



## Howard M. Miller

### Member

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## Profile

**Howard combines innovative thinking and pragmatic problem solving with committed advocacy on a day to day basis to help his clients achieve their goals and objectives.**

In today's rapidly changing and highly regulated business environment, a lawyer must do more than tell a client what cannot be done; he must stay one step ahead, guiding the client on a steady path forward.

### A Path Forward in Education

In the area of education law, Howard represents public school districts and private universities throughout New York. He provides collaborative real time day to day advice on the most complex and controversial matters facing his clients. When problems cannot be solved amicably, Howard provides zealous, yet cost effective, advocacy, collaborating with his clients at each and every phase of the matter.

### A Path Forward in Business

In private sector employment litigation, Howard litigates all types of employment discrimination and retaliation claims. He also represents clients in noncompete and trade secret cases and has won two significant appellate court decisions strengthening and cementing New York's "Faithless Servant Doctrine." Due to Howard's extensive litigation experience, his clients can expect to be fully informed up front of both the strengths and weaknesses of their case, as well as potential fees. There is simply no substitute for informed strategic decisions at the outset.

### Beyond the Courtroom

Many of Howard's cases have received media attention and have been reported in national employment law periodicals. In addition, Howard frequently lectures and writes articles on topics such as Constitutional Law, non-compete and trade secret litigation, employment and Constitutional issues relating to social networking sites and various aspects of employment discrimination and education law.

## Representative Matters

- *Eliav v. Roosevelt Island Operating Corporation*, 2024 WL 196477 (S.D.N.Y. 2024) (dismissing discrimination and retaliation claims)
- *We Transport v. Westbury School District*, \_\_\_\_ A.D.3d \_\_\_\_ (2d Dep't August 23, 2023) (dismissing claims brought by school bus company arising out of COVID-19 school closures)

## Education

- St. John's University School of Law (J.D. 1990)
- State University of New York at Albany (B.S., *cum laude*, 1986)

## Bar/Court Admissions

- New York
- U.S. Court of Appeals for the Second Circuit
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Northern District of New York
- U.S. District Court for the Southern District of New York

## Practices

- School Law
- Municipalities
- Higher Education
- Labor and Employment
- Health Care

- *Schulz v. Commack Union Free School District*, 2023 WL 2667050 (E.D.N.Y. 2023) (dismissing First and Fourteenth Amendment claims)
- *Pierce Coach Line v. Port Washington School District*, \_\_\_\_ A.D.3d \_\_\_\_ (2d Dep't February 22, 2023) (dismissing claims brought by school bus company arising out of COVID-19 school closures)
- *J.D. v. Rye Neck School District*, 2023 WL 1797170 (S.D.N.Y. February 7, 2023) (dismissing special education tuition reimbursement claims)
- *Hernandez v. Port Washington Union Free School District*, 193 A.D.3d 733, 141 N.Y.S.2d 875 (2d Dep't 2021)
- *Boyle v. N. Salem School District*, 2020 U.S. Dist. LEXIS 82504 (S.D.N.Y. 2020) (holding that Child Victims Act does not extend statute of limitations for federal claims)
- *Doe v. Vassar College*, 2019 U.S. Dist. LEXIS 203418 (S.D.N.Y. November 21, 2019) (successful defense against motion for preliminary injunction in Title IX "wrongful outcome" case)
- *Gingrich v. William Floyd School District*, 2018 U.S. Dist. LEXIS 103371 (E.D.N.Y. 2018) (dismissing constitutional claims arising out of student-on-student assault)
- *Nadolecki v. William Floyd School District*, 2016 U.S. Dist. LEXIS 88399 (E.D.N.Y. 2016) (recommending dismissal of First Amendment retaliation claims), *adopted in its entirety* 15-cv-2915 (September 13, 2016)
- *City of Binghamton v. Whalen*, 2016 N.Y. App. Div. LEXIS 4167 (3d Dep't June 2, 2016) (argued and on the brief in case enforcing full and complete compensation forfeiture under the "faithless servant doctrine" and rejecting task-by-task apportionment of damages)
- *Westchester Cnty. Independence Party v. Astorino*, 2015 U.S. Dist. LEXIS 133318 (S.D.N.Y. 2015) (dismissing RICO and Constitutional claims)
- *Lasillo v. Pilla*, 120 A.D.3d 1192, 992 N.Y.S.2d 143 (2d Dep't 2014) (affirming Village's termination of post-termination health care benefits)
- *Hommel v. City of Long Beach*, 2014 WL 1010654 (E.D.N.Y. March 14, 2014) (successful defense of First Amendment retaliation claim)
- *Mohawk v. William Floyd School District*, 2014 WL 838162 (E.D.N.Y. March 3, 2014) (dismissing employment discrimination and retaliation claim)
- *Saliba v. Five Towns College*, 2014 WL 92690 (E.D.N.Y. Jan. 10, 2014)(holding that alleged complaint by faculty member about another faculty member's harassment of student did not constitute protected activity under Title VII and dismissing retaliation claim on additional ground of lack of "but-for" causation and failure to exhaust remedies).
- *Dong v. Town of North Hempstead*, 2013 WL 6407724 (E.D.N.Y. December 9, 2013)(dismissing Fifth Amendment takings claim)
- *Spataro v. Glenwood Supply*, 479 Fed. Appx. 403 (2d Cir. 2012) (affirming grant of motion to dismiss age discrimination claims)
- *Carroll v. City of Mount Vernon*, 2011 WL 6759597 (2d Cir. 2011) (argued and on the brief in case granting post-Ricci motion for summary judgment dismissing reverse race discrimination claim), affirming 707 F.Supp.2d 449 (S.D.N.Y. 2010) (analyzing post-Ricci disparate impact claims)

