Bernice K. Leber

COUNSEL

Bernice’s practice concentrates on the prosecution and defense of complex civil business disputes, with an emphasis on those involving commercial disputes (real property, securities, financial and intellectual property).



Industries

Fashion & Retail Law

Practices

Complex Litigation
Trademark

Education

Columbia Law School, JD, 1978
Mount Holyoke College, AB, with distinction, 1975

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Bernice also handles professional liability cases, ethics and disciplinary matters involving lawyers, law firms, and accountants. Bernice served as New York State Bar President from 2008-2009 and Representative from ABA to the UN from 2017-2019.

Client Work

In her 30+ years as a lawyer, Bernice has represented clients in the construction, real estate, real estate development, law firm, accounting, pharma, securities, and financial services industries. Post-Covid-19, she has advised clients regarding force majeure, contracts, leasing, acquisitions, and business interruption remedies including insurance.

Notably, Bernice successfully litigated the cancellation of a 99-year sale-leaseback and related financing and construction contracts for a developer; performed workouts of real estate financings for many real estate developers with banks – both with and without litigation and in and out of bankruptcy; represented developers, banks, and financing companies in disputes (in court and arbitration) over construction, zoning, environmental, and financing issues; litigated successfully in the Second Circuit and Appellate Divisions bidding disputes on behalf of the Empire State Development Corporation and NYS Dormitory Authority; provided tax planning advice involving a closely held portfolio of $1B; and handled federal tax treaty cases before IRS and the federal courts. She also has litigated intellectual property actions in the advertising, music, sports, publishing, computer, fragrance, food, liquor, and fashion industries. In the Second, Third, Ninth Circuits and Delaware Supreme Court, Bernice has represented domestic foreign public and closely-held companies (e.g., The Hillman Corporation, Amarex, AMI, Princeton Economics, Sino Energy), venture capital firms, pharma companies, banks, investment advisors, and pension fund advisers under the securities, commodities exchange, ERISA, and various state and tax laws as well as the New York State Bar Association in a lawsuit concerning ethical standards of lawyer advertising, lawyers, and law firms on conflicts of interest, ethics rules.

Bernice succeeded in representing companies involved in the pharmaceutical industry, including defeating a generic pharma company’s request in an antitrust suit for a preliminary and permanent injunction regarding the terms for its manufacturing a generic form of a drug [Mutual Pharmaceutical

Inc. URL Pharma et al. v. Reckitt Benckiser, 15-505 E.D.Pa. April 20, 2016]; in intellectual property disputes, obtaining affirmance of a jury verdict finding willful infringement by a trademark distributor/licensee and affirmance of an order compelling the infringer to assign an uncontestable trademark to the rightful owner of a leading advertising journal, the first case of its kind in the Second Circuit (Lurzer's Archive v. American Showcase and One Magazine, 77 F.Supp.2d 370 (S.D.N.Y.1997)); obtaining a permanent injunction requiring an infringer to cease business and disgorge profits to a national ice cream manufacturer (case filed under seal); obtaining a permanent injunction requiring a prominent water industry business to cease unfairly competing with a leading water company (Puro Corp. of America v. Aqua Pure Company); obtaining an injunction preventing an infringer from using the name of a leading hotel chain and offering services related to the use of the hotel mark (case filed under seal). She has also represented trademark owners and licensees during bankruptcy proceedings, notably in In re *Schrafft's, In re J-L Bankruptcies* (on behalf of trademark owner *Haagen-Dazs*), In re *K-Mart bankruptcy* (ELK Investors), In re *Gitano*.

Bernice has also successfully represented several corporations (and certain of their officers) in securities fraud actions and financial litigation involving securities, Commodities Futures, secured transactions, accounting laws, and state laws, including the following: *Carol Karch v. Sinoenergy Corporation*, 2:09-CV-2320-PMP (D. Nev., Order dated April 13, 2010); *Alexander v. Cahill*, 598 F. 3d 79 (2d Cir. 2010); *SEC v. Armstrong*, 2004 WL 362318 (2d Cir. 2004) and Commodities Futures Trading v. Armstrong, 284 F.2d 404 (2d Cir. 2002, representing Armstrong's Japanese foreign investment advisor); In Re Amarex Securities Litigation (representing the Hillman Company and outside directors); and In re AMI Securities Litigation (representing the outside directors). She has also represented lawyers and accountants and their clients in matters involving professional liability.

