



CAROLYN J. FAIRLESS

Firm President

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"She misses no details and seems almost always to be available to address concerns. She is the ultimate client pleaser."

—Client comment to Chambers USA

EDUCATION

University of Colorado Law School,
J.D., 1998
Research Assistant to Professor
Dale A. Oesterle

Tulane University, B.S., 1992,
Computer Science, *cum laude*

OTHER EXPERIENCE

IBM Corporation
Computer Analyst

ADMISSIONS

Colorado
Montana

The President of Wheeler Trigg O'Donnell, Carolyn Fairless represents sophisticated clients in complex commercial litigation and professional liability defense. She has taken more than 25 trials or arbitration hearings to verdict or judgment. Carolyn is ranked in Band 1 in Chambers USA for General Commercial Litigation in Colorado and is a Fellow of the American College of Trial Lawyers.

HIGHLIGHTS

- Won a permanent injunction for an AmLaw 200 firm following a bench trial.
- Won a 15-day arbitration for a law firm in a malpractice case arising from a construction-defect lawsuit.
- Won an appeal in the Tenth Circuit for an AmLaw 100 firm reversing the denial of a motion to dismiss an adversary proceeding on a statutory construction issue of first impression.
- Won a Kentucky appeal for a law firm in a \$500 million estate dispute.
- Won a defense jury verdict for a lawyer and law firm facing outrageous conduct and malicious prosecution claims.
- Won a second unanimous jury verdict for a leading auto-parts manufacturer in an 11-year-old breach of contract dispute in federal court in Kentucky.
- Won a trial for two estate creditors accused of colluding with an estate representative to defraud the primary beneficiary.

INDUSTRIES

- Financial Services
- Legal Services
- Professional Services
- Real Estate
- Insurance

PRACTICE AREAS

- Professional Liability
- Legal Professional Liability
- Commercial Litigation
- Appellate
- Intellectual Property
- Catastrophic Injury Defense

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BIOGRAPHY

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Carolyn represents clients in matters including breach of contract, business torts, intellectual property, personal injury, insurance coverage and bad faith, and professional liability. She has been called "a lawyer's lawyer" and has successfully defended some of the nation's leading law firms and lawyers in high-stakes legal malpractice matters throughout the country. Carolyn also defends insurance, finance, and real estate firms and professionals.

There is a common misperception that jurors dislike the types of clients Carolyn represents. Her record of trial success proves otherwise. Carolyn humanizes her clients and presents their cases in fresh and creative ways for judges and juries. Especially when the underlying claims may be complex and potentially confusing, Carolyn develops clear case themes and trial strategies that engage jurors and help make critical information meaningful and memorable.

Chambers USA, the leading rankings directory in the legal industry, ranks Carolyn in Band 1 for General Commercial Litigation in Colorado, a distinction that places her among the top six commercial litigators in the state. In 2018, the directory wrote "She is noted by a source as 'talented and experienced beyond her years,' adding: 'She misses no details and seems almost always to be available to address concerns. She is the ultimate client pleaser.'"

Best Lawyers recognized Carolyn as the Denver Lawyer of the Year for Professional Malpractice Law - Defendants in 2017 and 2020-2021, and Legal Malpractice Law - Defense in 2023. Colorado Super Lawyers ranks Carolyn in the Top 10 Lawyers, as voted by her colleagues and peers. Carolyn is also Martindale-Hubbell AV peer-review rated.

CASES

- Won a permanent injunction for an AmLaw 200 firm following a bench trial.
- Won a 15-day arbitration for a law firm in a malpractice case arising from a construction-defect lawsuit.
- Won an appeal in the Tenth Circuit for an AmLaw 100 firm reversing the denial of a motion to dismiss an adversary proceeding on a statutory construction issue of first impression.

