court also granted the Association entitlement to a conditional award of appellate attorney's fees should it prevail below. *Lecorps v. Star Lakes Association, Inc.*, No. 3D21-2195 (Fla. 3d DCA May 25, 2022).
- Obtained an affirmance by the First District Court of Appeal of a termination of parental rights judgment entered against a father who refused to acknowledge he was the father and instead wanted to wait 5 years until he was released from prison to establish paternity and have a relationship with the child. Kimberly served as pro bono counsel for the statewide Guardian ad Litem program to represent the interests of the child as part of the Defending Best Interests Project. In affirming the order below, Judge Tanenbaum gave an in-depth analysis for the least restrictive means prong in TPR cases. *P.B., Natural Father of J.C.T., Minor Child v. Fla. Dep't of Children & Families & Guardian ad Litem for J.C.T.*, No. 1D21-3420 (Fla. 1st DCA March 29, 2022).
- Obtained an affirmance by the Fifth District Court of Appeal of a final summary judgment in a premises liability action arising from a slip and fall in the bathroom of a renter's own residential unit. The trial court ruled that there were no genuine issues of material fact as to actual or constructive notice concerning the transitory foreign substance found or negligent maintenance of the bathroom. The Fifth District agreed and affirmed. *Foreman v. Grep Southeast, LLC & Sabal Club Holdings, LLC*, No. 5D21-1724 (Fla. 5th DCA March 22, 2022).
- Obtained an affirmance in the Fourth District Court of Appeal of a final dismissal order of third party claims for tortious interference with an advantageous business relationship, civil conspiracy to commit tortious interference with a contract, aiding and abetting tortious interference with a contract, and vicarious liability, against a law firm and its lawyers who filed the underlying lawsuit against the appellant. *Jallali v. Zhou*, 4D20-5 (Fla. 4th DCA April 22, 2021).
- Obtained an affirmance of a final summary judgment by the First District Court of Appeal in a slip and fall case. The appellant argued that a restaurant/bar owner should have warned a patron about the bar stool being a dangerous condition and of the slippery dance floor, but presented no evidence that the owner was in a superior condition than the appellant. The Court rejected the appellant's arguments and affirmed the final judgment in favor of the owner. *Aljuni v. Blackfinn Jax, LLC*, No. 1D20-946 (Fla. 1st DCA April 20, 2021).
- Succeeded in obtaining an affirmance in the Fifth District Court of Appeal of a final dismissal order of a wrongful death products liability action. The Estate had filed the lawsuit two years after the statute of limitations expired, and claimed the limitations period was tolled due to the alleged adverse interest of the child's mother who had been abused by the deceased prior to the accident on an agricultural production site. The trial court dismissed the case with prejudice after giving the Estate five attempts

to amend. The Fifth District affirmed the dismissal and dispensed with oral argument that same day. *Rude v. Morbark, Inc.*, Case No. 5D20-976 (Fla. 5th DCA April 20, 2021).

