



## Mark A. Berman

### Member

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### Profile

**Mark represents both plaintiffs and defendants in a wide range of complex business disputes as well as in real estate, employment and in technology, higher education and e-discovery conflicts. Mark is a seasoned appellate attorney. He has been a court-appointed discovery master in a significant business litigation. His extensive experience allows him to assess his clients' matters, develop sound solutions and position his clients for successful outcomes.**

Mark's practice largely focuses on business, real estate and complex title litigations. He represents public and private companies, partnerships, law firms, universities, lenders, title insurance companies, investment advisors, non-profit organizations, real estate developers, commercial property owners and tenants, condominiums, cooperatives and their sponsors, as well as individuals, in disputes related to breach of contract, fraud, breach of fiduciary duty, forgery, insurance, construction, licensing and trespassing. He also resolves conflicts between shareholders, boards and managing agents.

Mark's litigation includes:

- Disputes between current and former business partners in numerous types of complex business disputes;
- Technology and E-discovery controversies;
- Bank and insurance fraud;
- Phishing and hacking disputes;
- Disputes concerning the construction and the demolition of buildings as well as in leasing, air rights, trespass, easement and licensing controversies;
- Insurance declaratory judgment actions;
- Employment disputes for both management, including enforcement of non-competition provisions;
- Matters for condominiums and cooperatives and also for sponsors and investors, as well as for unit owners, relating to construction, property damage, shareholder, board and managing agent disputes;
- Indemnification and contribution claims; and
- Complex title insurance disputes.

### Education

- Benjamin N. Cardozo School of Law (J.D., *magna cum laude*, 1990)
- Columbia College, Columbia University (A.B., 1986)

### Bar/Court Admissions

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

### Practices

- Litigation
- Cybersecurity and Data Privacy
- Artificial Intelligence
- Higher Education

Prior to joining Bond, Mark was a litigation partner with Ganfer Shore Leeds & Zauderer and before that was a commercial litigation associate with Skadden, Arps, Slate, Meagher & Flom in New York City. Mark also previously served as a Judicial Law Clerk for the Hon. Michael L. Orenstein, United States Magistrate Judge for the Eastern District of New York. He has authored a regular column on e-discovery in *The New York Law Journal* since 2005 and now is the author of *The Virtual Lawyer* column. His articles have been quoted in both appellate and trial court decisions. Mark was awarded an Innovation Award in 2021 by *The New York Law Journal*. He is a Commissioner and co-chair of Technology on the Chief Judge's Commission to Reimagine the Future of the New York Courts. He is also a member of the Commission's Post-Pandemic Working Group and Court Modernization Action Committee. Mark is also a member of the Appellate Division, Second Department's Artificial Intelligence Task Force.

Mark also served on the Executive Committee of the New York State Bar Association (NYSBA) as a Member-At-Large and was the founding chair of its Committee on Technology and the Legal Profession. He is a former Chair of NYSBA's Commercial and Federal Litigation Section and co-chairs its Commercial Division Committee.

He has taught a Law and Technology class at Syracuse, Albany and City University Law Schools as well as seminars on Artificial Intelligence at Columbia and Hofstra Law Schools.

## Representative Matters

- Represented a property owner in a multi-week breach of contract trial commenced by a broker that successfully resulted in a judgment in favor of the property owner
- Represented iconic condominium in breach of contract and insurance dispute
- Represented a major hotel in a Yellowstone injunction dispute with its tenant
- Represented major law firm in a technology and trade secret dispute
- Represented an investment advisory firm in a derivative action under Cayman Island law
- Represented title insurance companies in breach of contract actions
- Represented major equipment manufacturer in breach of contract and fraud action
- Represented plaintiff concierge company in an antitrust litigation and before the United States Surface Transportation Board
- Defended company in a class action alleging violation of the Fair and Accurate Credit Transaction Act
- Represented insured property owners and lenders in complex title disputes involving fraud
- Represented plaintiff beverage distributor against a multi-national drink manufacturer in a breach of contract arbitration
- Defended Fortune 500 company in a malicious prosecution litigation
- Represented condominium owners in disputes with their sponsor and architect in defective design and construction litigations

- Represented developer in an air rights dispute relating to a major New York City hotel
- Represented employees and employers in breach of contract actions
- Represented developers and building owners in licensing disputes relating to neighboring construction

## Honors & Affiliations

- Listed in:
  - *New York Super Lawyers*®, Business Litigation, 2023-2024
  - *Martindale-Hubbell*®, AV Preeminent Rated, Business Litigation
  - *The American Lawyer & Corporate Counsel*, Top Rated Lawyer in Commercial Litigation
- New York Chief Judge's Commission to Reimagine the Future of the New York Courts, Commissioner, 2021-Present
  - Member, Post-Pandemic Working Group, 2022-Present
  - Member, Court Modernization Action Committee, 2023-Present
- New York State Bar Association
  - Co-Chair, The Task Force on the Post-Pandemic Future of the Profession, 2022-Present
  - Co-Chair, Commercial and Federal Litigation Section, Commercial Division Committee, 2017-Present
  - Member, Executive Committee "At Large" Representative, 2018-2022
  - Chair, Committee on Technology and the Legal Profession, 2017-2020
  - Chair, Commercial and Federal Litigation Section, 2016-2017
  - Co-Chair, Commercial and Federal Litigation Section, Social Media Committee, 2013-2016
- The New York Bar Foundation, Fellow, 2015-Present
- New York State Court System, Electronic Discovery Working Group, Education Subcommittee Member, 2010-Present
- Federal Bar Council, Second Circuit Courts Committee Member, 2008-Present

