

Steven D. Zansberg
Appellate Practice
(as of January 2023)

Summary

I have appeared on behalf of a party in more than 50 appeals. In 37 of them, the party I represented prevailed, outright, and in 4 others they achieved partial success. I have also authored 19 *amici* briefs, and have prepared numerous other attorneys (through “mooting”) for oral arguments before state and federal appellate panels.

For six years, I served as a judge in the semi-final round of the ABA Forum on Communications Law’s Annual First Amendment Diversity Moot Court Competition, providing feedback and constructive criticism on oral argument presentations.

Judicial Clerkship

Chambers of Hon. Dorothy W. Nelson, U.S. Court of Appeals for the Ninth Circuit,
Pasadena, CA (1994-95)

Appeals Litigated

United States Supreme Court

- *Associated Press v. Dist. Ct. for Fifth Judicial Dist. of Colo.*, 542 U.S. 1301, 125 S. Ct. 1, (2004)

Tenth Circuit

- *BWP Media USA, Inc. v. Clarity Dig. Grp., LLC*, 820 F.3d 1175 (10th Cir. 2016) (affirming summary judgment to defendant in copyright infringement action under the DMCA)
- *Spacecon Specialty Contractors, LLC v. Bensinger*, 713 F.3d 1028 (10th Cir. 2013) (affirming summary judgment for documentary filmmaker in libel action on ground that no clear and convincing of actual malice was presented)
- *Bustos v. A&E Television Networks*, 646 F.3d 762 (10th Cir. 2011) (Gorsuch, J.) (affirming grant of summary judgment to defendant in defamation lawsuit on grounds of substantial truth)
- *Mitchell v. KDJM-FM*, 318 Fed. Appx. 676 (10th Cir. 2009) (affirming dismissal of libel suit)
- *Quigley v. Rosenthal*, 327 F.3d 1044 (10th Cir. 2003) (affirming, in part, jury verdict in favor of plaintiffs in libel case)
- *Fisher v. United Feature Syndicate*, 203 F.3d 834 (10th Cir. 2000) (affirming dismissal of copyright infringement action)

- *U.S. v. McVeigh*, 119 F.3d 806 (10th Cir. 1997) (affirming District Court’s rulings partially denying public access to judicial records in the prosecution of one of the two defendants convicted for the 1996 Oklahoma City bombing of the Murrah Federal Building).

Ninth Circuit

- *Delevin v. Holteen*, 687 Fed. Appx. 532 (9th Cir. 2017) (affirming dismissal of intentional infliction of emotional distress claim against entertainment editor of the *Durango Herald* newspaper) [oral argument posted on firm’s website]
- *Minden Pictures, Inc. v. John Wiley & Sons, Inc.*, 795 F.3d 997 (9th Cir. 2015) (reversing order of dismissal for lack of standing in a copyright infringement case) [oral argument posted on firm’s website]
- *Chen v. Brown, et al*, 623 Fed. Appx. 482 (9th Cir. 2015) (affirming dismissal of a libel claim against the *Orange County Register* newspaper)

Fourth Circuit

- *Rice v. Paladin Enterprises, Inc.*, 128 F.3d 233 (4th Cir. 1997) (reversing District Court’s grant of summary judgment to publisher of a book purporting to be a “how to” manual for contract killers)

U.S. Army Ct. of Crim. Appeals

- *Denver Post Corp. v. U.S.*, 2005 WL 6519929 (U.S. Army Ct. Cr. App. 2005) (ordering military judge to vacate its order closing an Article 32 preliminary hearing to the public in violation of the First Amendment)

California Supreme Court

- *Rittiman v. Public Utilities Commission of the State of California*, S270145 (Oct. 20, 2021) (granting Writ of Review and transferring to Court of Appeal to immediately address merits of reporter’s appeal of denial of public records requests, rejecting state regulator’s argument that he must “exhaust administrative remedies” prior to seeking judicial review).

