

**KATES NUSSMAN ELLIS**  
**FARHI & EARLE, LLP**  
**NOAH ZAKIM, ESQ., I.D. # 021422009**  
 190 Moore Street, Suite 306  
 Hackensack, New Jersey 07601  
 201-488-7211  
 noah@nklaw.com  
 Attorneys for Plaintiff Yin Yee Ethel Choi

<p><b>YIN YEE ETHEL CHOI,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>SUNG MIN KIM, ESQ. and</b>  <b>KIM, CHOI &amp; KIM. P.C.</b></p> <p style="text-align: center;"><b>Defendants</b></p>	<p><b>SUPERIOR COURT OF NEW JERSEY</b>  <b>LAW DIVISION: BERGEN COUNTY</b></p> <p style="text-align: center;"><b>DOCKET #: BER-L-_____-24</b></p> <p style="text-align: center;"><b><u>CIVIL ACTION</u></b></p> <p style="text-align: center;"><b>COMPLAINT FOR LEGAL</b>  <b>MALPRACTICE</b>  <b>With</b>  <b>AFFIDAVIT OF MERIT</b>  <b>PURSUANT TO N.J.S.A. 2A:53A-27</b></p>
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Plaintiff **YIN YEE ETHEL CHOI**, by way of Complaint against the Defendants, says upon information and belief, as follows:

**THE PARTIES and THE NATURE OF THE DISPUTE**

1. Plaintiff, YIN CHEE ETHEL CHOI (hereinafter referred to as “Plaintiff”), is an individual, who at all times material was and is a resident of Bergen County.
2. Defendant, SUNG MIN KIM, ESQ. , was and is at all times herein material, an attorney at law, duly admitted to practice law in New Jersey, with offices in Palisades Park, Bergen County, New Jersey.
3. Defendant, KIM, CHOI & KIM, P.C. is a New Jersey Professional Corporation, engaged in the practice of law with offices in Palisades Park, Bergen County, New Jersey which

at all times relevant, employed defendant SUNG MIN KIM, ESQ. as an attorney and as its agent and servant for the purpose of representing the interests of its clients in connection with various legal matters entrusted to them.

4. In or about February 2022, Plaintiff engaged the services of the defendant attorney and his law firm, for the purpose of representing her and her legal interests in connection with a certain piece of real property situated at 14 MacArthur Avenue in Closer, Bergen County.

5. Defendants accepted the engagement of Plaintiff and proceeded to represent her legal interests in connection with the sale of her real property at 14 MacArthur Avenue in Closter, New Jersey.

7. Upon information and belief, at the same time that Defendants were representing the Plaintiff in connection with the sale of her real property, they concurrently represented the interests of certain non-parties to this action, named Thomas Choi (no relation to Plaintiff) and his company, Acculux Construction, LLC (“Acculux”),<sup>1</sup> whose interests were in conflict with those of the Plaintiff.

7. Defendants further engaged in the aforesaid representation without the permission or informed consent or the knowing waiver of the conflict with Plaintiff, as required by accepted professional standards of care and practice, and in violation of NJ Rule of Professional Conduct 1.7. and 1.4 and other Rules.

8. In so doing, Defendants’ representation of Plaintiff, was tainted by conflicts of interest thereby violating accepted standards of care and legal practice, was in breach of Defendants’ fiduciary duties to Plaintiff, and was otherwise negligent, careless, and reckless, as more particularly set forth hereinbelow.

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<sup>1</sup> Thomas Choi and Acculux are defendants in a separate action brought by Plaintiff, bearing Docket No. BER-L-6699-23 pending in this court.

9. By reason of Defendants' failures to comply with accepted standards of care and legal practice as aforesaid, Plaintiff was thereby caused to suffer actual damage.

10. Accordingly, this is an action for legal malpractice, breach of fiduciary duty and related claims arising out of the Defendants' deficient representation of Plaintiff in connection with the aforesaid engagement for which Plaintiff now seeks monetary damages.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over the claims, allegations, and causes of action alleged in this lawsuit.

12. Venue is proper in this Court because the parties reside and/or do business in Bergen County and the real estate that is the subject of the representation is situated in Bergen County.

### **FACTS COMMON TO ALL ALLEGATIONS**

13. In or about December 2021, at the direction of Thomas Choi, Plaintiff purchased the property at 14 MacArthur Avenue in Closter, New Jersey, as an investment, with the intention of having it renovated by Thomas Choi and his company Acculux Construction, LLC and then re-selling it at a profit.

14. In or about January 2022, Plaintiff entered into a joint venture agreement and other ancillary agreements with Thomas Choi and his company, Acculux Construction, LLC for the renovations on the property which provided, in pertinent part, Plaintiff and Thomas Choi would share the difference between the sale price and the purchase price, equally.

15. In or about February 2022, a prospective buyer was identified for the property by Thomas Choi and his wife Jasmine Choi, a licensed New Jersey real estate broker.

16. A realtor's contract was signed by Plaintiff as the contract seller, and by the prospective buyer.

17. Thereafter, on or about February 23, 2022, Defendant SUNG MIN KIM, ESQ. and his law firm, at the request of Thomas Choi and Acculux Construction, LLC, whose interests were adverse to Plaintiff, proceeded to prepare a mortgage (the "Mortgage") and mortgage note (the "Mortgage Note") to be signed by the Plaintiff, which granted Choi's company, Acculux Construction, LLC a mortgage on Plaintiff's property in the sum of \$300,000, without first advising or discussing it with Plaintiff and without explaining to Plaintiff the significance and legal effect of that Mortgage.

18. Defendant SUNG MIN KIM, ESQ. and his law firm, while representing the interests of Thomas Choi and Acculux Construction, LLC further represented Plaintiff in the negotiation and preparation of a rider to the brokers contract (the "Rider") with the intention of having Plaintiff sign it, without first advising Plaintiff of his dual representation, and without explaining to Plaintiff the significance and legal effect of the terms of the Rider in violation of NJ Rule of Professional Conduct 1.4.