- *Mosby v. William Floyd School District*, 2010 WL 376842, 363 Fed. Appx. 788 (2d Cir. 2010) (argued and on the brief in case affirming grant of summary judgment in discrimination, hostile environment and retaliation case)
- *Hammond v. Keyspan*, 2009 WL 337727 (2d Cir. 2009) (on the brief in case affirming grant of summary judgment in disability discrimination case)
- *Capone v. Weeks*, 326 Fed. Appx. 46 (2d Cir. 2009) (argued and on the brief in case seeking recovery of defendant's attorney's fees in employment case) on remand 2010 WL 2771845 (E.D.N.Y. 2010) (granting fee shift against plaintiff's counsel)
- *New York & Atlantic Railway Company v. Surface Transportation Board*, 635 F.3d 66 (2d Cir. 2011) (upholding right of Town to enforce local zoning ordinances on transloading facility)
- *Evans v. City of Mount Vernon*, 92 A.D.3d 829, 939 N.Y.S.2d 130 (2d Dep't 2012) (argued and on the brief in case dismissing negligent hiring and supervision claims)
- *William Floyd School District v. Wright*, 61 A.D. 3d 856, 877 N.Y.S.2d 395 (2d Dep't 2009) (argued and on the brief in novel application of "faithless servant doctrine")
- *Ciancuilli v. Bronxville Police Commissioners*, 57 A.D.3d 661, 868 N.Y.S.2d 548 (2d Dep't 2008) (argued and on the brief in case upholding termination of police officer)
- *Murray v. Downey*, 48 A.D.3d 817, 852 N.Y.S.2d 387 (2d Dep't 2008) (argued and on the brief in case requiring exhaustion of remedies under collective bargaining agreement prior to filing lawsuit)
- *Beale v. Mount Vernon Police Department*, 2012 WL 4473282 (S.D.N.Y. 2012) (dismissing sex-based hostile environment claims)
- *Guardino v. Village of Scarsdale Police Department*, 2011 WL 4000999 (S.D.N.Y. 2011) (granting motion to dismiss ADA claim)
- *Zucker v. Five Towns College*, 2010 WL 3310698 (E.D.N.Y. 2010) (granting motion to dismiss age discrimination claim)
- *Burchette v. Abercrombie & Fitch Stores, Inc.*, 2010 WL 1948322 (S.D.N.Y. 2010) (dismissing claims alleging selective enforcement of "look policy")
- *Blanco v. Village of Scarsdale*, 2009 U.S. Dist. LEXIS 42773 (S.D.N.Y. 2009) (granting motion to dismiss retaliation claims)
- *Meyer v. William Floyd School District*, 2009 WL 33227208 (E.D.N.Y. 2009) (successful motion to dismiss employment discrimination claims)
- *Kempkes v. Marvin*, 2008 WL 5330673 (S.D.N.Y. 2008) (successful motion to dismiss First Amendment retaliation claim)

