



## David M. Gersten

**PARTNER**

Miami

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### RELATED SERVICES

- Commercial Litigation
- Class Action Defense
- Professional Liability Defense
- Artificial Intelligence
- Appellate
- Real Estate
- Blockchain & Cryptocurrency

### OFFICES

- Miami
- Denver
- Tampa

### OVERVIEW

David M. Gersten, former Chief Judge in Florida's Third District Court of Appeal, is a partner in the Commercial Litigation practice group of GRSM's Miami office. He represents clients in litigation and appeals in a multitude of areas, including commercial, labor, administrative, professional liability, real estate, land use, and probate law. He strategically advises clients on honing their legal issues to navigate potential evidence and procedural obstacles with both trial and post-trial implications in mind. His practice includes professional liability defense which includes regularly defending insurance agents, brokers, and other professionals in malpractice claims. Additionally, David often serves as a mediator and arbitrator in complex cases.

David received his Juris Doctor in 1975 from the University of Florida, and worked in private practice until 1980, when, at age 29, he was elected without opposition as a judge to the Miami-Dade County Court. Two years later, he was elected without opposition as a judge to the Eleventh Judicial Circuit of Florida. In 1989, he was appointed to Florida's Third District Court of Appeal, a position he retained for more than 20 years. During his time with the Third District Court of Appeal, David was unanimously elected to serve as the court's Chief Judge from 2007-2009. In 2015, David was awarded a Lifetime Achievement award by the *Daily Business Review*, for his outstanding service to the South Florida legal community.

David regularly writes and lectures on topics relating to appellate law, trial law, and ethics. His bi-weekly column on Law.com provides insight into recent appellate court decisions. He is also an appellate faculty member for the Florida College of Advanced Judicial Studies, and has served as the appellate division's Associate Dean. David also served as an adjunct professor teaching trial advocacy for the St. Thomas University School of Law, and is an active faculty member of The National Judicial College.

## REPRESENTATIVE EXPERIENCE

- Represented major homebuilder Lennar Corporation in an action against a former business partner, who had engaged in a fraud and defamation scheme in order to extort money from the client. Following a jury trial, Lennar was awarded \$1.02 billion in damages. The appellate court affirmed this \$1.02 billion verdict.
- Represented Palmer Trinity Private School, Inc. in connection with the school's \$55 million expansion of its current campus onto an adjacent, 32-acre parcel of land that it acquired specifically for that purpose in 2003. The representation included providing land use and zoning counsel, and successfully representing the client in eight appellate proceedings brought by neighboring residents opposed to the campus's expansion.
- Successfully defended a client, Clerk of the Circuit Court, in a federal civil rights action relating to a tax deed sale. The plaintiff alleged that the Clerk's failure to ensure that he received notice of the tax deed sale violated the plaintiff's procedural due process rights. Successfully argued the motion for summary judgment. This decision was affirmed on appeal.
- Represented a real estate developer, as appellee, in protecting a \$114.5 million judgment in our client's favor. A buyer breached a \$350 million sales contract and forfeited its payments. The buyer then sued the client for recovery of payments that had already been made prior to the breach of contract. The claim was dismissed, and the buyer appealed. The appellate court affirmed the dismissal.
- Defended a huge food product distribution company through trial and appeal in an action involving claims for millions of dollars in unpaid trade debt incurred by a now-bankrupt convenience store.
- Represented foreign real estate investors in a breach of contract action and successfully obtained a \$17 million judgment in the trial court. The judgment was affirmed on appeal.

