



*news*

Colorado Judicial Branch  
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Gerald Marroney, State Court  
Administrator

FOR IMMEDIATE RELEASE  
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## **Colorado Supreme Court to hear arguments at the University of Denver on Thursday, Jan. 20**

DENVER – The Colorado Supreme Court will hear oral arguments in two cases on Thursday, Jan. 20, at the University of Denver Sturm College of Law before an audience of students. The public also is invited to attend.

The visit is part of an emphasis by the Colorado Judicial Branch on public outreach and education, and an extension of the 25-year-old *Courts in the Community* program, in which the Supreme Court and Court of Appeals visit high schools around Colorado to hear arguments in actual cases.

“I think all of us on the bench believe trust and confidence in our court system depends very much on public understanding of what the courts do every day, and how they do it,” said Chief Justice Michael L. Bender. “Getting the appellate courts out in the community for a real hearing like this is not only a breath of fresh air for us, it helps further that goal. It introduces more of Colorado’s residents to the people behind the bench in their courts, and helps them learn more about what we do and what the rule of law means to us in our daily jobs.”

These are not mock proceedings, they are oral arguments in actual cases.

“I am very excited and honored to welcome the Court to Denver Law,” said Martin Katz, Dean of the University of Denver Sturm College of Law. “This is an excellent opportunity for our students to see top-flight lawyering in our state's highest court, and for our school to be involved in the big issues of the day.”

All seven justices hear cases together. They are Chief Justice Michael L. Bender and Justices Gregory J. Hobbs Jr., Alex J. Martinez, Nancy E. Rice, Nathan B. Coats, Allison Eid and Monica M. Márquez.

The two cases are:

- **09SA133, Concerning the application for Water Rights by Burlington Ditch, Reservoir & Land Co., et al.:** This appeal primarily involves a change of direct flow and storage water rights decreed in 1885 to the Burlington Ditch, Reservoir and Land Company. The water court's judgment and decree quantified the historic consumptive use credits for direct flow and storage rights attributable to Burlington shares. In order to protect against injury to other water rights, the water court disallowed consumptive use credits for what it found to be an illegal enlargement of Burlington direct flow water rights subsequent to 1885. The water court also limited the change of storage rights to the amount of water historically released for agricultural use, and it disallowed consumptive use credit for capture of water by the Barr Lake toe drains and for seepage into canals. In addition, the water court disallowed consumptive use credit for diversions made through the Metro Pumps, which the court found to be an undecreed point of diversion. Relying on prior decrees and the one-fill rule for storage rights, the applicants contest these and other determinations of fact and law as well as decree conditions that the water court entered.
- **09SC615, People v. Hernandez:** Mr. Hernandez was convicted and sentenced to prison after a jury in Colorado Springs found him guilty of leaving the scene of an accident. The Colorado Court of Appeals reversed the conviction. At trial, the prosecutor said the defendant had failed to identify himself as the driver at the scene of the accident. Mr. Hernandez' counsel said it was undisputed Mr. Hernandez remained at the scene of the accident and gave his contact information to police. The Court of Appeals concluded the statutes under which Mr. Hernandez was convicted do not require the driver of a vehicle involved in an accident to identify himself as such, and remanded the case to the trial court for entry of a judgment of acquittal. The Supreme Court agreed to review the case to examine whether, in order to fulfill the mandatory disclosure requirements of the statute on leaving the scene of an accident, a driver involved in an accident must identify himself or herself as the driver.

The proceedings will begin at 8:30 a.m. Thursday, Jan. 20, 2011, in Room 165 at the University of Denver Sturm College of Law, 2255 E. Evans Ave., Denver, CO 80208.

A question-and-answer session, during which the students can ask questions of the attorneys, will follow the arguments in each case. At the conclusion of the second argument, the students also will have the opportunity to participate in a question-and-answer session with the Supreme Court justices.

There will be a limited number of seats for the public. Audio recordings from the two arguments will be available online within one to two days of the arguments at [http://www.courts.state.co.us/Courts/Supreme\\_Court/Oral\\_Arguments/Index.cfm](http://www.courts.state.co.us/Courts/Supreme_Court/Oral_Arguments/Index.cfm).

