

# Thomas McMahon | JONES & KELLER

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 [joneskeller.com/attorney/thomas-mcmahon](https://joneskeller.com/attorney/thomas-mcmahon)

Tom McMahon is dedicated to making the world safe for competition, one client and case at a time. His practice is concentrated in the areas of antitrust litigation and counseling; health care, class action and other types of complex commercial litigation; and consulting and providing expert testimony with respect to attorneys' fees. He has won multi-million dollar lawsuits for plaintiffs and defendants at the trial and highest appellate levels of the federal and state judicial and administrative systems in Colorado and elsewhere around the country.

Mr. McMahon has successfully handled virtually all types of competition-related issues under federal and state antitrust laws — including successfully arguing before the U.S. Supreme Court on behalf of 23 *amici* states in *Cnty. Comm'ns. Co. v. City of Boulder*, 455 U.S. 40 (1981). He has extensive experience representing and advising physicians, medical groups and other health care entities regarding antitrust, competition, licensing, discipline, and privileging matters in federal, state and internal judicial and administrative proceedings. He has also served as lead, local and antitrust counsel in national, regional and state class action-type lawsuits. In other complex litigation, his experience encompasses matters as diverse as Constitutional rights under the federal Civil Rights Act; personal privacy under the federal Drivers Privacy Protection Act; government payments under the federal False Claims Act; counterfeit trade goods under the federal Lanham Act; joint operating agreements under the federal Newspaper Preservation Act; securities fraud under the 1933 & 1934 federal Securities Acts; and computer software under the Uniform Trade Secrets Act.

He continues to be available to represent individuals and business entities in trials and appeals in federal and state courts, before federal and state administrative tribunals and regulatory agencies, and in mediations and arbitrations.

## **Recent Activity**

Tom and fellow Jones & Keller shareholder Steve Long won a jury verdict in federal district court in Denver resulting in a \$9,783,000 judgment in favor of the plaintiff in *Auraria Student Housing at the Regency, LLC v. Campus Village Apartments, LLC* (D. Colo. Jan. 27, 2015). After that Tom won an award of attorneys' fees, costs and additional expenses of \$1,416,640, bringing the total judgment to \$11,199,640 in favor of the client. Previously, he won a ground-breaking decision in the case from the U.S. Court of Appeals in Denver, 703 F.3d 1147 (10th Cir. 2013), holding that the defendant could not immediately appeal the trial court's order, 825 F. Supp. 2d 1072 (D. Colo. 2011), denying Campus Village's motion to dismiss the case on grounds of state action immunity from the antitrust laws. The case ultimately settled, resulting in a \$6,150,000 recovery on behalf of the plaintiff Regency.

### **Thomas P. McMahon Shareholder**

Prior to that, Mr. McMahon won a unique and determinative ruling that a defendant hospital was liable as a matter of law to an excluded physician for breaching its contract with him embodied in the medical staff bylaws, resulting in a seven-figure recovery. *Rauh v. Holy Rosary Healthcare*, Cause No. DV 2011-41 (Mont. 16th Jdcl. Dist., Custer Cnty., May 22, 2013).

Tom also won a landmark ruling by the Colorado Court of Appeals on behalf of a physician suing a hospital over peer review proceedings, *Crow v. Penrose-St. Francis Healthcare Sys.*, 292 P.3d 1018 (Colo. App. 2012). The decision is the first appellate court ruling in the almost 40-year history of the Colorado Professional Review Act mandating that a hospital turn over otherwise confidential peer review materials to a physician who subpoenas them in the course of a peer review appeal. Prior to that, Mr. McMahon won a decision in the Colorado Court of Appeals on behalf of the same physician against the same hospital. The appellate court reversed the lower court and upheld the physician's right to sue the hospital over a faulty peer review process as soon as that administrative proceeding was completed. *Crow v. Penrose-St. Francis Healthcare Sys.*, 2010 WL 3169839 (Colo. App. 2010). Tom then defeated the defendant hospital's subsequent attempt to have the renewed litigation dismissed, obtaining an order to that effect from the El Paso County District Court in Colorado Springs on behalf of the physician client. Case No. 2008 CV 5607 (Nov. 21, 2011).

Over the past several years, Mr. McMahon has won more than \$10 million in recoveries for physician clients in Colorado, Missouri and Montana in disputes with hospitals.

Mr. McMahon continues to be available to represent individuals and business entities in trials and appeals in federal and state courts, before federal and state administrative tribunals and regulatory agencies, and in mediations and arbitrations.