19. Defendant SUNG MIN KIM, ESQ then delegated to Thomas Choi, who was not an employee or agent of his law firm, and whose interests were adverse to Plaintiff, the task to have Plaintiff sign the Mortgage, the Mortgage Note and the Rider although he was not a licensed attorney in the State of New Jersey and could not lawfully give legal advice to Plaintiff of the legal effects and ramifications of these documents, which were favorable to Thomas Choi and Acculux, but adverse and prejudicial to Plaintiff.

20. Complying with Defendant SUNG MIN KIM's and his law firm's directives, as communicated through Thomas Choi, Plaintiff unwittingly signed the Mortgage, the Mortgage Note and Rider.

21. On or about March 11, 2022, without the knowledge or consent of the Plaintiff, Defendant SUNG MIN KIM and his law firm caused the Mortgage against Plaintiff's Property to be recorded as a lien against the title thereof and against the legal interests of his client, the Plaintiff.

22. In so doing, Defendant SUNG MIN KIM and his law firm deviated from accepted standards of acceptable legal standards and legal practice, breached their fiduciary duties to Plaintiff, acted negligently, carelessly, and recklessly and aided and abetted in criminal activity, i.e., the unauthorized practice of law in violation of N.J.S.A. 2C-21-22.

**FIRST COUNT**  
**(Negligence)**

23. Plaintiff repeats and reiterates each of the allegations contained in the Factual Allegations set forth herein above, as though more fully set forth at length herein.

24. As a result of the Defendants' negligence as aforesaid, and as may otherwise be shown, Plaintiff sustained and continues to sustain grave financial loss and actual damage.

25. The Defendants' negligence, as more particularly set forth above and as may otherwise be shown, was a substantial factor in and thus the proximate cause of financial damage to Plaintiff for which Defendants are liable.

**WHEREFORE**, Plaintiff demands entry of judgment in her favor and against Defendants individually, jointly, severally and in the alternative for:

- a) Compensatory Damages;

- b) Pre- and post-judgment interest;
- c) Costs of suit;
- d) Punitive damages;
- e) Disgorgement of fees paid;
- f) Attorneys' fees and reasonable expenses pursuant to *Saffer v. Willoughby*, 143 N.J. 256 (1996), et seq. and
- g) Such other and further relief as the Court deems just and proper.

**SECOND COUNT**  
**(Professional Malpractice)**

26. Plaintiff repeats and reiterates each of the allegations contained in the Factual Allegations and the First Count set forth herein above, as though more fully set forth at length herein.

27. The conduct of Defendants, as aforesaid and as may otherwise be shown, breached the professional duties owed to Plaintiff and constituted deviations from accepted standards of care and legal practice, so as to constitute malpractice.

28. The deviations on the part of the Defendants, as aforesaid, and as may otherwise be shown, were the direct and proximate cause of and were a substantial factor in causing Plaintiff to sustain grave, foreseeable financial damages.

**WHEREFORE**, Plaintiff demands entry of judgment in her favor and against Defendants on the Second Count, individually, jointly, severally, and in the alternative, for:

- a) Compensatory Damages;
- b) Pre- and post-judgment interest;
- c) Costs of suit;

- d) Punitive damages;
- e) Disgorgement of fees paid;
- f) Attorneys' fees and reasonable expenses pursuant to *Saffer v. Willoughby*, 143 N.J. 256 (1996), et seq. and
- g) Such other and further relief as the Court deems just and proper.

**THIRD COUNT**  
**(Breach of Fiduciary Duty)**

29. Plaintiff, repeats, reiterates and incorporates herein each of the allegations contained in the Factual Allegations and Counts One through Two herein above, as though more fully set forth at length.

30. The conduct of Defendant attorney and law firm constituted professional negligence, was careless and reckless and failed to comply with accepted standards of care and practice and further, constituted a breach of fiduciary duty to the Plaintiff and a violation of the N.J. RPCs 1.7, 1.8, and 1.4, New Jersey decisional law, as well as opinions of the Advisory Committee on Professional Ethics and the Committee on the Unauthorized Practice of Law of the Supreme Court of New Jersey, and Defendants further aided and abetted in the unauthorized practice of law in violation of N.J.S.A. 2C-21-22.

31. Defendants failed to furnish services in accordance with accepted standards of care, so as to properly protect the legal interests of Plaintiff in the underlying transactional matter.

32. Defendants failed to communicate with their client, the Plaintiff, in violation of NJ Rule of Professional Conduct 1.4.

33. As a direct and proximate result of the aforesaid breach of fiduciary duty, and as may otherwise be shown, Plaintiff was caused to sustain grave, foreseeable damage.

**WHEREFORE,** Plaintiff demands entry of judgment in her favor and against Defendants, individually, jointly, severally, and in the alternative, for:

- a) Compensatory Damages;
- b) Pre- and post-judgment interest;
- c) Costs of suit;
- d) Punitive damages;
- e) Disgorgement of attorney's fees paid;
- f) Attorneys' fees and reasonable expenses pursuant to *Saffer v. Willoughby*, 143 N.J. 256 (1996), et seq.; and
- g) Such other and further relief as the Court deems just and proper.

**FOURTH COUNT**  
**(Breach of Contract)**

34. Plaintiff repeats and reiterates each of the allegations contained in the preceding paragraphs.

35. The conduct of the Defendants constituted a breach of contract, oral, implied and/or express as to the Plaintiff, the terms of which included, but were not limited to, the accepted standards of practice applicable to attorneys-at-law and law firms which were breached by Defendants.

36. By failing to furnish Plaintiff with a written engagement agreement Defendants were in violation of NJ Rule of Professional Conduct 1.5 (b).

37. As a direct and proximate result or the aforesaid breach of contract on the part of the Defendants, the Plaintiff was caused to sustain foreseeable and actual financial damages.