In real estate litigation, Bernice has represented partnerships and owners and lenders on a variety of contexts, including (but not limited to) documentation of charitable, conservation easements, real estate break up fees, and partnership dissolutions, including:

- *Derfner Management, Inc. v. Lenhill Realty Corp.*, 2011 NY Slip Op 72301 (App. Div. 2011).
- *Derfner Management, Inc. v. Lenhill Realty Corp.*, 90 A.D.3d 434, 933 N.Y.S.2d 671 (1st Dept. 2011).
- *Derfner Management, Inc. v. Lenhill Realty Corp.*, 105 A.D.3d 683, 964 N.Y.S.2d 132 (1st Dept. 2013).
- *Zedeck v. Derfner Management, Inc.*, 98 A.D.3d 925 (1st Dept. 2012).
- *Gibber v. Colton*, 2016 NY Slip Op 05227 (1st Dep't. 2016) aff'g., 2012 NY Slip Op 31403 (Sup. Ct. N.Y. Cty. 2012).
- *Gibber v. Colton* – Index No. 159326/12 (Sup. Ct. N.Y. Cty. 1/30/14).

In the fashion industry, Bernice won dismissal of a class action involving the modeling industry, i.e., *Raske v. Ford et al.* 2013 NY Slip Op 32013 (U) (Sup. Ct. N.Y. Cty. 2013), resolved unfair competition disputes between modeling agencies, and negotiated termination agreements for numerous models and their modeling company.

Professional Activities

From 2017 to 2019, Bernice served as the ABA Representative to the UN, where she led the ABA Observers in two UN programs addressing diversionary courts and emergency medical relief to victims of sexual and gender-based violence. Her report on medical relief also established the ABA House of Delegates policy.

In 2020 and 2017, Bernice co-authored a NYS Bar Association report, "The Time is Now," and "If Not Now, When?," which reviewed federal and state court data on women trial attorneys. As a result of this report, many federal and state judges have adopted a rule or policy to encourage traditionally underrepresented attorneys to take on speaking roles in the court.

In 2020, in the wake of the global pandemic, Bernice wrote an alert, "What Litigation Has the Coronavirus Spurred? Force Majeure, Insurance, Real Estate & More."

In 2020, Bernice was featured in a podcast entitled, "Mediation in the Time of Covid-19."

In 2015, Bernice became a founding member and serves as a board member of Women Trial Lawyers Caucus of New York, whose mission is to promote women in the legal profession, and more specifically, in the courtroom; to share our experiences and expertise and mentor, motivate and encourage women litigators; to encourage women to join the judiciary; to conduct screenings of judicial candidates, specifically to the New York State Court of Appeals, and to provide continuing

legal education addressed to issues of concern to women lawyers and judges.

In 2011, Bernice began serving on the Professional Ethics and Judicial Ethics Committee of the City Bar, has lectured to lawyers and clients on “hot button” ethics issues (City Bar January 2012; State Bar 2011), and has provided and continues to provide guidance as a member of the City Bar Ethics Hotline for inquiries on legal ethics.

Also in 2011, Bernice was appointed to Senator Charles E. Schumer’s Judicial Selection Panel and to the Governor’s New York State First Department Judicial Screening Committee.

Since 2010, Bernice has served as a Committee Member for the Committee for an Independent Public Defense Commission.

In 2009, Bernice served as the 111th President of the New York State Bar Association, the largest voluntary bar association in the US (80,000 members). She also served three terms as a director of the New York Bar Foundation; three terms (ongoing) as a member of the Corporate Board Selection Committee of the Financial Women’s Association; a member of the State Bar and ABA House of Delegates; member of the Executive Committee of the Intellectual Property Section of the New York State Bar Association; as a member of the Finance Committee of the State Bar Association and chaired the Strategic Financial Planning Committee. She is also past First Vice-President from the 1st Judicial District to the State Bar, former chair of the New York State Bar Association’s Commercial and Federal Litigation Section (1997-1998) and Past Chair-Elect of the Section; past Chair of the Subcommittees on Discovery, Appellate Practice, Federal Judiciary; and past member of the Courts of Superior Jurisdiction (1995-1998), Committee on Judicial Administration, and the Civil Courts Committee for the Association of the Bar of the City of New York.

