

# LAW WEEK

## COLORADO

## SEAN CONNELLY

### EXPERIENCED ON BOTH SIDES OF THE BENCH

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If your attorney just won your appeal so that your case can proceed to trial, you might as well see if he can win the trial, too.

That's what Sean Connelly did in *Leone v. Owsley*, where he was retained to get a summary judgment overturned in the 10th Circuit Court of Appeals in November 2015 and then stayed on to try the case to a nearly \$2 million jury verdict for his client in July.

Connelly is best known in Colorado's legal community as an appellate practitioner with experience on the bench for the Colorado Court of Appeals. Being back in the trial courtroom "was a different process" from Connelly's appellate bread and butter.

"So many unexpected things can happen" in trial with all of its variables, from choosing the jury to preparing witnesses to preparing cross-examinations, Connelly said. "Whereas in appeal there are usually fewer surprises, the record's already contained and developed, and it's about marshaling the strongest arguments."

But successful trial practice and appellate practice, Connelly said, have this in common: It's about "telling a persuasive story that holds together," whether that's to a jury, a judge or a panel of judges. Some might assume that simplifying your client's narrative is only a priority when you're in front of a jury. "I think simplicity is a virtue at any level," Connelly said.

"Even on appeal you want a story that is understandable to judges," he said. "Judges are busy, and they don't want to wade through a 50-page brief and not understand exactly what are the relevant facts and how (they) tie into the law."

Connelly should know — he himself served as a judge on the Colorado

Court of Appeals from 2008 to 2011. One way that experience informed his practice is that he knows to keep brevity in briefs while still mastering the relevant facts of the case for the judge to see. "I think you want to understand every detail of a case and every aspect of a legal argument and then distill it to its essence," he said.

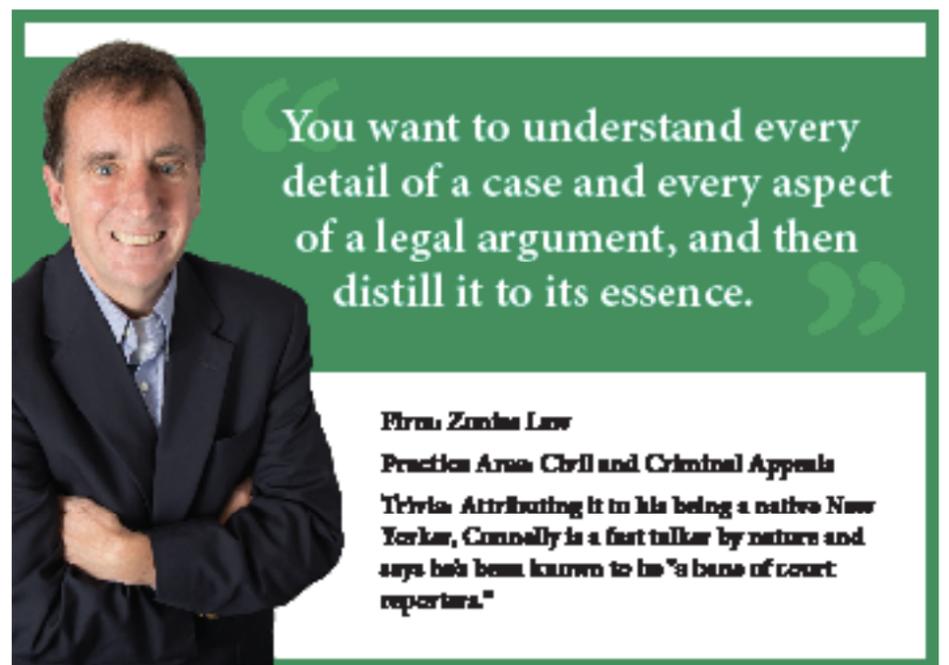
*Leone v. Owsley*, a valuation dispute between a hedge fund's shareholders, was a unique opportunity for Connelly because by the time he took over the case on appeal, it had already gone through discovery and pre-trial processes — his least favorite part of litigation — and was more or less ready for trial.

His client, Charles Leone, resigned as a principal the Madison Street Partners hedge fund, and his two former co-principals made an offer to buy out his roughly 20 percent stake — \$135,850 — that was so low that he claimed it was a breach of the company's operating agreement.

Connelly said that when it came to arguing the valuation of his client's share of the company, it was one expert against the opposition's three, but the simpler narrative and calculation method won out, he thinks. The client's "very simple and credible" testimony helped as well in connecting with the jurors, he said.

In his appellate practice, Connelly usually handles 10 to 15 complex appeals in a year. "That's the most invigorating aspect of my practice, the variety of it," he said. It allows him to apply his deep-dive approach to case after case in a given year and constantly learn about industries, legal areas, regulations and statutes he previously hadn't dealt with. He'll take cases running the gamut of legal areas from commercial disputes to civil rights cases to constitutional issues.

His appellate victories last year included a Colorado Common Interest



Ownership Act case against Vail Resorts involving Vail's Lionshead residential development in August (*Arrabelle at Vail Square Residential Condominium Association v. Arrabelle at Vail Square, LLC*), as well as *In re Avandia Products Liability Litigation* in July, which he co-counseled with attorneys from Lewis Roca Rothgerber Christie.

Connelly is particularly active in pro bono appellate cases. In November, he argued at the 10th Circuit on behalf of a Muslim inmate at Colorado's Supermax prison who was denied rights to group prayer.

Ahmed Ghailani, who was convicted for co-conspiring in the 1998 Al-Qaeda bombings of embassies in Kenya and Tanzania, requested he participate in Islamic group prayer, which the prison denied because he was in an individual cell. The district court threw out Ghailani's pro se Religious Freedom Act claim, saying that he didn't disprove that the government had a compelling interest to deny him group prayer.

On appeal, Connelly put forth the

argument that the government had it backward — that the government has the burden of proving a compelling interest. The case, *Ghailani v. Lynch*, was before a panel that included U.S. Supreme Court justice nominee Judge Neil Gorsuch and is still awaiting a decision.

"If I'm going to accept a case, I'm going to give it everything I have" whether it's a paying case or not, Connelly said. Connelly said that at the end of the day, appellate work is about "mastering the record." Sometimes that record can encompass a five-week trial and its transcripts and exhibits, and run tens of thousands of pages long. And then the challenge becomes distilling that massive record down its essential, relevant parts, "to marshal the facts in a way that's understandable and get to the essence of the case," as Connelly puts it. And it's a challenge he continuously enjoys, even 150 state and federal appeals into his career. •

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