



FREDERICK R. YARGER

Partner

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"Exceptionally gifted . . . one of the brightest legal minds I've ever encountered."

—Former Colorado Attorney General Cynthia Coffman

Fred Yarger, the former Solicitor General of Colorado, represents clients in high-stakes appeals and complex litigation nationwide. He has been on the front lines of dozens of precedent-setting cases in a wide range of legal areas. His appellate experience spans multiple states and federal appellate courts, including the U.S. Supreme Court, where he has argued as counsel of record multiple times. In trial courts, Fred develops sophisticated strategies that protect his clients' interests and seek to favorably shape the law.

HIGHLIGHTS

- Representing healthcare system in regulatory litigation concerning reimbursement levels for uncompensated care.
- Representing development and property management company in class action challenging sale and management of "condo hotel" resort properties on contract, antitrust, and securities law theories.
- Won a jury verdict for DISH Wireless in a cell tower contract dispute worth hundreds of millions of dollars; lead counsel on appeal.
- Won a \$50 million Colorado Supreme Court victory for Denver International Airport following a decades-long series of contract disputes.
- Won precedent-setting Colo. Supreme Court victory for Crestone Peak Resources.
- Represented irrigation district serving farmers in south Oregon in a water-use dispute described by Law360 as an "Environmental Case to Watch."
- Won a precedential opinion in the Colorado Court of Appeals involving administrative hearings.

EDUCATION

University of Chicago Law School, J.D. 2007, Order of the Coif, with honors, winner of the Beale & Mulroy prizes for written advocacy

Dartmouth College, B.A. 2004, Economics and Statistics, *magna cum laude*, Presidential Scholar

GOVERNMENT SERVICE

Solicitor General of the State of Colorado

Two-time winner of the Attorney General's Award for Exceptional Performance

Law Clerk to the Hon. Timothy M. Tymkovich, United States Court of Appeals for the Tenth Circuit

Law Clerk to the Hon. Mark R. Filip, United States District Court for the Northern District of Illinois

OTHER EXPERIENCE

Gibson Dunn & Crutcher LLP
Partner

ADMISSIONS

Colorado
District of Columbia

INDUSTRIES

- Oil & Gas
- Energy
- Consumer Products & Services
- Insurance

PRACTICE AREAS

- Appellate
- Commercial Litigation
- Environmental Litigation
- Class Actions
- Investigations & Compliance
- Pro Bono

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BIOGRAPHY

Fred Yarger, the former Solicitor General of Colorado, represents clients in high-stakes appeals and complex litigation nationwide. He has been on the front lines of dozens of precedent-setting cases in a wide range of legal areas. His appellate experience spans multiple states and federal appellate courts, including the U.S. Supreme Court, where he has argued as counsel of record multiple times. In trial courts, Fred develops sophisticated strategies that protect his clients' interests and seek to favorably shape the law.

In every case, whether at trial or on appeal, Fred partners with his clients to find creative ways to advance their business priorities. In addition to his trial and appellate successes, Fred's government experience helps him advocate for clients before state and federal regulatory and investigative agencies. Fred also maintains an active pro bono practice; for example, he currently represents an inmate subjected to excessive force by a group of prison guards trained to employ military-style tactics against inmates in a county jail.

Fred's written advocacy has been recognized by top appellate and Supreme Court litigators; he is a three-time winner of the National Association of Attorneys General "Best U.S. Supreme Court Brief" award. In ranking Fred in Band 1 for "Litigation: Appellate" in Colorado, Chambers USA noted that a client said, "Fred gives masterful arguments that show command of the records and a keen recognition of what courts are looking for." *Law Week Colorado* has named Fred a Top Litigator, and the *Denver Business Journal* recognized him in its annual "Who's Who in Energy" for his successes litigating issues affecting the oil and gas industry. Before joining WTO, Fred was a partner in an AmLaw 20 firm.

CASES

Appeals

- Won a \$50 million Colorado Supreme Court victory for Denver International Airport, overturning adverse bench trial and lower appellate court opinions and creating precedent that prohibits putative plaintiffs from using delay tactics to gain an unfair advantage in litigation.
- Won a Colorado Supreme Court opinion for Crestone Peak Resources in a lease dispute with significant implications for Colorado's oil and gas industry.
- Won on an issue of first impression before the Colorado Court of Appeals for an insurance company. The published opinion states that administrative determinations in workers' compensation proceedings do not have preclusive effect in subsequent bad faith cases, protects the efficiency of administrative proceedings, and preserves employers' ability to present complete defenses at trial.