**Editor's Note:**

News media organizations interested in parking information, or in video recording or photographing the arguments may contact Jon Sarché at the State Court Administrator's Office, [jon.sarche@judicial.state.co.us](mailto:jon.sarche@judicial.state.co.us) or at 303-837-3644. We will reserve seats for journalists.

The following pages contain information about expanded media coverage.

## *Media opportunity*

**What:** Colorado Supreme Court Oral Arguments  
**When:** 8:30 a.m. – 11:30 a.m., Jan. 20, 2011  
**Where:** University of Denver Sturm College of Law, 2255 E. Evans Ave., Denver, CO 80208

**Photo opportunities.** During oral arguments, the requirements set forth in Chapter 38, Rule 2 of the Colorado Supreme Court Rules are in effect. Rule 2 is attached. Highlights include:

- a. A written request for expanded media coverage (form is attached below) must be filed in advance with copies to counsel for the parties.
- b. If granted, only one video camera and/or one still camera is allowed, and that media source must share and pool its coverage with other media.
- c. No flash attachments or lighted television cameras are allowed during the arguments.
- d. The camera operator may use a tripod, but shall not change location while court is in session.

For information, contact Jon Sarché, (303) 837-3644.

**Following each argument, during the question-and-answer interaction between the students, lawyers and justices, access is open for media opportunities without the limitations of Rule 2. All media representatives also are welcome to photograph the luncheon immediately following the cases.**

### **Schedule:**

8:30 a.m. – 10 a.m.	<b><u>09SA133: Concerning the Application for Water Rights by Burlington Ditch, Reservoir &amp; Land Co., et al.</u></b>
10 a.m. – 10:15 a.m.	Justices conference; attorneys answer students' questions
10:15 a.m. – 10:30 a.m.	Break
10:30 a.m. – 11 a.m.	<b><u>09SC615, People v. Hernandez</u></b>
11 a.m. – 11:15 a.m.	Justices conference; attorneys answer students' questions
11:15 a.m. – 11:30 a.m.	Justices answer students' questions
11:30 a.m. – 1 p.m. (est.)	Lunch, justices, faculty and selected students, other guests

**Request for Expanded Media Coverage.** Requests must be submitted at least one day prior to the proceeding as outlined in Rule 2 (submitting requests three days prior to the proceeding is appreciated to allow for response time). Submit to Susan Festag, Clerk of the Court, Colorado Supreme Court, 101 W. Colfax Ave., Suite 800, Denver, CO 80202; fax 303-837-2340. Copies also must be sent to the attorneys in the cases. A fill-in-the-blank request form is attached below.

## Expanded media coverage of court proceedings

The presence of expanded media coverage in the Colorado court system's courtrooms is controlled by strict standards spelled out in Chapter 38, Rule 2 of the Colorado Supreme Court Rules effective July 1, 2010. The rule also outlines each step necessary to garner approval for such coverage.

There are several points in the Rule of particular note:

1. A written request for expanded media coverage must be submitted to the court at least one day before expanded media coverage is requested to begin, unless a longer or shorter time is required or permitted by the court.
2. Copies of the expanded media coverage request shall be mailed or faxed to all counsel for each party participating in the proceeding prior to submitting the request to the court.
3. The request must include a description of the pooling arrangements, including the identity of the designated representatives.
4. Any party or witness may lodge with the judge a written objection to expanded coverage of all or a portion of a proceeding.

### *Request for expanded media coverage in Colorado state courts*

#### **Rule 2. Media Coverage of Court Proceedings**

**(a) Expanded Media Coverage: A judge may authorize expanded media coverage of court proceedings, subject to the guidelines set forth below.**

