

PRACTICES

Appellate

EDUCATION

University of Washington, J.D., 1990
With Honors
Washington Law Review, Associate Editor

Gettysburg College, B.A., 1980

BAR ADMISSIONS

Colorado

COURT ADMISSIONS

U.S. District Court for the District of Colorado
U.S. Court of Appeals for the Fourth Circuit
U.S. Court of Appeals for the Fifth Circuit
U.S. Court of Appeals for the Sixth Circuit
U.S. Court of Appeals for the Eighth Circuit
U.S. Court of Appeals for the Ninth Circuit
U.S. Court of Appeals for the Tenth Circuit
U.S. Supreme Court

Stephen Masciocchi

Partner

555 17th Street, Suite 3200, Denver, CO 80202

P 303.295.8451

smasciocchi@hollandhart.com

Steve brings a fresh perspective and more than 30 years' experience to bear in high-stakes appeals and class actions.

Steve primarily assists clients with federal and state appeals and class actions. He co-chairs the firm's Appellate Practice Group. He is ranked in Band 1 by *Chambers USA* for appellate litigation and is a Fellow of the American Academy of Appellate Lawyers, one of only four attorneys in the State of Colorado to have been inducted into the Academy. He is listed in Lawdragon's 500 Leading Litigators in America.

Depth of Experience: Steve has represented parties or amici in approximately 200 appeals and presented more than 70 oral arguments in state and federal appellate courts. He has represented clients in a wide array of civil litigation matters, including bankruptcy, civil rights, contract, construction, employment, environmental, insurance, oil and gas, product liability, real estate, takings, and mass tort litigation.

Broad Range of Jurisdictions: Steve has litigated in the Fourth, Fifth, Sixth, Eighth, Ninth, and Tenth Circuit Courts of Appeals, and in the US Supreme Court. He has significant experience in state appellate courts, particularly in the Colorado Court of Appeals and Colorado Supreme Court.

EXPERIENCE

Appellate

Steve represents clients in appeals in a wide range of subject areas and multiple jurisdictions. He has frequently served as appellate preservation counsel and provided strategic advice in multiple federal district court matters. He writes and lectures on appellate practice and procedure. He is the co-editor of The Colorado Lawyer Appellate Practice column.

Class Actions

Steve has significant experience representing defendants in complex class action litigation. He has compiled a remarkable record of success in convincing federal district courts to deny certification and appellate courts to vacate certification orders.

Legal Ethics

Steve represents attorneys in disqualification, grievance, and licensure matters, and he serves as an expert witness in legal ethics. He is a member of the Colorado Supreme Court's Standing Committee on the

Rules of Professional Conduct, a member and past Chair of the Colorado Bar Association Ethics Committee, and a member and past Chair of Holland & Hart's Ethics and Conflicts Committee. He served as the Coordinating Editor of The Colorado Lawyer's column on Legal Ethics and Professional Conduct for 14 years.

CLIENT RESULTS

Amicus Briefs

In a precedent-setting case asking whether insurance adjusters may be sued for statutory bad faith, the Colorado Supreme Court agreed with our amicus client, the Chamber of Commerce of the United States, and held that such claims may only be brought against an insurer, not an individual adjuster.

In case involving the migratory bird rule, the United States Supreme Court upheld our amicus client's position that the Army Corps of Engineers improperly asserted jurisdiction over isolated, intrastate waters.

In a key case for Colorado's oil and gas industry, the Colorado Supreme Court sided with our amicus client and declined to force the state oil and gas commission to adopt a rule requiring it to readjust its statutory mandate, under which it must both foster oil and gas production and mitigate significant environmental impacts.

In a seminal case involving Colorado's new Teacher Tenure Act, the Colorado Supreme Court adopted our amicus client's position on the act's validity and rejected challenges to the Act under the Colorado Constitution's Due Process and Contract clauses.

Bankruptcy

In a significant victory for our client and consumer lenders, the Tenth Circuit agreed that when a bankruptcy trustee avoids a lien, the remedy of avoidance is usually sufficient, and a money judgment against the creditor is neither required nor appropriate.

In an appeal from a bankruptcy court order interpreting a Chapter 11 plan involving a fund for future tort claimants, the federal district court agreed with our interpretation of the plan and its provisions for paying the future claimants.

Civil Rights

In a case of first impression, the Colorado Supreme Court determined that Colorado sheriffs have no immunity from suit under the Colorado Governmental Immunity Act when pretrial detainees bring claims for false imprisonment and other intentional torts.

In another precedent-setting case, the Colorado Court of Appeals ruled that taxpayers have standing to challenge whether sheriffs have statutory and constitutional authority to enforce federal civil immigration law.

Commercial Litigation

In a case of first impression, the Colorado Supreme Court reinstated our client's claim for breach of a commercial rental contract and established that loss-of-use damages are recoverable under such contracts.