## **Practice Areas**

Antitrust Litigation & Counseling

Appellate Practice

Class Actions

Commercial Litigation

Health Care Litigation

## **Experience**

Tom served four years as a JAG Officer in the U.S. Air Force, where he was a member of the Trial Judiciary. In that capacity he served as the local defense counsel while stationed at Clark AB, Philippines, the Air Force's most active overseas court-martial jurisdiction. He was then stationed at Lowry AFB, Colorado, the Air Force's most active stateside court-martial jurisdiction, where he served as a regional defense counsel throughout the West.

## **Representative Matters**

### **Federal Cases**

#### **U.S. Supreme Court**

Cnty. Commc'ns Co. v. City of Boulder, 455 U.S. 40 (1982), rev'g 630 F. 2d 704 (10th Cir. 1980), rev'g 485 F. Supp. 1035 (D. Colo. 1980) ("Boulder I")

#### **U.S. Courts of Appeals**

Auraria Student Housing at the Regency, LLC v. Campus Village Apartments, LLC, 843 F.3d 1225 (10th Cir. 2016) ("Regency II")

Auraria Student Housing at the Regency, LLC v. Campus Village Apartments, LLC, 703 F.3d 1147 (10th Cir. 2013), dismissing appeal from 825 F.Supp.2d 1072 (D. Colo. 2011)

Christy Sports, LLC v. Deer Valley Resort Co., 555 F.3d 1188 (10th Cir. 2009)

Miller v. Image Data, LLC, 91 Fed.Appx. 122, 2004 WL 326998 (10th Cir. Feb. 23, 2004)

Paladin Assocs., Inc. v. Mont. Power Co., 328 F.3d 1145 (9th Cir. 2003), aff'g 97 F. Supp. 2d 1013 (D. Mont. 2000)

Colo. v. Western Paving Constr. Co., 833 F. 2d 867 (10th Cir. 1987), panel decision vacated (per curiam) by an equally divided court, 841 F. 2d 1025 (10th Cir.) (en banc), reinstating judgment in 630 F. Supp. 206 (D. Colo. 1986); cert. denied, 488 U.S. 870 (1988)

Cnty. Commc'ns Co. v. City of Boulder, 660 F. 2d 1370 (10th Cir. 1981), rev'g 496 F. Supp. 823 (D. Colo. 1980); cert. dismissed, 456 U.S. 1001 (1982) ("Boulder II")

### **U.S. District Courts**

Auraria Student Housing at the Regency, LLC v. Campus Village Apartments, LLC, 2015 WL 5608114 (D. Colo. Sept. 25, 2015) (denying defense post-trial motions under Rules 50(b), 29), 2014 WL 4412529 (D. Colo. Sept. 8, 2014) (denying defense summary judgment motion)

Auraria Student Housing at the Regency, LLC v. Campus Village Apartments, LLC, 825 F.Supp.2d 1072 (D. Colo. 2011), appeal dismissed, 703 F.3d 1147 (10th Cir. 2013) ("Regency I")

BEAL Corp. Liquidating Trust v. Valleylab, Inc., 927 F. Supp. 1350 (D. Colo. 1996)

Abrams v. S.E. Mun. Bonds, Inc., [1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) 96,055 (D. Colo. 1991)

Abrams v. S.E. Mun. Bonds, Inc., [1990-91 Transfer Binder] Fed. Sec. L. Rep. (CCH) 95,757 (D. Colo. 1990)

### **McMahon Shareholder**

In re Ins. Antitrust Litig., 723 F. Supp. 464 (N.D. Calif. 1989), rev'd, 938 F.2d 919 (9th Cir. 1991), aff'd in part, rev'd in part sub nom. Hartford Fire Ins. Co. v. California, 509 U.S. 764 (1993)

Colo. v. Western Paving Constr. Co., 833 F. 2d 867 (10th Cir. 1987), panel decision vacated (per curiam) by an equally divided court, 841 F. 2d 1025 (10th Cir.) (en banc), reinstating

judgment in 630 F. Supp. 206 (D. Colo. 1986); cert. denied, 488 U.S. 870 (1988)

Colo. v. Asphalt Paving Co., 1987-1 Trade Cas. (CCH) 67,473 (D. Colo. 1987)

Colo. v. Goodell Bros., Inc., 1987-1 Trade Cas. (CCH) 67,476 (D. Colo. 1987)