- Represented a Florida real estate development, sales and marketing firm in a lawsuit against a prominent real estate developer who repudiated their joint venture agreement. The client received a verdict in his favor that was upheld on appeal.
- Defended one of the world's largest manufacturers of ink and ink-related products in an action brought by a customer for more than \$2 million, plus punitive damages. The customer alleged that the client's product was defective and sued the client and five of its individual employees, alleging fraud by surreptitiously altering the ink quality for financial gain. After more than two years of intense litigation, the customer agreed to dismiss the case with prejudice.
- Represented the owner of a large estate defending against an employee seeking to recover an annuity he claimed the client owed him. The client obtained summary judgment which was affirmed on appeal.
- Obtained a writ of prohibition against a trial court judge who was found to have acted with impropriety in hearing the case. After the appellate court granted the writ, a new judge was subsequently assigned to the case.
- Represented a junior mortgage holder in connection with a mortgage foreclosure action, in which the client sought to recover his rights to redeem the mortgage. Though the trial court ruled that the client had no right to the mortgage proceeds, the appellate court reversed the ruling, reinstating the client's rights to redeem the mortgage.
- Represented an agricultural developer and produce distributor LLC, as well as its president and majority owner, in a corporate governance dispute with the minority owner. After the trial court denied the minority owner's motion for temporary injunction, the case successfully settled.
- Represented a marina at trial in successfully defending against a multi-million judgment concerning the purchase and sale of a marina located in the Florida Keys. Representing the client on appeal, the trial court's judgment was affirmed.

## PUBLICATIONS

- An Abridged Treatise on Attorneys' Fees Awards, *Law.com* (April 27, 2015)
- Mandamus – An Extraordinary Writ For Special Master Appointments, *Law.com* (April 13, 2015)
- The Case of Fundamental Error & The Big Bad Bullet, *Law.com* (March 25, 2015)
- Must Read Primer: Pleading, Long-Arm Jurisdiction, Standard of Review, and When a Record is Required, *Law.com* (March 18, 2015)
- Damages Just Got Easier, *Law.com* (February 10, 2015)
- No Irreparable Harm = No Certiorari, *Law.com* (January 26, 2015)
- 2015 – Judiciary, Lawyers and Law Schools at The Precipice, *Law360* (January 02, 2015)
- Common Sense Approach to Appellate Sanctions, *Law.com* (January 05, 2015)
- Defendants Beware – Garnishment Writs Can Be Enforced Before Trial Court Rule, *Law.com* (December 02, 2014)

- An Unusual Claim for Negligence Based Upon STD, *Law.com* (October 23, 2014)
- Arbitration: One For All – All For One, *Law.com* (October 07, 2014)
- Covenant of Good Faith in Contracts: When It Does Not Apply, *Law.com* (July 21, 2014)
- Editorial: High Court Is Swinging Pendulum Back On 4th Amendment, *Law360* (July 10, 2014)
- Arbitration: Waiver or no Waiver?, *Law.com* (July 07, 2014)
- Editorial: So Why Are Securities Class Action Cases So Lucrative?, *Daily Business Review* (June 26, 2014)

## PRESENTATIONS

- *How to Bulletproof Your Orders*, Florida College of Advanced Judicial Studies, Ft. Meyers, FL (September 2024)
- *Decision Making*, The National Judicial College, Seattle, WA (August 2024)
- *Artificial Intelligence in Courtroom Practice: What Lawyers and Judges Need to Know*, The National Judicial College, Miami, Florida (February 2020)
- *Decision Making*, The National Judicial College, Santa Fe, NM (December 2019)
- *Florida and U.S. Supreme Court Update*, Florida Conference of Circuit Judges, Naples, FL (August 2019)
- *Ethics and Judging: Reaching Higher Ground*, The National Judicial College, Reno, NV (May 2019)
- *Ethics at Oral Argument*, 4th District Court of Appeal, Educational Seminar, Palm Beach County, FL (February 2019)
- *Decision Making*, The National Judicial College, San Diego, CA (August 2018)
- *Florida Appellate Case Law Update*, Florida Conference of Circuit Judges, Naples, FL (August 2018)
- *Expert Witnesses: the Good, the Bad and the Ugly*, Florida College of Advanced Judicial Studies, Orlando, Florida (May 2018)
- *To Certify or Not, That is the Question*, The National Judicial College Webcast, (April 2018)
- *Advanced Topics in Handling Mass Torts*, The National Judicial College Webcast, (February 2018)
- *U.S. Supreme Court Cases: What State Trial Judges Need to Know*, The National Judicial College Webcast, (October 2017)
- *Ethics and Judging: Reaching Higher Ground*, The National Judicial College, Reno, NV (October 2017)
- *Judicial Decision Making*, The National Judicial College, Big Sky, MT (August 2017)
- *Advanced Topics in Handling Mass Torts: Perfecting your Proceeding*, The National Judicial College Webcast, (May 2017)
- *What Appellate Judge's Want Trial Lawyers and Judges To Know*, Dade County Bar Association Bench & Bar Conference, Miami, FL (2017)
- *Judicial Ethics*, National Association of Bar Counsel, Miami, FL (2017)
- *Managing Mass Tort; Pre-Trial*. Part 2, National Judicial Conference (February 2016)
- *The Angle on Engle Tobacco Litigation*, 11th Judicial Circuit of Florida (January 21, 2016)