In a complex commercial dispute, the Colorado Court of Appeals held that a foreign guarantor was bound to the terms of its guaranty, affirmed a $6.7 million judgment for our client, and awarded appellate attorney fees.

In a dispute between an author and publisher, the Colorado Court of Appeals agreed that the author was not entitled to any royalties when his publishing contract was sold to another publisher.

In complicated commercial appeal, the Ninth Circuit upheld multimillion dollar tort, unfair business practice, and punitive damages awards against a large insurer, which failed to create or manage vehicle services contracts for our car dealer clients.

Employment

The Ninth Circuit affirmed a defense verdict in our employer client's favor on wrongful discharge and retaliation claims and rejected the former employee's instructional error and other arguments.

In a large class action involving fraud-based claims of employees who were terminated under a reduction-in-force, the Idaho Federal District Court denied class certification for lack of both typicality and predominance.

Rejecting claims by long-haul truck drivers, the Colorado Federal District Court decertified their FLSA collective action and denied class certification, and the Tenth Circuit upheld the lower court's ruling that our employer client properly classified them as independent contractors.

Environmental Appeals

In a complex NEPA matter involving an attempt by environmental groups to shut down drilling in the San Juan Basin, the Tenth Circuit affirmed an order in our clients' favor denying plaintiffs' motion for preliminary injunction.

In post-trial motions after judgment involving a contract to remediate a Superfund site, the federal district court adopted our position that federal contract law, not Idaho law, governed whether the plaintiff was entitled to prejudgment interest, saving our client over $23 million.

Oil, Gas, and Mining

In a dispute between a pipeline company and a developer, the Tenth Circuit affirmed a judgment requiring the developer to incur the cost of relocating the pipeline to accommodate a new development.

In a significant appeal involving multi-million dollar mining royalty claims, the Ninth Circuit upheld summary judgment in favor of our client based on

the doctrine of laches.

After agreeing to hear our two Rule 23(f) appeals, the Tenth Circuit vacated orders certifying large statewide classes of Kansas and Oklahoma royalty owners and determined that the lower courts failed to follow recent Supreme Court precedent in certifying the classes.

In two large punitive statewide class actions brought by oil and gas royalty owners in Colorado and New Mexico, the federal district court denied certification based on our arguments that the named plaintiffs failed to prove both commonality and predominance.

In a large punitive oil and gas royalty class action in New Mexico, the federal district court granted our motion for summary judgment and dismissed the named plaintiffs' claims and thus obviated any class certification proceedings.

In an appeal arising out of an international oil and gas arbitration, the Fifth Circuit agreed that the district court erred in vacating the arbitration panel's award in our client's favor given the deferential standard of review that applies to arbitral awards.

Real Estate

In a complicated, pipeline-construction case, the Colorado Court of Appeals affirmed an award of nearly $9 million for our client and rejected the appellant's attempt to reinstate its approximately $20 million in counterclaims.

The Colorado Court of Appeals ruled in our client's favor in a commercial real estate dispute over funds in an escrow account and awarded our client appellate attorney fees.

Torts and Insurance

In a case of first impression, the Tenth Circuit affirmed summary judgment and upheld our client's right to rescind a $3 million “key man” life insurance policy. The court agreed with our view of when an insurer becomes “chargeable with knowledge” of a fact concealed by the insured under unsettled Colorado law.

In two separate but related product liability cases involving defective heating hose, the Tenth Circuit affirmed large judgments for our clients and upheld prejudgment interest awards from the date of a defective product's installation, which added almost $11 million to the judgments.

In an appeal involving an explosion that leveled a building, the Colorado Court of Appeals agreed that the trial had been infected by multiple evidentiary errors and reversed the $6 million verdict the jury had rendered against our client.

PUBLICATIONS

"Tenth Circuit Explains That 'Pickering' Balancing Is Rarely Appropriate in

Ruling on Motions to Dismiss," *Law.com*, February 20, 2025

"Tenth Circuit Holds That Seven-Day Waiting Period for Firearms Purchases Likely Violates the Second Amendment," *Law.com*, October 22, 2025

"Tenth Circuit Adopts Ascertainability Test and Clarifies Class Action Requirements," *Law.com*, January 2, 2026

"Tenth Circuit Rejects BLM Plan to Manage Wild Horse Populations as Arbitrary and Capricious," *Law.com*, August 1, 2025

"Tenth Circuit Affirms Judgment in Marijuana Business Dispute But Remands Order Enforcing Judgment Over Public Policy Concerns," *Law.com*, August 21, 2024

"Tenth Circuit Affirms Dismissal of Substantive Due Process Challenge to School District's Gender-Identity Policies," *Law.com*, May 13, 2025

"Tenth Circuit Declines to Extend Collateral Order Doctrine to Encompass Interlocutory Orders on 'Bivens' Claims," *Law.com*, June 28, 2024