Awards, Recognitions & Appearances

Awards

Year	Award
2022	New York State Bar Association’s Shira A. Scheindlin Award – given to a female litigator who has distinguished herself in the courtroom in either the Federal or State Courts in New York and who has shown a commitment to mentoring young attorneys in the legal community.
2020	Crain’s New York Business – named one of 100 lawyers included in the 2020 List of “Notable Women in Law,” a special feature that celebrates an exceptional pool of talented female attorneys in the New York City metro area.
2017	New York State Bar Association’s Ruth G. Shapiro Award – awarded to a State Bar member for outstanding contributions to addressing the concerns of women. Bernice was recognized for her work in the area of Human Trafficking, Wrongful Convictions, and Gender Parity.
2022-2006	Super Lawyers – Business Litigation
2022-2006	Who’s Who in American Law
2020-2006	Who’s Who of American Women
2020-2006	Who’s Who in America
2011-2010	Super Lawyers Top 50 Women Lawyers – New York Metro
2012-2011	Avenue Magazine, Legal Elite
2009	Awardee, National Executive Service Corp., whose mission is to assist corporate boards with administration and Sarbanes-Oxley compliance

Recognitions

Year	Recognitions

2016-2019	Member, Executive Committee, United Nations Dep't. of Public Information
2017-2019	Representative of ABA to UN Representatives and Observers Committee
2012-present	Distinguished Neutral, International Centre for Dispute Resolution (ICDR)
2011-present	Member, Women's Forum, Inc.
2011-present	Member, Panel of Arbitrators, American Arbitration Association
2011-present	Member, Panel of Mediators, American Arbitration Association
2009-2008	Member, American Law Institute Board
2008-present	Delegate to ABA House of Delegates
2008-present	Member, ABA Commission on Fair and Impartial Courts
2008-present	Member, ABA Commission on the Future of the Legal Profession
2008-present	Advisor to US Trade Representative on Business of Practicing Law (ethical rules and regulation of lawyers domestically and internationally)
2008-2009	Member, ABA Commission on Fair Commission on Fair and Impartial Courts
2007-present	Liaison to Resource Board, National Association of Women Judges
1999-present	Mediator to the United States District Courts for the Southern District of New York and Commercial Division of the Supreme Court of the State of New York
1999-present	Arbitrator to the United States District Court, Eastern District of New York

In 2017, Bernice co-chaired the ABA UN Committee, which reported on "Emergency Medical Funding To Victims of Sexual Gender Based Violence in the DRC"; She presented the Report to the ABA House of Delegates in February 2017, which unanimously adopted the Report's recommendations as official policy.

In 2013, Bernice co-chaired the Special Committee in the New York State Bar Association, proposing an amendment to the laws on Human Trafficking.

In 2009, Bernice led the Committee on Wrongful Convictions for the New York State Bar Association proposing changes to reduce wrongful convictions.

In 2008-2009, Bernice implemented legislative policy before the New York State Legislature, and Governor Paterson's Office and Office of Court Administration on legislation to address: climate change, wrongful convictions, funding for indigent/middle-class, e-filing, compact for long-term care for the sick and elderly, same-sex marriage proposals, title agents, ethics standards, Commission to

Review Qualification of New York State Court of Appeals' candidates, lawyer advertising, campaign finance reform, cy pres awards.

In 2008- 2009, US Congress on: Guantanamo Bay status, destruction of documents by Executive Office, review of qualifications of candidates to the Second Circuit Federal Judiciary, federal shield law, attorney-client privilege presentation, media.

In 2007-2008, Bernice lectured to the Southern and Eastern District of New York and the Commercial Division Justices of the State Of New York on the use of cy pres awards in class action settlements to fund civil legal services.

In 2007 and 2008, Bernice served as a panelist on the New York State Bar Association's program *"Committee on Professional Discipline presents Current Issues in Ethics and Discipline."*

In 2006, Bernice lectured on Lawyer Advertising to the NYS Association of Disciplinary Attorneys, the Brooklyn, Queens and City Bar Associations, and the Masters Institute Program at Stonybrook and 2009, argued in the Second Circuit on behalf of the State Bar concerning the constitutionality of lawyer advertising with respect to 30-day ban on solicitation of accident victims and their families.

In 2005, Bernice chaired the Task Force for The State Bar on Lawyer Advertising that proposed changes to the disciplinary rules and procedures concerning lawyer ads, adopted by the Administrative Board of the State Courts in April 2009.