**WHEREFORE**, the Plaintiff demands judgment against each of the Defendants, individually, jointly and severally, and in the alternative, for:

- a. Compensatory damages;
- b. Punitive damages;
- c. Interest;
- d. Costs of suit;
- e. Attorneys' fees and reasonable expenses pursuant to Saffer v. Willoughby, 143 N.J. 256 (1996), et seq.; and
- f. Disgorgement and return of professional fees and commissions paid to Defendants in connection with professional services rendered.

**DEMAND FOR THE PRODUCTION OF INSURANCE POLICIES**

Pursuant to New Jersey Court Rule 4:10-2(b), Plaintiff hereby requests Defendants to produce within five (5) business days true and complete copies of all insurance agreements- primary and umbrella policies which may satisfy part or all of a judgment which may be entered in the action or indemnify or reimburse for payments made to satisfy the judgment.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs demand a jury trial as to all issues that may be tried before a jury.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4 notice is hereby given that the Plaintiff, designates Noah Zakim, Esq. as trial counsel on behalf of Plaintiff in the within matter.

**KATES NUSSMAN ELLIS  
FARHI & EARLE, LLP  
Attorneys for Plaintiff**

**Dated: January 22, 2024**

**By: /s/ Noah Zakim  
Noah Zakim**

**CERTIFICATIONS**

Pursuant to **Rule 4:5-1(b)(2)**, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief, except that the Plaintiff has commenced a separate action against certain parties who are not attorneys which action is pending in this court under Docket No. BER-L-6699-23, and Accculux Construction, LLC has commenced an arbitration proceeding against Plaintiff before the American Arbitration Association under AAA Case Number: 01-23-0005-6850. Also, to the best of our belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in this action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

I hereby certify in accordance with **Rule 1:38-7(b)** that confidential personal identifiers, if any, have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future.

**KATES NUSSMAN ELLIS  
FARHI & EARLE, LLP  
Attorneys for Plaintiff**

**Dated: January 22, 2024**

**By: /s/ Noah Zakim  
Noah Zakim**

**YIN YEE ETHEL CHOI,**

**Plaintiff,**

**v.**

**SUNG MIN KIM, ESQ. and  
KIM CHOI & KIM. P.C.**

**Defendant.**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY**

**DOCKET NO.: BER-L-\_\_\_\_\_-24**

**CIVIL ACTION**

**AFFIDAVIT OF MERIT**

**Of**

**BENNETT J. WASSERMAN, ESQ.  
PURSUANT TO N.J.S.A. 2A:53A-27**

**STATE OF NEW JERSEY)**

**S.S.**

**COUNTY OF BERGEN )**

**BENNETT J. WASSERMAN** being of full age, duly sworn, hereby states under oath:


(a) I am an attorney at law and am duly admitted to practice in the States of New Jersey, New York and Pennsylvania (license inactive due to non-residency). I have been a Certified Civil Trial Attorney by the Board on Trial Attorney Certification of the Supreme Court of New Jersey for 36 years, since April 1985. I am a Diplomate of the American Board of Professional Liability Attorneys certified in Legal Professional Liability Law since 2012. I have served as Special Professor of Law, on the adjunct faculty of Hofstra University School of Law since 1991, where I have taught a full semester course called "Lawyer Malpractice" to advanced law students. My course curriculum materials are posted at [www.legalmalpractice.com](http://www.legalmalpractice.com). I also devote a substantial portion of my professional life to the general practice of law and to the substantive area of law involved in this action, i.e. real estate transactions, as well as to the areas of legal ethics and professional malpractice. I have been so engaged for at least five years prior to the date of this affidavit.

(b) I have reviewed various materials provided to me by Plaintiff's counsel including the Complaint and Jury Demand herein; the Purchase Contract, the Purchase Deed, the Purchase HUD statement, the Mortgage, Mortgage Escrow Agreement, Acculux agreements, Contract for Sale of property, Contract Rider, title commitment documents, HUD for sale of property, the documents and correspondence comprising the file maintained by the Defendant in the underlying matters and multiple other documents related to the transactions at issue.

(c) A copy of my current *curriculum vitae* is attached hereto as **Exhibit #1**

(d) Based upon my review of the aforesaid materials, I hereby state, pursuant to N.J.S.A. 2A:53A-27, that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the practice or work of defendants **SUNG KIM MIN, ESQ.** and his law firm, **KIM CHOI & KIM, P.C.** whose professional conduct is the subject of the Complaint in this action, fell outside acceptable professional standards of practice.

(d) I have no financial interest in the outcome of this case.



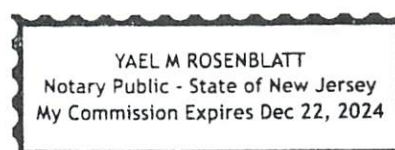
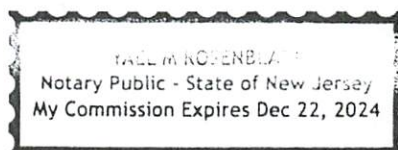
Bennett J. Wasserman, Esq.

DATED: January 31, 2024

Sworn and subscribed to before me  
this 31st day of January 2024



NOTARY PUBLIC  
STATE OF NEW JERSEY





**EXHIBIT #1**

**Legal  
Malpractice.com**

CONSULTING | EXPERT TESTIMONY | ADVOCACY | MEDIATION

expertise *beyond* expectation!

Office: 201.488.1222  
Cell: 201.803.6464  
Fax: 973.556.1776  
Email: [experts@legalmalpractice.com](mailto:experts@legalmalpractice.com)

Three University Plaza  
Hackensack, NJ 07601

Blog: [legalmalpracticelawreview.com](http://legalmalpracticelawreview.com)  
WWW: [legalmalpractice.com](http://legalmalpractice.com)

### **BENNETT J. WASSERMAN, ESQ.**

Since 1985, *LegalMalpractice.com, Inc.* has evolved into a Professional Standards and Peer Review Organization to the legal profession and liability insurance industries. It consists of a consortium of recognized experts—practicing lawyers, law professors, forensic accountants and insurance industry professionals whose collective experience is coordinated to provide expertise in all matters concerning the law governing lawyers. Expert consulting and testimony is provided in the areas of legal malpractice, legal ethics, law firm billing standards and practices and attorney advertising compliance.