- Succeeded in obtaining an affirmance by the Fourth District Court of Appeal of a final judgment entered in favor of an insurance carrier in a case involving an alleged assignment of benefits for a water loss. The county court granted final summary judgment in favor of the insurer, finding the plaintiff lacked standing to sue. The case sat in limbo in the circuit court appellate division and then was transferred to the Fourth District Court of Appeal after the jurisdictional changes took place. Four months later, the Fourth District issued a written opinion citing to one of the cases that the insurance carrier relied on in its Answer Brief. *Empire v. United Property & Casualty Company*, No. 4D21-65 (Fla. 4th DCA April 14, 2021).
- Obtained a dismissal by the Fourth District Court of Appeal of an appeal of an order denying emergency relief in our client's action to foreclose a claim of lien and for damages and breach of contract against a former unit owner. The appellant attempted to revive an untimely appeal of a prior order by obtaining a new order to the same effect as the original and then filing the notice of appeal within thirty days of that most recent order. The Fourth District dismissed the appeal and granted the association its motion for entitlement to appellate attorney's fees. *Sawyers v. Lakeside Manor North Association*, No. 4D21-225 (Fla. 4th DCA April 7, 2021).
- Obtained an affirmance by the Fourth District Court of Appeal of the dismissal with prejudice of a listing real estate agent and his broker, in an alleged negligence and fraud case. The Fourth District rejected the plaintiffs' arguments that the trial court abused its discretion in dismissing their pleadings due to their attorney's conduct and detailed how the plaintiff's attorney dropped the ball in litigating the case, in a separate opinion reversing the plaintiffs' attorney's contempt conviction. *Arnoul v. Perlstein*, No. 4D20-67 (Fla. 4th DCA Feb. 3, 2021).
- Obtained an affirmance by the Second District Court of Appeal of a directed verdict entered at trial in an action to hold a welfare agency vicariously liable for an alleged assault and battery by an employee who was terminated for forgery of the victim's signature. The Second District rejected the plaintiff's arguments, and affirmed the final judgment in favor of the defendant. *Fields v. The Devereux Foundation, Inc.*, No. 2D19-2947 (Fla. 2d DCA Jan. 6, 2021).
- Obtained an affirmance by the First District Court of Appeal of a defense verdict obtained for client, an owner of a commercial retail center and parking lot, in a negligent security action. A chef was taking garbage outside a restaurant, when he was shot and killed. The Estate sued the owner of the building and the parking lot as well as defendants involved in the development, design, and maintenance of the retail center. The jury returned a defense verdict in favor of all defendants. The Estate appealed, arguing that the trial court abused its discretion in excluding subsequent remedial measure evidence of the installation of lighting, signs, and cameras in the parking lot after the shooting. The First District rejected the Estate's argument, and affirmed the final judgments in favor of the defendants. *Rowe v. Rowin*, No. 1D19-2637 (Fla. 1st DCA Nov. 25, 2020).
- The Fifth District Court of Appeal affirmed the final judgment entered in favor of a hospital and three of its trauma/critical care physicians, where the Plaintiff's sole expert on liability and causation was a retired internal medicine physician, and the trial court found that the Plaintiff's expert lacked the requisite qualifications under Florida law to render opinions against the hospital and its three specialist physicians. *Pisano v. Orlando Health, Inc. d/b/a Orlando Regional Medical Center*, 5D19-524 (Fla. 5th DCA 2019).
- The First District Court of Appeal affirmed final judgment entered in favor of the Association in a dispute over the use of a condominium unit as a full-service

restaurant. *Fehrman v. Gateway Commons II Condominium Association, Inc.*, 1D17-4555 (Fla. 1st DCA 2018).