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- Representing healthcare clients in high-stakes appeals of "nuclear verdicts" with tens of millions of dollars in liability in Arizona, Oklahoma, and New Mexico.
- Won in the First, Fourth, and Ninth Circuits for a major shipping logistics company to affirm dismissals of wage theft and other claims under state and federal law or dispose of class claims.
- Successfully defended Colorado's new congressional map to the Colorado Supreme Court in a fast-paced appeal. The appeal raised complicated, novel questions of constitutional law, and was the first time the court applied Colorado's new laws governing congressional redistricting. Over a dozen parties filed briefs, and argument was held less than two weeks after the Commission adopted the map.
- Representing an oil and gas company as post-trial and appellate counsel to defend a verdict of over \$40 million in a complex commercial dispute involving an agreement to develop hydrocarbon assets.
- On behalf of a nationwide appliance retail and repair company, successfully defended the constitutionality of a statutory cap on noneconomic damages.
- Represented a medical device company in post-trial and appellate proceedings in a case presenting questions of first impression under Colorado products liability law.
- Represented a national homebuilding company before the Colorado Supreme Court in a case presenting questions of first impression under the economic loss rule.
- Won in the First Circuit for a major shipping logistics company to affirm dismissals of wage theft and other claims under state and federal law.
- Represented United Power, Inc., a Colorado electric distributor, in an appeal of an exit-fee dispute worth over \$1 billion.
- Won in the Sixth Circuit for one of the world's leading kitchen and laundry appliance companies in a multimillion-dollar commercial licensing dispute.
- Prevailed in the Tenth Circuit for a European telecommunications company seeking discovery to support litigation concerning a multibillion-dollar joint venture.
- Represented land conservation entity in the Tenth Circuit in a dispute with a local government that raised legal and constitutional issues for western landowners and conservation groups.
- Served as appellate preservation and consulting counsel for a recreation company in a catastrophic injury case raising unsettled legal issues affecting vicarious liability, apportionment of fault, and statutory limits on noneconomic damages.

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- Represented a temporary staffing agency in the appeal of the largest individual personal injury judgment in Colorado history.
- Represented a national market leader in cannabidiol-based wellness products in an emergency petition to the Colorado Supreme Court to reduce the scope of damages available at an impending breach-of-contract trial.
- Represented an airport fixed-based operator as amicus counsel in a Colorado Supreme Court appeal affecting tax liability for lessees on public land across the state.
- Represented nationally recognized law professors in filing an amicus brief to the Texas Supreme Court explaining the contours of the "ministerial exception" to liability for churches in cases in which clergy sue for work-related torts or other claims.
- Won a unanimous decision in Colorado's highest court preserving the state's longstanding regulatory approach for the oil and gas industry.
- Successfully represented a prospective government contractor as part of a multi-firm team in the appeal of a government bid protest worth tens of billions of dollars.
- Successfully preserved a landmark state law reforming tenure policies for public school teachers.
- Won an emergency, eve-of-trial appeal to the Colorado Supreme Court to preserve core legal claims in a consumer protection case with tens of millions of dollars in potential monetary awards.
- On remand from the U.S. Supreme Court, won a judgment upholding sales tax collection rules for e-commerce companies. That judgment set the stage for a Supreme Court decision that fundamentally reshaped e-commerce tax law across the country. Also authored a Supreme Court amicus brief cited in the majority's opinion.
- Won a unanimous, precedent-setting decision in the Colorado Supreme Court that required the nation's largest consumer litigation finance company to abide by state lending laws.

Trials & Litigation

- Representing healthcare system in regulatory litigation concerning reimbursement levels for uncompensated care.
- Representing development and property management company in class action challenging sale and management of "condo hotel" resort properties on contract, antitrust, and securities law theories.

