

## KIMBERLY KANOFF BERMAN

SPECIAL COUNSEL



### AREAS OF PRACTICE

Appellate Advocacy and Post-Trial Practice

### CONTACT INFO

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Fort Lauderdale, FL 33301

### 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

### OVERVIEW

Kimberly is part of the firm's Appellate Advocacy and Post-Trial Practice Group in the Professional Liability Department. She has litigated numerous appeals in Florida state and federal appellate courts across a wide variety of subject matters in cases involving medical malpractice, construction defect, 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, professional malpractice, and bad faith cases.

Kimberly has an AV Preeminent rating by Martindale-Hubbell, the highest rating for professional competence. Since 2015, Kimberly has been recognized as a Super Lawyers Rising Star, a designation given each year to only 2.5 percent of lawyers in the State of Florida.

Kimberly is actively involved in bar association and related legal societies. She has been appointed to the Board of Trustees for the Florida Supreme Court Historical Society and serves on the Florida Bar Appellate Practice Section's Executive Council and as vice chair of the Legislative Committee. She is a member of the Florida Bar, 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.

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

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## EDUCATION

University of Miami School of Law (J.D., 2005)

University of Florida (B.S., 2002)

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## HONORS & AWARDS

AV® Preeminent™ by Martindale-Hubbell®

Super Lawyers Rising Star 2015-2020

South Florida Legal Guide, Top Up and Comers, 2020

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## ASSOCIATIONS & MEMBERSHIPS

Dade County Bar Association

Florida Association of Women Lawyers, 2009-2013

Florida Bar Appellate Practice Section (Executive Council 2016-Present)

Florida Bar, Board Certified in Appellate Practice, 2020

Rosemary Barkett American Appellate Inn of Court

Third District Court of Appeal Historical Society

Florida Supreme Court Historical Society

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## YEAR JOINED

2018

University School 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*.

## THOUGHT LEADERSHIP

### Ten Marshall Dennehey Attorneys Selected to the 2020 Florida Super Lawyers & Florida Rising Stars Lists

June 4, 2020

Ten attorneys from the Florida offices of Marshall Dennehey Warner Coleman & Goggin have been selected to the 2020 edition of Florida Super Lawyers magazine. [Read More](#)

### Kimberly Kanoff Berman Becomes Board Certified in Appellate Practice by The Florida Bar

Appellate Advocacy and Post-Trial Practice

June 1, 2020

Kimberly Kanoff Berman, Special Counsel in the Fort Lauderdale office of Marshall Dennehey

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### Twelve Marshall Dennehey Attorneys Selected to the 2019 Florida Super Lawyers & Rising Stars Lists

May 30, 2019

Twelve attorneys from Marshall Dennehey's Florida offices (Fort Lauderdale, Jacksonville, Orlando and Tampa) have been selected to the 2019 edition of Florida Super Lawyers magazine.

[Read More](#)

### Eleven Marshall Dennehey Attorneys Selected to the 2018 Florida Super Lawyers & Rising Stars Lists

June 19, 2018

Eleven attorneys from the Florida offices of Marshall Dennehey Warner Coleman & Goggin have been selected to the 2018 edition of Florida Super Lawyers magazine.

[Read More](#)

## **Appellate Attorney Kimberly Kanoff Berman Joins Marshall Dennehey as Special Counsel in Fort Lauderdale**

Appellate Advocacy and Post-Trial Practice

May 29, 2018

Appellate attorney Kimberly Kanoff Berman has joined Marshall Dennehey as Special Counsel in the Fort Lauderdale office. A member of the firm's Professional Liability Department, Ms.

[Read More](#)

## **Florida Supreme Court Hosts Historic Remote Oral Arguments During the COVID-19 Pandemic**

Fort Lauderdale

Appellate Advocacy and Post-Trial Practice

COVID-19 Task Force 2020

June 1, 2020

## **Transitioning From In-Person to Remote Oral Arguments in Fla. Appellate Courts**

Fort Lauderdale

Appellate Advocacy and Post-Trial Practice

April 28, 2020

## **Will COVID-19 Kill Oral Arguments in Florida State and Federal Appellate Courts?**

COVID-19 Task Force 2020

Appellate Advocacy and Post-Trial Practice

March 27, 2020

Appellate advocates The material in this newsletter has been prepared for our readers by Marshall Dennehey Warner Coleman & Goggin.

## **Insurance company cannot sue their retained defense counsel for legal malpractice.**

Professional Liability

April 1, 2019

When an insurance company retains a law firm to represent an insured to defend a lawsuit, can the insurance company sue the law firm for legal malpractice if it is not satisfied with the law firm's defense of its insured? Case Law Alerts, 2nd Quarter, April 2019

## **Drafting Jury Instructions That Win Appeals**

Fort Lauderdale

Appellate Advocacy and Post-Trial Practice

June 29, 2018

## **PUBLISHED WORKS**

"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," April 28, 2020, *Daily Business Review*

"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

## **CLASSES/SEMINARS TAUGHT**

*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

## **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)

## **RESULTS**

## **Appellate success in campground negligence lawsuit.**

### **Appellate Advocacy and Post-Trial Practice**

#### **Premises and Retail Liability**

**May 18, 2020**

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.

## **Appellate victory in fence dispute.**

### **Appellate Advocacy and Post-Trial Practice**

#### **Professional Liability**

**May 18, 2020**

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.

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

### **Health Care Liability**

**March 1, 2020**

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.

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

### **Health Care Liability**

**March 1, 2020**

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.

## **SIGNIFICANT REPRESENTATIVE MATTERS**

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 (11<sup>th</sup> 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).