



Mark A. Finkelstein

Partner

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Mark is a highly experienced trial lawyer who regularly tries cases to juries, judges and arbitration panels. He is also certified as a mediator by the North Carolina Disputes Resolution Commission. Mark uses these experiences to work with clients to avoid disputes and resolve controversies in the most cost-effective manner possible.

Mark's practice spans a wide range of litigation and legal advice regarding matters of business, intellectual property, corporate disputes, construction, environmental issues, unfair or deceptive trade practices, contracts, fiduciary duty, breach of covenant of good faith and fair dealing, trade secret protection and employment matters. His successes extend to obtaining summary judgment in North Carolina state and federal courts.

Mark has presented to lawyers and judges on topics as far ranging as ethical issues for in-house counsel dealing with e-discovery to practice before the North Carolina Business Court. He also seeks additional opportunities to serve as efficient local counsel to out of state barristers, solicitors and attorneys in matters pending in Business Court, United States District Court and North Carolina Superior Court.

Recent and Reported Cases

- *Devonwood-Loch Lomond Lake Association, Inc. et al v. City of Fayetteville et al.* 5:18 cv 270-H (E.D.N.C. August 15, 2019) (Defended claims for (1) an unconstitutional taking without compensation under 42 USC Section 1983; (2) breach of easements; (3) unlawful appropriation; (4) negligence; (5) violation of North Carolina's Stormwater Management Act; (6) nuisance; (7) trespass; and (8) unjust enrichment. Obtained a dismissal of all claims against our client pursuant to Federal Rule 12(b)(6).)
- *Piazza v. Kirkbride*, ___ N.C. ___ (May 10, 2019) (Represented on appeal a member of a Technology Company Board of Directors in the first North Carolina Securities Act case to reach the North Carolina Supreme Court in 35 years)
- *Cornetti v. Lewis and Saad, LLC* 18 CVS 12537 (March 8, 2019 Wake County Superior Court) (Defended Negligent Supervision, Training and Retention Claim; obtained directed verdict on Punitive Damages Claim and a verdict of less than 5% of what Plaintiff sought in an admitted liability case)
- *Finkel et al. v. Palm Park, Inc. et al.*, 17 CVS 14515 (October 24, 2018)(North Carolina Business Court) (Advanced claims and avoided dismissal under Rules 12(b)(1) and 12(b)(6) of claims for breach of fiduciary duty, dissolution, sale to LLC Member in lieu of dissolution and action for company information in a minority interest freeze out case)