**Bennett J. Wasserman** founded *LegalMalpractice.com* and now serves as its Vice President and General Counsel. Over the past three decades he has litigated, arbitrated, mediated and served as a consulting or testifying expert in well over 1,500 legal malpractice, legal ethics, law firm billing and attorney advertising matters. He has been recognized as an expert in the law-governing-lawyers and on standards of care in the legal profession. He has testified in courts throughout the country, before disciplinary review boards and before state and federal legislative bodies. He has provided detailed studies and authoritative testimony to help legislative committees evaluate pending legislation that affects his areas of expertise. He is certified by the Supreme Court of New Jersey as a Civil Trial Attorney and he is a member of the Supreme Court's *Ad Hoc* Committee on Attorney Malpractice Insurance. He is a Diplomat of the American Board of Professional Liability Attorneys and a member of its Board of Governors. He is licensed in New Jersey, New York and Pennsylvania. He has been continuously recognized by SuperLawyers, Best Lawyers, Avvo, (10.0) Martindale-Hubbell (AV) and the Bar Register of Pre-Eminent Lawyers.

In addition to his work at *LegalMalpractice.com*, Ben serves as Special Professor of Law at Hofstra University School of Law, where he designed and teaches a full semester advanced course called "Lawyer Malpractice". He regularly publishes in the New Jersey Law Journal and lectures to lawyer and industry groups on his areas of expertise. He also serves as Chairman of the Legal Malpractice Law department of a prominent law firm based in New Jersey and New York, where he prosecutes and defends substantial legal malpractice and ethics cases. He has appeared as an expert witness on behalf of the State of New Jersey in billing and legal malpractice cases and has represented publicly traded corporations and county and local governments in cases against their former lawyers and law firms, in which he has secured substantial recoveries for these private and public entities.

Over the years, Ben has served as expert or attorney of record in important landmark cases dealing with the law of legal malpractice, legal ethics, law firm billing standards and attorney advertising. Recently, he has developed new theories of lawyer liability stemming from abusive billings practices, breaches of fiduciary duty, and "botched settlements" and is actively prosecuting cases in those areas.

**Ben can be reached at:** [benwasserman@legalmalpractice.com](mailto:benwasserman@legalmalpractice.com) or at (201)803.6464.

**BENNETT J. WASSERMAN**  
**COUNSELOR AT LAW**

**CONSULTING OFFICES:** LegalMalpractice.com, Inc.  
3 University Plaza-Suite 350  
Hackensack, New Jersey 07601  
Tel: (201) 488-1222  
Cell: (201) 803-6464  
[benwasserman@legalmalpractice.com](mailto:benwasserman@legalmalpractice.com)

**LAW OFFICES:** 375 Cedar Lane  
Teaneck, New Jersey 07666  
Tel. (201) 907-5000  
Cell: (201) 803-6464  
Fax: (973) 556-1776

**ACADEMIC OFFICES:** Maurice A. Deane School of Law  
Hofstra University  
121 Hofstra University  
Hempstead, New York 11549

**WEB BIOS:**

[http://legalmalpractice.com/corporate/ABOUT-US\\_cp7522.htm](http://legalmalpractice.com/corporate/ABOUT-US_cp7522.htm)

<https://www.legalmalpracticelawreview.com/editorial-board/>

<https://www.dsslaw.com/our-firm/attorneys/bennett-wasserman/>

**EXPERIENCE:** Active participation in well over 1,000 legal malpractice and legal ethics cases as:  
(1) attorney of record for litigants;  
(2) consulting or testifying expert witness in transactional and litigation based matters in legal malpractice and legal ethics proceedings;  
(3) Special Professor of Law, Hofstra University Law School teaching advanced law students a full semester course entitled "Lawyer Malpractice" since 1990.  
(4) Founder and Editor-in-Chief, *Legal Malpractice Law Review*.

**BAR ADMISSIONS:** New York (1975), New Jersey (1976) and Pennsylvania (1983) State and Federal Courts; Supreme Court of the United States.

**CERTIFICATIONS:** Supreme Court of New Jersey: Certified Civil Trial Attorney (1985);  
  
American Board of Professional Liability Attorneys, Diplomate in Legal Malpractice (2012). (Member, Board of Governors)

**RATINGS/HONORS:** AV™ - Martindale-Hubbell;  
  
Bar Register of Preeminent Lawyers (Lexis/Nexis Martindale Hubbell);

Best Lawyers in America® 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018. (Legal Ethics and Professional Responsibility Law and Legal Malpractice Law);

The Best Lawyers in the United States (1985);

SuperLawyers® New Jersey for ten consecutive years: 2005 to 2018. (Professional Liability) (Thomson Reuters) Member, Blue Ribbon Panel.

“Lawyer of the Year, 2008”-- New Jersey Law Journal (Dec. 24, 2008) with co-counsel on *In re Opinion 39 of the Committee on Attorney Advertising*.

Member, Supreme Court of New Jersey, Ad Hoc Committee on Attorney Malpractice Insurance (2014-2017).

[www.Avvo.com](http://www.Avvo.com) (10 out of 10, legal malpractice)

#### OCCUPATION:

**Consulting Practice:** **LegalMalpractice.com, Inc.**  
(Hackensack, NJ) (1995 to date)

V.P. and General Counsel, Consultant to lawyers, law firms, and professional liability insurance companies on legal ethics and legal malpractice (plaintiff and defendant); qualified as expert witness by courts in the field of legal malpractice, legal ethics and law firm billing.

**Law Practice:** **Davis Saperstein & Salomon, PC**  
(Teaneck, NJ and NYC),

Of Counsel and Chair, Legal Malpractice Law Section (January 2011 to 2020)

**Academic:** **Hofstra University, Maurice A. Dean School of Law**  
Hempstead, New York (1990-2013; 2016- date ).  
Special Professor of Law (in Lawyer Malpractice).