- The Fifth District Court of Appeal affirmed final summary judgment entered in favor of the insurer in a claim for post-arbitration interest and bad faith, stemming from an underlying uninsured motorist claim. *Huffman v. Commerce West Ins. Co.*, No. 5D16-4692 (Fla. 5th DCA 2018).
- The Fourth District Court of Appeal affirmed the trial court's finding of defense and indemnity and an award of attorney's fees to a contractor. *Blok Builders, LLC v. Katryniok*, No. 4D16-1811 (Fla. 4th DCA 2018).
- The Third District Court of Appeal reversed and remanded an adverse final judgment entered against the insurer in an uninsured motorist case. The Court found that the insurer was either entitled to a summary judgment or a directed verdict because coverage was a legal and not a factual question, and the insurer was entitled to judgment as a matter of law. *Zurich American Insurance Company v. Cernogorsky*, No. 3D16-689 (Fla. 3d DCA 2017).
- The Southern District Court of Florida, acting in its appellate capacity, affirmed a bankruptcy court's order denying a motion to reopen the case for action effecting discharge of debtor. *Verdecia v. Valentine*, No. 17-CV-60723-WPD (S.D. Fla. 2017).
- The Third District Court of Appeal affirmed the trial court's denial of a non-final order granting the defendants' motion to transfer venue based on forum nonconveniens in an aviation case. *Theobald v. Piper Aircraft, Inc.*, No. 3D16-1504 (Fla. 3d DCA 2016).
- The Fourth District Court of Appeal reversed in part an adverse final judgment entered in favor of an insurance agent, finding that the contract between the agent and the agency was divisible so that the statute of limitations for each commission began to run when a commission was received by the agency. *Access Ins. Planners, Inc. v. Gee*, No. 4D14-1883, 4D14-2706 (Fla. 4th DCA 2015).
- The Fourth District Court of Appeal affirmed the entry of summary judgment in favor of a shopping center owner who was sued after a motorcycle patron was injured in an accident on the roadway outside of the shopping center. *Ball v. Black*, No. 4D14-276 (Fla. 4th DCA 2015).
- The Second District Court of Appeal denied the plaintiff's petition for certiorari challenging the trial court's discovery order on attorney-client privilege issues in a bad faith case. *Mabie v. Universal Underwriters Ins. Co.*, No. 2D14-847 (Fla. 2d DCA 2014).
- The Eleventh Circuit Court of Appeals affirmed a final summary judgment entered in favor of an excess carrier, finding that its insured breached the policy by failing to notify the excess insurer of the occurrence, claim, and suit until almost four years after the occurrence and claim and several months after final judgment was entered against the insured. *American Guarantee & Liability Insurance Co. v. Simon Roofing & Sheet Metal Corp.*, No. 13-11685 (11th Cir. 2014).
- The Third District Court of Appeal affirmed the trial court's entry of post-trial directed verdict in favor of a cruise line in a slip in fall case, where the plaintiff failed to prove negligence. *Deutsch v. Celebrity Cruises, Inc.*, No. 3D12-1710 (Fla. 3d DCA 2013).
- The Third District Court of Appeal affirmed a final summary judgment entered in favor of a spa servicer on a cruise ship. The trial court found that the spa did not have a legal duty to the cruise patron to provide CPR or defibrillation after a patron collapsed while exercising on a treadmill in the cruise ship's gym. *Amaran v. Royal Caribbean Cruises, Ltd.*, (Fla. 3d DCA 2013).
- The Third District Court of Appeal reversed the trial court's order denying the spa operator's motion to dismiss based on a contractual forum selection clause. *Steiner Transocean Limited v. Efremova*, No. 3D12-2390 (Fla. 3d DCA 2013).

Honors & Awards

- Chambers USA, Litigation: Appellate, Florida, Band 3 (2026)
- AV® Preeminent™ by Martindale-Hubbell®
- The Best Lawyers in America®, Appellate Practice (2026)
- Florida Trend, Legal Elite, 2023 Notable Women Leaders in Law
- South Florida Legal Guide, Top Lawyer, Appellate Law (2021)
- Florida Super Lawyers Rising Star (2015-2020)
- South Florida Legal Guide, Top Up and Comers, 2020

Associations & Memberships

- Broward County Bar Association
- Dade County Bar Association
- Florida Association of Women Lawyers, 2009-2013
- Florida Bar, Appellate Practice Section Vice Chair (Live Programs), CLE Committee, 2023; Pro Bono Committee Chair, 2021; Executive Council, 2016-Present; Legislative Committee Vice Chair, 2018-2020; Programs Committee Chair, 2015-2018
- Florida Bar, Board Certified in Appellate Practice, 2020
- Florida Supreme Court Historical Society, Treasurer & Communications Chair, 2024
- Florida Supreme Court Historical Society, Secretary, 2023
- Rosemary Barkett American Appellate Inn of Court
- Third District Court of Appeal Historical Society