- (1) **Definitions.** As used in this section, unless the context otherwise requires:
  - (A) "Proceeding" means any trial, hearing, or any other matter held in open court which the public is entitled to attend.
  - (B) "Photograph" and "photography" means all recording or broadcasting of visual images, by means of still photographs, videotape, television broadcasts, motion pictures, or otherwise.
  - (C) "Expanded media coverage" means any photography or audio recording of proceedings.
  - (D) "Judge" means the justice, judge, magistrate, or other judicial officer presiding over the proceedings. In proceedings with more than one judge presiding, any decision required shall be made by a majority of the judges.
  - (E) "Media" means any news gathering or reporting agency and the individual persons involved, and includes newspapers, radio, television, radio and television networks, news services, magazines, trade papers, in-house publications, professional journals, or any other news reporting or news gathering agency whose function it is to inform the public or some segment thereof.
- (2) **Standards for Authorizing Coverage.** In determining whether expanded media coverage should be permitted, a judge shall consider the following factors:
  - (A) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;
  - (B) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court; and
  - (C) Whether expanded media coverage would create adverse effects which would be greater than those caused by traditional media coverage.
- (3) **Limitations on Expanded Media Coverage.** Notwithstanding an authorization to conduct expanded media coverage of a proceeding, there shall be no:
  - (A) Expanded media coverage of pretrial hearings in criminal cases, except advisements and arraignments;
  - (B) Expanded media coverage of jury voir dire;
  - (C) Audio recording or "zoom" close-up photography of bench conferences;
  - (D) Audio recording or close-up photography of communications between counsel and client or between co-counsel;
  - (E) Expanded media coverage of in camera hearings;
  - (F) Close-up photography of members of the jury.

- (4) **Authority to Impose Restrictions on Expanded Media Coverage.** A judge may restrict or limit expanded media coverage as may be necessary to preserve the dignity of the court or to protect the parties, witnesses, or jurors. A judge may terminate or suspend expanded media coverage at any time upon making findings of fact that: (1) rules established under this Rule or additional rules imposed by the judge have been violated; or (2) substantial rights of individual participants or rights to a fair trial will be prejudiced by such coverage if it is allowed to continue.
- (5) **Conditions for Coverage.** Expanded media coverage shall be conducted only under the following conditions:
- (A) **Equipment Limitations.**
- (i) **Video.** Only one person at a time shall be permitted to operate a videotape, television, or motion picture camera. There shall be only one such camera at a time in the courtroom, except that, at the discretion of the judge, the camera operator may have a second camera. The camera operator may use a tripod, but shall not change location while court is in session.
  - (ii) **Audio.** The court's audio system shall be used if technically suitable and, in that event, there must be no interference with the court's use of its system. If the court's system is not technically suitable, then the person conducting expanded media coverage may install an audio recording system at his or her own expense upon first obtaining approval of the judge. All microphones and related wiring shall be unobtrusive and shall not interfere with the movement of those in the courtroom.
  - (iii) **Still Cameras.** Only one person at a time shall be permitted to operate still cameras, which shall make as little noise as possible. The still photographer may use a tripod, but shall not change location while court is in session.
  - (iv) **Lighting.** No movie lights, flash attachments, or sudden lighting changes shall be permitted during a proceeding. No modification or addition of lighting equipment shall be permitted without the permission of the judge.
  - (v) **Operating Signals.** No visible or audible light or signal (tally light) shall be used on any equipment.
- (B) **Pooling Arrangements.** The media shall be solely responsible for designating one media representative to conduct each of the categories of expanded media coverage listed in subsection (I) of this section, and for arranging an open and impartial distribution scheme with a distribution point located outside of the courtroom. If no agreement can be reached on either of these matters, then there shall be no expanded media coverage of the type for which no pooling agreement has been made. Neither judges nor other court personnel shall be called upon to resolve any disputes concerning such pooling arrangements.
- (C) **Conduct of Media Representatives.** Persons conducting expanded media coverage shall conduct themselves in a manner consistent with the decorum and dignity of the courtroom. The following practices shall apply:
- (i) Equipment employed to provide expanded media coverage shall be positioned and operated so as to minimize any distraction;
  - (ii) Identifying marks, call letters, logos, symbols, and legends shall be concealed on all equipment. Persons operating such equipment shall not wear clothing bearing any such identifying information;
  - (iii) Equipment used to provide expanded media coverage shall not be placed in, or removed from, the courtroom while court is in session. No film, videotape, or lens shall be changed within a courtroom while court is in session.
- (6) **Procedures.** The following procedures shall be followed in obtaining authorization for expanded media coverage:
- (A) **Request for Expanded Media Coverage.** A written request shall be submitted to the judge at least one day before expanded media coverage is requested to begin, unless a longer or shorter time is required or permitted by the judge. Copies of the request shall be given to counsel for each party participating in the proceeding. The request shall include the following:
- (i) The name, number, date and time of the proceeding;
  - (ii) The type (audio, video or still photography) of expanded media coverage requested and a description of the pooling arrangements required by section (e)(II), if any, including the identity of the designated representatives.
- (B) **Objections.** Any party or witness may lodge with the judge a written objection to expanded media coverage of all or a portion of a proceeding.