Editor-in-Chief, “*Legal Malpractice Law Review: Research, Resources and Expertise in the Law Governing Lawyers*” (Oct. 2009 to date).  
<http://www.legalmalpracticelawreview.com>

#### PRIOR EMPLOYMENT:

Stryker, Tams & Dill, L.L.P., (Newark, NJ and New York, NY) (2002-2010), Of Counsel.

Bennett J. Wasserman, A Professional Corporation, Hackensack, New Jersey (1983 to 2002)

Moderator, National Legal Malpractice Forum; Co-Moderator, N.J. Professional Liability Law Forum, Counsel Connect (on-line computer discussion groups for lawyers on professional liability.)

Partner and New Jersey counsel to Harry H. Lipsig, Esq., (Lipsig, Sullivan & Liapakis, P.C. New York, New York.) (1978 - 1983.)

Associate to Arnold B. Elkind, Esq., (Elkind, Lampson & Sable, Esqs., New York, New York), former Chairman of the National Commission on Product Safety (1974 - 1978.)

Merck & Co. (Merck Sharp & Dohme Div.); Professional Representative (pharmaceutical marketing) (1969-1971.)

**Areas of Practice.** Civil Litigation; Advocacy and Counseling in the law governing lawyers (legal malpractice, legal ethics; attorney advertising, attorney billing practices,) commercial transactions and commercial litigation; real estate litigation; real estate transactions, environmental law, family law, construction and land use and development, mortgage foreclosures; securities litigation; professional due diligence; health care law, medical liability; professional malpractice; commercial torts; general negligence; toxic torts; construction site accidents and construction defect litigation; railroad and product liability; employment law, intellectual property, wills, trusts and estates, bank and securities fraud.

**Responsibilities:** case strategy development and implementation, investigation, discovery, motion practice, appeals, overall management of major litigation and appellate cases. Alternate Dispute Resolution.

Lead counsel to public and close corporations, municipal entities and individuals in major legal malpractice actions arising from botched commercial litigation and transactions, securities, intellectual property, family law, health care law and financing, real estate law and financing, land use and development, wills, trusts and estates, employment law, patent and trademark law, family law, tort litigation, ineffective assistance of counsel in criminal defense and breach of fiduciary duty.

Serve as consulting and/or testifying expert on behalf of litigants, law firms, lawyers and professional liability insurers.

Serve as defense counsel designated by select professional liability carriers in major legal malpractice cases.

Served as defense counsel in product liability, personal injury cases on behalf of Tokio Marine Insurance Company, the largest Japanese liability carrier insuring companies such as Panasonic, Honda, Matsushita Electronics Corporation and other liability insurance carriers.

Expert witness in the law governing lawyers, including legal malpractice, legal ethics, lawyer advertising and law firm billing practices, including consulting, case strategy, expert witness affidavits of merit, reports, testimony in depositions, trial and arbitration venues.

**NOTEWORTHY MATTERS &  
FREQUENTLY CITED DECISIONS:**

***Cantone Research, Inc. et al. v. Michael R. Gardner, Esq.* (App. Div. Docket No. A-2420-14T3, unpublished, Oct. 20, 2015) (Attorney of Record to Plaintiffs)** (New Jersey has an interest in asserting jurisdiction over a Pennsylvania lawyer not authorized to practice law in New Jersey who gives advice to New Jersey residents and businesses on New Jersey securities law.)

***In re Opinion 39 of the Committee on Attorney Advertising*, 197 N.J. 66, 961 A.2d 722 (2008) (Attorney of Record-co-counsel for petitioners and intervenor/petitioners)** wherein the N.J. Supreme Court declared two of its own Rules of Professional Conduct unconstitutional as violative of commercial free speech.



*Carbis Sales, Inc. et al v. Eisenberg, et al.*, 397 N.J. Super. 64, 935 A.2d 1236 (App. Div., 2007) (liability of designated defense counsel to his insurance carrier, net opinion rule) (*Expert witness*)

*Fiorentino v. Frank Rapoport, Saul Ewing, et. al.*, 693 A.2d 208 (Pa. Super.) app. denied. 1997 PA. 2323 (1997). (Negligence, contract and fiduciary duties of lawyer in commercial transaction) (*Expert witness*).

*Huber v. Watson*, 568 N.W.2d 787 (Sup. Ct. of Iowa, 1997) (litigation malpractice, failure to name appropriate parties in underlying asbestos suit) (*Expert witness*).

*Vahila et. al. v. Charles D. Hall, III, et. al.* 77 Ohio St.3d 421, 647 NE2d 1164 (1997) (Sup. Ct. of Ohio). (proving the case within a case in underlying criminal defense case with expert witness) (*Expert witness*).

*Profit Sharing Trust v. Lampf, Lipkind, et al.* 267 N.J. Super 174, 180, 630 A.2d 1191 (Law Div., 1993). (Fiduciary duty of law firm to refrain from prohibited transactions with client under RPC 1.8) (*Expert witness*).

*Olds v. Donnelly*, 291 N.J. Super. 222 (1996) *aff'd* 150 N.J. 424 (1997) (*Expert witness*) reverses *Circle Chevrolet Co. v. Giordano, Halleran & Ciesla* (which held entire controversy doctrine inapplicable to legal malpractice claims)

*Estate of Re v. Kornstein, Veisz & Wexler*, 958 F. Supp. 907 (SDNY 1997) (fiduciary duty of lawyer in the absence of negligence) (*Expert witness*).

*Sklodowsky v. Lushis*, 417 N.J. Super 648, 11 A.3d 420 (App. Div. 2011) (entire controversy doctrine does not bar subsequent legal malpractice action) (*Expert witness*)

*Higgins v. Thurber*, 413 N.J. Super. 1, 992 A.2d 50 (App. Div. 2010) (entire controversy does not bar subsequent legal malpractice action in an estate case) (*Consulting Expert to Plaintiff*);

*Dinter v. Sears, Roebuck & Co.*, 278 N.J. Super. 521 (1995). (*Attorney of record*).