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- Won a Kentucky appeal for a law firm accused of aiding and abetting a client's breach of fiduciary duty in a \$500 million estate dispute.
- Won a defense jury verdict for a lawyer and law firm facing outrageous conduct and malicious prosecution claims.
- Won a second unanimous jury verdict for a leading auto-parts manufacturer in an 11-year-old breach of contract dispute in federal court in Kentucky. Due to the results of a prior appeal, WTO's client held the burden of proof on key issues in the trial.
- Won a trial for two estate creditors accused of colluding with an estate representative to defraud the primary beneficiary. The presiding judge entered judgment for WTO's clients, concluding that the plaintiff had failed to prove virtually every necessary element of her claims.
- Argued and won a motion to dismiss \$150 million malpractice claims brought in Nevada against an AmLaw 200 firm. The allegations involved the accuracy of an underlying tax opinion.
- Won an arbitration award for a lawyer and law firm against malpractice claims related to a 2014 real estate deal. Claimants asserted damages of \$3 million plus interest. The arbiter ruled for WTO's client and found that no malpractice occurred.
- Won a complete defense verdict for a lawyer and law firm accused of malpractice in the handling of a sale of interests in the plaintiff's company.
- Won an arbitration for a law firm client that sued its former client for unpaid fees and was countersued for malpractice. The arbitrator rejected the malpractice claims and awarded WTO's client its unpaid fees plus interest, as well as its legal fees and costs incurred in the arbitration.
- Won a complete defense verdict in a professional liability claim against a law firm and lawyer. The plaintiff alleged that WTO's client was negligent, yet the jury found that not only was our client not negligent, but that the alleged negligence didn't cause the claimed damages.
- Obtained Rule 12 dismissal for a Midwest-based, AmLaw 200 firm facing claims exceeding \$500 million in state court in Kentucky.
- Won a complete defense jury verdict for a major auto parts manufacturer in federal court in Kentucky. WTO was called in just six months before trial in this protracted contract dispute that had already included two trips to the Sixth Circuit.

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- Won Tenth Circuit victory for a law firm client in protracted litigation arising out of a divorce and bankruptcy characterized as "the most complex [the divorce court] has seen in 25 years." The plaintiff-husband sued WTO's client, which handled the bankruptcy proceedings for the plaintiff's ex-wife, and the ex-wife's divorce counsel, in federal court. The Tenth Circuit's ruling in this matter follows a 2015 ruling for our client from the Tenth Circuit Bankruptcy Appellate Panel.
- Won summary judgment for a large regional law firm in a legal malpractice case involving claims that the firm's lawyers failed to properly advise the plaintiff regarding environmental issues in an underlying real estate transaction.
- Won a unanimous opinion from the Colorado Supreme Court that strongly upholds Colorado's strict privity rule in determining whether non-client beneficiaries may sue an estate lawyer for malpractice or professional liability. In its opinion, the Court adopted the most stringent test, as WTO advocated, and affirmed that the plaintiffs lacked standing to sue our clients.
- Won a defense verdict for Pepsi Bottling Group in a six-day jury trial. The plaintiff claimed a traumatic brain injury as a result of being struck with falling merchandise from a retail display. WTO's client was one of two defendants in the litigation, and the jury assigned no fault to our client.
- Prevailed before the Tenth Circuit Bankruptcy Appellate Panel, which affirmed a bankruptcy court's order of summary judgment for WTO's client, a law firm that had been sued for representing its client in bankruptcy proceedings that became intertwined with a protracted divorce in which the plaintiff (to the appeal) was a party.
- Won a complete defense jury verdict in a \$12 million legal malpractice case. The jury found in favor of WTO's client on all claims and also awarded unpaid legal fees owed by plaintiffs.
- Won a complete defense jury verdict in federal court for a large international law firm accused of malpractice. The plaintiff hired WTO's client to handle a complex patent infringement matter, then sued the firm for negligence and breach of fiduciary duty.
- Won back-to-back Colorado Court of Appeals victories in June 2013 in legal malpractice cases involving claims of failure to disclose, negligent misrepresentation, fraudulent concealment, and breach of fiduciary duty.
- Defeated class certification in federal court in Oklahoma in a case involving thousands of claimants against a law firm that represents clients before the Social Security Administration. Following the denial of certification, the court granted summary judgment in favor of WTO's client on all remaining individual claims in the case.

