

KENNETH R. KIRBY

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PROFESSIONAL PROFILE/BIOGRAPHY

Litigation and insurance defense and coverage attorney with experience spanning a broad range of practice areas. Successfully represented corporate, individual, and municipal clients in many sophisticated and complex lawsuits, bringing strong analytical and practical negotiating skills to bear on their behalf. For example, successfully represented the mayor of the City of Buffalo in the Buffalo Public Schools Desegregation Case and prepared a comprehensive longitudinal study of the desegregation of the Buffalo Public School System which culminated in the court’s dismissal of the case.

An accomplished appellate practitioner who has briefed or argued over 100 appeals, frequently handling appeals on referral from other attorneys. Among appeals briefed and argued was one that first established, on behalf of his severely injured young client, a private right of action against a merchant which, in violation of a General Business Law provision prohibiting such sales, had sold a BB gun and ammunition to a minor under the age of sixteen.

AREAS OF PROFESSIONAL CONCENTRATION

Appellate Practice
Civil, Commercial, and Contract Litigation
Insurance Law/Coverage
Labor Law (workplace or construction site accidents)
Motor Vehicle and No-Fault

Municipal Liability
Negligence & Tort
Premises, Products, and Professional Liability
Real Property
Workers’ Compensation Group Self-Insurance

PROFESSIONAL EMPLOYMENT

Lippes Mathias Wexler Friedman LLP, Counsel

2008 - 2011

Assumed the lead role in formulating and executing strategy in complex litigation, particularly in both class action litigation and the defense of seventy employers that were sued in relation to their participation in nine separate group self insurers trusts. Responsibilities:

- Represented clients in insurance defense lawsuits and insurance coverage disputes and litigation (including defending and prosecuting declaratory judgment actions)
- Performed initial research about and preparing analyses of clients’ legal positions (strengths and weaknesses)
- Prepared pleadings (both offensive and defensive)
- Conducted discovery and responded to discovery requests
- Researched, drafted, and argued motions
- Analyzed and responded to changes in applicable statutory and regulatory law
- Researched, drafted, and argued clients’ motions and appeals (including a successful appeal defeating a group self-insurers trust’s attempt to retroactively assess the clients over \$1 million)

- Negotiated Memoranda of Understanding controlling clients' pre-existing statutory and contractual exposure to joint and several liability arising out of their participation in workers' compensation self insurers trusts
- Researched and drafted client's appellant's brief to the New York Court of Appeals in *Bordeleau v State of New York, et al.*, 74 AD3d 1688 (3d Dept. 2010) (involving a sophisticated state constitutional law issue yet to be argued).

Mattar, D'Agostino & Gottlieb, LLP, Associate

2007 - 2008

Represented clients in sophisticated commercial litigation. Responsibilities:

- Drafted pleadings
- Conducted discovery and depositions
- Researched, drafted, and argued motions and appeals.

Wilder & Lineball, LLP, Associate

2006 - 2007

Represented clients, including utilities and assureds, in commercial, insurance coverage, personal injury and property loss litigation. Responsibilities:

- Conducted discovery and depositions
- Researched and drafted motions and appellate briefs for clients (including the appellant's brief to the New York Court of Appeals in *Jericho Water District v One Call Users Council, Inc.*, 10 NY3d 365 [2008], in which Mr. Kirby discovered a critical Court of Appeals precedent supporting the statutory construction advanced on behalf of the firm's client)
- Argued motions and appeals.

Napier, Fitzgerald & Kirby, LLP, Partner

1993 - 2006

Represented clients in a variety of personal injury cases, including products liability, motor vehicle, premises liability, and professional liability. Responsibilities:

- Performed initial intake and evaluation, including drafting pleadings
- Conducted all phases of discovery, including depositions
- Reported to clients and carriers, formulating strategy and assessing risk
- Researched, drafted, and argued sophisticated motions (including dispositive motions)
- Negotiated settlements of both plaintiff's and defense cases
- Researched and drafted appellate briefs and arguing appeals
- Tried cases.

O’Shea, Reynolds, Napier, Cummings & Kirby, Associate (1983 – 1986) and Partner

1986 - 1993

Responsibilities mirrored those listed above, with respect to Napier, Fitzgerald & Kirby. Has represented the City of Buffalo and its former mayor in numerous matters, including (i) the Buffalo Public Schools Desegregation Case in federal district court and (ii) the “bed tax” (i.e., hotel tax) litigation with the County of Erie in state court.

After the firm assumed the representation of the mayor of the City of Buffalo in the ongoing Buffalo Public Schools Desegregation Case (*Arthur v. Nyquist*, 716 F. Supp. 1484 [W.D.N.Y.1989], later reported at 904 F. Supp. 112 [W.D.N.Y.1995]), devised and implemented a new litigation strategy for the mayor enabling the mayor, for the first time, to defeat the Buffalo Board of Education’s claim that millions more dollars funding than the City had appropriated to the Board was necessary in order for the Board to comply with desegregation orders. Together with mayor’s Advocate for the Handicapped, prepared study demonstrating how Buffalo Public Schools’ physical facilities could be most economically rendered compliant with handicapped accessibility laws and regulations.

EDUCATION

- State University of New York at Buffalo, School of Law and Jurisprudence (1980 -1982)
Juris Doctor Awarded: 1982. Attended Georgetown University Law Center (1979).
- State University of New York at Buffalo (1975 – 1979); Bachelor of Arts: Awarded 1979, *summa cum laude*. Double Major: Political Science and History, with Departmental Honors.

BAR ADMISSIONS/BAR MEMBERSHIPS

- New York State (All courts)
- United States Supreme Court
- United States Court of Appeals for the Second Circuit
- United States District Court, Western District of New York
- United States Bankruptcy Court, Western District of New York
- Member, New York State Bar Association and Bar Association of Erie County.

PEER RECOGNITION/PUBLICATIONS/COMMUNITY SERVICE

- Recognized, by peer selection, in Buffalo Law Journal/ Buffalo Business First’s “2007 Who’s Who in Western New York Law” for appellate practice and advocacy
- Published article: “The Six-Year Legal Malpractice Statute of Limitations: Judicial Usurpation of the Legislative Prerogative?” (New York State Bar Journal, December 1994 edition). Publication precipitated curative legislation (see, McKinney’s Cons. L. of N. Y., L.1996, c. 623, sec. 1, eff. Sept. 4, 1996)
- Former member, Buffalo Water Board and Buffalo Police Reorganization Commission.