Classes & Seminars Taught

- *Obtaining Evidence from Electronic Devices in Florida*, National Business Institute Seminar, November 26, 2024
- *Advanced Brief Writing - Tips, Tools, and Technology for Improving Your Appellate Brief*, Miami-Dade Bar's Appellate Court Committee CLE, October 31, 2024
- *A Not-So- "Little" Problem with Precedent: Intra-District Conflicts in Florida's District Court of Appeals*, The Florida Bar Appellate Practice Section's Audio Webcast, August 15, 2023
- *Insurer Malpractice Claims Against Defense Counsel: Recognizing, Defending, and Preventing Potential Claims - Common Errors and Strategies for Avoiding Them*, Panelist, Strafford CLE Webinar, January 24, 2023
- *Brief Writing for the Third DCA*, Moderator, Florida Bar's Appellate Practice Section's Practicing Before the Florida Third District Court of Appeal 2022 CLE Seminar, Miami, FL, October 28, 2022
- *Preventing Defective Jury Instructions In Personal Injury Trials: Leveraging Errors on Appeal - Part III Common Objections*, Panelist, Strafford CLE Webinar, September 7, 2022
- *UNprecedented*, Summarily: A Podcast for Busy Lawyers, June 23, 2022
- *Punitive Damages and Interlocutory Appeals*, Panelist, Miami-Dade Bar Miami Law Con, April 22, 2022
- *Everything Old is New Again Series - A Conversation with the Judiciary: Challenges and Opportunities in the Changing Landscape of Appellate Practice*, Co-Host/Moderator, Florida Bar Winter Meeting Virtual CLE, Guardian ad Litem Program and Florida Bar Appellate Practice Section, January 26, 2022
- *56 Feds are Coming: Strategies Using the Upcoming Florida Summary Judgment*

Standard, Marshall Dennehey Client Webinar, January 15, 2021

- [The Great Font Debate](#), Issues on Appeal Podcast, January 2021
- [Hidden Essentials of Appellate Law](#), Co-Chair, Florida Bar Appellate Practice Section, West Palm Beach, FL, February 2019
- [Understanding Hearsay and Keeping Evidence Out \(Pre and Post Trial\)](#), The Rules of Evidence: A Practical Toolkit, National Business Institute, Fort Lauderdale 2017

Published Works

- ["The 'Sunshine' State: New Comparative Negligence Jury Instructions Following the Adoption of House Bill 837."](#) *Daily Business Review*, September 20, 2024
- ["Where Are We Now? Punitive Damages Claims in Fla. 2 Years Post-Interlocutory Review Rule Change."](#) *Daily Business Review*, March 15, 2024
- "Transparency in Damages Now or Later: The Jury is Still Out," *CJLA Quarterly Digest*, December 2023
- ["Viewpoint: Florida High Court Tapped Brakes on Dangerous Instrumentality Liability."](#) *Insurance Journal*, December 26, 2023
- ["A Not-So-Little Problem With Precedent: Intra-District Conflict in Florida District Courts of Appeal."](#) *Florida Bar Journal*, December 15, 2022
- ["Punitive Damage Amendments Soon Subject to Immediate Interlocutory Appeal."](#) *Daily Business Review*, February 9, 2022
- ["Decision Creates Potential for Legal Malpractice Actions Against Retained Defense Attorneys."](#) *Daily Business Review*, July 30, 2021
- ["How I Made Partner: I Opened the Door to Partnership by Becoming an Appellate Specialist, Says Kimberly Berman of Marshall Dennehey."](#) *Law.com*, May 4, 2021
- ["Senate Bill 72 May Be Effective "Vaccine" Against COVID-19-Related Claims."](#) *Orlando Medical News*, April 7, 2021
- ["Commentary: Florida Adoption of Federal Judgment Standard a Win For Insurers."](#) *Insurance Journal*, January 6, 2021
- ["Florida Courts Clarify Role of Appraisal in Coverage Claims Disputes"](#), *Insurance Journal*, December 10, 2020
- "Florida Supreme Court Hosts Historic Remote Oral Arguments During the COVID-19 Pandemic," Florida Supreme Court Historical Society's *Historical Review* magazine, Spring/Summer 2020
- ["Transitioning From In-Person to Remote Oral Arguments in Fla. Appellate Courts."](#) *Daily Business Review*, April 28, 2020
- "Justice Alan Lawson's Commitment to Service Runs Deep," *Florida Supreme Court Historical Society Historical Review Magazine*, Fall/Winter 2019
- "Justice R. Fred Lewis Returns to Miami for a Celebration of His Legal and Judicial Career," *Florida Supreme Court Historical Society Historical Review Magazine*, Summer/Fall 2019
- "Drafting Jury Instructions That Win Appeals," *Certworthy*, the newsletter of the DRI's Appellate Advocacy Committee, Issue 1, June 29, 2018
- "A Cure for 'Acute Motion Sickness': A Practitioner's Guide to Motion Practice in Florida's Appellate Courts," *FIU Law Review*, Vol. 12, Number 2, Spring 2017
- "Is That Claim Covered?," *Claims Magazine*, January 2017
- "How to Confuse Your Read Effectively," *For the Defense*, DRI: The Voice of the Defense Bar, December 2012
- "The Butler Tetralogy: The Topsy Coachman Doctrine Revisited," 85 Fla. B.J. 7, July/August 2011
- "Common Mistakes Students Make at Oral Argument," *The Gavel*, Ave Maria School

