

Altitude: Reaching a New Level of Appellate Advocacy

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Sponsors: Colorado Supreme Court | Colorado Court of Appeals | Child Welfare Appeals Workgroup
State Court Administrator's Office – Court Improvement Program | Office of the Child's Representative
Office of Respondent Parents' Counsel | Colorado County Attorney's Association – Human Services
DBA Young Lawyer's Division | CBA Juvenile Law Section

1. Welcome

Chief Judge Steve Bernard, Colorado Court of Appeals

Chief Judge Steve Bernard was appointed to the Colorado Court of Appeals in May 2006 by Governor Bill Owens and was sworn in on July 5, 2006. Chief Judge Bernard has served on various committees on the Court of Appeals and is a member of the leadership council of the Colorado Institute for Excellence in Judicial Education; the judiciary's Probation Standing Committee; the executive committee of the Colorado Bar Association's Criminal Law Section; and the executive committee of *Our Courts*, a nonpartisan organization that offers educational programs to the public about the court system. He began his career as deputy district attorney, working for the District Attorney's Office in the Seventeenth Judicial District from the end of October 1978 until the end of December 2004. He was promoted to chief trial deputy in 1982 and became the assistant district attorney in 1993. He worked as a chief deputy district attorney at the District Attorney's Office in the Nineteenth Judicial District from January 2005 until June 2006. During his career as a prosecutor, he served on the governing board of the Colorado District Attorneys' Council from 1993 to 2004; the Adams County Community Corrections Board from 1994 to 2002; the Supreme Court Nominating Commission from 1997 to 2002; the Adams County Open Space Advisory Board from 2000 to 2004; and the Weld County Community Corrections Board from 2005 to 2006. He is a past president of the Adams County Bar Association. Chief Judge Bernard received both of his degrees from the University of Colorado, a BA in political science in 1975 and a JD in 1978.

2. C.A.R 3.4 and Behind the Scenes

Polly Brock, Colorado Court of Appeals, Clerk of Court

Robin Hoogerhyde, Colorado Court of Appeals, Staff Attorney

Description: Ever wonder why your briefs are stricken? When the court will rule on your motion? Why you get a show cause order on finality? Polly Brock, Clerk of the Court of Appeals, and Robin Hoogerhyde, motions and jurisdiction counsel covering juvenile matters, will give an overview of what happens with your cases from the filing of the notice of appeal to being put at issue, and will provide plenty of time to answer your burning questions about what happens to your cases and common problems you face before your briefs ever land on a Judge's desk.

Polly Brock has been with the Colorado Courts since 1996 and is currently the Clerk of Court for the Colorado Court of Appeals and the Court Executive for the Appellate Courts. Polly graduated from the University of Colorado School of Law in 1992. Before her current position, Polly was the Deputy Clerk of Court and District Administrator and was a staff attorney for the Colorado Court of Appeals specializing in motions and jurisdiction for over 10 years. She is a graduate of the Colorado Judicial Executive

Leadership Development Program (2015) and the Colorado Institute for Faculty Excellence in Judicial Education (2017).

Robin Hoogerhyde is a staff attorney at the Colorado Court of Appeals specializing in expedited civil cases. Robin has worked at the Court of Appeals since graduating from Michigan State University College of Law in 2008. She began as a law clerk for Judges Román and Dailey and then worked as Judge Graham's (ret.) permanent clerk until she accepted her current position as motions and jurisdiction counsel. Prior to attending Michigan State, Robin graduated from Rutgers University in New Brunswick, New Jersey and she was raised outside Boston, Massachusetts where her parents, sister, niece, and nephew still reside. Robin was honored to receive the Denver Bar Association's Young Lawyer of the Year award in 2017 and she is actively engaged in many areas of continuing education. In her spare time, Robin enjoys hanging out with her husband Ross and her dachshunds Max and Millie, watching countless reruns of "Bob's Burgers," and attempting home projects.

3. Preserving Appellate Issues in Dependency and Neglect Cases

Hon. Brian D. Boatright, Colorado Supreme Court

Hon. Rebecca R. Freyre, Colorado Court of Appeals

Description: Preservation begins before the trial and continues through final judgment. This session will cover how and when to preserve appellate issues and the consequences of failing to do so. It will also explore circumstances unique to D&N cases, including exceptions to traditional preservation.

Hon. Brian D. Boatright was appointed to the Colorado Supreme Court in November 2011. Prior to his appointment, Justice Boatright was a District Court Judge in the First Judicial District in Golden, Colorado. As a District Court Judge, Justice Boatright presided over felony criminal matters, probate matters, civil cases matters, dependency & neglect matters, and juvenile delinquency matters. Preceding this appointment to the District Court Bench, he was a Deputy District Attorney in the First Judicial District. Justice Boatright graduated from Westminster College in Fulton, Missouri and received his Juris Doctorate from the University of Denver.

