Appellate



OVERVIEW

Clients value our ability to prepare for and to navigate the complex appellate process in New Mexico and the Tenth Circuit. When the stakes are high, our clients involve Modrall Sperling's seasoned appellate lawyers sooner rather than later.

By its nature, appellate litigation is different from litigation in the trial courts, and therefore requires a different set of skills geared for an audience of appellate judges.

Our appellate lawyers do not merely draft and argue cases in the appellate courts. We help clients and their trial lawyers to prepare for appellate review from the outset of litigation. We consult with them to identify and develop the legal theories most likely to bring success in the appellate courts. We draft pre-trial motions, and assist at trial, to preserve those issues for appeal.

We also draft and argue post-judgment motions, negotiate favorable settlements on appeal when appropriate, and draft and file amicus curiae briefs on issues of interest to our clients.

EXPERIENCE

- Summary judgment upheld for client school district in Americans with Disabilities Act case, *J.V. v. Albuquerque Public Schools*, 813 F.3d 1289 (10th Cir. 2016)
- Affirmance of dismissal of high-profile mandamus action seeking to halt trap-neuter-return program for feral cats, *Britton v. Bruin*, et al., No. 34,283 (N.M. Ct. App. 2016)
- Summary judgment affirmed for school officials, and rejection of claim that they improperly searched a student for drugs, *A.M. v. Holmes*, No. 14-2066 (10th Cir. 2016)
- Affirmance of dismissal of tort claims against client; Court of Appeals held that actions for tort damages may be brought only by directly injured plaintiff, not by a plaintiff who claims to have suffered collateral injuries, *National Roofing, Inc. v. Alstate Steel, Inc.*, No. 34,006, 366 P.3d 276 (N.M. Ct. App. 2015)
- Reversal of case-ending discovery sanction against client, *Couch v. Williams,* 365 P.3d 45 (N.M. Ct. App. 2015)
- Controversial groundwater quality regulations for New Mexico's copper industry upheld against challenge by environmental groups, *Gila Resources Information Project v. N.M. Water Quality Control Commission*, 355 P.3d 36 (N.M. Ct. App. 2015)
- Reversal of an administrative agency's suspension of electric rates; Supreme Court held that the agency violated client's rights by acting without providing notice or a hearing, *Tri-State Generation & Transmission Ass'n v. N.M. Public Regulation Commission*, 347 P.3d 274 (N.M. 2015)

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- $40 million reduction of punitive damages award in personal injury case on post-judgment motions; case settled, *Sowards v. Biotronik, Inc.*, No. D-307-CV-2009-02563 (N.M. Third Judicial Dist. Ct. 2014)
- Summary judgment upheld in client's favor in wrongful death case, *Holley v. Evangelical Lutheran Good Samaritan Society*, 588 F. App'x 792 (10th Cir. 2014)
- Reversal of lower court decision; Supreme Court held that statute mandating dispensing fee on pharmacy prescriptions did not apply to clients, which were managed care organizations, *Starko, Inc. v. N.M. Human Services Department*, 333 P.3d 947 (N.M. 2014)
- Affirmance of determination that Public Works Minimum Wage Act did not apply to client, *In re Rescission of Prior Determination Relating to Sandia Foundation Const. Projects,* 331 P.3d 1003 (N.M. Ct. App. 2014)
- Client's entitlement to charitable exemption from property tax upheld, *La Vida Llena v. Montoya,* 299 P.3d 456 (N.M. Ct. App. 2013)
- Summary judgment affirmed in client's favor on Americans with Disabilities Act claim, and affirmance of award of sanctions against EEOC for pursuing a frivolous claim, *EEOC v. TriCore Reference Laboratories,* 493 F. App'x 955 (10th Cir. 2012)
- Rejection of election-law challenge to municipality's formation of a public improvement district, *Glaser v. Lebus*, 276 P.3d 959 (N.M. 2012)
- Reversal of trial court's refusal to give effect to arbitration agreement, *Barron v. Evangelical Lutheran Good Samaritan Society,* 265 P.3d 720 (N.M. Ct. App. 2011)
- Summary judgment affirmed in client's favor in case alleging civil rights violations under 42 U.S.C. § 1983, *Mata v. Anderson*, 635 F.3d 1250 (10th Cir. 2011)
- Represented Governor of New Mexico in extraordinary writ proceeding, *New Energy Economy, Inc. v. Martinez*, 247 P.3d 286 (N.M. 2011)
- Summary judgment affirmed in client's favor in wrongful death case, *Henderson v. National R.R. Passenger Corp.*, 412 F. App'x 74 (10th Cir. 2011)
- Affirmance of dismissal of securities fraud claims against clients, *Wilde v. Westland Development Co., Inc.,* 241 P.3d 628 (N.M. Ct. App. 2010)
- Summary judgment affirmed in favor of client, Oklahoma Tax Commission, in declaratory judgment action by tribe seeking judgment that its reservation had not been disestablished, *Osage Nation v. Irby*, 597 F.3d 1117 (10th Cir. 2010)

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