Colo. v. Goodell Bros., Inc., 1986-2 Trade Cas. (CCH) 67,236 (D. Colo. 1986)

Colo. v. Schmidt-Tiago Constr. Co., 108 F.R.D. 731 (D. Colo. 1985)

Colo. v. Popejoy Constr. Co., 1985-1 Trade Cas. (CCH) 66,372 (D. Colo. 1984)

Colo. v. Best-Way Paving Co., 1984-2 Trade Cas. (CCH) 66,259 (D. Colo. 1984)

## **State Cases**

### **Colorado Supreme Court**

Crow v. Penrose-St. Francis Healthcare System, 169 P.3d 158 (Colo. 2007)

Colo. Spgs. Bd. of Realtors v. State, 780 P.2d 494 (Colo. 1989)

People ex rel. Woodard v. Colo. Spgs. Bd. of Realtors, 692 P. 2d 1055 (Colo. 1984)

### **Colorado Court of Appeals**

Crow v. Penrose-St. Francis Healthcare System, 292 P.3d 1018 (Colo. App. 2012)

Crow v. Penrose-St. Francis Healthcare System, 2010 WL 3169839 (Colo. App. 2010)

### **Missouri Court of Appeals**

Clinch v. Heartland Reg'l Med. Ctr., 187 S.W.3d 10 (Mo. App. 2006)

## **Professional and Community Affiliations**

American Bar Association

- Antitrust Law Section
- Health Care Section
- Litigation Section

Colorado Bar Association

- Business Law Section
- Antitrust Law Subsection

Denver Bar Association

## **Bar and Judicial Admissions**

U.S. Supreme Court

U.S. Court of Appeals, 10th Circuit

U.S. Court of Appeals, 9th Circuit

U.S. Court of Military Appeals

U.S. District Court, District of Colorado

U.S. District Court, Eastern District of Michigan

U.S. District Court, Northern District of California

Colorado Supreme Court

Michigan State Courts

Missouri State Court

Montana State Courts

Wyoming State Court

## **Seminars, Speeches and Publications**

### **Appearances**

PBS, MacNeil-Lehrer Report, "Taking Cities to Court" (1982)

NBC, Today Show, "Retail Price Maintenance" (1981)

### **Legislative Testimony**

58th Colorado General Assembly, 2nd Regular Session, Senate Government Affairs and House Judiciary Committees, HB 92-1082, "Colorado Antitrust Act of 1992" (1992)

54th Colorado General Assembly, 2nd Regular Session, Highway Legislative Review Committee, SB 84-23, "Amendments to Colorado Restraint of Trade and Commerce Act" (1984)

### **Presentations**

World Research Group, Overcoming the Impact of Payer Consolidation in Hospital Managed Care Contracting, “Antitrust Implications of Payer Consolidation: Can Hospitals Challenge New, Jointly-Marketed Products and If So, How?” (2007)

Lorman Education Services, Health Insurance Basics, “FTC Actions Involving Health Care Providers and Negotiating Health Insurance Contracts” (2003)

Federal Trade Commission, Antitrust Health Care Conference, “The Role of Private Antitrust Counsel in Private Health Care Antitrust Enforcement” (1996)

Colorado Bar Association, Antitrust Subsection, ” ‘Predatory’ Pricing: What is it in Theory, Does it Really Exist, and Can it be Proven?” (1996)

Colorado Bar Association, Antitrust Subsection/Patent, Trademark & Copyright Section/Technology and the Law Committee, “Surfing the Information Super Highway Without Drowning: Licensing, Protection and Antitrust Issues in Today’s High Technology Markets” (1995)

American Bar Association, Antitrust Law Section 43rd Annual Spring Meeting, State Antitrust Enforcement Committee “Defending a State Criminal Antitrust Investigation and Prosecution – A Defense Perspective” (1995)

American Bar Association, Antitrust Law Section 42nd Annual Spring Meeting, Trial Demonstration “Proving Relevant Market to a Jury in a Rule of Reason Case” (1994)

Colorado Bar Association, Antitrust Subsection, Practical Pointers in Trying an Antitrust Case, “Establishing the Relevant Market Through Expert Economic Testimony” (1994)

Colorado Bar Association, Antitrust Subsection, “Antitrust Enforcement Under the Clinton Justice Department,” panel member (1993)

Continuing Legal Education in Colorado, Inc., Business Law Symposium, “The New `Colorado Antitrust Act of 1992’ – An Overview of What Every Business Lawyer Should Know” (1993)