Hon. Rebecca R. Freyre was appointed to the Colorado Court of Appeals in 2015. Before joining the court, she practiced as a criminal appellate lawyer for the Colorado State Public Defender's Office for eleven years and as a trial deputy public defender in the 18th Judicial District for fourteen years. Judge Freyre received her bachelor's degree from Smith College in 1982 and worked in the financial services and securities industries before attending law school. She received her law degree from the University of Denver College of Law in 1990.

4. Standards of Review in Dependency & Neglect Cases

Hon. Jerry N. Jones, Colorado Court of Appeals

Description: The standard of review has been called the lens through which a brief is viewed. It affects how judges read both the facts and the legal analysis in a brief. The goals of this session are to help participants better understand the role of the standard of review and the standards that apply to different types of arguments. This presentation will also cover how to craft arguments around the applicable standard of review.

Hon. Jerry N. Jones has served on the Colorado Court of Appeals since 2006. Before that he was Chief of the Appellate Division of the United States Attorney's Office for the District of Colorado, an attorney with Moye White LLP in Denver, a Special Assistant Attorney General for the Colorado Attorney General's Office, and a judicial clerk to Justice George Lohr of the Colorado Supreme Court. He graduated from Arizona State University and obtained his law degree from the University of Denver Sturm College of Law. Judge Jones has served on a number of bar association and judicial committees, and taught appellate advocacy at the University of Denver for several years.

5. ICWA Update

Hon. David M. Furman, Colorado Court of Appeals

Hon. Karen M. Ashby, Colorado Court of Appeals

Hon. Craig R. Welling, Colorado Court of Appeals

Description: The panelists will present an update from the ICWA division.

Hon. David M. Furman was appointed to the Colorado Court of Appeals in 2005. Prior to his appointment, he served as a Magistrate in the Denver District and Juvenile Courts. Before taking the bench, Judge Furman practiced trial and appellate litigation with his own firm, focusing on criminal defense, child protection, and family law. He also served as a Deputy Public Defender in the Appellate Division of the Colorado State Public Defender's Office. Judge Furman is a frequent lecturer and contributor to continuing judicial and legal education programs on juvenile and appellate practice. He Chairs the Child Welfare Appeals Workgroup, the Court Improvement Program, and Editorial Advisory Board, *Judicial Benchbook on Colorado Child Welfare Law, 5th ed.* He also serves on the Juvenile Rules Committee. Judge Furman successfully proposed a number of bills specific to juvenile law, including the Office of the Child's Representative. He also proposed the formation of the Respondent Parents' Counsel Work Group, which recommended the structure of the Office of Respondent Parents' Counsel, and the Juvenile Law Column of the *Colorado Lawyer* (the first of its kind in the country), serving as the column's first editor (as co-editor, 2002-2005). Judge Furman graduated from Wheaton College with degrees in Psychology and Christian Education. He graduated with an M.S.W. from the University of Denver and (1989), and a J.D. from the University of Denver Sturm College of Law (1989).

Hon. Karen M. Ashby was appointed to the Denver Juvenile Court in September 1998 and was appointed as the Presiding Judge of the Denver Juvenile Court 9 months later, a position that she held until December, 2013, when she was appointed to the Colorado Court of Appeals. She serves as a member of the ICWA division at the Court of Appeals. Judge Ashby served as a board member of the National Council of Juvenile and Family Court Judges from 2003-2011. Locally, she has been a member of the Colorado Judiciary's Court Improvement Project since 1999 and has chaired the committee since 2001. She has served as Chair of the Colorado Supreme Court's Juvenile Rules Committee since its inception.

Hon. Craig R. Welling was appointed to the Colorado Court of Appeals in February 2017. From 2011 until being appointed to the Court of Appeals, Judge Welling served as a Colorado district court judge in the Seventeenth Judicial District (Adams County). As a district court judge, Judge Welling had two-year rotations in each of the following: an adult felony criminal docket; a juvenile docket (including dependency and neglect cases, juvenile delinquency cases, contested and uncontested adoption cases, and

paternity and maternity determinations); and a domestic relations docket. Prior to being appointed to the bench, Judge Welling served in Colorado Governor Bill Ritter's Office of Legal Counsel (2007-2011); and before that, was an associate at Rothgerber Johnson & Lyons LLP (2001-2007). Judge Welling earned a B.S. in chemical engineering from Colorado State University in 1995, an M.A. in environmental engineering from Pennsylvania State University in 2001, and a J.D. from the University of Colorado in 2001.

6. Effective Appellate Writing and Quality of Briefs: From the Lens of COA Staff Attorneys

Jenny Carman, Colorado Court of Appeals, Staff Attorney

Description: A readable brief is a persuasive brief. Discover tips and tricks to improve your writing and help the court understand your arguments.