## Honors & Affiliations

- Listed in:
  - *The Best Lawyers in America*®, Education Law, 2012-2024 (listed for more than 10 years)
  - *New York Super Lawyers 2023*®, Employment & Labor (listed for 10 years)
- Benchmark Litigation Labor & Employment Star, 2021

- New York State Bar Association
- Nassau County Bar Association
- National Association of College and University Attorneys
- Member, Law Review
- St. Thomas More Scholar

## Representative Presentations

- Diversity, Equity and Inclusion After Students for Fair Admissions v. President and Fellows of Harvard College, National Council of School Attorneys Annual Meeting, New Orleans, La., April 4, 2024
- The First Amendment and the Erosion of Managerial Authority, National Center for the Study of Collective Bargaining, CUNY Graduate Center, March 18, 2024
- What Town Officials Need To Know about the Potential Legal Pitfalls of Posting Town-Related Business on Their 'Personal' Social Media Accounts, Association of Towns Annual Training, New York City, February 18, 2024
- School Board Member Use of Social Media – Some Questions and Answers, 2023 Pre-Convention Law Conference, New York State School Boards Association, Oct. 26, 2023
- School Safety – Evolving Challenges and the Road Ahead, 2023 Summer Law Conference Series, New York State School Boards Association, July 18, 2023
- Communicating What Matters Now! First Amendment Rights in School, 2023 Annual School Law Conference, The Nassau Academy of Law, March 24, 2023
- Recent Court Decisions about Which Every Public Employer Should Know, Association of Towns, February 20, 2023, New York, NY.
- Panelist, "Communicating What Matters Now! First Amendment Rights in School," 2023 Annual School Law Conference, Nassau and Suffolk Academies of Law and the Education Law Committees of the Nassau and Suffolk County Bar Associations, Oakdale, New York, March 24, 2023
- Employee Speech and the First Amendment, New York State School Board Association's 26th Annual Pre-Convention School Law Seminar, October 27, 2022
- First Amendment in the Workplace: Managing Employee Speech in Polarizing Times, 2022 Fall Legal Conference, The State University of New York, October 13, 2022
- Staff Speech – *Kennedy* and its Impact on *Garcetti*, Free Exercise Standards, Counsel of School Attorneys - 2022 Fall School Law Seminar, October 11, 2022
- Recent Court Decisions About Which Every Public Employer Should Know, 47th Annual Conference, New York State Public Employer Labor Relations Association, Saratoga Springs, NY, July 11, 2022
- A Gold Mine of Recent Court Decisions - What Public Employers Need to Know, 51st Annual Training Conference, National Public Employer Labor Relations Association, in Austin, Texas, June 29, 2022
- Panelist, "Deal or No Deal - Disciplinary Proceedings in Cyberspace," 2022 Annual School Law Conference, Education Law Committees of Suffolk and Nassau County Bar Associations, April 8, 2022