Continuing Legal Education in Colorado, Inc., The New “Colorado Antitrust Act of 1992” – What Every Judge, Business Lawyer, Corporate Counsel and Litigator Should Know, “An Overview of Significant Provisions” (1993)

Continuing Legal Education in Colorado, Inc., Lurking Liability in Business Practice, “The Lawyer as an Antitrust Defendant” (1992)

Colorado Bar Association, Business Law Section, “The New `Colorado Antitrust Act of 1992’ – An Overview of What Every Business Lawyer Should Know” (1992)

Colorado Bar Association, Antitrust Subsection, “The New `Colorado Antitrust Act of 1992’ – Three Crucial Enhancements” (1992)

Colorado Bar Association, Securities Subsection, “Securities Fraud Litigation Arising Out of Colorado Special District Bond Defaults” (1991)

Colorado Bar Association, Antitrust Subsection, “Resale Price Maintenance Revisited” – Moderator (1991)

American Bar Association, Antitrust Section, Labor Committee, “Report on Colo. v. Colo. Union of Physicians and Surgeons” (1991)

Colorado Bar Association, Antitrust Subsection, “Update on In re Ins. Indus. Antitrust Litig.” (1990)

Colorado Bar Association, Antitrust Subsection, “Unfair Competition – Selling Below Cost and Price Discrimination” (1989)

National Association of Attorneys General, State Antitrust Enforcement Conference, “Antitrust in the 90s: Basics and Beyond II – Defenses, Exemptions and Tying Arrangements” (1989)

Continuing Legal Education in Colorado, Inc., Colorado Antitrust and the Health Care Field, “The Rise of State Law Enforcement Actions and the Civil Investigation” (1989)

National Association of Attorneys General, Civil RICO Western Regional Conference, “Avoiding Litigation Pitfalls in Discovery” (1989)

Colorado Bar Association Antitrust Subsection, “Vertical Restraints/Dealer Terminations” (1988)

Pacific Northwest Attorneys General, “Investigation and Litigation of Highway Bidrigging Cases” (1988)

Continuing Education Services, Antitrust for the Business Counselor: Prevention Strategies and Risk Analysis, “State and Federal Enforcement Trends” (1988)

American Public Power Association, “Swords and Shields (II)” (1985)

Tennessee Valley Authority Public Power Association, “Swords and Shields” (1984)

American Bar Association, Local Government Section, “National Institute on Antitrust and Local Governments” (1983)

Ohio State Bar Association, 1982 Antitrust Institute, “Antitrust Defenses – State Action `Immunity’ and the Noerr-Pennington `Exemption’” (1982)

National Conference of State Legislatures, “State Action Immunity and Subordinate Governmental Entities” (1982)

## **Publications**

“Physician-Controlled Network Joint Ventures: Antitrust Considerations,” 24 The Colorado Lawyer 1551 (1995)

“The 1992 Colorado Antitrust Act: Per Se Bidrigging and Key Issues,” 22 The Colorado Lawyer 2229 (1993)

Point/Counterpoint, “New Antitrust Protection: Pro — Measures Protect Retail Competition,” The Denver Post, March 22, 1988, at 2D

## **Shareholder**

“Colorado Antitrust Law Seven Years Later,” 13 The Colorado Lawyer 1808 (1984)

“Antitrust and Due Process: State Regulation of Occupation Licensing,” in Swords and Shields: An Antitrust Handbook for Municipal and Cooperative Utilities (1984)

“Colorado Antitrust Law Seven Years Later: Back on Course and Two-Thirds of the Way to the Big-Time,” National Association of Attorneys General (“NAAG”) Antitrust & Commerce Report (June 1984)

“Recent Significant Developments in ‘State Action’ and Noerr-Pennington Exemptions: From Boulder to the ‘Sham’ Exception,” 14 U. Tol. L. Rev. 531 (1983)

“City of Boulder Revisited,” NAAG Antitrust Report (October 1982)

“An Antitrust Enforcement Reply to the So-Called ‘Need’ for Contribution Legislation,” NAAG Antitrust Report (April 1982)

“Recent Federal Litigation Relating to Customer-Bank Communication Terminals (‘CBCTs’) and The McFadden Act,” 32 The Business Lawyer 1657 (1977)

“Off-Premises Customer-Bank Communication Terminals: New Growth on the Old ‘Branch’ Doctrine,” 6 The Colorado Lawyer 25 (1977)

## **Practice Areas**

Antitrust

Healthcare Business

Healthcare Litigation

Litigation