(C) **Judicial Authorization.** The judge shall rule on a request or objection within a reasonable time prior to the proceeding or promptly after the request or objection if the proceeding has begun. The ruling shall be made on the record and the reasons therefore set forth briefly.

(D) The media or any witness may not appeal, or seek review by original proceeding, the granting or denial of expanded media coverage. A party to the case may seek review of a ruling by original proceeding, if otherwise appropriate, or by post-trial appeal.

**(b) Other use of Media.**

(1) A judge may authorize the use of electronic or photographic means for the perpetuation of a record, or for purposes of judicial administration.

(2) A judge may authorize the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

## Request for Expanded Media Coverage

The name of media group: \_\_\_\_\_

Person making request: \_\_\_\_\_

Contact information: \_\_\_\_\_

Name, address of counsel (if represented): \_\_\_\_\_

\_\_\_\_\_

Date of request: \_\_\_\_\_ Date of proceeding: Jan. 20, 2011

Time of the proceeding	Case Number	Case Caption
8:30 a.m.	09SA133	Concerning the Application for Water Rights by Burlington Ditch, Reservoir & Land Co., et al.
10:30 a.m.	09SC615	People v. Hernandez

The type of expanded media coverage requested:	Designated Representative:
____ audio	_____
____ video	_____
____ still photography	_____

Description of the pooling arrangements required by section (5)(B), including the identity of the designated representatives:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Request for Expanded Media Coverage.** Requests must be submitted at least one day prior to the proceeding as outlined in Rule 2 (submitting requests three days prior to the proceeding is appreciated to allow for response time). Submit to Susan Festag, Clerk of the Court, Colorado Supreme Court, 101 W. Colfax Ave., Suite 800, Denver, CO 80202; fax 303-837-2340. Copies also must be sent to the attorneys in the cases.

The undersigned hereby certifies that on the \_\_\_\_ day of \_\_\_\_\_, 2011, a true and correct copy of the foregoing Request for Expanded Media Coverage was mailed, faxed or hand delivered to the following persons at the locations or fax numbers indicated:

**09SA133 – Concerning the Application for Water Rights of the Burlington Ditch, Reservoir & Land Co., et al.**

**For the Petitioner:**

Brian Nazareus, Ryley Carlock & Applewhite, 1999 Broadway, Suite 1800, Denver, CO 80202, tel. 303-863-7500, fax 303-595-3159

William Hillhouse, II, White & Jankowski LLP, 511 16<sup>th</sup> St., Suite 500, Denver, CO 80202, tel. 303-595-9441, fax 303-825-5632

John P. Akolt, III, Akolt & Akolt LLC, 80 S. 27<sup>th</sup> Ave., Brighton, CO 80601, tel. 303-659-7373, fax 303-595-3159

**For the Respondents:**

Steven Sims, Brownstein Hyatt Farber Schreck, LLP, 410 17<sup>th</sup> St., Suite 2200, Denver, CO 80202, tel. 303-223-1100, fax 303-223-1111

David Hallford, Balcomb & Green PC, P.O. Drawer 790, Glenwood Springs, CO 81602, tel. 970-945-6546, fax 970-945-8902

**09SC615 – The People of the State of Colorado v. Richard Hernandez**

**For the Petitioner:**

John T. Lee, Assistant Attorney General, 1525 Sherman St., 7<sup>th</sup> Floor, Denver, CO 80203, tel. 303-866-5168, fax 303-866-3955

**For the Respondent:**

Sarah A. Kellogg, Colorado State Public Defender's Office, 1290 Broadway, Suite 900, Denver, CO 80203, tel. 303-764-1400, [appellate.pubdef@coloradodefenders.us](mailto:appellate.pubdef@coloradodefenders.us)

\_\_\_\_ I agree to comply with all relevant orders and all criteria set forth in Rule 2.

Signature \_\_\_\_\_ Date \_\_\_\_\_