Colorado Supreme Court

- *In re: People v. Owens*, No. 2018SA55 (Colo. 2018) (holding that the First Amendment provides no presumption of public access to judicial records on file in a capital murder case)
- *In re: People v. Sigg*, No. 13SA21 (Colo. 2013) (vacating a trial judge’s *sua sponte* order closing a preliminary hearing to the public as a violation of the public’s First Amendment right to attend judicial proceedings)

- *Denver Post Corp. v. Ritter*, 255 P.3d 1083 (Colo. 2011) (affirming trial court’s dismissal of open records case concerning call logs for the Colorado Governor’s “private” cell phone)
- *Freedom Colo. Info., Inc. v. El Paso Cty. Sheriff’s Dep’t*, 196 P.3d 892 (Colo. 2008) (holding that a Sheriff’s decision to withhold records of an internal affairs investigation was subject to judicial review for an abuse of discretion and remanding for findings under that newly articulated standard)
- *In re: People v. Aaron Thompson*, 181 P.3d 1143 (Colo. 2008) (holding that a trial court violated Colorado’s Criminal Justice Records Act by sealing the entirety of an indictment returned in open court)
- *Harris v. Denver Post Corp.*, 123 P.3d 1166 (Colo. 2005) (holding that the writings of the two shooters at Columbine High School confiscated by the Sheriff as part of its investigation were “criminal justice records” subject to the Criminal Justice Records Act)
- *In re: People v. Bryant*, 94 P.3d 624 (Colo. 2004) (affirming trial court’s prior restraint order prohibiting publication of closed hearing transcript mistakenly sent to seven media outlets)
- *Lewis v. Colo. Rockies Baseball Club, Ltd.*, 941 P.2d 266 (Colo. 1997) (affirming trial court’s ruling that professional baseball franchise infringed the rights of seller/distributor of game program on public sidewalk abutting the baseball stadium)

Utah Supreme Court

- *Jensen v. Sawyers*, 130 P.3d 325 (Utah 2005) (reversing, in part, jury verdict against television station for conducting hidden camera “sting” recording of physician distributing diet pills without conducting a proper medical examination)

California Court of Appeal

- *Rittiman v. Pub. Util. Comm’n of the State of Cal.*, 80 Cal. App. 5th 1018, 295 Cal. Rptr.3d 285 (2022) (holding that individuals who submit public records requests to this state agency are not required to exhaust administrative remedies prior to obtaining judicial review under the California Public Records Act) [oral argument posted on firm’s website]
- *Heying v. Anschutz Entertainment Grp.*, 2017 WL 5841962 (Cal. App. 2017) (affirming dismissal, under California anti-SLAPP Act, of libel action by Hollywood celebrity’s libel action on grounds of substantial truth and lack of actual malice)

Colorado Court of Appeals

- *Blake v. Marcari-Healey Publishing Co., et al.*, 2022CA1835 (pending) (appeal by libel plaintiff whose case was dismissed upon granting of defendants' anti-SLAPP motion)
- *Burmeister v. Clark, et al.*, 2022CA774 (pending) (appeal by libel plaintiff whose case was dismissed upon granting of defendants' anti-SLAPP motion)
- *Gonzalez v. Hushens, et al.*, 2022CA696 (pending) (cross appeals in defamation case following granting in part of anti-SLAPP motion)
- *Daleiden v. Ginde*, 2021CA1625 (pending) (appeal by libel plaintiff whose case was dismissed upon granting of defendant's anti-SLAPP motion)
- *Colorado Sun and KUSA-TV v. Brubaker*, 2021CA1608 (pending) (two news organizations challenging the Department of Human Services' withholding of public records showing the number of phone calls to state's child abuse hotline placed from multi-bed residential child care facilities) [oral argument posted on firm's website]
- *St. George v. Denver Post and KUSA-TV*, No. 19CA1412 (Nov. 25, 2020) (affirming trial court's dismissal of libel action against two news outlets on substantial truth grounds)
- *Anderson v. Porter, et al.*, No. 19CA233 (Jan. 23, 2020) (affirming trial court's dismissal of defamation action by former City Councilor against the *Fort Morgan Times* on grounds of substantial truth)
- *Guy v. Whitsitt*, 2020COA93 (holding that Town Council violated Colorado's Open Meetings Law by failing to announce any "specific topic" that was to be discussed in executive session meetings outside of public view)
- *SG Interests I, Ltd. v. Kolbensschlag*, 2019COA115 (affirming summary judgement to environmental activist sued for libel by oil company premised on his posting a comment on Facebook, found to be substantially true)
- *Arkansas Valley Publ'g Co. v. Lake Cty Bd. of Cty. Cmm'rs*, 369 P.3d 725 (Colo. App. 2015) (holding that County Commissioners did not violate Colorado's Open Meetings Law when they engaged in "day-to-day supervision of county employee" who was terminated for using illegal drugs on the job)
- *Fry v. Lee*, 408 P.3d 843, 2013COA100 (Colo. App. 2013) (affirming trial court's dismissal of libel action against *The Denver Post* on grounds of substantial truth)
- *Gruber v. Denver Post Corp.*, 40 Med. L. Rptr. (BNA) 1219 (Colo. App. 2012) (affirming trial court's dismissal of libel action on grounds of