of Law Moot Court Newsletter, Vol. 5, Issue 2, Fall 2011

- "Upstairs at the Third DCA: The Specific Duties of an Appellate Law Clerk, Part II," *The Bulletin*, Dade County Bar Association, June 2011
- "Upstairs at the Third DCA: The General Duties of an Appellate Law Clerk, Part I," *The Bulletin*, Dade County Bar Association, January 2011
- "A Day in the Life of a Third DCA Law Clerk: The Arms of An Appellate Judge," *The Record*, Journal of the Appellate Practice Section of the Florida Bar, Vol. XVIII, No. 1, Fall 2010

Media Commentary

- "Appellate Pro Bono Attorneys Step Up to Defend Children," *The Florida Bar News*, February 16, 2023

Legal Teaching Position

- Adjunct Faculty, Nova Southeastern Shepard Broad College of Law, Davie, FL (2014-2015)
- Adjunct Faculty, Ave Maria School of Law, Naples, FL (2009-2013)
- Adjunct Faculty/Mock Trial Team Coach, St. Thomas University School of Law, Miami Gardens, FL (2008-2011)

Pro Bono

- Florida Guardian Ad Litem Office, Defending Best Interests (DBI) program

Certifications

- Board Certified, Appellate Practice, The Florida Bar

Results

Summary Judgment Secured in a Foodborne Illness Wrongful Death Matter

We won summary judgment in a foodborne illness wrongful death case. The plaintiff filed a wrongful death action against multiple parties, including the seafood supplier, distributors, transporters and the restaurant that served the decedent. The plaintiff alleged the decedent died as a result of eating raw oysters that contained vibrio vulnificus. We represented the supplier and argued there was no evidence the oysters were defective when they left the supplier's hands. An expert was retained to support our motion for summary judgment. The expert prepared an affidavit citing the applicable duties pertaining to the harvesting, processing, and transportation of the oysters and stated the supplier did not breach any of the applicable duties. Utilizing calculated pressure tactics in a long-term strategy execution, plaintiff's counsel eventually conceded that the record evidence did not support a finding that the supplier breached its duties, resulting in the court granting summary judgment. The case remains ongoing with multimillion dollar demands against the remaining defendants.