- *Graves v. DJF Builders, Inc.*, 16 CVS 014231 (Jury Trial before Business Court Judge Gregory P. McGuire, Wake County, November 2017) (Obtain a dismissal of all claims in an action for Declaratory Judgment, Trespass, Negligence and Nuisance)
- *Public Works Commission of the City of Fayetteville v. City of Fayetteville*, 14 CVS 7782 (Cumberland County, May 23, 2016) (represent Commission and Commissioners in a declaratory judgment and breach of fiduciary duty action regarding authority over a utility operation with over one billion dollars in assets and a \$350 million budget)
- *Kirkbride v. Piazza*, ___ N.C.App. ___ (April 5, 2016) (Represent director of startup technology company in a North Carolina Securities Act and Unfair Trade Practices Act appeal after obtaining summary judgment for another director who was also the company's lawyer)
- *Sopko Individually and Derivatively on Behalf of Stancill and Sopko, PA v. Stancill* (2015 NCBC 14 – North Carolina Business Court 2015) (Breach of fiduciary duty and business tort case)
- *Lonesource, Inc. v. United Stationers Co.*, 2013 WL 1309290 (EDNC 2013) (Summary Judgment in a fraud, breach of contract, G.S. 75-1.1 unfair trade practice, tortious interference with contract and declaratory judgment case)
- *Lonesource, Inc. v. United Stationers Supply Co.*, 2012 U.S. Dist. LEXIS 100349 (EDNC 2012) (Distributor/wholesaler dispute)
- *Laster v. Francis*, 199 N.C. App. 572, 681 S.E. 2d 858 (2009) (Real Property and Fiduciary Duty Case)
- *State ex rel. Cooper v. State Properties, LLC*, 2009 N.C. App. Lexis 2010 (Feb 17, 2009) (Regulatory Appeal)
- *UAW-GM Center For Human Resources V. Workplace Benefits, LLC*, 2008 U.S. Dist. LEXIS 7521; 2008 WL 283728 (E.D. MI. 2008) (Benefits contract dispute)
- *Mineo & Crouse, PLLC v. Mineo*, 189 N.C. App 232, 658 S.E. 2d 33 (2008) (Limited Liability Company Governance and Breach of Fiduciary duty case)
- *WMS, Inc. v. Alltel Corp*, 185 N.C.App 86, 647 S.E.2d 623(2007) (Arbitrability of affirmative defenses in an Unfair Business Practice case)
- *WMS, Inc. v. Weaver*, 183 N.C. APP. 295, 644 S.E.2d 567 (2007) (Fees and costs in an Unfair Business Practices case)
- *Kroger Limited Partnership v. Guastello*, 177 N.C. App. 386, 628 S.E.2d 841 (2006) (bench trial of commercial lease dispute)
- *Tejal Vyas, LLC v. Carriage Park Limited Partnership*, 359 N.C. 315, 608 S.E.2d 751 (2005) (Jurisdictional dispute in a business fraud case)
- *WMS, Inc. v. Weaver*, 166 N.C. App. 352, 602 S.E.2d 706 (2004), cert. denied 359 N.C. 197, 602 S.2d 706 (2004) (arbitration prosecution of multimillion dollar breach of the covenant of good faith and fair dealing and unfair trade practices case)
- *Lighthouse Car Wash Systems, LLC v. Illuminator Building Co., LLC*, 2004 WL 2750251 (S.D. Ind. 2004) (defense of patent infringement action)
- *Emergency One, Inc. v. American Fire Eagle Engine Co.*, 332 F.3d 264 (4th Cir. 2003) (jury trial representation of defendant/counter claimant in a trademark infringement action)
- *State Properties, LLC v. Ray*, 155 N.C. App. 65, 574 S.E.2d 180 (2002) (jury trial prosecution of fraud and unfair trade practices in commercial real property transaction case)
- *Clayton v. Stephens*, 6 F.Supp.2d 480 (E.D.N.C. 1996) (defense of RICO, RCRA, negligence, tortious interference with contract, fraud, breach of contract, and unfair trade practices case)



- *Crown Cork & Seal Co., v. Dockery*, 907 F.Supp. 147 (M.D.N.C. 1995) (defense of CERCLA action)
- *Horsehead Resource Development Co. v. Browner*, 16 F.3d 1246 (D.C. Cir. 1994) (administrative review of Environmental Protection Agency Regulations)
- *Barr-Mullen, Inc. v. Browning*, 108 N.C. App. 590, 424 S.E.2d 226 (1993) (prosecution of Trade Secret Protection Act action obtaining injunctive relief)
- *Ellis v. Northern Star, Co.*, 326 N.C. 219, 388 S.E.2d 127 (1990) (jury trial prosecution of business defamation and unfair or deceptive trade practices action)
- *Bolton Corp. v. T.A. Loving Co.*, 94 N.C. App. 392, 380 S.E.2d 796 (1989) (jury trial representation of HVAC contractor for delay and disruption caused by general contractor)

Before Fox Rothschild

Mark was a partner at Smith Moore Leatherwood LLP, which combined with Fox Rothschild in 2018. In 2015, he was President of the Tenth Judicial District Bar which included over 5000 lawyers in Wake County, Raleigh, Cary and parts of Research Triangle Park. He is an executive committee member and former President of the Chief Justice Susie M. Sharp Inn of Court.

