



## Marcy Glenn

### Of Counsel

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**Marcy provides the experienced, no-nonsense advocacy that clients demand in high-stakes and complex civil appeals.**

#### PRACTICES

Advertising, Marketing, and Sponsorships  
 Appellate  
 Commercial Litigation  
 Class Actions

#### EDUCATION

Northeastern University School of Law, J.D., 1981

Dartmouth College, B.A., 1977  
*cum laude*

#### BAR ADMISSIONS

Colorado

Recognized as a leading appellate lawyer in Colorado and the Tenth Circuit, she regularly represents clients throughout the United States, including in the United States Supreme Court, the federal courts of appeals, and a number of state appellate courts. Her practice covers a broad variety of substantive areas, including constitutional law, natural resources law, employment law, commercial litigation, environmental law, and intellectual property.

Drawing on years of service to the courts, the bar, and her clients on issues related to the practice of law, Marcy also advises individuals, law firms, and other entities on issues of legal ethics, attorney discipline and licensure, and legal malpractice. She has chaired the Colorado Supreme Court's Standing Committee on the Colorado Rules of Professional Conduct since its creation in 2003. She is a former chair and current member of the Colorado Bar Association Ethics Committee, and a former chair of the Committee on Attorney Conduct of the United States District Court for the District of Colorado. From 1993 through 2001, she chaired Holland & Hart's Ethics and Conflicts Committee, on which she continues to serve.

Marcy is dedicated to providing pro bono legal service. Over the course of her career, she has worked on, among other broad-impact appeals, a successful legal challenge to conditions at Colorado's old maximum security prison, a constitutional challenge to Colorado's public school funding laws, a case providing Colorado adoptees with greater access to their adoption records, and a challenge to the constitutionality of Colorado's criminal libel statute. Marcy has also represented individuals in need in dissolution, adoption, First Amendment, and prisoner rights matters, and she has participated since its inception in the Lawyers in the Classroom program, which teaches constitutional law principles to fourth-grade students in the Denver Public Schools.

Marcy is the former leader of Holland & Hart's Appellate Practice Group and the former chair of the firm's Partnership Admission Committee.

She speaks and writes regularly on the subjects of appellate litigation and legal ethics.

Before joining Holland & Hart in 1983, Marcy clerked for United States District Court Judge Richard P. Matsch. In 2017, Marcy was one of three

nominees for a vacant seat on the Colorado Supreme Court.

## **CLIENT RESULTS**

### **Amicus Briefs**

Ms. Glenn has prepared amicus curiae briefs for various governmental and private parties in cases pending in various state and federal appellate courts, including the United States Supreme Court, on issues including liability under the Clean Air Act, preemption of state law claims under ERISA, attorney ethics, and the constitutional provisions creating the Great Outdoors Colorado Trust Fund.

### **Banking Appeals**

Resolving a question of first impression, the Ninth Circuit adopted our argument that 12 U.S.C. § 1821(d)(6)(A)(ii), part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, is not merely a venue provision but defines the court's subject matter jurisdiction, which required affirmance of dismissal of the claims against our bank client.

### **Commercial Litigation Appeals**

In consolidated appeals arising out of a complex commercial dispute, the Nevada Supreme Court rejected our adversary's fraudulent inducement argument, and affirmed the district court's order enforcing a prior settlement agreement in our client's favor, the entry of summary judgment in our client's favor in a separate lawsuit, and our client's recovery of attorneys' fees.

### **Election Law**

In numerous appeals over multiple years, the Colorado Supreme Court accepted our arguments that the state Title Board properly fixed titles for our client's initiatives to amend the Colorado Constitution.

### **Electric Power Appeals**

The Wyoming Supreme Court accepted in full the position of our clients, a group of industrial electric power consumers, and affirmed a Public Service Commission decision that rejected a utility's requested rate increase of over \$91 million.

In an appeal from ordinances adopted to create a municipal power utility, the Colorado Supreme Court accepted our argument that the Colorado Court of Appeals erred in its finality analysis, and reversed and remanded for further proceedings.

### **Employee Benefits Appeals**

The Tenth Circuit reversed the entry of judgment for the claimant in an ERISA case, holding that the district court improperly considered evidence outside the record of our client, the plan administrator. The Supreme Court denied the claimant's petition for certiorari review.

