



## Karen L. Johnston

Member

### Denver Office

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**Karen L. Johnston is a Member of the Construction and Manufacturing industry groups, focusing primarily on workplace safety & health and litigation. She practices out of the Firm's office in Denver, Colorado.**

Karen's practice centers on workplace safety and health and related civil, criminal and administrative litigation. She counsels and represents mining industry – including metal, nonmetal, and coal mine operators and contractors – construction, energy, and general industry clients in all aspects of their regulatory safety and health matters and in crisis management.

Her litigation experience is extensive, from pretrial discovery through appeal. She defends clients in regulatory matters before the Occupational Safety and Health Review Commission (OSHRC) and the Federal Mine Safety and Health Review Commission (FMSHRC) in issues under the Occupational Safety and Health Act and the Federal Mine Safety and Health Act, respectively. She also represents clients before various state Occupational Safety and Health agencies. In addition, Karen is well-versed in issues arising under the Safe Explosives Act, including licensing and permitting.

Karen's favorite part of her work is visiting clients at the mine sites to get a firsthand account of what it is like to work at and manage these facilities. She loves training supervisors and safety professionals on best practices and helping to keep these worksites safe and compliant.

Karen has authored several published articles on safety and health topics, and she regularly presents on workplace safety and health topics to various national and state industry and trade association groups. She also conducts seminars and training programs on safety and health enforcement and discrimination topics under various state and federal acts.

Out of the office, Karen spends time traveling, reading, knitting, and rooting on the University of Denver Pioneers hockey team. She and her husband love dogs – particularly Boxers – and all of their dogs have been named after various mythological gods and heroes.

## Notable Legal Experience

- Represented underground and surface operators and contractors in litigation of multi-citation/order enforcement actions under the Federal Mine Safety and Health Act in all regions of the United States
- Represented various employers in OSHA and MSHA fatality and accident investigations
- Represented operators regarding jurisdiction disputes between OSHA and MSHA
- Represented operators in Section 105(c) discrimination investigations, temporary reinstatement proceedings and hearings
- Represented management officials and agents during Section 110(c) investigations
- Represented operators in Part 50 immediate notification cases following an accident

- Represented operators in issues arising under the Safe Explosives Act
- Represented multiple employers in cases involving all types of citations including willful and repeat allegations

## Work History

- Jackson Kelly PLLC (1997-Present)
- Irizarry & McCall, P.C. (1994-1997)
- Parcel, Mauro, Hultin & Spaanstra, P.C. (1991-1994)
- Akin, Gump, Strauss, Hauer & Feld (1989-1990)

## Practices

- Workplace Safety & Health
- Litigation
- Construction Law

## Industries

- Coal
- Energy
- Manufacturing
- Mining

## Education

- University of Pennsylvania Law School (J.D., 1989)
- University of Denver (B.A. in Public Affairs & Mass Communications, *cum laude*, 1986)

## Admissions

- Colorado (1991)
- U.S. Court of Appeals, Third Circuit (2007)
- U.S. Court of Appeals, District of Columbia Circuit (2005)
- U.S. Court of Appeals, Tenth Circuit (1994)
- U.S. District Court, District of Colorado (1991)

## Professional Organizations

- American Exploration and Mining Association (Board of Trustees)
- American Bar Association
- Colorado Bar Association
- Denver Bar Association
- National Stone, Sand & Gravel Association
- Women in Energy
- Women in Mining
- American Society of Safety Engineers
- Utah Mining Association

## Speaking Engagements & Publications

### Speaking Engagements

- Panelist, "MSHA 105(c) Discrimination Developments to Watch," EMLF Safety Seminar, Washington, DC (Sept. 20-21, 2022)

