

Appellate Advocacy

Our appellate practice is widely recognized as one of the strongest and most sophisticated in the region. We regularly handle high-profile appeals, for clients large and small, before the state and federal appellate courts in New Jersey and New York. Our consistent track record for success has led the *New Jersey Law Journal* to name our group Appellate Litigation Department of the Year in each of the last five years (2018 through 2022).

Many of the firm's appellate clients are referred to us by law firms who represented the client in the trial court and recommend their clients retain us to increase the odds of prevailing on appeal.

In crafting our briefs and preparing for oral arguments, we draw on the vast experience of a former New Jersey Supreme Court Justice and a former Presiding Judge of the Appellate Division. The Honorable Gary S. Stein (Ret.) joined the firm after serving as an Associate Justice on the New Jersey Supreme Court for more than 17 years. During his tenure on the Court, Justice Stein authored more than 365 majority and dissenting opinions, covering virtually every area of New Jersey state law, including education, constitutional law, insurance coverage, zoning and land use law, civil and criminal procedure, and attorney discipline. The Honorable Ellen L. Koblitz (Ret.) joined the firm in 2020 after serving as a Judge on New Jersey's Appellate Division for 10 years, including the last 2 years as Presiding Judge. Before she was appointed to the Appellate Division, Judge Koblitz served as a trial court judge in New Jersey Superior Court in the Chancery, Criminal, Family, and Special Civil Parts for more than 17 years.

In addition to representing clients on appeal in State and Federal Courts, the department's lawyers and retired judges are routinely retained by other firms to prepare lawyers for Appellate and Supreme Court oral arguments, to assist in the preparation of briefs and Petitions for Certification, and to consult generally on appellate issues.

Representative Matters

Our firm is proud of the results it has achieved for clients, some of which are noted here. Of course, each legal matter is unique on many levels, and past successes are not a guarantee of results in any other pending or future matters.

- Representing two attorneys brought up on ethics charges by the New Jersey Office of Attorney Ethics (OAE) for allegedly instructing a paralegal to "friend" a represented adversary on Facebook in an underlying personal injury case, the first time that any New Jersey court has opined on issues pertaining to the application of our rules of ethics to the social media.

The adversary in that matter filed charges against the attorneys before the District II-B Ethics Committee (DEC), who reviewed the grievance, and determined that the attorneys' conduct did not amount to a violation of the Rules of Professional Responsibility. After the DEC dismissed the grievance, the adversary's attorney demanded that the OAE review and reverse the DEC's decision. The OAE docketed and investigated the matter and filed charges against the

attorneys. Following a five-year litigation, from the trial court to the Supreme Court, to resolve a novel procedural issue concerning the scope of the OAE's authority to investigate and prosecute attorney grievances, the matter was ultimately remanded for an ethics hearing. The case proceeded to an ethics hearing before a Special Master, during which the OAE voluntarily dismissed the case against one of the attorneys. Following a complete trial as to the second attorney, the Special Master issued a decision dismissing all charges in their entirety, holding that the OAE failed to establish by clear and convincing evidence any violation of the RPCs. The OAE has appealed the Special Master's decision to the Disciplinary Review Board (DRB). Following briefing and oral argument, a four-member majority of the DRB reversed the Special Master's decision, finding that the attorney's conduct violated the RPCs and imposed an admonition. That decision was not unanimous, as five DRB members dissented in three separate opinions. On behalf of the client, Pashman Stein filed a Petition for Review with the Supreme Court. The Supreme Court reversed the DRB's plurality decision, held that the Office of Attorney Ethics failed to establish by clear and convincing evidence that Respondent violated the RPCs, and dismissed the disciplinary charges against him. The Court credited the Special Master's findings concerning Respondent's good faith misunderstanding regarding the nature of Facebook, noting the infancy of Facebook when the conduct occurred in 2008, but otherwise held that in today's world, attorneys have a duty to acquaint themselves with social media platforms to ensure permissible uses of online research.

- Successfully represented on appeal a prominent doctor who had been convicted of two criminal charges involving unlawful sexual contact with a patient. Although this firm did not serve as trial counsel, it was established before the Appellate Division that the doctor in question did not receive a fair trial and the conviction was reversed
- Successfully briefed and argued an appeal to the U.S. Court of Appeals for the Second Circuit on behalf of a global restaurant chain in a complex commercial dispute.
- Represented prominent cardiology group and individual cardiologists in a business tort case brought against them by a specialty hospital asserting claims of tortious interference and unfair competition relating to the group's referral practices. Retained after the trial court had just denied defendants' motions for summary judgment and facing a trial that was expected to last several months, we spearheaded the filing of new motions for summary judgment that raised dispositive issues that had not yet been addressed in the more than seven-year-old litigation. Following extensive briefing, the trial court dismissed all of the hospital's claims with prejudice. The hospital had been seeking nearly \$30 million in compensatory damages and an award of punitive damages. On appeal, the Appellate Division affirmed the dismissal of 99% of the hospital's damages claim and remanded for further proceedings on claims valued at less than \$300,000. The case settled during trial, shortly after the parties selected a jury and delivered opening statements.
- Successfully appealed and obtained reversal of \$7.6 million jury verdict in premises liability action.
- In a land redevelopment dispute between a private redeveloper and a local designated redevelopment entity involving issues of contract interpretation and claims of breach of contract, successfully briefed and argued the appeal of an adverse jury verdict, resulting in the Appellate Division reversing the jury verdict, and remanding for a

new trial.

- Obtained favorable appellate decision in matter of first impression concerning net book value partnership buy-out valuation and related unconscionable value claims.
- Representing the plaintiff in an oppressed minority shareholder suit concerning issues of oppression in a closely held corporation. This case resulted in the New Jersey Supreme Court issuing a precedential decision clarifying the State's oppressed shareholders jurisprudence and provided needed guidance on the question of the proofs necessary to trigger the availability of remedies under the oppressed shareholder statute. The case was remanded and appealed following the entry of a \$25 million judgment in our client's favor on remand. In a second Supreme Court decision, which also created new law on the applicability of a marketability discount in the context of a court ordered buy out of interests in closely held corporations, the Court reinstated in full the judgment of \$25 million (an \$18 million buyout and plus more than \$7 million in pre- and post-judgment interest). In post-judgment enforcement proceedings, assisted in collecting more than \$20 million through various execution avenues from both individual and corporate judgment debtors. Successfully tried a fraudulent transfer claim, resulting in an opinion and order requiring the return of \$18 million in funds secreted overseas.
- Representing a liquidating trustee appointed by a federal bankruptcy court on an appeal to the New Jersey Appellate Division concerning more than \$200 million in claims against the corporate parents and affiliates of an insolvent entity relating to environmental liabilities for pollution of the Passaic River.