*Kostick v. Janke, et al.*, 221 N.J. Super 37 *aff'd* 223 N.J. Super 311 (App. Div. 1988) (*Attorney of Record*).

#### **PUBLICATIONS:**

"*The Ubiquitous Detailman...*" 1 Hofstra Law Review 183-213 (1973) -- reprinted in Paul D. Rheingold, DRUG LITIGATION, 3rd Edition (1981), and in PRECLINICAL AND CLINICAL TESTING BY THE PHARMACEUTICAL INDUSTRY, 1975, Joint Hearings before the Subcommittee on Health and Administrative Practice and Procedure of the Committee on the Judiciary, United States Senate, 94th Congress, pages 1258-1280; cited in Dixon, TREATISE ON DRUG PRODUCT LIABILITY, s.6.10, et seq.

SYMPOSIUM ON PRODUCT LIABILITY AND SAFETY, Volume II, Hofstra Law Review (1974), (Articles Editor and Coordinator.)

LAWYERS LIABILITY REVIEW (Timeline Publishing Co., Inc.) (Member of Advisory Board.)

Author, Proposed Amendment to N.J.S.A. 2A:13-4, endorsed by the New Jersey State Bar Association and introduced into the NJ Senate and Assembly (S-1925 & A-3063, March, 1997).

Wasserman, *The Circle Chevrolet Fallout Continues: Problems the Supreme Court Did Not Solve*. 149 N.J.L.J. 320 (July 28, 1997).

Wasserman, *Expert Witnesses in the Legal Malpractice Case: The New Jersey Experience* (reprinted from Understanding Legal Malpractice - NJ Institute for Continuing Legal Education, Dec. 1997).

Wasserman, *Lawyer Malpractice: The Difference Between Life & Death*, (Opinion & Commentary, N.J. Law Journal, June 26, 2000).

Wasserman et ano., *Legal Ethics: Getting Down to the Reason for the Rule* (New Jersey Law Journal. N.J. Supreme Court Year in Review 1999-2000 - 9/4/00).

Wasserman et ano., *Legal Ethics: Making Things Clear* (New Jersey Law Journal. N.J. Supreme Court Year in Review 2000-2001 - 9/3/2001).

Wasserman et ano., *Legal Ethics & Malpractice: Third Party Escrow Funds, Entitled to Same Protection as Client Trust Funds*. (New Jersey Law Journal. N.J. Supreme Court Year in Review, 2001-2002- 9/2/2002..

Wasserman et ano., *Legal Ethics & Malpractice: Court Reaffirms American-Rule Exception to Enforce Fiduciary Duty* (New Jersey Law Journal, N.J. Supreme Court Year in Review, 2002-2003.

Wasserman, *Legal Ethics & Malpractice: 'Suit Within A Suit is Not Required'*, (New Jersey Law Journal, The State Supreme Court Year in Review, 2003-2004.

Wasserman, *Legal Ethics & Malpractice: Advice on Asset Protection Could Land Lawyers in Hot Water* (New Jersey Law Journal, The State Supreme Court Year in Review, 2004-2005).

Wasserman, *Legal Ethics & Malpractice: Missing Evidence Prompts Negative Inference* (New Jersey Law Journal, The State Supreme Court Year in Review, 2005-2006).

Wasserman, *Professional Malpractice: Where Were the Lawyers?, Aiding and Abetting Breach of Fiduciary Duty*, (New Jersey Law Journal, January 22, 2007.)

Wasserman, *Own Up to Mistakes*, (New Jersey Law Journal, The State Supreme Court Year in Review, 2006-2007.)

Wasserman, *Professional Malpractice: Holding Lawyers Accountable for Bad Settlements*. (New Jersey Law Journal, January 21, 2008) Professional Malpractice Supplement, (lead article)

Wasserman, *Way to Cut Quality of Lawyering: Cut Deadline for Malpractice Suits*, New Jersey Law Journal, Commentary, April 28, 2008).

Wasserman et ano., *The Enormity of Our Fiduciary Duty*, New Jersey Law Journal, The Supreme Court Year in Review, Legal Ethics and Malpractice, 2007-2008).

Wasserman, *Decries State Bar's Support for Shortening Legal Malpractice Statute of Limitations*, New Jersey Law Journal, December 8, 2008, "Voice of the Bar" p.12-13.

Wasserman, et ano., *Professional Malpractice: Two Views of the Saffer Fee-Shifting Rule: There is a Professional Duty to Support the Rule*, New Jersey Law Journal, January 19, 2009) p. 1.

Wasserman, *The Professional Services Business Enhancement Act: Myths, Realities and Prospective Problems*, Report to Members of the New Jersey General Assembly and Senate, January 28, 2009.

Wasserman, *What if Bernie Madoff Were a New Jersey Lawyer?*, New Jersey Law Journal, Commentary, May 11, 2009, p. 23.

Wasserman, et ano. *At the Crossroad of Constitutionally Protected Free Speech and the Rules of Professional Conduct*, New Jersey Law Journal, Supreme Court Year in Review Sept. 7, 2009).

Wasserman, et ano., *Mandatory Legal Malpractice Insurance: The Time has Come*. New Jersey Law Journal, Professional Malpractice Supplement, January 14, 2010.

Wasserman, *What if Goldman Sachs Were a New Jersey Law Firm?* New Jersey Law Journal, Commentary, May 17, 2010.

Wasserman, et ano. *Settle and Sue is Here to Stay*, New Jersey Law Journal, Supreme Court Year in Review, September 6, 2010).

Wasserman, et ano., *It is Reaffirmed: Entire Controversy Doctrine Does Not Bar a Subsequent Malpractice Action*. (New Jersey Law Journal, Supreme Court Year in Review, September 6, 2011).