- *Managing Mass Tort; Pre-Trial*. Part 1, National Judicial Conference (December 2015)
- *Powerhouse Cross-Examination Tools, A View From the Bench: Legends of the Courtroom*, Daily Business Review, Miami, FL (June 12, 2015)
- *What Appellate Judges Want Trial Lawyers & Judges to Know*, Dade County Bar Association Bench and Bar Conference 2015, Miami, FL (February 20, 2015)
- *Professionalism and Ethics in the Third District Court of Appeal*, Practicing Before the Third District Court of Appeal, The Florida Bar, Miami, FL (February 06, 2015)
- *A Discussion with the Giants of Appellate Law, A View From the Bench: South Florida Legends of the Courtroom*, Daily Business Review, Miami, FL (October 10, 2014)
- *Civil Law Trends*, Florida Conference of Circuit Judges (July 22, 2014)
- *Arguing Evidence on Appeal: Do You Feel Lucky*, The Florida Bar Hot Topics in Evidence CLE, Tampa, FL (March 21, 2014)
- *Perfecting Your Argument*, Dade County Bar Association's 2014 Bench & Bar Conference, Coral Gables, FL (February 28, 2014)
- *Practicing with Professionalism CLE*, The Florida Bar Continuing Legal Education Committee and Young Lawyers Division, Miami, FL (January 10, 2014)

## CREDENTIALS

### Admissions

- Florida
- Colorado
- U.S. District Court, Southern District of Florida

### Memberships

- Coral Gables Bar Association
- Cuban American Bar Association
- Florida Association of Women Lawyers
- Miami Beach Bar Association
- National Association of State Judicial Educators
- Master Emeritus James C. Adkins, Jr., American Inn of Court
- Master Emeritus Eugene P. Spellman, American Inn of Court
- The Conference of District Court of Appeal Judges
- National Council of Juvenile and Family Court Judges
- The Florida Bar Professionalism Committee
- The Florida Bar Judicial Nominating Procedures Committee
- Committee on District Court of Appeal Performance and Accountability
- Committee on District Court of Appeal Judicial Management

- Florida Court Education Council, Appellate Court Member
- Legislative Committee of District Court of Appeal Judges
- The Florida Bar Judicial Administration Selection and Tenure Committee

#### **Community Involvement**

- Member, Board of Directors, Miami Beach Community Health Center
- Member, Board of Directors, Legal Services of Greater Miami
- Chair, Annual Legal Eagle Competition to benefit Legal Services of Greater Miami, Inc., University of Miami School of Law

#### **Education**

- J.D., University of Florida, Levin College of Law, 1975
- B.A., University of Florida, 1973
  - *Florida Blue Key Honor Society*

#### **Honors**

- *Best Lawyers in America*® distinction in Commercial Litigation (2018-2025)
- National Judicial College, 25-Year Service Award, Reno, NV (2018)
- *Florida Trend Magazine*, Florida Legal Elite, 2016
- *Daily Business Review*, Lifetime Achievement Award, 2015
- *Daily Business Review*, Most Effective Lawyer, Corporate Securities, 2014
- *Daily Business Review*, Top Verdict Award, 2014
- *Super Lawyers*® distinction in Appellate and Business Litigation (2014 – 2020)
- Elected Chief Judge, Third District Court of Appeal, 2007 – 2009
- Third District Court of Appeal Historical Society Outstanding Service Award, 2009
- St. Thomas University School of Law Outstanding Jurist Award, 2009
- Elected President, Florida Conference of District Court of Appeal Judges, 2007 – 2008
- Boy Scouts of America, The Silver Beaver Award, 1995
- *Miami South Florida Magazine*, Best Judge Award, 1985

#### **Languages**

- Spanish