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- Won a bench verdict in state court in a legal malpractice matter. After the law firm brought a collection action against a former client, the former client countered with a multimillion-dollar damages demand, claiming breach of fiduciary duty. Following a one-week trial, the judge dismissed the former client's counterclaim and awarded WTO's client the full amount of fees owed plus interest.
- Won an arbitration award in favor of a law firm client. The arbitrator denied all legal malpractice claims against WTO's client and awarded it unpaid fees, plus interest, attorneys' fees, and costs.
- Represented plaintiffs challenging the constitutionality of increasing copyright protection by 20 years and Section 514 of Uruguay Round Agreements Act extending copyright protection to foreign works. The United States Supreme Court ruled the statutes were constitutional.
- Obtained a Rule 12(b) dismissal of a complaint filed in federal court in Missouri against a large international law firm. The plaintiffs ultimately obtained an eight-figure jury verdict against the remaining defendants in the case.
- Successfully defended against a real estate company's claims that WTO's client's interference caused the loss of a \$2 million investment when it prevented the sale of a shopping center before the real estate market crashed. WTO was retained in the last months before trial, and despite rulings made before WTO's engagement that the basis for interfering lacked merit as a matter of law, following trial, the court ruled for WTO's client on all issues of liability, causation, and damages.
- Obtained a Rule 12(b) dismissal of a malpractice case against five lawyers. The opposing party appealed the dismissal and, while the appeal was pending, the case settled with no payments being made by WTO's clients.
- Obtained summary judgment for a law firm client and an award of attorneys' fees in a legal malpractice case in which the plaintiff sought \$7 million in damages. The plaintiff appealed the award of attorneys' fees, and the parties settled the appeal with payments being made to the client.
- Obtained partial summary judgment in federal court for a large national law firm that had been sued for malpractice, aiding and abetting, conspiracy, and violations of RICO. The ruling reduced the damage claim from over \$150 million to less than \$2 million and paved the way for a favorable settlement of the case.
- Awarded complete summary judgment in a legal malpractice case one week before a multi-week trial was scheduled to begin. The plaintiff had sought over \$5 million in damages.

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TEACHING POSITIONS

- National Institute for Trial Advocacy

REPRESENTATIVE CLIENTS

- Lawyers and Law Firms

BAR & COURT ADMISSIONS

- Colorado
Montana
U.S. Supreme Court
U.S. Court of Appeals, 10th Circuit
U.S. Court of Appeals, 6th Circuit
U.S. District Court, D. Colorado

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LEGAL MEMBERSHIPS, ACTIVITIES & HONORS

CAROLYN J. FAIRLESS

- American College of Trial Lawyers, Fellow
 - Legal Ethics and Professionalism Committee, Chair, 2022-2024
 - Vice-Chair, 2020-2021
 - Vice-Chair, Colorado State Committee, 2022-2024
 - Member, Boot Camp Trial Training Programs Committee, 2020-2021
- Chambers USA
 - Commercial Litigation - Colorado, 2013-2023
- American Bar Association
 - Standing Committee on Lawyers' Professional Liability, 2020-2023
- The Best Lawyers in America
 - Professional Malpractice Defense Lawyer of the Year - Denver, 2017, 2020-2021
 - Legal Malpractice Law - Defense Lawyer of the Year - Denver, 2023
 - Commercial Litigation, 2013-2024
 - Legal Malpractice Defense Law, 2012-2024
 - Professional Malpractice Defense Law, 2012-2024
 - Intellectual Property Litigation, 2017-2024
- Benchmark Litigation
 - Local Litigation Star, 2020-2024
 - Top 250 Women in Litigation 2014-2018
 - Commercial Litigation - Colorado, 2014-2018
 - Future Star - Colorado, 2013
- Colorado Super Lawyers
 - Super Lawyers, Professional Liability: Defense, 2009-2024
 - Rising Stars, Professional Liability: Defense 2009
 - Top 10, 2022-2024
 - Top 100, 2012-2021
 - Top 50 Women, 2012-2024
 - Top 50, 2011
 - Top 25 Women, 2011
- Colorado Women's Bar Association Foundation
 - 2015 Raising the Bar Dinner Honoree,
 - "Women to Watch: Five Female Attorneys Who Will Make an Impact Over the Next 10 Years"
- Minority Corporate Counsel Association
 - Rainmakers Who Always Shine, 2017
- Colorado Law Distinguished Alumni in Private Practice Award, 2021
- Law Week Colorado
 - "Barrister's Best" Civil Litigator: 2018, 2015
 - "Barrister's Best" Insurance Law for Defendants, 2021
 - Top Litigator, 2018
 - "People's Choice" Best Civil Litigator, 2017