"Tenth Circuit Rejects Request to Vacate $13.5M Stipulated Judgment With FTC Notwithstanding Change in Law," *Law.com*, February 13, 2024

"Tenth Circuit Rejects Qualified Immunity Defense in Section 1983 Suit Arising out of George Floyd Protests," *Law.com*, December 14, 2023

"Tenth Circuit Rules Courts Cannot Dismiss Only Part of an Action Based on Forum Non Conveniens," *Law.com*, June 6, 2023

"Tenth Circuit Affirms Reliance On 'Effective Vindication Exception' to Refuse to Enforce Arbitration Provision," *Law.com*, March 9, 2023

"Tenth Circuit Clarifies Ancillary Enforcement Jurisdiction," *Law.com*, November 9, 2022

"Tenth Circuit Holds That Key Provision of Colorado's Child Abuse Confidentiality Law Violates the First Amendment," *Law.com*, September 14, 2022

"Tenth Circuit Rules That Religious Employers May Not Use the Collateral Order Doctrine To Immediately Appeal Rulings on the Ministerial Exception to Title VII Claims," *Law.com*, July 25, 2022

"Tenth Circuit Reverses Denial of Asylum to Transgender Woman Under the Compulsion Standard," *Law.com*, May 16, 2022

"Tenth Circuit Allows Government Officials To Assert Qualified Immunity Defense To RFRA Damages Claims," *Law.com*, March 21, 2022

"Tenth Circuit Holds That COVID Closure Orders Do Not Trigger Business Interruption Coverage," *Law.com*, January 20, 2022

"Tenth Circuit Confirms That Time Devoted To Booting Up Work Computer and Launching Software Is Compensable Under the Fair Labor Standards Act," *Law.com*, November 17, 2021

"Tenth Circuit Affirms District Court Decision To Abstain Under 'Pullman' From Exercising Jurisdiction," *Law.com*, May 20, 2020

"Tenth Circuit Addresses Adequacy of Procedures for Sexual Misconduct Investigations at Colleges and Universities," *Law.com*, April 15, 2020

"The Tenth Circuit Rejects Correctional Officer's Qualified-Immunity Defense to Alleged Sexual Abuse of Inmate," *Law.com*, March 25, 2020

"Revocation of Informed Consent and Its Consequences," *The Colorado Lawyer*, December 2021

"Civil Interlocutory Appeals in Colorado State Courts," *Colorado Lawyer*, October 2020

"Contracts," *Colorado Bar Association CLE*, June 30, 2020

"Supreme Court OK's TABOR Repeal Initiative," *Law Week Colorado*, June 29, 2020

"Hurdles to Interlocutory Review Under CAR 4.2," *The Colorado Lawyer, p. 107*, July 2015

"Client-Drafted Engagement Letters and Outside Counsel Policies," *The Colorado Lawyer, p. 33.*, February 2014

"Climate Change and Positional Conflicts of Interest," *The Colorado Lawyer*, October 2011

"Marketing Plus Referrals for a Fee - Feeder Operations by Any Other Name," *The Colorado Lawyer, p. 75.*, July 2007

"Federal Anti-Terrorism Laws And Law Firm Clients," *The Colorado Lawyer, p. 117.*, October 2004

"Novel Theories and Notable Exceptions: Making the Most of a Federal Appellate Court's Discretion to Hear Issues for the First Time on Appeal," *Trial Talk, p. 26.*, April/May 2004

"Ethical Marketing," *The Colorado Lawyer, p. 27.*, October 2003

"The Insurer's Right to Recoup Defense Costs, the Insured's Right to Independent Counsel, and the Recovery of Attorney Fees in Coverage Actions," *Paper for ABA TIPS Insurance Coverage Litigation Committee Midwinter Mtg.*, February 23, 2003

"Rights in Flux: The Insurer's 'Right' to Recoup Defense Costs and the Insured's 'Right' to Independent Counsel," *The Brief, p. 30.*, Winter 2003

"Interlocutory Appeals," *Paper for Colorado Appellate Practice, CLE in*

Colorado, Inc., October 29, 1999

"The Insurer's Right to Reimbursement of Defense Costs: The Emerging Morass," *American Bar Association Tips Corporate Counsel Comm. News, Summer 1999, p. 1.*, Summer 1999

"Internet E-Mail: Legal and Practical Considerations," *American Bar Association Journal Practice Mgmt., p. 42.*, October 1998

"Internet E-Mail and Encryption: Privilege, Confidentiality, and Malpractice Risks," *The Colorado Lawyer, p. 21.*, October 1998

SPEAKING ENGAGEMENTS

"Tumbleweeds – Recent Colorado and Tenth Circuit Cases That Have Found Their Way to the Supreme Court," *American Academy of Appellate Lawyers 2023 Spring Meeting*, April 20-22, 2023