Obtained Reversal of Non-Final Order in a Wrongful Death Case

We obtained reversal of a non-final order in a wrongful death case against a dive captain, dive master and the corporate entity dive companies. A woman drowned while scuba diving on a chartered tour. Following her death, the toxicology report revealed high levels of illicit drugs and alcohol. During the course of litigation, her estate moved for leave to amend their complaint to add a claim for gross negligence and punitive damages, claiming the defendants were grossly negligent for failing to use the buddy system and for allowing the decedent to dive when they knew or should have known she was intoxicated. The estate also claimed gross negligence against the dive master for allowing the decedent out of his eyesight for four to ten minutes during the dive, despite having identified the decedent as requiring “special assistance.” In support of their motion, the estate relied on the police statements, deposition testimony and an expert report. The defendants argued the evidence was insufficient to support the amendment and contended that none of the witnesses knew that the decedent was intoxicated before she dove. In granting the motion, the trial court did not make an affirmative finding that the estate had made a reasonable showing by evidence, which would provide a reasonable evidentiary basis to recover punitive damages. On appeal, the Fourth District agreed with our arguments and reversed on several grounds. First, the Fourth District concluded the trial court applied the wrong legal standard. Second, the court found the estate failed to present sufficient evidence to establish a reasonable basis for recovery of punitive damages against the dive captain and dive master. Third, the estate’s proposed amended complaint did not properly allege a claim against the corporate entity defendants.

Per Curiam Affirmance Obtained in Florida Fire-Loss Subrogation Case

We succeeded in obtaining a *per curiam* affirmance in the First District Court of Appeal of a final order dismissing the plaintiff’s fire-loss subrogation claim against our client, a tenant in a leased property the plaintiff insured. The First District affirmed the trial court’s finding that the specific fire-loss provisions in the lease shifted the risk of loss to the landlord, the plaintiff’s insured. As a result, our client was a co-insured under the plaintiff’s policy. An insurance company cannot sue its own insured.

Dismissal With Prejudice Secured in Complex Florida Litigation Matter

We obtained a dismissal with prejudice in an action based on an alleged violation of contract, constitutional challenge of a Florida statute, and enforcement of a third-party settlement agreement. We represented an international nonprofit private membership organization in an action by a former member for violation of his membership in said organization. The plaintiff attempted to use a settlement agreement from a prior case to show that he was in compliance with the organization’s membership requirements. He also argued that the requirement to be a member of an underlying organization was unconstitutional because of an antiquated Florida law. We argued that a settlement agreement could not be enforced against a third party with no connection to a settlement agreement, in addition to pointing out the plaintiff’s failure to follow procedural requirements. Agreeing with our arguments, the judge ruled from the bench after oral arguments, dismissing the case with prejudice for failure to state a breach of contract and failure to state a cause of action under the Declaratory Judgment Act.

Appellate Success in Wrongful Death Product Liability Action

Our attorneys succeeded in obtaining an affirmance in the Fifth District Court of Appeal of a final dismissal order of a wrongful death product liability action. The decedent's estate filed the lawsuit two years after the statute of limitations expired. The estate argued the statute was tolled for a variety of reasons. The trial court dismissed the case, with prejudice, after giving the Estate five attempts to amend. The Fifth District affirmed the dismissal and dispensed with oral argument that same day.

Court affirms dismissal of real estate agent and his broker.

Our attorneys succeeded in obtaining an affirmance by the Fourth District Court of Appeal. The Fourth District affirmed the dismissal, with prejudice, of our clients, a listing real estate agent and his broker, in an alleged negligence and fraud case. The court rejected the plaintiff's arguments that the trial court abused its discretion in dismissing their pleadings due to their attorney's conduct. The court detailed how the plaintiff's attorney dropped the ball in litigating the case in a separate opinion reversing the plaintiffs' attorney's contempt conviction.

Successful Appeal of Negligent Security Action

We obtained an affirmance by the First District Court of Appeal of a defense verdict in a negligent security action. A chef was taking garbage outside of a restaurant when he was shot and killed. The estate sued our client, the owner of the commercial building and parking lot, as well as the defendants involved in the development, design and maintenance of the retail center. The jury returned a defense verdict in favor of all defendants. The estate then appealed, arguing the trial court abused its discretion in excluding subsequent remedial measure evidence of the installation of lighting, signs and cameras in the parking lot after the shooting. The First District rejected those arguments, and affirmed the final judgments in favor of the defendants.