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- Won a jury verdict for DISH Wireless in a cell tower contract dispute worth hundreds of millions of dollars; lead counsel on appeal.
- Counsel in a federal jury trial in a multimillion-dollar dispute concerning alleged construction defects in a large residential development; lead counsel on appeal.
- Served as appellate preservation counsel to a natural resources company for a jury trial in a commercial dispute with tens of millions of dollars in claimed damages.
- Successfully represented large healthcare system in series of regulatory proceedings under a first-of-its kind legal framework to set reimbursement rates for "public option" health insurance plans.
- Successfully dismissed a client from a complex commercial dispute involving a technology platform intended to facilitate quality control for consumer products.
- Represented a leading ridesharing company in catastrophic injury cases with millions of dollars in claimed damages.
- Represented a wholesale energy company in a multi-jurisdictional dispute with multiple counterparties, preserving tens of millions of dollars of contract value and a key long-term business objective for the client.
- Advised an oil and gas company on state law regulatory issues that threatened the client's assets in a major oil and gas producing region.
- Advised a national distribution company on litigation strategy concerning federal regulations governing the distribution and sale of electronic tobacco products.
- Served as appellate preservation counsel in a First Amendment case challenging a major university's policies regarding the recognition of religious student groups.
- Won preliminary and permanent injunctions after a contested evidentiary hearing in trial court, invalidating federal oil and gas regulations that duplicated state rules and hindered resource development.
- Served as counsel for Colorado in a multistate coalition that won the first injunction against the federal "Waters of the United States Rule."
- Defended a public company auditor at trial and on appeal in a proceeding brought by the United States Securities and Exchange Commission.
- Represented the patent holder of an antidepressant in a multistate class action raising antitrust and consumer protection claims.

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- Represented a domestic company seeking to protect and enforce an international marketing and distribution agreement in simultaneous actions filed in Florida and California federal trial courts.

U.S. Supreme Court

- Represented irrigation district serving farmers in south Oregon in a water-use dispute described by Law360 as an "Environmental Case to Watch."
- Represented a pro-bono client in certiorari-stage proceedings in the U.S. Supreme Court to challenge a criminal conviction based on emerging constitutional law.
- Represented a group of state legislative leaders in filing a U.S. Supreme Court amicus brief in a major election law case that will shape state-level election policy for future elections.
- Represented a major car maker in certiorari-stage proceedings in the U.S. Supreme Court, preserving a favorable lower court decision that precluded liability for a class of employment discrimination claims.
- Argued before the U.S. Supreme Court in defense of Colorado's anti-discrimination laws in a closely-watched case that the national media described as a "blockbuster."
- Argued before the U.S. Supreme Court in a case involving administration of an interstate water compact governing a river system that provides drinking water and irrigation to over six million people in three U.S. States and Mexico.
- Won a complete victory in the U.S. Supreme Court in an interstate pollution case claiming hundreds of millions of dollars in damages. Convinced the U.S. Department of Justice to file a brief supporting the client's position.
- Won a U.S. Supreme Court ruling that overturned a Colorado Supreme Court decision severely restricting local governments from pursuing school choice policies.
- Argued a challenge to state rules governing refunds of criminal fees. Helped lead a subsequent legislative effort to make Colorado a leader in granting due process rights to criminal defendants who seek refunds after reversal of their convictions.
- Argued before the U.S. Supreme Court in a case challenging jury secrecy rules that dictate when a verdict is subject to challenge in claims of individual juror bias. National media called this a "top five" case of the term.
- Successfully defended Colorado's marijuana regulatory framework before the U.S. Supreme Court and the Tenth Circuit, defeating federal preemption claims that would have prevented states from tightly regulating the supply side of the multibillion-dollar marijuana market. Persuaded the U.S. Department of Justice to support the client's position before the Supreme Court.

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- Won a ruling from the U.S. Supreme Court that vacated an adverse decision of the Tenth Circuit and opened up new legal arguments for a client on remand to the trial court.