- Staff Political Speech in Polarizing Times, Council of School Attorneys (COSA) Spring School Law Seminar in San Diego, CA, April 2, 2022
- Free Speech in the Era of Racial and Political Polarization, National PELRA, New Orleans, LA, November 9, 2021
- Student First Amendment Rights – An Update from the Supreme Court, NYSSBA Pre-Convention Law Conference, NYC, October 24, 2021
- Help Wanted: Managing Through the Current Labor Staffing Shortage, Bond Webinar, October 19, 2021
- Operating in a COVID-19 Environment, Long Island Association of School Personnel Administrators, Webinar, October 7, 2021
- Free Speech in the Era of Racial and Racial Political Polarization, New York State Public Employer Labor Relations Association, Saratoga Springs, NY, September 30, 2021
- The Biden Administration’s Employment Law Initiatives, Association of Independent Research Institutes, Webinar, September 13, 2021
- Helping Students Transition Back into an In-person School Environment, NYSSBA Summer Law Conference, Melville, NY, July 8, 2021
- COVID-19 - An Overview of Lessons Learned, NYSSBA Pre-Convention Law School Seminar, October 21, 2020
- COVID-19 Labor Issues as Staff Return to Work, Long Island Association of School Personnel Administrators, Part 1: July 29, 2020; Part 2: August 5, 2020
- Handling Mental Health Issues in School, National Business Institute, May 8, 2020
- Panel Member, The “Ayes” Have It: Legislative Update No. 1/An Overview of New Laws with a Focus on Employment Issues, 2019 School Law Conference, Nassau County Bar Association, December 6, 2019
- Sweeping Changes to New York Human Rights Law, Association of Towns 2020 Annual Meeting & Training School, New York, NY, February 17, 2020
- The Varying Landscape of Employment Discrimination, New York State School Boards Association, Rochester, NY, October 26, 2019
- Sweeping Changes to New York Human Rights Law: Employers Must Prepare Now, Bond, Schoeneck & King Webinar, August 29, 2019
- Child Victims Act: Impacts on the Insurance Industry, Bond, Schoeneck & King Webinar, July 23, 2019
- Sexual Harassment Litigation Strategies, County Attorney's Association of New York, Cooperstown, NY, May 20, 2019
- Solving the Mental Health Rubik's Cube in the Modern and Maddening Workplace, Long Island Association of School Personnel Administrators, March 6, 2019
- Sexual Harassment in the Era of Viral News, National Business Officers Association, February 7, 2019
- Holiday Season Postscript: An Update on Noncompete Agreements, The Journal of the Nassau County Bar Association, January 2019
- Switching to Offense in Employment Cases, Long Island Chapter Labor and Employment Relations Association, December 12, 2018

- Panel Member, How to Protect Your School District in the Age of the "Me Too" Movement, Annual School Law Conference, December 7, 2018
- Sexual Harassment in the Viral News World, New York State School Boards Association, Sheraton New York Times Square Hotel, October 26, 2018
- Switching to Offense in Employment Cases, New York State Bar Association Labor & Employment Law Section, Montreal, Quebec, Canada, October 12, 2018
- Student Activism: The Past Visits the Present Again, New York State School Boards Association, Plainview, NY, July 26, 2018
- Preventing Sexual Harassment in the Workplace, New York State Public Employer Labor Relations Association, Inc. (NYSPELRA), Saratoga Springs, NY, July 19, 2018
- Managing Employees in the Digital Era, The Accounting & Finance Show NY, Javits Center, New York, NY, July 11, 2018
- Social Media Investigations in the Workplace, County Attorneys' Association of the State of New York Annual Meeting, The Otesaga Hotel, Cooperstown, NY, May 21, 2018
- Title IX, Long Island Association of School Personnel Administrators, April 25, 2018
- Interviewee, Tower Talk Business Radio, February 23, 2018
- Panel Member, "Express Yourself!" - Standard for Disciplining Staff and Students for Exercising Their Freedom of Expression - Mock 3020-a Proceeding and Legal Analysis, 2017 Annual School Law Conference, December 8, 2017
- Religion in the Public Schools, New York State School Boards Association, October 13, 2017
- Hot Topics in Higher Education and Technology & School Policy~A Panel Discussion, Mid-Hudson School Study Council, Monroe-Woodbury High School, Central Valley, New York, August 4, 2017
- Sections 3020-a and 3020-b – A Timely Update, New York State School Boards Association, July 27, 2017
- Labor & Employment Law – What's Hot, What's New, What's Next, New York State Industries for the Disabled, October 6, 2017
- Aggressive Litigation Techniques in Defending Employment Cases, Bond's In-House CLE Series, February 27, 2017
- Digital Fingerprints: The Legal Double-Edged Swords of Social Media and Email, Long Island Association of School Personnel Administrators Event, December 1, 2016
- Hot Topics in Public Sector Employment Law, Association of Towns of the State of New York 2016 Personnel Management School, November 18, 2016
- Student Use of Heroin and Other Drugs – The Legal Issues and More, New York State School Boards Association, October 27, 2016
- Labor & Employment Law Developments and What They Mean for Your Agency, New York State Industries for the Disabled, September 8, 2016
- Investigations & Student Rights Relative to Social Media, Mid-Hudson School Study Council, August 5, 2016
- Litigating and Defending Retaliation Claims: Overcoming the Complex Challenges of These Claims and Pitfalls to Avoid, American Conference Institute