Jenny Carman is a staff attorney at the Colorado Court of Appeals, where she specializes in dependency and neglect. She has ten years' experience in appellate law, having previously focused on criminal and civil appeals while serving as an appellate law clerk. She earned her J.D. in 2007 from the University of Denver Sturm College of Law, her M.S. in 1999 from Stanford, and her B.S. in 1995 from the University of Wisconsin. She is admitted to the bars of Colorado and Florida.

7. After the Briefing: Effective Appellate Advocacy and Oral Arguments

Hon. Brian D. Boatright, Colorado Supreme Court

Hon. Richard L. Gabriel, Colorado Supreme Court

Hon. John Daniel Dailey, Colorado Court of Appeals

Hon. David M. Furman, Colorado Court of Appeals

Description: In this session, judicial panelists (who participated in a lot of oral arguments before they were appointed) offer tips for a more persuasive oral argument. Petitions for rehearing and cert petitions will also be addressed.

Hon. Brian D. Boatright was appointed to the Colorado Supreme Court in November, 2011. Prior to his appointment, Justice Boatright was a District Court Judge in the First Judicial District in Golden, Colorado. As a District Court Judge, Justice Boatright presided over felony criminal matters, probate matters, civil cases matters, dependency & neglect matters, and juvenile delinquency matters. Preceding this appointment to the District Court Bench, he was a Deputy District Attorney in the First Judicial District. Justice Boatright graduated from Westminster College in Fulton, Missouri and received his Juris Doctorate from the University of Denver.

Hon. Richard L. Gabriel was appointed to the Colorado Supreme Court in June of 2015, after serving on the Colorado Court of Appeals from 2008-15. Justice Gabriel received his B.A. in American Studies from Yale University in 1984 and his J.D. from the University of Pennsylvania School of Law in 1987. Prior to his appointment to the Court of Appeals, Justice Gabriel was a long-time partner with Holme Roberts & Owen LLP (now, Bryan Cave Leighton Paisner) in Denver, where his practice focused on commercial, intellectual property, probate, and products liability litigation, including appeals, and where he headed the firm's intellectual property practice group. Justice Gabriel has received numerous awards for his service to the community, including the Denver Bar Association's Award of Merit, a Rocky Mountain Children's Law Center

Champions for Children award, and the Richard Marden Davis Award. He is a member of the state bars of New York and Colorado, the bars of numerous federal courts, including the United States Supreme Court, and the American, Colorado, New York, and Denver Bar Associations, where he has served (and continues to serve) on many committees. Justice Gabriel is also actively involved in the Chief Justice's Commission on Professional Development, the board of the Colorado Judicial Institute, the executive council of the Minoru Yasui Inn of Court, and the Our Courts program. He writes and speaks frequently on matters relating to the judiciary, trial and appellate practice, and professionalism. In his spare time, he plays the trumpet professionally.

Hon. John Daniel Dailey was appointed Judge of the Colorado Court of Appeals by Governor Bill Owens in January 2000 and retained by the voters in the 2002, 2010, 2018 general elections. Born and raised in Hornell, New York, Judge Dailey graduated cum laude from Bucknell University (B.A. political science, 1974) and summa cum laude from Syracuse University's College of Law (Juris Doctor, 1977). Upon graduating from law school, he clerked for Colorado Court of Appeals Judge David W. Enoch. Prior to his appointment to the Court of Appeals, Judge Dailey served the public for over twenty-one years as a member of the Colorado Attorney General's Office. His area of expertise was appellate, and more particularly, criminal appellate, practice. He was appointed Deputy Attorney General in charge of the Colorado Attorney General's Appellate Section in 1986; Deputy Attorney General in charge of the five units (appellate, medicaid fraud, special prosecutions, capital crimes, and victim assistance) which comprised the office's Criminal Enforcement Section in 1992; Deputy Attorney General in charge of the office's Consumer Protection Section in 1999; and, Assistant Solicitor General in charge of the office's Criminal Appellate Division, also in 1999. Judge Dailey has taught appellate advocacy at both the University of Colorado and the University of Denver law schools and has been a presenter at appellate practice CLEs. John has served as a member of the Colorado Supreme Court's Advisory Committee on Rules of Appellate Procedure and currently chairs the Colorado Supreme Court's Advisory Committee on Rules of Criminal Procedure.