Wasserman, et ano., *A Full Course Feast for the Law Governing Lawyers*. (New Jersey Law Journal, Supreme Court Year in Review, September 3, 2012).

Wasserman, *Recovering Damages in Legal Malpractice Cases*, (New Jersey Law Journal Professional Malpractice Supplement, January 21, 2013) (lead article).

Wasserman, *On Being an Expert Witness in Legal Malpractice Cases*, (N.J. Institute for Continuing Legal Education, March, 2013).

Wasserman, *Breach of Fiduciary Claims Under RPC 1.5 (a): Beware the "Sleeping Tiger"*. Chap 24 & 25 in PLI ETHICS IN CONTEXT: SUMMER 2013 (Practicing Law Institute, NYC, 2013)

Wasserman, *All Clients Deserve Protection from Professional Negligence, A Call for Universal Mandatory Legal Malpractice Insurance in New Jersey*. (New Jersey Law Journal: Professional Malpractice Supplement, January 20, 2014. (lead article). (Endorsed by the Board of Editors of the New Jersey Law Journal, Editorial, *Mandatory Insurance for Lawyers*, January 31, 2014)

Wasserman, et ano., *Judicial Integrity and Public Confidence Are Court's Primary Concerns This Term*, (New Jersey Law Journal, Supreme Court Year in Review, Legal Ethics and Malpractice Sept. 2014).

Wasserman, *Court Approves Lawyers' Use of Trade Names*, (New Jersey Law Journal, Supreme Court Year in Review, Sept. 24, 2015);

Wasserman, *Time to Say Good-bye to the 'Suit Within a Suit'*, (New Jersey Law Journal, Professional Malpractice Supplement, January 18, 2016).

Wasserman, *The 'Innes' Case: Another Reason to Keep 'Saffer v. Willoughby' Alive*, (New Jersey Law Journal, Commentary, May 16, 2016, p. 27).

**WORK IN PROGRESS:**

LAWYER MALPRACTICE: Curriculum, Cases & Materials  
<http://www.legalmalpracticelawreview.com/articles/law-school-1/>

*Legal Malpractice Law Review: Research, Resources and Expertise in the Law Governing Lawyers* <http://www.legalmalpracticelawreview.com>.

**EDUCATION:**

Hofstra University School of Law, Hempstead, N.Y.

-- J.D. *cum laude*, 1974.

-- Hofstra Law Review, Articles Editor.

-- Dean's Citation for Excellence in Trial Advocacy.

-- Class Rank: 13th of 165.

Hunter College, New York City.

-- B.A., 1968.; M.A., 1971.

**BAR ASSOCIATIONS:**

Association of Professional Responsibility Lawyers (APRL); Defense Research Institute; American Association of Justice (AAJ); New Jersey Association for Justice (NJAJ); American Bar Association; Center for Professional Responsibility; New Jersey State Bar Association (Member, Malpractice Insurance Committee, 1992-to 2000); Member, Entire Controversy Committee 1996-97; NJSBA Delegate to the American Bar Association National Legal Malpractice Conference of the Standing Committee on Lawyers' Professional Liability 1994 -98); New York State Bar Association; Bergen County Bar Association; New York County Lawyer's Association (Lawyer's Professional Liability Committee); Professional Liability Underwriting Society; New Jersey Association of Professional Mediators.

**MISCELLANEOUS:**

--Designed "LAWYER MALPRACTICE" course curriculum for law school level at Hofstra University School of Law, Hempstead, New York and other law schools.

--Testified before the United States Senate, Subcommittee on Health (Edward M. Kennedy, Chairman), regarding the need for improvement in the law pertaining to the marketing of pharmaceutical products (1974).

--Interviewed by trade journals concerning developments in product liability law (e.g., Chemical Business, February 8, 1982.)

--Served on Bar Association Committees studying topics in law and medicine and multi-state practice of law.

--Lectured before Bar Association and community groups on trial advocacy and legal ethics.

--Guest lecturer on legal malpractice at:

- University of Liverpool (Cayman Island) Law School (1995, '96, '98, '99, 2002)
- Rutgers University School of Law (Newark, New Jersey, 1996)
- New York Law School (New York, N.Y., April, 2006).
- Lecturer & Panelist "Avoiding Malpractice", Continuing Legal Education Program, Bucks County (PA.) Bar Association (November 1995.)
- Co-Moderator & Panelist, "The Malpractice Explosion", Lexis Counsel Connect on-line seminary (November 1995.)
- Moderator, "Circle Chevrolet: Pitfalls of Legal Malpractice", Counsel Connect on-line seminary (April-May 1996). Reprinted in New Jersey Law Journal Supplement July 1, 1996.
- Faculty, "Ethical and Legal Malpractice Considerations in the Electronic Information Revolution, ATLA-NJ Education Foundation (January 1997).
- Faculty, "Understanding Legal Malpractice", N.J. Institute for Continuing Legal Education. Topic: "Expert Witnesses in the Legal Malpractice Case". (December, 1997).
- Lecture, "The Impact of the Entire Controversy Doctrine on Legal Malpractice" Bergen County Bar Association (9/12/96)
- Lecture, "The Entire Controversy Doctrine: How Wide and How Deep the Black Hole?" Bergen County Bar Association (10/24/96).
- Lecture, "Pitfalls of Legal Malpractice" Bergen County Bar Association (11/29/2001)
- Lecture & Panelist, "Practical Aspects of *Circle Chevrolet's* Impact Upon Legal Malpractice Claims", New Jersey State Bar Association, Annual Meeting, (5/16/97).
- Lecture & Panelist, "Ethics for Litigators and Trial Lawyers", Conflicts of Interest, New York State Bar Association, CLE (November 4 & 18, 2005).
- Lecture & Panelist, 8<sup>th</sup> Annual New Jersey Trust & Estate Law Forum, 2006, "A Word to the Wise: Keeping Current on Trust and Estate Legal Malpractice Trends and Issues". New Jersey Institute for Continuing Legal Education, Sept. 13, 2006.
- Lecture, "When Ethical Violations Become Malpractice" ATLA-NJ Meadowlands Seminar, October 21, 2007;
- Lecture, "Ethics Here, Ethics There, Ethics, Ethics Everywhere (NJ State Bar Association Public Utility Law Committee/NJ Institute of Continuing Legal Education, April 9, 2010);
- Panel Member, "Teaching Tomorrow's Lawyers to Avoid Legal Malpractice: A Roundtable Discussion (American Bar Association, National Legal Malpractice Conference, Washington, DC April 15, 2010).