The Tenth Circuit reversed the entry of summary judgment for the claimant

and remanded to allow our client, the plan administrator, to reconsider the claim and make additional fact findings.

For our client, the plan administrator, we persuaded the Tenth Circuit to narrow the circumstances when district courts may admit evidence beyond that considered by the plan administrator in appeals from denials of benefits under ERISA.

The Tenth Circuit held that ERISA preempts claims for bad faith breach of an insurance contract under Wyoming law.

### **Environmental Appeals**

In a lawsuit that made two trips to the Tenth Circuit, that court ultimately ordered reinstatement of the jury's \$177 million nuisance verdict, plus over \$1 billion in prejudgment interest, in favor of our clients, owners of property damaged from plutonium that migrated from Rocky Flats, a federal nuclear weapons plant. While the parties' cross-petitions for certiorari were pending in the Supreme Court, the case settled for \$375 million.

The Ninth Circuit held that the EPA did not act arbitrarily or capriciously in allowing the State of Nevada to redesignate one of its clean air areas into two areas under the Clean Air Act, a ruling that allowed our mining company client to operate under less restrictive national air quality standards.

The Fifth Circuit bucked the tide of routine rejection of claims under the National Environmental Policy Act, and held inadequate the Air Force's and FAA's environmental impact statement for the Realistic Bomber Training Initiative in West Texas.

The Ninth Circuit rejected the EPA's jurisdictional arguments and permitted our client's appeal of EPA enforcement orders to proceed to a decision on the merits.

### **Oil, Gas, and Mining Appeals**

Rejecting the plaintiffs' claimed multi-billion dollar interest in the Kasaghan oil field in the Caspian Sea, developed in part by our oil company client, the Tenth Circuit affirmed the entry of summary judgment for our client on statute of limitations grounds.

The Tenth Circuit affirmed the district court's dismissal of all claims in a natural gas royalty class action against our energy company clients. The court also reversed the district court's order certifying a statewide class of plaintiffs.

The Oklahoma Court of Civil Appeals reversed the district court's certification of a statewide class of royalty interest owners.

The Colorado Court of Appeals upheld a multi-million dollar class settlement in an oil and gas underpaid royalties case, rejecting an unhappy class member's challenge.

In a decision that has significantly limited oil and gas royalty owners' rights, the Colorado Supreme Court reversed the lower appellate court and held that the putative class's claim for allegedly underpaid natural gas royalty accrued on the date of the alleged breach of contract, not on the date of discovery of the alleged breach.

### **Other Appeals**

The Federal Circuit affirmed a \$24 million judgment for our client, the inventor of an electric blender jar, rejecting the defendant's multiple challenges to the jury's finding of willful infringement.

Accepting our construction of damages provisions in the federal Computer Fraud and Abuse Act, the Ninth Circuit affirmed a jury verdict in favor of our client.

### **Real Estate Appeals**

In a decision that clarified the distinction between contractual covenants and conditions, the Utah Supreme Court held that our client was entitled to recover actual and liquidated damages based on a seller's failure to perform under a commercial real estate contract.

### **Securities Fraud Appeals**

At our behest, the Colorado Court of Appeals took the rare step of reversing its earlier decision in the same case and adopted our arguments for a presumption that interests in general partnerships are not securities under the Colorado Securities Act.

The Tenth Circuit affirmed the judgment in favor of our client, a federal receiver in a securities fraud matter, holding that the claimant was properly denied any recovery from the receivership estate.

### **Significant Pro Bono Appeals**

In a pro bono civil rights case, the Tenth Circuit twice reversed the entry of judgment against our client, holding that the district court's rulings on absolute and qualified immunity were wrong as a matter of law.

The Colorado Court of Appeals reversed the district court's adoption placement and remanded for proceedings to determine whether the toddler child should be placed with our pro bono clients, the foster parents.

A pro bono appeal for our adult adoptee client led to a Colorado Court of Appeals decision giving all persons adopted in Colorado between 1951 and 1967 full access to all court records and other papers related to their adoptions.

### **Tax Appeals**

The Colorado Supreme Court held that taxpayers may deduct post-wellhead production costs in valuing oil and gas leaseholds for state property tax assessments.

## Torts and Insurance Appeals

The Colorado Supreme Court exercised its original jurisdiction to reverse the trial court's order requiring our client to produce sensitive medical records.