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Lawyer of the Year, 2014
Top Women Lawyers, 2010
Denver Business Journal
Power Book Award Winner - 2016
5280 Magazine
Top Lawyer
Civil Litigation, 2016-2018, 2021, 2023, 2024
Commercial Litigation, 2021, 2023, 2024
Colorado Corporate Counsel Black Book
Business Litigation, 2007
The Legal 500 United States
Litigation, 2007
Martindale-Hubbell AV® Peer Review Rated
Fellow, Litigation Counsel of America, The Trial Lawyer Honorary Society
Colorado Bar Association
Ethics Committee
Defense Research Institute
Professional Liability Committee
Colorado Supreme Court Judicial Nominating Commission, 2017-2022

COMMUNITY MEMBERSHIPS, ACTIVITIES & HONORS

- Animal Assistance Foundation, Board of Directors, 2016-2018
President, Foothills Animal Foundation, 2009-2012

ARTICLES & PRESENTATIONS

Articles

- Co-Author, "Behavioral Ethics and the Practice of Law, ALAS Loss Prevention Journal," Vol. XXX, No. 2, (Winter 2019).

Book Chapters

- Co-Author, "Legal Malpractice," Chapter 24, *Colorado Civil Claims: Elements, Defenses, and Sample Pleadings, First Edition, Continuing Legal Education in Colorado, Inc.* (2019).

Presentations

- Panelist, "Houston, We May Have an Issue...: Navigating the (Possible) Mistake," PilotLegis Member Conference, (November 6, 2023).
- Panelist, "Lessons in Legal Ethics and Risk Management for Law Firms and Insurance Professionals," Professional Liability Defense Federation Annual Meeting, (September 28, 2023).

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- Moderator, "Nuclear Verdicts for Lawyers: We are not Immune," American Bar Association National Legal Malpractice Conference, (April 20, 2023).
- Presenter, "Winning at Trial; Closing Argument," Colorado Bar Association CLE Seminar, (March 9, 2023).
- Panelist, "Hazards in Co-Counsel, Local Counsel and Referral Relationships," American Bar Association National Legal Malpractice Conference, (September 22, 2022).
- Mock trial presenter, Attorneys' Liability Assurance Society Annual General Meeting, (June 17, 2022).
- Moderator, "The Changing Litigation Landscape: Trials and Hearings in 2022 and Beyond," American Bar Association National Legal Malpractice Conference, (April 8, 2022).
- Moderator, "Pointing the Finger at the Plaintiff," American Bar Association National Legal Malpractice Conference, (September 23, 2021).
- Presenter, "Ethical or Unethical? Potential Pitfalls in Trial Practice," Colorado Defense Lawyers Association Summer Conference, (July 31, 2021).
- Presenter, "Foundations: How to Prepare for a Deposition," Colorado Bar Association CLE Estate Planning Retreat, (June 11, 2021).
- Presenter, "Unexpected Peril: The Evolution of Third-Party Claims Against Lawyers," Association of Professional Responsibility Lawyers Mid-Year Meeting, (March 5, 2021).
- Presenter, "Ethical Pitfalls in Trial Practice," Colorado Bar Association CLE Seminar, (November 12, 2020).
- Presenter, "Best Practices and Ethics in the Profession," Colorado Bar Association CLE Seminar, (June 20, 2019).
- Presenter, "Conducting Voir Dire," Practicing Law Institute, (May 21, 2019).
- Presenter, "Ripped From the Headlines: Real World Cautionary Tales in Attorney Ethics," Colorado Law Homecoming & Reunion Weekend, (October 27, 2018).
- Presenter, "We Told You So – Loss Prevention Success Stories," Attorneys' Liability Assurance Society Annual General Meeting, (June 22, 2017).
- Presenter, "A Primer on Lawyers' Professional Liability Insurance," Colorado Bar Association CLE, (January 27, 2017).