BAR & COURT ADMISSIONS

Colorado
District of Columbia
U.S. Supreme Court
U.S. Court of Appeals, 10th Circuit
U.S. Court of Appeals, 1st Circuit
U.S. Court of Appeals, 4th Circuit
U.S. Court of Appeals, 5th Circuit
U.S. Court of Appeals, 6th Circuit
U.S. Court of Appeals, 7th Circuit
U.S. Court of Appeals, 8th Circuit
U.S. Court of Appeals, 9th Circuit
U.S. Court of Appeals, D.C. Circuit
U.S. District Court, D. Colorado
U.S. District Court, D. North Dakota

LEGAL MEMBERSHIPS, ACTIVITIES & HONORS

Chambers USA
Colorado Litigation - Appellate Spotlight, 2021-2024
National Association of Attorneys General "Best Brief" Award for excellence in written advocacy before the United States Supreme Court
2015-2018 (three-time winner)
Denver Business Journal
"Who's Who in Energy," 2018
Law Week Colorado
Litigator of the Year, 2018
The Best Lawyers in America
Appellate Practice, 2020, 2022-2025
5280 Magazine
Top Lawyer - Appellate, 2024
Colorado Supreme Court Standing Committee on the Rules of Professional Conduct
Member
Tenth Circuit Historical Society
Vice President and Member of the Board of Directors
Product Liability Advisory Council
Member
Colorado Bar Association
Federalist Society

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Colorado Civil Justice League, Legal Advisory Board
Member

ARTICLES & PRESENTATIONS

Articles

- Co-Author, "Demystifying Colorado's Atypical Civil and Administrative Appeals," Colorado Lawyer, (January/February 2023).
- Co-Author, "Take a Page From The Onion: A General Counsel's Guide to Effective Amicus Advocacy," Corporate Compliance Insights, (October 19, 2022).
- Co-Author, "What Proposed Contractor Rule May Mean For Wage Litigation," Law360 (August 24, 2022).
- Co-Author, "Supreme Court Reins In, But Does Not Overturn, SEC's Disgorgement Authority," New York Law Journal, (June 2020).
- Co-Author, "What to Consider Before Filing for a Rule 57 Speedy Hearing," Law360 Expert Analysis, (September 12, 2019).
- "*Trinity Lutheran Church v. Comer*: The justices reach broad agreement, but on a narrow question," SCOTUSblog, (June 27, 2017).

Presentations

- Co-Presenter with Colorado Court of Appeals Judge, "Top Appellate Tips," Colorado Defense Lawyers Association Annual Conference (August 2024).
- Presenter, "On the Docket at the U.S. Supreme Court," Nebraska State Bar Association, (October 20, 2023).
- Co-presenter, "Appellate Preservation in State & Federal Colorado Courts," Denver City Attorney's Office, (August 9, 2023).
- Co-presenter, "The Power of Plain Language in an Oil and Gas Lease: A Case Study," Jamie Jost of Jost Energy at the 49th Annual Fall Land Institute of the Denver Association of Professional Landmen (November 3, 2022).
- Co-presenter, "A Pandemic, Redistricting, and an Election Year," (June 21, 2022).
- Co-presenter, with Jamie Jost and Kelsey Wasylenky of Jost Energy Law, "Navigating the New Normal in a Changed Oil & Gas Climate," (January 21, 2021).
- Co-moderator, "Colorado Bar Association CLE: "Friend or Foe: Amicus Briefs in Colorado's Appellate Courts," Panel Discussion by Colorado Supreme Court Justices Melissa Hart and William Hood, III and Chief Judge Steve Bernard of the Colorado Court of Appeals, (November 6, 2020).

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- "Federalist Society Nationwide Teleforum: Representing Colorado," A Conversation with Solicitor General Eric Olson and Former Solicitor General Fred Yarger, (April 2020).
- Presenter, "COVID-19: Legal Implications of Colorado's Stay-at-Home Order," Centennial Institute, (March 2020).
- Keynote Speaker, "Let Them Speak Cake: Expansion of Free Speech and *Masterpiece Cakeshop*," The Federal Bar Association Civil Rights Section, (March 30, 2018).
- Presenter, "Colorado at the United States Supreme Court," The American Bar Association, Appellate Practice Regional Meeting, (March 6, 2018).
- Presenter, *Masterpiece Cakeshop*: Interview with Colorado Solicitor General Fred Yarger, The University of Chicago Law Review Podcast, 2, (January 13, 2018).

PERSONAL INTERESTS

- Chasing after his three young sons with his wife Katie (also a full-time lawyer), the Colorado music scene, skiing, and hiking Colorado's mountains.