## Representative Publications

- Quoted, "'You Can't Do What You've Been Doing,' Lawyer Warns Union as Litigation Heats Up," *Law.com*, December 6, 2024
- Generative AI: Confidentiality, Verification, Client Consent and Billing, *New York Law Journal*, August 30, 2024
- Quoted, "Judge Rejects Donald Trump's Request to Speak at Summations in Civil Fraud Trial," *New York Law Journal*, January 10, 2024
- Time To Embrace AI: Client Counseling on AI Will Be Imperative, *New York Law Journal*, December 29, 2023
- Quoted, "Landlord Creditors Wiped Out in WeWork Collapse May Have Advantage in Bankruptcy Court," *New York Law Journal - Law.com*, November 14, 2023

- A Negligent Cybersecurity Breach!, *New York Law Journal*, November 6, 2023
- Meet the Jetsons: Virtual Lawyering, *New York Law Journal*, September 1, 2023
- Co-Author, "Your Commercial Division 'Tool Kit,'" *New York Law Journal - Law.com*, August 17, 2023
- ChatGPT: To Use or Not to Use -- That is the Question!, *New York Law Journal*, June 29, 2023
- Google Docs, Google Drive and Dropbox: What To Know in Litigation About Using Cloud Storage, *New York Law Journal*, May 1, 2023
- Litigation in New York: Post Pandemic, Part 2, Co-Author with New York Supreme Court Justice Craig Doran, *New York Law Journal*, March 15, 2023
- Litigation in New York: Post Pandemic Co-Author with New York Supreme Court Justice Craig Doran, *New York Law Journal*, March 6, 2023
- New York's New Cybersecurity Mandatory CLE Requirement and a Roadway to Cyber-Claims, *New York Law Journal*, December 30, 2023
- The Future of Virtual Lawyering in New York State, Co-Author with New York Supreme Court Justice Craig Doran, *New York Law Journal*, October 31, 2022
- Social Media Evidence Admissibility, *New York Law Journal*, September 6, 2022
- Creative Digital Service of Process, *New York Law Journal*, July 1, 2022
- Settlement Agreement by Email, *New York Law Journal*, May 2, 2022
- Nuances on Virtual Proceedings, *New York Law Journal*, February 28, 2022
- Something Special for the Commercial Litigator, *New York Law Journal*, February 17, 2022
- New Rule on Taking Remote Depositions, *New York Law Journal*, January 3, 2022
- ESI in the Cloud and the Use of Dropbox, *New York Law Journal*, November 1, 2021
- Compelling a Virtual Arbitration Over Objection, *New York Law Journal*, September 3, 2021
- Virtual Proceedings: Technology Can Ensure Fairness, *New York Law Journal*, July 2, 2021
- Virtual Bench Trial Protocols, *New York Law Journal*, May 3, 2021
- Reimagining the Technology of New York's Courts, *New York Law Journal*, March 31, 2021
- In-Person Versus Virtual Bench Trials, *New York Law Journal*, January 4, 2021
- Remote Depositions in State Court: Can They Be Compelled?, *New York Law Journal*, November 2, 2020
- Q&A Interview of Mark A. Berman: Lawyering Remotely in the Age of COVID, *New York Law Journal*, September 2, 2020
- Triggering and Production of 'Litigation Holds', *New York Law Journal*, August 31, 2020
- Editor/Author, The Virtual Lawyer E-Book, *New York State Bar Association*, Summer 2020
- Cybersecurity Education for Lawyers, *New York Law Journal*, July 6, 2020

- Are Non-Party Attorney Fees Recoverable as a Reimbursable ESI Production Expense?, *New York Law Journal*, May 4, 2020
- Remote Computing: Cyber Protection From Home, *New York Law Journal*, March 16, 2020
- Cybersecurity ‘Hygiene’ for Lawyers, *New York Law Journal*, March 16, 2020
- Email Spoliation Sanctions, Timing is Everything, *New York Law Journal*, January 7, 2020
- ComFed’s 2019 Social Media Ethics Guidelines, *New York Bar Association Journal*, September/October 2019
- Social Media, Jurors and Jury Instructions, *New York Law Journal*, November 5, 2019
- Who Pays for E-Discovery Attorney Fees and Vendor Expenses? , *New York Law Journal*, September 3, 2019
- 2019 Social Media Ethics Guidelines, *New York Law Journal*, July 2, 2019
- Audit Trail ‘Meta Data’ Leaves Tell-Tale Signs in Medical Malpractice Actions, *New York Law Journal*, May 6, 2019
- Social Media Demands Must Be Tailored and Reasonable, *New York Law Journal*, March 4, 2019
- Women Attorneys in Tech: Four Industry Leaders Talk About Their Work, *New York Bar Association Journal*, January/February 2019

## Representative Presentations

- An Interview with Mark Berman, Commercial Litigation, Legally Bond Podcast, November 20, 2023