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- Presenter, "Pretrial Discovery and Depositions," Colorado Bar Association CLE, (November 2, 2016).
- Presenter, "Insurance Coverage Issues in Estate, Trust and Fiduciary Litigation," 36th Annual Estate Planning Retreat, (June 9-11, 2016).
- Presenter, "Baker v. Wood Ris & Hames: Privity Prevails," Trust & Estate section CLE luncheon series, (March 1, 2016).
- Presenter, "Location, Location, Location: The Decisions Involved in Venue Selection," ABA Fall 2015 National Legal Malpractice Conference, (September 17, 2015).
- Presenter, "A Primer on Lawyers' Professional Liability Insurance," Colorado Bar Association CLE's Hanging Your Shingle: Hardware. Software. Anywhere You Want to Go, (August 20-22, 2015).
- Presenter, "Policy Exclusions, Conditions, Endorsements, and Coverage Gaps," Colorado Bar Association's Understanding Your Professional Malpractice Insurance Policy, (December 11, 2014).
- Presenter, "Legal Malpractice: Preventing Claims and Grievances," CLE International's The Ethics CLE annual conference, (December 8, 2014).
- Presenter, "Lessons Learned: Protecting In-House Counsel From Malpractice Claims," Association of Corporate Counsel's Eighth Annual Ethics Day For In-House Counsel, (December 3, 2014).
- Presenter, "The Defense Perspective: How Loss Prevention and Firm Management Practices Can Impact Malpractice Claims," Ethics CLE at Wheeler Trigg O'Donnell, (November 19, 2014).
- Presenter, "Attorney Liability to the 'Near Client' and Non-Client: It's not just your clients you have to worry about!," Pilot Legis Annual Member Conference, (November 7, 2014).
- Presenter, "Hazards in Co-Counsel, Local Counsel and Referral Relationships," AON Law Firm Symposium, (October 15, 2014).
- Presenter, "Malpractice Insurance - Hanging Your Shingle: Your Future Begins Now," Colorado Bar Association CLE, (August 15, 2014).
- Presenter, "Protecting Yourself and Your Firm: What are the Questions to Ask About Insurance Coverage?" Colorado Bar Association, (January 30, 2014).

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- Presenter, "Avoiding Missteps in Handling Litigation and Other Disputes," Association of Corporate Counsel Colorado Chapter, (December 5, 2012).
- Presenter, "Ethics: Be Careful What You Ask For: Pitfalls in Settlement Negotiations," Network Trial Law Firms' Litigation Management in a New York Minute seminar, (August 10, 2012).
- Presenter, "Policy Exclusions, Conditions, Endorsement, and Coverage Gaps: Malpractice Insurance Coverage - What's Your Policy?," CLE accredited seminar, Denver, Colorado, (April 15, 2011).
- Presenter, "Human Resource Management and Oversight," legal malpractice prevention CLE, (January 27, 2011).
- Presenter, "Deposition Strategy 101," Colorado Defense Lawyers Association CLE Seminar, (December 4, 2009).
- Presenter, "Preventing Legal Malpractice, Potential Pitfalls and How to Avoid Them," Colorado Bar Association Continuing Legal Education Seminar, (2009-2013).
- Presenter, "Alternative Dispute Resolutions/Mediation Settlement Strategies," CNA continuing education program, (March 13, 2008).
- Panelist, "Preventing Legal Malpractice," Colorado Bar Association CLE, (January 17, 2003 and January 31, 2008).
- Presenter, "Interviews With Former Employees: Strategies and Pitfalls," The Prac. Litigator, at 47, (March 2005).
- Presenter, "Non-Liability to Non-Participants: A Manufacturer's Duty Should End at the Playing Field, and Not Extend to Criminal Acts," Mealey's Prod. Liab. & Risk, (August 29, 2002).

PERSONAL INTERESTS

- Her dogs