substantial truth)

- *Henderson v. City of Ft. Morgan*, 277 P.3d 853 (Colo. App. 2011) (holding that City Council did not violate the Open Meetings Law by filling two vacancies on that body by means of a secret ballot), overturned through legislative amendment.
- *Freedom Colo. Info., Inc. v. City of Colo. Springs*, 37 Med. L. Rptr. (BNA) 1639 (Colo. App. 2009) (affirming trial court's ruling that city violated the Open Records Act by improperly withholding the employment contracts for two cardio-thoracic surgeons on staff at a public hospital)
- *World West LLC v. Steamboat Sch. Dist. RE-2 Bld. of Educ.*, No. 07CA1104, 37 Media L. Rptr. (BNA) 1663 (Colo. App. Mar. 26, 2009) (affirming trial court's ruling that School Board violated the Colorado Open Meetings Law by failing to announce the particular topic to be discussed in an executive session)
- *Centura Health, Inc. v. Colo. Dept. Pub. Health & Enviro.*, No. 06CA2381 (May 15, 2008) (affirming trial court's ruling that Department of Public Health properly determined to disclose a hospital group's proposal for licensing under the Open Records Act)
- *American Civil Liberties Union of Colo. v. Whitman*, 159 P.3d 707 (Colo. App. 2006) (holding that trial court properly denied plaintiff's motion seeking to amend complaint to add claim for declaration that police officers never have a reasonable expectation of privacy with respect to records concerning on duty conduct)
- *Wilson v. Meyer*, 126 P.3d 276 (Colo. App. 2005) (affirming trial court's dismissal of libel claims against *The Cortez Journal* on ground of the fair report privilege and opinion)
- *Rouse v. Bd. of Cty. Comm'rs of Arapahoe Cty.*, No. 04CA2247 (Colo. App. Mar. 22, 2005) (affirming trial court's finding that county commissioners violated the Open Meetings Law by making decisions in an executive session)
- *Stone v. New York Times Co.*, 30 Media L. Rptr. (BNA) 1918, 1921 (Colo. App. 2002) (affirming trial court's grant of summary judgment in a libel suit on the grounds of substantial truth)
- *Weston v. Cassata*, 37 P.3d 469 (Colo. App. 2001) (affirming trial court's ruling that Department of Human Services violated welfare recipients' right to due process of law by providing unintelligible notices of termination of benefits)
- *Jones v. Mountain Air Ranch*, No. 00CA200 (Colo. App. Mar. 15, 2001) (affirming trial court's dismissal of defamation action on grounds of substantial truth).
- *Bodelson v. Denver Publ'g Co.*, 5 P.3d 373 (Colo. App. 2000) (holding that county coroner must reconsider its denial of access to autopsy reports of Columbine High School victims in light of changed factual circumstances)