- Panelist, "Hot Topics in Mine Safety," American Bar Association Section of Labor and Employment Law, Occupational Safety and Health Law Committee 2022 Midwinter Meeting, Sarasota, Florida (March 8-11, 2022)
- Co-speaker with Laura E. Beverage, "What Does MSHA Have in Store Under the New Administration?," 2021 American Exploration and Mining Association Annual Meeting, Sparks, Nevada (Dec. 9, 2021)
- Panelist, "Hot Topics in Mine Safety," American Bar Association Section of Labor and Employment Law, Occupational Safety and Health Law Committee 2021 Virtual Midwinter Meeting (March 2021)
- Panelist, "MSHA Accident Investigations: A to Z," American Bar Association Section of Labor and Employment Law, Occupational Safety and Health Committee, Palm Springs, California (March 4, 2020)
- Co-speaker with Karl F. Kumli, "2020 Operations Seminar: Navigating an MSHA Inspection — A Boots-on-the-Ground Approach," Indiana Mineral Aggregates Association 2020 Winter Workshop (Jan. 27, 2020)
- Speaker, "Crisis Management: You've Called the First Responders, Now What?," Southeast Mine Safety & Health Conference, Birmingham, Alabama (Nov. 5, 2019)
- Speaker, "Managing a Key Minefield of Operator Liability: MSHA Accident Investigations," 2019 South Central Joint Mine Safety and Health Association Conference, Dallas, Texas (April 17, 2019)
- Speaker, "Whistleblower Protections Under the Mine Safety and Health Act," Cement Employers Association 2019 Spring Meeting, Dallas, Texas (March 27, 2019)
- Speaker, "Myth of Contractual Immunity — Legal Risks Under OSHA on a Multi-Employer Worksite," North Dakota Safety Council 46th Annual Safety & Health Conference (Feb. 2019)
- Co-speaker with Laura E. Beverage, "Crisis Management: You've Called the First Responders, Now What?," North Dakota Safety Council 46th Annual Safety & Health Conference (Feb. 2019)
- Speaker, "Drone Use: What You Need to Know to be Compliant," South Central Joint Mine Health & Safety Conference (2018)
- Speaker, "Limits on MSHA Jurisdiction," Energy & Mineral Law Foundation, Mine Safety and Health Law Special Institute (2018)
- Speaker, "The Good, The Bad & The Ugly of Accident Investigations," Indiana Minerals and Aggregates Association Winter Workshops (2018)
- Speaker, "Effective Management of Contractors," South Central Joint Mine Health & Safety Conference (2017)
- Speaker, "Adequate Today, Inadequate Tomorrow: The Moving Target of Workplace Exam Compliance," Indiana Mineral Aggregates Association Winter Workshops (2017)
- Speaker, "Crisis Management: Prepare for the Worst in Order to be Your Best," NSSGA AGG1 Aggregates Academy & Expo (2016)
- Speaker, "Managing the Emergency: You've Called 911, Now What?," National Stone, Sand & Gravel Association Webinar (2015)
- Speaker, "Discipline of Miners After MSHA Investigations Under § 103(g) and After Accidents," PCMIA/PCA Safety and Health Law Seminar (2014)
- Speaker, "The Mine Operator's Rules to Live By," Iowa Limestone Producers Association (2014)
- Speaker, "'New' MSHA Post Election," MSHA Spring Thaw (2010)
- Speaker, "Paradigm Shift: Mine Safety & Health Administration (MSHA) Compliance, Enforcement, Penalties, and Evidence Collection," Energy and Mineral Law Foundation Special Institute (2008)
- Speaker, "Collateral Damage: How the Focus on MSHA is Impacting Your Operations," Arizona Rock Products Association (2008)
- Speaker, "Evidence Collection in Preparation of A Defense," National Stone, Sand & Gravel Association Legal Symposium (2008)
- Speaker, "Post MINER Act - A Workshop for Survival," Northwest Mining Association (2007)
- Speaker, "Recent Developments in MSHA Law, Enforcement Strategy, and New Penalty Structure," National Stone, Sand & Gravel Association Environmental Safety & Health Forum Expo (2007)