--Panel Member & Presenter, "Is It Ethical"? (New Jersey Association for Justice, Meadowlands Seminar 2011, November 11, 2011).

--Lecturer, "Legal Malpractice: The Good, the Bad, the Future" (New Jersey Association for Justice, Meadowlands Seminar 2011, November 11, 2011).

--Lecturer, "Legal Ethics Violations and Legal Malpractice" (New Jersey Association for Justice, Meadowlands 2011, November 11, 2011).

--Lecturer and Panel Member, "Legal Ethics Update: 2012" (New Jersey Association for Justice, Meadowlands, 2012, November 16, 2012).

--Speaker, "2013 Legal Malpractice Update: Getting the Most out of your Expert". (N.J. Institute for Continuing Legal Education, March 16, 2013)

--Presenter, "Legal Malpractice: Getting the Most out of Your Expert Witness" (American Board of Professional Liability Attorneys, Annual Meeting, 2013, New Orleans, LA, April 26, 2013).

--Lecturer *Breach of Fiduciary Claims Under RPC 1.5 (a): Beware the "Sleeping Tiger"*. PLI ETHICS IN CONTEXT: SUMMER 2013 (Practicing Law Institute, NYC, August 13, 2013)

--Presenter, "*To Be or Not to Be: The Legal Malpractice Expert*" ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS (APRL), February 2, 2015 (Houston, TX)

--Presenter, "*Preventing, Asserting and Responding to Legal Malpractice Claims*", Seton Hall University Law Circuit Review, February 10, 2015.

Commentator, "*Lawyers as Targets: Suing, Prosecuting and Defending Lawyers*" Institute for the Study of Legal Ethics, Maurice A. Deane School of Law, Hofstra University, April 1, 2015

--Featured in Forbes Magazine, May 22, 2006 (On the Docket: "Getting Theirs")

--Appeared on radio talk shows with Barry Farber and television documentaries with Geraldo Rivera concerning cases of public interest relating to tort law.

--Received newspaper coverage on numerous matters being actively litigated in the courts.

--On-going participation in continuing legal and alternate dispute resolution education courses.

--Founded the Multi-State Bar Association, an organization seeking to foster the growth of the multi-state practice of law.

--Awarded "Distinguished Alumni Medal" Hofstra University Law School, June 1985.

--Personal interest in environmental law, municipal finance, municipal bonds, securities and bank fraud and related legal and investment issues.

--Real Estate Broker, State of New York (Lic. # 691079)

**EXHIBIT #2**

**TESTIMONY LOG**  
**Of**  
**BENNETT J. WASSERMAN, ESQ.**  
**2016-2021**

<b>CASE NAME</b>	<b>COURT/ VENUE</b>	<b>DOCKET NO.</b>	<b>DATE</b>	<b>DEP (D) or TRIAL (T)</b>
Dist XII Ethics Comm. v. Steinberg	NJ Supreme Court	Dkt. XII-2014- 0010E	1/23/2016	T
Smith v. Burr	Superior Ct NJ	HUD-L-1599-15	9/7-8/2016	T
Sparta v. Fanburg	Superior Ct NJ	SSX-L-3276-13	1/17/16	D
Nobis v. Belmonte	Superior Ct NJ	UNN-L-3595-14	6/29/16	D
Auerbach v. Delgatto	Supreme Ct. NY	669908/2015	11/01/16	T
Fichtman v. Jacobs	4 <sup>th</sup> Jud Dist. Nassau Cnty FL	14-CA-168	4/21/17	D
Elgohail v. Benedetto	Superior Ct NJ	MON-C-51-13	12/26/17	D
Diaz v. Arzadi	Superior Ct NJ	MID-L-6740-16	7/20/18	D
Paramount Transp. v. Lasertone Corp.	Supreme Ct NY	28695/2006	7/24/18	T
Dippolito v. Nugent	Superior Ct NJ	CAM-L-4605-14	10/30/18	T
Meral v. Brewster Morhous	Cir. Ct. Mercer Cnty WV	17-C-303	12/7/18	D
Luciano v. Adubato, et al	Superior Ct NJ	HUD-L-2359	3/31/19	D
Kaminsky v. Brenner	Civ. Ct. NY	55991/2011	8/5/19	T
Rappaport v Pasternak	Superior Ct of NJ	BER-L-77-19 Arbitration before Chief Justice James Zazzali	1/9/20 2/12/20	D T
Yerkes v. Anapol	U.S. Dist. Ct. DNJ	17-cv-02493-JBS- AMD	3/16/20	D

<b>CASE NAME</b>	<b>COURT/ VENUE</b>	<b>DOCKET NO.</b>	<b>DATE</b>	<b>DEP (D) TRIAL (T)</b>
MHA v Brach Eichler	Superior Court of NJ/ Hudson County	HUD-L-4864-16	3/24/21	D
Caper v. Foley Lardner	Superior Court MA/ Suffolk County	16-cv-1986	4/1/21	D
Murray ex. of Ludorf v. Pollack and Flanders, LLP	Superior Court/MA Middlesex County	1681 cv 00576	8/26-8/31/21	T
Groisman v. Zwick	U.S. District Ct. EDNY	16-CV-1369	6/23/2022	D
Martin Law Firm, LLC v. Kirk Loury	Superior Court of NJ/Burlington County	BUR-L-1528-19	1/4/2023	D
Wolff v. Kassem	Superior Court of NJ/Bergen County	BER-8831-18	3/10/2023	D