Claim Affirmed Under the Florida Birth-Related Neurological Compensation Plan

Our appellate attorneys convinced Florida's Fifth District Court of Appeal to affirm an administrative law judge's final order finding a claim compensable under the Florida Birth-Related Neurological Compensation Plan. A minor child was permanently and substantially brain damaged as a result of his complicated birth. The parents sought compensation pursuant to NICA under protest. The parents contended the brain injury that caused the child's permanent and substantial mental and physical impairment occurred prior to the statutory period (i.e., during labor, delivery or resuscitation in the immediate post-delivery period in a hospital). They claimed the injury occurred in the 34 minutes from when the cord prolapsed at home to when the mother arrived at the hospital, where she ultimately delivered the child via emergency cesarean section. NICA and the hospital argued that the permanent and substantial impairment occurred during the statutory period. The administrative law judge agreed, and the Fifth District Court of Appeal affirmed the final order determining the claim was compensable.

Appellate Success in Campground Negligence Lawsuit

We obtained a *per curiam* affirmance in the Fourth District Court of Appeal in a suit against a campground/RV park. The suit alleged that the campground negligently

maintained the campsite and failed to keep the electrical up to code, forcing an RV owner to abandon her RV at the site. The campground countersued for writ of distress to remove the unsightly vehicle from the campsite. The trial court entered judgment on the pleadings and declined to amend the complaint, finding an amendment would be futile. The Fourth District Court of Appeal affirmed the trial court's entry of final judgment in favor of the campground on the main claim as well as the counterclaim. The court also conditionally granted the campground's motion for appellate attorney's fees and remanded the case to the trial court to rule on the validity of the unaccepted proposal for settlement.

Appellate Victory in Fence Dispute

The homeowners claimed the homeowners association's response to their request to mediate the dispute violated the applicable mediation statutes. They sued the association for declaratory and injunctive relief. The circuit court, sitting in its appellate capacity, had affirmed the final judgment in favor of the association and awarded it appellate attorney's fees and costs. The homeowners then filed a petition for writ of certiorari to the Fifth District Court of Appeal, alleging the circuit court deprived them of due process and committed an error of law that resulted in a miscarriage of justice. The Fifth District Court of Appeal denied the petition and awarded the association its appellate attorney's fees. This prompted the homeowners to dismiss another pending appeal and resolve all claims for attorney's fees in favor of the association without further litigation.

Defense prevails at trial and appellate level in medical malpractice action.

We prevailed at the trial court level and on appeal in a medical malpractice action filed against a Florida hospital and three of its trauma/critical care physicians. It was alleged that the patient was overmedicated with narcotics during her 64-day hospital stay, resulting in acute respiratory failure and other complications, which caused her death. The plaintiff's sole expert on liability and causation was a retired internal medicine physician. On the eve of trial, the trial court granted summary judgment in favor of the defendants, finding the plaintiff's expert lacked the requisite qualifications under Florida law to render opinions against the hospital and its three specialist physicians. The Fifth District Court of Appeal affirmed the final judgment without an opinion and granted the defendants' motion for appellate attorney's fees.

Successful defense of Florida medical malpractice action in the trial court and on appeal.

We prevailed on an appeal to the 5th District Court of Appeal in a medical malpractice action filed against a hospital and three of its trauma/critical care physicians. It was alleged that the patient was over-medicated with narcotics during her 64-day hospital stay, resulting in acute respiratory failure and other complications, which caused her death. The plaintiff's sole expert on liability and causation was a retired internal medicine physician. On the eve of trial, the trial court granted summary judgment in favor of the defendants, finding that the plaintiff's expert lacked the requisite qualifications under Florida law to render opinions against the hospital and its three specialist physicians. The Fifth District affirmed the final judgment without an opinion and granted the defendants'

motion for appellate attorney's fees.

Thought Leadership

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