

Robert Barrer

Chief Ethics and Risk Management Partner

Syracuse
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Education

- Syracuse University College of Law, *Magna Cum Laude*, JD
- Skidmore College, *With Honors*, BA

Practices & Industries

- Professional Liability
- Commercial Litigation & Complex Trials
- Torts & Products Liability Defense

Admitted to Practice

- New York
- Texas

Court Admissions

- US Court of Appeals for the Second Circuit
- US District Court for the Eastern District of New York
- US District Court for the Northern District of New York
- US District Court for the Southern District of New York
- US District Court for the Western District of New York
- US Supreme Court

Biography

Robert is Barclay Damon's chief ethics and risk management partner and is responsible for all ethics, conflicts, loss-prevention, and CLE activities. In this senior leadership position, he counsels firm attorneys and provides analysis and advice on ethical questions involving conflicts of interest, privileges, and legal issues implicating the Rules of Professional Conduct.

Robert also supervises the firm's CLE programs, lectures on a wide variety of ethics and practice-management topics, and is responsible for designing and implementing programs and policies to improve the provision of high-quality legal services for firm clients.

Robert has over 39 years of trial and appellate experience in the state and federal courts and serves as a mediator for court-directed and private mediation clients. Over the course of his career, Robert represented large and small corporations, governmental and agency clients as well as individuals. At present, Robert regularly represents lawyers and law firms in disciplinary and professional misconduct matters before the Grievance Committees of the Third and Fourth Judicial Departments of the New York State Supreme Court.

Bar Associations

- American Bar Association
- New York State Bar Association, Standards of Attorney Conduct Committee Member, Chair of Misconduct Subcommittee
- New York County Lawyers Association, Committee on Professional Discipline

Selected Memberships & Affiliations

- American Board of Trial Advocates, Elected Member
- Association of Professional Responsibility Lawyers
- NYS Supreme Court, Appellate Division, Fourth Department, Fifth Judicial District: Former Chair and Grievance Committee Member
- NYS Commission on Judicial Conduct, Referee

Representative Experience

- Regularly represents lawyers and law firms as respondents in professional-discipline matters before attorney grievance committees.
- Represented a lawyer not admitted in New York State who was charged with violating the advertising rules, including soliciting victims of a mass tort within 30 days of the event. Following an investigation and review of our submissions, the client was able to avoid any discipline being imposed or even a report by the Grievance Committee to the lawyer's home state.
- Represented a lawyer who was temporarily suspended for failure to cooperate with an investigation into the lawyer's IOLTA account (while the lawyer panicked and did not respond, there was no improper conduct). An Order to Show Cause and supporting papers were quickly prepared, and we were able to convince the court to stay the suspension and then formally deny the motion of principal counsel of the Grievance Committee for the temporary suspension. The temporary suspension was lifted within one week of the engagement, and all reference to the suspension has been removed from the lawyer's Unified Court System profile.
- Represented a lawyer who was investigated for misrepresentation in the use of a judicial subpoena during the course of a family court custody dispute. The principal counsel of the Grievance Committee initially sought a formal disciplinary referral to the court, but after reading our initial submission, changed the recommendation to private discipline. We submitted a comprehensive response on behalf of the client and appeared at a Grievance Committee meeting to argue the client's case. The committee voted to disregard the recommendation of its principal counsel and declined to impose any discipline on the client.
- Obtained summary judgment a municipality that provided emergency medical services in response to a 911 call concerning the plaintiff, who suffered a massive heart attack. While at the scene, the defibrillator and the pads allegedly malfunctioned. A lawsuit was brought against the client and the manufacturer and distributors of the defibrillator and pads. In the absence of a special relationship, and none was

established, there was no municipal liability. The plaintiff appealed, and the dismissal of the action was affirmed.

- Obtained summary judgment for a third-party benefits provider for self-funded health- and risk-management plans in a pair of federal civil-rights actions commenced by retired disabled police officers who were challenging the manner in which their medical benefits were paid under Section 207-c of the NY General Municipal Law. The decision granting summary judgment was affirmed by the US Court of Appeals for the Second Circuit. One of the plaintiffs then commenced a near-identical action in NYS Supreme Court against the client. Obtained dismissal of most of the claims in an initial motion, and then obtained summary judgment dismissing the remaining claims. The decision granting summary judgment was then affirmed by the Appellate Division, Fourth Department.
- Represented a manufacturer of motorcycles and off-road vehicles in a challenge to the manufacturer's decision to terminate the franchisee based upon its failure to meet the standards contained in the franchise agreement. Following a six-week jury trial in the US District Court for the Northern District of New York, the jury returned a verdict in favor of the client, thereby validating the decision to terminate the franchise.
- Successfully defended two municipal agencies and one of its officers in a federal civil-rights action arising out of the declaration that multi-story dwelling in a college town was not up to the local housing code and therefore unsuitable for use as a college fraternity. Following a six-week trial, the jury in the US District Court for the Northern District of New York returned a verdict in favor of the clients despite the fact the former owners of the home were found liable for fraud. The Second Circuit affirmed the verdict in all respects.
- Successfully defended a client accused of legal malpractice arising out of his representation of an accused in a criminal case. Under NY law, a former client of an attorney who was convicted in a criminal case cannot claim legal malpractice against the attorney without first establishing actual innocence. The incarcerated former client made no claim or showing of innocence, and therefore, summary judgment was obtained for our client.
- Successfully defended a manufacturer of folding ladders in a claim by an insurance-company claims adjuster that the ladder failed, causing him to fall and sustain personal injuries. Relying upon expert testimony from a wood materials and ladder expert, convinced the jury that the ladder was not defective and the sole cause of the fall and injury was the negligence of the plaintiff. The jury returned a verdict of 'no cause for action' following a four-day trial.

Prior Experience

- Hiscock & Barclay, LLP, Partner

Judicial Clerkships

- US District Court for the Northern District of New York, Judge Howard Munson

Selected Honors

- *The Best Lawyers in America*®: Commercial Litigation, 2021–2027
- Selected to *Super Lawyers* Upstate New York: Business Litigation, 2007–2017; Professional Liability: Defense, 2018–2026
- Burton Awards, Law360 Distinguished Writing Award for "Unintended Consequences: Avoiding and Addressing the Inadvertent Disclosure of Documents," 2006, and "Careless Keystrokes and Bad Decisions—New York Law on Inadvertent Disclosure," 2017
- Northern District of New York Federal Court Bar Association, Pro Bono Service Award, 2010

Selected Speaking Engagements

- New York State Bar Association Women in Law Section 18th Annual Edith I. Spivak Symposium, "Changing Lanes: Ethical Blind Spots (2022)"
- New York State Bar Association, "Ethics 2020: Legal Ethics in the Real World" CLE
- 17th Annual Hinshaw & Culbertson Legal Malpractice/Risk Management National Conference, "Navigating Troubled Waters: Dealing With the Impaired Lawyer (2018)"
- New York State Bar Association, "Introductory Lessons on Ethics and Civility (2018)" CLE
- American Law Institute National, "The Efficient and Ethical Use of Email in Law Practice" Webinar

Selected Media

- *New York Legal Ethics Reporter*, “Careless Keystrokes & Bad Decisions: New York Law on Inadvertent Disclosure”
- *New York Legal Ethics Reporter*, “Ethical Implications and Best Practices for the Use of Email”
- *New York State Bar Association Journal*, “Removal of Personal Injury Actions to New York Federal District Courts”
- *New York State Bar Association Journal*, “Unintended Consequences: Avoiding and Addressing the Inadvertent Disclosure of Documents"