In 2001 and 2002, Bernice lectured to 300 New York State Supreme Court judges at the New York State Judicial Conference. She was also a speaker at the New York State Bar Association Conference on Federal Civil Practice.

She has also lectured on a variety of subjects to bar groups and PLI, including: ethics, federal civil practice, arbitration, loan workout litigation, the commercial courts of the Supreme Court, and case management techniques.

Appearances

In 2008, Bernice was interviewed on CUNY TV's "One to One with Sheryl McCarthy," which highlighted her priorities as President of the New York State Bar Association.

Publications

- Co-author, "New Developments in COVID-19 Litigation for New York City Landlords: Saving Grace or Hail Mary?," ArentFox Schiff Client Alert – 2020
- Co-author, "Fashion Model Class Action Case a Bellwether For Other Industries," ArentFox Schiff Client Alert – 2020
- Co-author, "What Litigation Has the Coronavirus Spurred? Force Majeure, Insurance, Real Estate & More," ArentFox Schiff Client Alert – 2020
- Co-author NYSBA, "If Not Now, When?," an empirical study of women trial lawyers in New York – 2017
- ABA, Report on Sexual, Gender-Based Violence in DRC – 2017
- NYSBA Special Committee Report on Human Trafficking – 2013
- Co-author, "New York's status as prime arbitration venue bolstered with opening of the New York International Arbitration Center," Arent Fox Client Alert – 2013
- "Disclaimer Attorneys Must Use in New York to Advertise Specialty Mostly Unconstitutional," *Bloomberg BNA Law Week*; March 13, 2012
- "Conducting the Cross-Border Arbitration: Anatomy of a Case," written and presented to the International Section of the ABA, Toronto, Canada; 2011
- Drafted and argued amicus brief to the U.S. Court of Appeals for the Second Circuit urging that the ethics rules on attorney advertising (30-day moratorium) in New York State should be upheld (*Alexander v. Cahill, 2d Cir.)*; July 16, 2007; Second Circuit subsequently affirmed district court upholding these ethics rules. See 598 F.3d 79 (2d Cir. 2010).
- "Waving a Red Flag" – FTC's latest effort to regulate lawyers hits wall of opposition, *The National Law Journal*; November 8, 2010
- NYSBA Task Force Report on Wrongful Convictions – 2009
- "Protocols for Discovery in Arbitrations," written in conjunction with the New York State Bar

Association ADR Section; 2009

- "Women in the Law – Taking the Lead," *New York Law Journal*; February 2009
- "The Time for Civil Gideon is Now," *Touro Law Review (Vol. 25 – No. 1)*; 2009
- "Taking Stand on Guantánamo," *New York Law Journal*; February 18, 2009
- "New Efforts Focus on Exonerating Prisoners in Cases Without DNA Evidence," *The New York Times*; February 8, 2009
- "Examining Human Error in Wrongful Convictions," *The New York Times*; February 1, 2009
- "State Bar Association Calls for End to Stalemate on Judicial Pay" press conference, *New York State Bar Association news release*; March 31, 2008
- "What Do Women Lawyers Really Want?" questionnaire, *The Complete Lawyer*; March/April 2008
- "State Bar groups want a share of 'cy pres' awards," *National Law Journal*; September 1, 2008
- Best of the Law Blog: "Order to Release YouTube Data Sparks Backlash – On YouTube," *Wall Street Journal*; August 13, 2008
- "How Do You Define a Blog?," *Law Firm Inc., Vol. 4, No. 6I*; November/December 2006
- "Consumer Surveys in Trademark Cases: Are They in Evidence or Out?," *New York Law Journal*; April 25, 2005
- "NY Bar to Target Misleading Advertisements," *Long Island Business News*; November 18, 2005
- *Federal Civil Practice Handbook* (NYSBA 1999) and Updates (2001, 2006)
- "Joinder, Severance, and Consolidation," *Commercial Litigation In New York State Courts* (West 1996) and Update (2002)

Life Beyond the Law

Bernice is the former Parliamentarian to the New York State Senate (1975 session).

Bar Admissions

New York

Court Admissions

Supreme Court of the United States
US District Court, Eastern District of New York
US District Court, Southern District of New York
US Court of Appeals, 2nd Circuit