- Speaker, “MSHA Regulatory and Legislative Update,” Washington & Oregon Aggregates & Concrete Association’s Fall & Winter Workshop (2006); Arizona Rock Products Association (2006); and American Society of Safety Engineers, Colorado Chapter (2007)
- Speaker, “MINER Act of 2006: Real Improvement or Framework For Controversy,” Rocky Mountain Mineral Law Foundation (2007)
- Speaker, “The Basics of MSHA § 110(c) Liability,” Colorado Rock Products Association (2005) and Arizona Rock Products Association (2006)
- Speaker, “Mine Act Case Law Update,” Arizona Rock Products Association (2005)
- Speaker, “To Produce Or Not To Produce: How To Answer That Question When MSHA Wants Your Documents,” ISMSP 2005 Critical Issues & T3 Conference (2005)
- Speaker, “The Federal Mine Safety & Health Act of 1977, Its History & Purpose,” University of Denver, Sturm College of Law (2001) (2002) (2005)
- Speaker, “Ethical Concerns when Communicating with Government Agencies,” Lorman Educational Services (2004)
- Speaker, “The Mine Act: Is It Time for Change?,” National Stone, Sand & Gravel Association Annual Convention (2004)
- Speaker, “How to Fight an MSHA Citation,” Nebraska Mine Safety and Health Conference (2004)
- Speaker, “Handling Case from Inspection to Hearing,” DNNA 2004 HSEQ Conference (2004)
- Speaker, “Workplace Violence,” Lorman Educational Services (2004)
- Speaker, “OSHA Legal Liability,” Colorado Rock Products Association (2004)
- Speaker, “OSHA Regulatory and Case Update,” OSHA Today Annual Issue Forum (2003)
- Speaker, “OSHA Inspections: How to Minimize Personal Liability By Managing the Process,” Home Builders Association of Metro Denver (2003)
- Speaker, “Legal Responsibilities and Liabilities at Multi-Employer Worksites,” The 28th Annual North Dakota Safety and Health Conference (2001) and The 30th Annual North Dakota Safety and Health Conference (2003)
- Speaker, “Handling a Case Under Alternative Case Resolution Initiative (ACRI),” Colorado Ready Mix Concrete Association/Colorado Rock Products Association and Colorado Mining Association (2002) and Arizona Rock Products Association (2003)
- Speaker, “OSHA Round-Up: Agency Challenges & Changes Under the Bush Administration,” The 29th Annual North Dakota Safety and Health Conference (2002) and The 30th Annual North Dakota Safety and Health Conference (2003)
- Speaker, “MSHA Round-Up: Agency Challenges & Changes Under the Bush Administration,” 30th Annual North Dakota Safety and Health Conference (2003)
- Speaker, “OSHA’s Comprehensive Ergonomics Plan,” Colorado Ready Mix Concrete Association/Colorado Rock Products Association (2002)
- Speaker, “Primer in Mining History and Regulation,” Ranmun High School (2002)
- Speaker, “Current Issues In Safety and Health Enforcement,” Arizona Rock Products Association (2002)
- Speaker, “Part 46 One Year Later: Pass or Fail?,” National Stone, Sand & Gravel Environmental Safety & Health Forum (2001)
- Speaker, “Regulatory Agenda for a New Administration,” National Aggregates Association/National Stone Association Annual Convention (2001)
- Speaker, “Where OSHA is Headed in the Twenty-First Century,” The 28th Annual North Dakota Safety and Health Conference (2001)
- Speaker, “OSHA’s New Recordkeeping & Reporting Rule: Compliance Issues & Questions,” Lorman Seminar (2001)
- Speaker, “Safety Issues at Multi-Employer Worksites,” Rocky Mountain Health & Safety Conference (2000)

#### **Writings and Publications**

- Co-author with Nicole Grimesey, "Is your defense prepared for interferences?," *Aggregates Manager* magazine (Sept. 2019)

- Co-author with K. Brad Oakley, "MSHA undertakes Phase II of its 'One MSHA' initiative," *Aggregates Manager* magazine (July 2019)
- Author, "Know your options for challenging a citation," *Aggregates Manager* magazine (May 2019)
- Author, "Drug testing your employees: Can you? Should you?," *Aggregates Manager* magazine (July 2018)
- Co-Author with C.K. Lane and Marco M. Rajkovich, Jr., "Mine Safety and Health in the U.S.: Expansion of MSHA Authority to Control Mining Operations Through Inspection and Investigation," 60th Annual Rocky Mountain Mineral Law Institute (2014)
- Co-Author with Laura E. Beverage, "The Mine Improvement and New Emergency Response Act of 2006: Improvement or Framework for Controversy," 53rd Annual Rocky Mountain Mineral Law Institute (2007)
- Co-Author with Laura E. Beverage, "A Primer on Federal and State Occupational Safety and Health Laws and Regulations Applicable to Uranium Mining and Milling," Rocky Mountain Mineral Law Foundation Uranium Exploration and Development Mineral Law Series (2006)
- Co-Author with Laura E. Beverage, "Mine Safety and Health Law," Part I of the Industrial Minerals and Rocks 7th Edition (2006)
- Co-Author with Laura E. Beverage, "Communication with a Government Agency Represented by Counsel: Where Does the Ethical Boundary Fall," 25 Energy & Min. L. Inst. ch. 3 (2005)
- Author, "The Federal Mine Safety and Health Act of 1977: Is it Suffering From a Mid-Life Crisis?," *Denver Law Review* (2001)
- Co-Author with Julia Shreve, "Part 46 One Year Later: Pass or Fail?," *Stone, Sand & Gravel Review* (2001)
- Author, "How to Live in Legal Harmony with Independent Contractors," *Aggregates Manager* (1999, 2000)

## Community

- University of Denver Alumni Organization
- Denver Botanic Gardens
- Greater Park Hill Neighborhood Association
- Historic Park Hill