8th Annual Forum on Defending and Managing Employment Discrimination Litigation, July 28, 2016

- Transgender Individuals in the Schools: Lingering Issues, New York State School Boards Association, July 21, 2016
- First Amendment Claims and Employer Counter-Claims, New York State Public Employer Labor Relations Association, July 20, 2016
- Guidance on Transgender and Gender Nonconforming Students, Mid-Hudson Catskill Council of Superintendents, April 12, 2016
- Public Education and the Law – The New Frontier: From Debates over Implementation of the Common Core to Student Opt-Outs of Standardized Testing, as well as the Rights of Transgender Individuals in the Schools – Where Will it End?, New York State Bar Association, Committee on Law, Youth & Citizenship, January 27, 2016
- Transgender Students and Employees, Nassau and Suffolk Academies of Law, School Law Conference, December 14, 2015
- Transgender Individuals in the Schools – Lingering Issues, New York State School Boards Association, October 18, 2015
- Update on Age Discrimination Litigation Trends: The Latest Class Action Developments, Guidance on Wrongful Reduction in Force Claims, and Practical Solutions for Overcoming the Most Common Challenges Employers are Now Facing in the Age Discrimination Landscape, American Conference Institute's 7th Annual Forum on Defending and Managing Employment Discrimination, July 27, 2015
- The New APPR – What Does It All Mean?, New York State School Boards Association Summer Law Conference, July 23, 2015
- §3020-a Proceedings in the Age of APPR, New York State School Boards Association, January 14, 2015
- Title IX, Transgender and Inter-Scholastic Sports, Nassau and Suffolk Academies of Law, School Law Conference, December 8, 2014
- Social Media in the Schools – The Legal v. Practical Issues, New York State School Boards Association, October 27, 2014
- Social Media, New York State Association of School Personnel Administrators, October 20, 2014
- Big Brother is Watching...But is it Legal? A Review of Current Issues Relating to Background Checks - Panelist, New York State Bar Association, Labor & Employment Law Section, Fall Meeting, September 13, 2014
- Religious Discrimination, American Conference Institute, August 1, 2014
- Section 3020-a Proceedings in the Age of APPR, New York State School Boards Association, July 24, 2014
- Legal Update for School Stakeholders, Mid-Hudson School Study Council, April 10, 2014
- The Changing Face of School Athletics, New York State School Boards Association, January 9, 2014
- What Every School Board member Should Know About Litigation, New York State School Boards Association, October 26, 2013

- Sexual Harassment Involving Faculty Under Title IX, Touro College Jacob D. Fuchsberg Law Center, April 5, 2013

## Representative Publications

- "A Case of First Impression in the Second Circuit: Court Rules Garcetti Defense Not Applicable to Professor's Claim of Academic Freedom," *Bond's Higher Education Law Report*, September 7, 2023
- "A Case Worthy of Ushering in the Dog Days of Summer," *Bond's New York Labor and Employment Law Report*, July 6, 2023
- "Don't Let Your Office Become 'The Office'," *Long Island Business News*, June 26, 2020
- "Can the Wisdom of a Guns N' Roses Song Help Us Avoid a Retaliation Claim?," *New York Law Journal*, November 1, 2019
- "What Employers can do About Employee Activism," *Long Island Business News*, November 1, 2019
- "Applying Martial Arts Philosophy to Employment Law," *Long Island Business News*, September 13, 2019
- Quoted in "The Reviews are In," *Long Island Business News*, September 13, 2019
- The Sound of Silence: Seventh Circuit Holds That Undocumented Misconduct is Still Misconduct, *JD Supra*, August 6, 2019
- Employment Law Through the Philosophy of a Martial Arts Practitioner, *JD Supra*, July 15, 2019
- An Old "SNL" Skit, A New Court Decision, and How Rumors Can Lead to Sexual Harassment Liability, *JD Supra*, March 6, 2019
- Co-Author, *2019 Chambers USA Regional Employment Guide*, New York Chapter
- Immigration and Related Foreign Workers, Contributing Author, *Chambers and Partners*, October 2018
- Dr. Dolittle and the Faithless Servant Doctrine in 2018 (So Far), *New York Labor and Employment Law Report*, August 2018, also published in *JD Supra*, August 21, 2018
- Class action waivers - good for business or bad for employees?, *Long Island Business News*, August 2018
- "Litigation Over The Flu Shot: A New Symptom Of Flu Season," *Law360*, February 23, 2018
- "The Faithless Servant Doctrine: An Olden Law for Modern Times," *Nassau Lawyer*, January 2018
- "'Brute Reason' or Lack of Nuance: Seventh Circuit's Twin Holdings That a Long Term Leave is Not a Reasonable Accommodation May...," *JD Supra*, December 1, 2017
- Quoted in "Ignore at your own peril," *Long Island Business News*, November 17, 2017
- "Ships Passing in the Night: The First Amendment and the Employee Grievance," *Nassau Lawyer*, July/August 2017



