



JENNINGS HAUG
KELEHER MCLEOD
WATERFALL LLP



505.346.9123

tcb@jkwlawyers.com

Albuquerque Plaza
201 Third Street NW, Suite 1200
Albuquerque, NM 87102

Services

- Appellate Practice
- Antitrust Law & Litigation
- Environmental Law – Energy & Natural Resources Law
- Tribal / Native American Law

Thomas C. Bird



Tom's legal practice focuses on appellate law. Over the past 40 years he has been involved with shaping the law in New Mexico in the areas of antitrust, public utility, constitutional law, insurance coverage, natural resources law, and Tribal/Native American law.

Tom's knowledge in a wide range of legal areas and his understanding of the appeals process allow him to bring valuable insight and useful strategies to both the trial and appellate processes. Tom regularly assists trial counsel during litigation to help ensure the legal team's litigation strategy also supports a strong appellate challenge.

He is frequently contacted by businesses, individuals, governmental entities, and trial counsel, to appeal or defend a lower court ruling. Tom is admitted to practice in state, federal and district courts, including the Ninth and Tenth Circuit Courts of Appeal and the U.S. Supreme Court.

The American Academy of Appellate Lawyers, an organization that honors attorneys who demonstrate the highest skill and integrity in appellate law matters, inducted Tom as a Fellow in 2017. He has been recognized by The Best Lawyers in America®, a ranking by peers in the legal community, as a top appellate lawyer in New Mexico since 2008 and is rated Preeminent AV by Martindale-Hubbell®.

Tom received his bachelor's degree from the University of New Mexico in 1977 and earned his law degree from the University of New Mexico Law School in 1982.

Representative Engagements

- » *Evanston Ins. Co. v. Desert State Life Management*, 56 F.4th 899 (10th Cir. 2022) (reversing judgment declining to enforce misappropriation exclusion)
- » *Citizens for Fair Rates v. New Mexico Public Regulation Commission*, 2022-NMSC-010, 503 P.3d 1138 (2022) (upholding constitutionality of the Energy Transition Act)
- » *Chavez v. Bridgestone Americas Tire Operations, LLC*, 2022-NMSC-503 P.3d 332 (2022) (reversing personal jurisdiction ruling based on consent by registration theory)
- » *State ex rel. Egolf v. New Mexico Public Regulation Commission*, 2020-NMSC-018, 476 P.3d 896 (2020) (writ of mandamus issued to Commission requiring enforcement of Energy Transition Act)

Representative Engagements (cont.)

- *Gerald Peters Gallery, Inc. v. Stremmel*, 815 Fed. Appx. 138 (9th Cir. 2020) (reversing summary judgment in gallery owner's defamation suit against art experts claiming gallery owner sold a forged painting)
- *Pompeo v. Board of Regents of the University of New Mexico*, 852 F.3d 973 (10th Cir. 2017) (affirming summary judgment for university defendants in academic free speech case)
- *Carrillo v. My Way Holdings, LLC*, 2017-NMCA-024, 389 P.3d 1087 (2017) (affirming summary judgment for race horse track owners based on common law right to exclude licensees)
- *Clinesmith v. Temmerman*, 2013-NMCA-024, 298 P.3d 458 (2013) (affirming dismissal of former wife's appeal challenging decision to void estate plan signed by her ex-husband, who suffered from Alzheimer's disease)
- *Guttman v. Khalsa*, 669 F.3d 1101 (10th Cir. 2012) (holding that waiver of Eleventh Amendment immunity in the American with Disabilities Act was unconstitutional)
- *Homans v. City of Albuquerque*, 366 F.3d 900 (10th Cir. 2004) (affirming First Amendment challenge to the City of Albuquerque's campaign spending limit)
- *Walton v. Tesuque Pueblo*, 443 F.3d 1274 (10th Cir. 2006) (holding that claims of vendor permit holder banished from Pueblo were barred by tribal sovereign immunity)
- *Brown v. Presbyterian Healthcare Services, Inc.*, 101 F.3d 1324 (10th Cir. 1996) (affirming judgment in one of the few successful antitrust claims brought by a physician against a hospital based on the revocation of hospital privileges)
- *TPL, Inc. v. New Mexico Department of Taxation and Revenue*, 133 N.M. 447, 64 P.3d 474 (2002) (reversing the Department's denial of TPL's gross receipts tax deduction)
- *Johnstone v. City of Albuquerque*, 140 N.M. 596, 145 P.3d 76 (2006) (holding that stepfather/police officer had no duty to anticipate and prevent stepdaughter's suicide)
- *Capco Acquisub, Inc. v. Greka Energy Corp.*, 145 N.M. 328, 198 P.3d 354 (2008) (reversing judgment against appellant/parent corporation on due process grounds)
- *Strausberg v. Laurel Healthcare Providers, LLC*, 2013-NMSC-032, 304 P.3d 409 (reversing on federal preemption grounds decision to deny enforcement of arbitration clause)
- *Moongate Water Co., Inc. v. City of Las Cruces*, 2013-NMSC-018, 302 P.3d 405 (holding that certificate of convenience and necessity statute did not apply to municipal water utility in competition with privately owned water utility)
- *State ex rel. Sandel v. New Mexico Public Utility Commission*, 127 N.M. 272, 980 P.2d 55 (1999) (striking down Commission's attempt to implement retail wheeling administratively as contrary to Public Utilities Act)

Bar Admissions

- New Mexico
- U.S. District Court of Appeals for the Ninth and Tenth Circuits
- U.S. Supreme Court

Education

University of New Mexico, J.D. (1982)

University of New Mexico, B.A. (1977)

Honors & Awards

- Inducted as Fellow into The American Academy of Appellate Lawyers (2017)
- Selected for inclusion in The Best Lawyers in America® in the following areas:
 - Antitrust Litigation (2008 – 2024)
 - Appellate Practice (2008 – 2024)
 - Native American law (2008 – 2024)
 - Listed as 2024 *Best Lawyers in America*® Lawyer of the Year in Native American law.
 - Listed as 2015 *Best Lawyers in America*® Lawyer of the Year in Native American law.
 - Natural Resources Law (2008 – 2024)
 - Listed as 2023 Best Lawyers in America® Lawyer of the Year in Natural Resources Law in New Mexico.
- Recipient of Lewis Sutin Award for Excellence in Appellate Advocacy
- Annually honored by *Southwest Super Lawyers*® since 2009 for his work in Appellate law matters
- Rated AV by Martindale-Hubbell®

Professional Associations & Memberships

- State Bar of New Mexico, Member
 - Natural Resources and Environmental Section, Board of Directors; Chair (1993 – 1994)
 - Appellate Practice Section, Board of Directors (2002 – 2005); Chairman (2004)
- New Mexico Supreme Court Appellate Rules Committee, Chairman (2012 – 2018)