Beyond Fox Rothschild

Mark is a Certified Superior Court Mediator with the North Carolina Dispute Resolution Commission and serves on the Mediation Panel of the U.S. District Court for the Eastern District of North Carolina. He was formerly registered as an arbitrator and neutral for the American Arbitration Association (AAA) and National Association of Securities Dealers (NASD),

Mark is a state certified judicial campaign treasurer and served on the faculty of the National Institute for Trial Advocacy. He recently stepped down as Secretary to the Outreach Committee of Christ Church. He measures his marriage to Lisa (Wake Forest Law Review class of 1988) in "Dog Lives" – they are on their third mischievous Golden Retriever (who have helped them raise two kind and mischievous children).

Honors & Awards

- North Carolina Pro Bono Honor Society (2017, 2018)
- Named to "The Best Lawyers in America" list for Commercial Litigation in North Carolina by *Best Lawyers* (2015-2021)
- North Carolina *SuperLawyers*, Listed Business Litigation (2007, 2009-2021)
- *Super Lawyers Business Edition*, Business Litigation (2013-2015)
- Martindale-Hubbell's top (AV) Peer Review Rating
- Listed, *Who's Who in American Law* and *Who's Who in the South and Southeast*
- Fellow, Litigation Counsel of America
- Fellow, American Bar Foundation

Practice Areas

- Litigation
- Directors' & Officers' Liability & Corporate Governance
- Alternative Dispute Resolution
- Antitrust



- Employment Litigation
- Environmental
- Franchising & Distribution
- Real Estate
- Eminent Domain/Condemnation
- Media & Defamation

Bar Admissions

- North Carolina

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, District of Columbia Circuit
- U.S. Court of Appeals, Third Circuit
- U.S. Court of Appeals, Fourth Circuit
- U.S. District Court, Eastern District of North Carolina
- U.S. District Court, Middle District of North Carolina
- U.S. District Court, Western District of North Carolina
- U.S. District Court, Eastern District of Michigan

Education

- University of North Carolina School of Law (J.D., *with honors*, 1985)
- Grinnell College (B.A., *with honors*)

Memberships

- Chief Justice Susie M. Sharp Inn of Court
 - Past President
- Federal Bar Association
- Legal Committee of the NAACP Raleigh-Apex Chapter
- National Association of Environmental Professionals
 - Chairman, Ethics Committee
 - 18th Annual Conference Steering Committee
- North Carolina Bar Association
 - Committee on Law Related Education
- Rosenfield Committee on Public Affairs, International Relations and Human Rights
- Tenth Judicial District Bar (Raleigh/Wake), past President
- U.S. Council for International Business (Business and Industry Advisory Committee to the Organization for Economic Cooperation and Development (OECD) and the International Chamber of Commerce)
 - Committee on the Environment,
- Wake County Bar Association
 - Vice Chair, Professionalism Committee



Board of Directors

- Tenth Judicial District State Bar
- Carolina Legal Assistance
- Clean Water Fund Lead Testing, Inc.
- Mediation Services of Wake, Inc., Vice President
- Raleigh Environmental Quality Advisory Board, Chairman
- Wake County Bar Association

Events

Annual CEO/CFO Outlook Panel

February 20, 2020 at 7:30am – 9:00am

Sheraton Imperial Hotel

Hosted by: Association of Corporate Growth

Know Your Mediation Rules and Your Mediation Tools

September 12, 2019 at 12:45pm – 2:45pm

NC State Bar

Hosted by: NC State Bar

Legal Writing for Litigators

March 13, 2019

North Carolina State University's University Club

Hosted by: Chief Justice Susie M. Sharp Inn of Court

Responding to Mediation Advocates' Best & Worst Practices

September 13, 2017

Campbell University School of Law

Hosted by: Wake County Bar Association's Certified Mediator Education Program

Association of Corporate Counsel Charlotte Chapter CLE

March 6, 2013

Hosted by: Association of Corporate Counsel Charlotte Chapter