Hon. David M. Furman was appointed to the Colorado Court of Appeals in 2005. Prior to his appointment, he served as a Magistrate in the Denver District Court, presiding over the adult drug court and handling post-decree domestic relations and foreclosure cases (2003-2005). He also served as a Magistrate in the Denver Juvenile Court, handling child protection, adoption, delinquency, truancy, and paternity and support cases (1999-2005). Before taking the bench, Judge Furman practiced trial and appellate litigation with his own criminal defense and family law firm, representing children in dependency and neglect and domestic relations child custody cases (1995-2000). He served as a Deputy Public Defender in the Appellate Division of the Colorado State Public Defender's Office (1990-1995). While an adjunct professor at Colorado Christian University, he taught courses on non-profit organizations, sociology, and laws impacting professional counselors (2004-2008). At Denver University's Graduate School of Social Work, he taught courses on laws impacting social work practice and government policies affecting children and families (1995-2005). He is licensed to practice law in Colorado and admitted to practice in the United States District Court for the District of Colorado, the United States Court of Appeals for the Tenth Circuit, and the United States Supreme Court.

8. Trending Topics in Dependency and Neglect

Jenny Carman, Colorado Court of Appeals, Staff Attorney

Description: This presentation addresses emerging issues in dependency and neglect proceedings. Topics include parental sobriety and visitation, ICPC assessment of nonoffending parents, evidentiary issues, and remand red flags.

Jenny Carman is a staff attorney at the Colorado Court of Appeals, where she specializes in dependency and neglect. She has ten years' experience in appellate law, having previously focused on criminal and civil appeals while serving as an appellate law clerk. She earned her J.D. in 2007 from the University of Denver Sturm College of Law, her M.S. in 1999 from Stanford, and her B.S. in 1995 from the University of Wisconsin. She is admitted to the bars of Colorado and Florida.

9. Ethical Issues in Dependency and Neglect Appeals: From the Perspective of Stakeholders

Magistrate Debra W. Dodd, Guardian ad Litem

April M. McMurrey, Deputy Regulation Counsel

Melanie Jordan, Respondent Parents' Counsel, Guardian ad Litem

Laura G. Eibsen, Assistant City Attorney, Senior

Description: The panel will discuss a range of ethical issues that may arise during the appellate process, from collaboration between trial and appellate counsel in filing an appeal to seeking certiorari where the parent disappears while the appeal is pending.

Magistrate Debra W. Dodd began her legal career in 1997 as a prosecutor in the Adams County District Attorney's Office, where she served as Lead Deputy of County Court and later as a Senior Trial Deputy. In 2004, Debra became a Guardian ad Litem for the newly-formed Office of the Child's Representative, handling Dependency and Neglect and Juvenile Delinquency cases. Over her fifteen years as a GAL, Debra represented the best interests of nearly 1000 abused and neglected children in Weld, Boulder, and Larimer counties. In Weld County, she was a member of the Family Treatment Court team and the 19th Judicial District Best Practices Team. In 2016, Debra became an appellate attorney for the Office of Respondent Parent's Counsel; and in 2017, also joined Litigation Support with OCR. Debra became a district court magistrate in 2017 for the 19th Judicial District, where she handles IV-D child support and paternity matters on a part-time basis. She continues as an appellate attorney for both OCR and ORPC when she is not on the bench, and currently participates in the Colorado Supreme Court Appellate Work Group sub-committee. Debra has previously presented at the Child Welfare Summit and the annual conferences for both OCR and ORPC.

April M. McMurrey is Deputy Regulation Counsel in the intake division of the Colorado Supreme Court Office of Attorney Regulation Counsel. Ms. McMurrey received her undergraduate degree from Colorado State University and her law degree from the University of Colorado School of Law. Ms. McMurrey joined the Office of Attorney Regulation in 2001 as a law clerk. She was later promoted to the trial division, where she worked for seven years as an Assistant Regulation Counsel. Ms. McMurrey then worked

in the intake division as an Assistant Regulation Counsel. Ms. McMurrey is a member of the Colorado Bar Association, the Colorado Women's Bar Association, the Douglas-Elbert County Bar Association, the Colorado Bar Association Ethics Committee, and the National Organization of Bar Counsel.

Melanie Jordan: Melanie Jordan represents parents at the trial and appellate levels and also serves as a GAL in the 1st Judicial District. Before starting her own practice, Melanie was a county attorney in Jefferson and Boulder counties.

Laura G. Eibsen has been an Assistant City Attorney with the Denver City Attorney's Office since 1991. She specializes in handling appeals in dependency and neglect cases, but also has extensive experience litigating juvenile law cases. After graduating from Georgetown University in 1979, Ms. Eibsen served as a VISTA Volunteer with the Legal Center for Handicapped Citizens (now known as Disability Law Colorado). She graduated from the University of Colorado School of Law in 1984. She subsequently clerked for the Hon. Orrelle R. Weeks, the then-presiding judge of the Denver Juvenile Court, and has been a GAL. Ms. Eibsen has made several CLE presentations on topics related to juvenile law and has served on various statewide workgroups and committees devoted to improving trial court and appellate advocacy as well as compliance with the Indian Child Welfare Act (ICWA) in D&N cases.