"Conflicts of Interest Involving Corporate Clients," *Association of Corporate Counsel - Colorado Chapter*, December 2021

"Conflicts of Interest and Disqualification," *CLE Presentation for Ethics 7.0, CLE in Colorado, Inc.*, November 18, 2016

"Motions to Disqualify Opposing Counsel," *CLE Presentation for the Pueblo Bar Association*, November 10, 2015

"Preservation of Issues for Appeal," *CLE Presentation for Appellate Practice Update, CLE in Colorado, Inc.*, December 13, 2013

"Ethical Dilemmas Created by Client-Drafted Engagement Letters and Outside Counsel Policies," *ACC Ethics Day*, December 4, 2013

"Ethical Marketing," *CLE Presentation Colorado Real Estate Fall Update, CLE in Colorado, Inc.*, October 11, 2013

"Ethical Marketing," *CLE Presentation for Willis Carpenter Real Estate Symposium, CLE in Colorado, Inc.*, July 13, 2013

"Not-So-Obvious Rules of Professional Conduct," *CLE Presentation to Pitkin County Bar Association*, May 25, 2012

"Beginning and Ending the Attorney-Client Relationship: Engagement Letters and Withdrawal," *CLE Presentation for Ethics 7.0 CLE in Colorado, Inc.*, December 1, 2011

"Climate Change and Positional Conflicts of Interest," *CLE Presentation to Colorado Bar Association Environmental Section*, October 25, 2011

"Interlocutory Appeals in Colorado State Courts," *CLE Presentation for Appellate Practice Update, CLE in Colorado, Inc.*, November 19, 2010

"Not-So-Obvious Rules of Professional Conduct," *CLE Presentation for University of Denver Sturm College of Law Alumni Weekend*, October 15,

2010

"Multi-Jurisdictional Practice and the Unauthorized Practice of Law," *Presentation for Renewable Energy Transmission Conference: Bridging the Gap*, Denver, CO, March 18, 2010

"Will MJP be the End of Me? Multi-Jurisdictional Practice and the Unauthorized Practice of Law," *Annual Ethics CLE, CLE International, Inc.*, December 7, 2009

"The Ethics of Representing More Than One Party to a Real Estate Transaction," *CLE Presentation for Annual Real Estate Law Update, CLE in Colorado, Inc.*, November 6, 2009

"Interlocutory Appeals in Colorado State Courts," *CLE Presentation for Appellate Hot Topics, CLE in Colorado, Inc.*, October 10, 2008

"Collecting Prejudgment and Postjudgment Interest in Colorado," *CLE Presentation, CLE in Colorado, Inc.*, June 26, 2008

"Lawyer Mobility and Conflicts Checking," *CLE Presentation for Tuesdays at the Bar, Denver Bar Association*, November 14, 2006

"Ethics When Emotions Run High," *CLE Presentation for Colorado Municipal League Annual Meeting*, June 28, 2006

"Motions to Disqualify Opposing Counsel," *CLE Presentation for Ethics, CLE International, Inc.*, December 9, 2005

"Current Ethical Issues in Appellate Practice," *CLE Presentation for Appellate Practice in Colorado's Federal and State Courts, CLE in Colorado, Inc.*, May 13, 2005

"Ethics: Considerations When Emotions Run High," *CLE Presentation for Local Regulation of Adult Businesses, CLE International, Inc.*, September 13, 2004

"Internet Ethics: Email Confidentiality and Marketing on the Web," *CLE Presentation for Legal Ethics, CLE in Colorado, Inc.*, October 25, 2002

"Appellate Advocacy Workshop," *Faculty, CLE in Colorado, Inc.*, May 10, 2001

"Ethics Update," *CLE Presentation for Torts Update, CLE in Colorado, Inc.*, November 4, 1999

RECOGNITION

- American Academy of Appellate Lawyers, Fellow
- *Chambers USA*, Litigation: Appellate, 2023-2026
- *The Best Lawyers in America*®, Appellate Practice, 2013-2027
- Legal 500 US City Elite - Denver, Commercial Disputes, 2026
- Martindale-Hubbell®, AV Preeminent® Rating, 2002-2025

- Colorado Super Lawyers®, Appellate, 2017-2026
- *Lawdragon*, 500 Leading Litigators, Appellate, inc. Supreme Court, 2025-2027

PROFESSIONAL AND CIVIC AFFILIATIONS

- *The Colorado Lawyer*
  Appellate Practice Column, Co-Editor
- *Law.com*
  Tenth Circuit Spotlight, Co-Editor
- American Bar Association
  Litigation Section, Appellate Practice Committee
- Colorado Bar Association
  Ethics Committee
  Litigation Section, Appellate Practice Subcommittee
- Colorado Bar Foundation Fellow
- Denver Bar Association