Reinstating the jury verdict in our developer client's favor, the Colorado Supreme Court exercised its original jurisdiction to reverse the trial court's order granting a new trial after a defense verdict on the plaintiff's premises liability claims.

## PUBLICATIONS

"Supreme Court OK's TABOR Repeal Initiative," *Law Week Colorado*, Co-Author, 06/29/2020

"Observations of a Newer Member of the MPRE Drafting Committee," *The Bar Examiner Magazine*, Fall 2019

"Persuasion Through Candor," *Colorado Lawyer*, February 2019

"Pro Se Civil Appeals — Resources and Opportunities," *45 The Colorado Lawyer 57*, June 2016

"Pro Se Civil Appeals — The Problem and Special Standards and Rules," *45 The Colorado Lawyer 63*, March 2016

"Midstream Fee and Expense Modifications Under the Colorado Ethics Rules," *40 The Colorado Lawyer 79*, August 2011

"Private Screening," *38 The Colorado Lawyer 59*, Co-Author, June 2009

"Further Thoughts on the In-Firm Attorney-Client Privilege," *Media Law Resource Center MediaLaw Letter*, May 2008

"The New Colorado Rules of Professional Conduct: A Survey of the Most Important Changes," *36 The Colorado Lawyer 71*, Co-Author, August 2007

"CBA Ethics Committee: An Overview," *35 The Colorado Lawyer 53*, Co-Author, December 2006

"Imputed Conflicts – In a 'State' of Conflict," *Media Law Resource Center MediaLaw Letter 41*, September 2006

"Beyond Briefs: Motion Practice in Civil Appeals in the Tenth Circuit," *Trial Talk*, April/May 2005

"Tenth Circuit Appears to Be Tilting More to the Right," *26 National Law J. 1*, August 2004

## RECOGNITION

- American Academy of Appellate Lawyers, Fellow
- Colorado Bar Association, Award of Merit, 2017
- Colorado Bar Association Ethics Committee: Don Sears Award for

- Ethical Enhancement of the Legal Profession, 2015
- Colorado Lawyers Committee Individual of the Year Award, 2013
- *The Best Lawyers in America*®, Lawyer of the Year, Appellate Practice, 2021
- *The Best Lawyers in America*®, Appellate Practice, 2006-2021
- *Law Week Colorado*, Barrister's Choice, Best Appellate Lawyer, 2017
- *Who's Who in American Law*
- *5280 Magazine* Top Lawyers, Appellate, 2015-2021
- Colorado Super Lawyers®, Appellate, 2006-2020
- Colorado Super Lawyers®, "Top 50 Women Lawyers," 2012-2020
- Colorado Super Lawyers®, "Top 100 Lawyers," 2015-2020
- American Bar Association Foundation Fellow, 2012-present
- Colorado Bar Foundation Fellow Emeritus, 2011-present
- Tenth Circuit Historical Society, Founding and Lifetime Member

## PROFESSIONAL AND CIVIC AFFILIATIONS

- National Conference of Bar Examiners, Multistate Professional Responsibility Exam Drafting Committee, Member, 2018-present
- Colorado Governor's Board of Ethics, 2017-2018
- Colorado Supreme Court
  - Standing Committee on Rules of Professional Conduct, Chair, 2003-present
  - Standing Committee on Colorado Appellate Rules, Member, 2011-present
  - Attorney Discipline Hearing Board, Member, 1998-2000 and 2011-2017
- United States District Court for the District of Colorado, Committee on Conduct, Member, 2001-2007; Chair 2003-2007
- Colorado Bar Association
  - Ethics Committee, Member, 1993-present; Chair, 1999-2000
  - Litigation Section Appellate Practice Subcommittee, Member, 1995-present
  - Amicus Briefs Committee, Member, 2006-present
  - Ad Hoc Committee on Proposed Federal Court Ethics Rules, Member, 1999-2000
- Colorado Bar Association/Denver Bar Association Joint Task Force on Multidisciplinary Practice, Member, 1999-2000
- *The Colorado Lawyer*
  - Editorial Board, Member, 2011-present; Vice-Chair, 2014-2016; Chair, 2016-2017
  - Appellate Practice Column, Co-Editor, 2014-present
- National Conference of Bar Examiners, Multistate Professional

Responsibility Exam Drafting Committee, External Reviewer, 2017-2018