- "Adding Inevitability to the Often Disfavored Inevitable Disclosure Doctrine," *New York Labor and Employment Law Report*, April 27, 2017
- "A 'Fair and Balanced' Look at a Salary Claw-Back Against an Alleged Serial Sexual Harasser," *New York Labor and Employment Law Report*, April 20, 2017
- "Federal Appeals Court Rules That Transgender Students Can Use Restroom of Choice," *JD Supra*, June 1, 2017
- "Adding Inevitability to the Often Disfavored Inevitable Disclosure Doctrine," *JD Supra*, May 1, 2017
- "A 'Fair and Balanced' Look at a Salary Claw-Back Against an Alleged Serial Sexual Harasser," *JD Supra*, April 21, 2017
- Quoted in "Suits and Armour: Top 5 Reasons Employers Are Sued by Their Workers, and How to Cut Your Risk," *Long Island Business News*, August 15, 2016
- "Employment Law's "Hulk"-Like Superhero — The Faithless Servant Doctrine — Just Got Stronger," *New York Labor and Employment Law Report*, June 7, 2016, also published in *JD Supra*, June 8, 2016
- "How Would A Noncompete Hold in The 'Star Wars' Universe?," *New York Labor & Employment Law Report*, February 25, 2016
- "Privilege Issues in the Media Firestorm," *Higher Education Law Report*, February 3, 2016, also published in *JD Supra*, February 4, 2016
- "'Cat's Paw' Liability in faculty Decision-Making," *Higher Education Law Report*, January 8, 2016, also published in *JD Supra*, January 11, 2016
- "Lloyd Dobler's View of Job Responsibilities Can't Defeat Garcetti Defense," *New York Labor & Employment Law Report*, December 19, 2015, also published in *JD Supra*, December 10, 2015
- "School Districts: New Continuing Education and Registration Requirements Still on the Horizon for 2016-2017," *JD Supra*, November 5, 2015
- "Employee's "Trick" Results in a Halloween Bag of Rocks From the Jury," *New York Labor and Employment Law Report*, October 15, 2015, also published in *JD Supra*, October 16, 2015
- "School Districts: Changes to APPR And Teacher Tenure," *JD Supra*, April 17, 2015
- "Pooh Corner and a Zen Approach to Employment Law," *New York Labor & Employment Law Report*, March 2015, also published in *JD Supra*, March 27, 2015
- "A Labor and Employment Audit of Santa's Workshop," *New York Labor & Employment Law Report*, November 2014, also published in *JD Supra*, November 13, 2014
- "Sun Tzu – And the Art of Defending an Employment Discrimination Claim," *New York Labor & Employment Law Report*, August 2014, also published in *JD Supra*, August 14, 2014
- Howard M. Miller, Louis P. DiLorenzo and Christopher T. Kurtz, "Striking Out A-Rod: The Faithless Servant Doctrine," *Law360*, February 14, 2014, also published in *JD Supra*, February 18, 2014
- "When Complaining About "Everything" Defeats A Retaliation Claim," *Bond Higher Education Law Report Blog*, January 31, 2014

## Other Activities

- *Long Island Business News*, 2017 Leadership in Law Award