- *Musick v. Ute City Tea Party, Ltd.*, No. 99CA667 (Colo. App. Apr. 6, 2000) (affirming summary judgment to *The Aspen Daily News* in defamation action on grounds of substantial truth)
- *Denver Post Corp. v. Stapleton Dev. Corp.*, 19 P.3d 36 (Colo. App. 2000) (affirming trial court’s ruling that so-called “private” redevelopment agency was subject to the Open Records Act)
- *ACLU of Colo. v. Grove*, 98CA981 (Colo. App. Oct. 21, 1999) (affirming trial court’s ruling that City of Denver improperly withheld a police internal affairs investigation file under the Colorado Criminal Justice Records Act)
- *Freedom Newspapers, Inc. v. Tollefson*, 961 P.2d 1150 (Colo. App. 1998) (affirming trial court’s ruling that City- owned and operated utility has improperly withheld records showing recipients of voluntary early retirement benefits)
- *Zubeck v. El Paso Cty. Retirement Plan*, 961 P.3d 597 (Colo. App. 1998) (affirming trial court’s ruling that city-run pension program had violated both the Open Meetings Law and the Open Records Act)
- *Meyer v. ABC, Inc.*, No. 97CA891 (Colo. App. June 2, 1997) (affirming trial court’s ruling that county coroner improperly withheld autopsy report for Jon Benét Ramsey under the Open Records Act)
- *Martorella v. SG Asset Mgmt.*, No. 95CA2140 (Colo. App. June 5, 1997) (affirming trial court’s ruling that economic loss rule barred plaintiff’s recovery for defective construction claim)

Amicus Briefs

- *Reaman v. Brookhart*, 2022CA1119 (Colo. App. 2022)
- *L.S.S. v. S.A.P.*, 2021CA000853 (Colo. App. 2022)
- *Animal Legal Defense Fund v. Kelly*, No. 20-3082 (10th Cir. 2020)
- *Frasier v. Evans*, No.19-1015 (10th Cir. 2019)
- *Skilling v. United States*, 561 U.S. 358, 391 n. 28 (2010) (amicus brief cited)
- *Broward Bulldog, Inc. v. U.S. Dept. of Defense*, No. 17-13787 (11th Cir. 2017)
- *Jefferson Cty. Educ. Ass’n v. Jefferson Cty. Sch. Dist.*, 2016 COA 10
- *Reno v. Marks*, 349 P.3d 248 (Colo. 2015)
- *Benefield v. Colo. Republican Party*, 329 P.3d 262 (Colo. 2014)

- *Air Wisconsin Airlines Corp. v. Hoeper*, 320 P.3d 830 (Colo. 2012)
- *Curious Theater Co. v. Colo. Dep't of Public Health and Env't*, 220 P.3d 544 (Colo. 2009)
- *Town of Marble v. Darien*, 181 P.3d 1148 (Colo. 2008)
- *Mink v. Suthers*, 482 F.3d 1244 (10th Cir. 2007)
- *Showler v. Harper's Magazine Found.*, 222 Fed. Appx. 755 (10th Cir. 2007)
- *Denver Publ'g Co. v. Bd. of Cty Comm'rs of Cty. of Arapahoe*, 121 P.3d 190 (Colo. 2005)
- *Bd. of County Comm'rs, Costilla Cty. v. Costilla Cty. Conservancy Dist.*, 88 P.3d 1188 (Colo. 2004)
- *Gumina v. City of Sterling*, 119 P.3d 527 (Colo. App. 2004)
- *Interactive Digital Software Ass'n v. St. Louis County, Mo.*, 31 Med. L. Rptr. 1737(8th Cir. 2003)
- *Denver Publ'g Co. v. Bueno*, 54 P. 3d 893 (Colo. 2002)
- *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044 (Colo. 2002)

Moot Court Judging

- American Bar Association, Forum on Communications Law, Annual First Amendment and Media Law Diversity Moot Court Competition (semi-finals round) 2020, 2019, 2018, 2016, 2014, 2013, 2012