

# WILENTZ

—ATTORNEYS AT LAW—

WILENTZ, GOLDMAN & SPITZER, P.A.

## Appellate Practice

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

The Appellate team of Wilentz, Goldman & Spitzer, P.A. consists of experienced litigators and former judges including Frank M. Ciuffani, retired Presiding Judge of the New Jersey Superior Court, General Equity Division and Probate Judge of Middlesex County. Judge Ciuffani along with Brian J. Molloy are co-chairs of the Appellate team where they oversee a group of experienced litigators in appeals in both the state and federal Courts. Wilentz is frequently retained to handle appeals in cases where other law firms served as trial counsel.

Many of our attorneys started their training in appellate practice while serving as judicial clerks to justices and judges on the New Jersey Supreme Court, the Appellate Division and the District Court of New Jersey.

In every tried case, there is a winner and a loser. If you are contemplating an appeal, our Appellate Practice Team can help. We have extensive appellate experience and a regular presence before both the federal and state appellate courts, and we collectively have a history, background and training in all facets of the appellate process — deciding whether and when to present an emergent application, move for leave to appeal, appeal from final judgments, how to structure appellate arguments, and the presentation of effective oral argument before appellate courts.

If your case is important enough to appeal or to defend on appeal, it should be important enough to hire experienced appellate counsel. However, we recognize the practical need to have appeals handled in a thorough and professional yet economical fashion, a goal that we achieve by combining the talents of junior attorneys under the supervision and guidance of experienced senior appellate attorneys practicing within the Appellate Practice Team. Regardless of the size of the case, we are prepared and have the resources to commit to the handling and management of appellate matters from inception to conclusion.

### Representative Cases

- In a case before the Appellate Division involving a novel interpretation and application of the redevelopment law, the firm defeated significant challenges in upholding the municipality's designation of its central business district as an area in need of redevelopment.
- After being retained as appellate counsel, the firm successfully reversed a trial court's orders excluding an expert report submitted after the discovery deadline, and granting summary judgment to defendants in a professional malpractice action.
- The firm established in a case of first impression that an exculpatory release, executed by a decedent as a condition to receiving scuba diving instructions, does not preclude the decedent's heirs from bringing a wrongful death action pursuant to New Jersey statute, and that the exculpatory agreement was unenforceable and void as against public policy.
- The firm successfully represented a major electric utility in upholding the comprehensive orders of the Board of Public Utilities, following lengthy, multi-party proceedings culminating in the restructuring of the electric utility industry in New Jersey. The firm, in the Appellate Division, the New Jersey Supreme Court, and the United States Supreme Court, overcame disputes over complex fact-finding regarding the valuation of power plants and the securitization of stranded original investment costs and numerous constitutional, statutory and procedural claims.
- After the trial judge refused to grant a temporary restraining order against the award of a municipal contract, the firm successfully filed a motion for leave to appeal and for emergent relief, with the

Appellate Court, which reversed the trial court's decision and directed issuance of an injunction. After trial, the firm's client prevailed on its claims.

- In an unusual procedural case involving ancillary relief, the firm successfully petitioned the New Jersey Supreme Court to require an appellant to include in its supercede as bond counsel fees awarded by the trial court, after the trial court, Appellate Division and a single Justice of the Supreme Court refused to do so.
- The firm was successful on a motion for leave to appeal before the Appellate Division in reversing an order of the trial court that disqualified a law firm that had been extensively involved in the trial of the case.
- The firm successfully represented an Abbott school district in complex and controversial litigation in the New Jersey Supreme Court, challenging budgets and programs for special-needs children.
- The firm obtained a favorable ruling from the Third Circuit Court of Appeals, reversing the dismissal of the action by the district court regarding the due diligence requirement imposed upon counsel in connection with the practice of naming fictitious parties in a complaint.
- The firm was successful in the Appellate Division in upholding a grant of summary judgment by the trial court in a matter in which the ownership of substantial commercial and residential property was at issue.