

# The Roles and Responsibilities of Trial and Appellate Judges

*Lesson from the Courts in the Community curriculum*

*Find out more about [this program](#) and discover [additional lesson plans about how state courts operate](#).*

**Objective:** Students will be able to discern the roles and responsibilities of trial and appellate judges and how those roles are similar and different.

## **Inquiry Questions:**

- What are some of the skills it takes to be a trial judge? An appellate judge?
- How are the roles and responsibilities of trial and appellate judges similar? How do they differ?
- How do the structures of state courts impact democratic decision making?

## **Colorado Academic Standards**

- **SS.HS.4.2.EOb.** Identify the structure, function, and roles of current members of local, state, and national governments. Including but not limited to: understanding the three branches of government at each level of government.
- **SS.HS.4.2.EOf.** Evaluate the role of the judicial system in protecting life, liberty, and property for all persons in the United States

**Activities:** Teacher lecture (background information and lecture outline provided); class participation activity, handouts

**Grade Level:** High School

**Anticipated classroom time:** 45-60 minutes

---

## **Teacher background information**

### **Introduction**

*by former Colorado Supreme Court Justice Gregory J. Hobbs*

State and federal appellate judges must exercise scholarship and common sense. All judges have this responsibility, of course. But appellate judges, in particular, have a duty to articulate justice and the law, in writing, for public guidance.

The third branch of government, the judiciary, governs primarily through the written judicial opinion. Authoring a written opinion for an appellate court can be very humbling because of the work it takes and the impact court decisions can have on citizens and the community.

The work is hard and important.

First, you need to thoroughly research, read, and write the proposed opinion to be as correct as you can on the law and the facts of the case. You are making a judgment on what others have done or left undone in their lives. You always owe the parties to the appeal the courtesy of fair and diligent consideration.

Second, you need the vote of a majority of the judges or justices who must decide the case. Otherwise, your opinion will never see the light of day. One of your colleagues may end up authoring



the court's decision, simply by proposing a concurrence or dissent that gains enough votes to become the court's judgment. So you must listen carefully to the suggestions of your colleagues and take them into account if you think they contribute to the strength of the court's judgment in the case. For example, the Colorado Court of Appeals sits in three-judge panels to decide a case — you need the vote of at least one other judge besides your own. Our Colorado Supreme Court — which chooses which of the decisions of the Colorado Court of Appeals we will undertake to review — has seven justices; you need the vote of at least three other justices.

As an appellate judge or justice, you must never give in to anger or pettiness if you don't get your way. The law is not about you, anyway. It has to do with people in community. Next time around, when you get your next assignment to write the proposed majority opinion, you will have the privilege of convincing your colleagues yet again.

Third, and most important, you must learn never to give up listening and learning about people and the law, and how the work of justice is crucial work of any civilized society, in all ages. Growing into the job — every day you get to do the job — is the mark of settling into your role and responsibility as an appellate judge.

I like to think of an appellate court as a council of elders. Do you remember Elrond in *The Fellowship of the Ring* convening the council of men, elves, dwarves, and hobbits? They came to the circle with their own ideas, hopes, experiences, and tendencies. Despite their strongly held viewpoints, they listened, spoke, debated, and then decided on a course of action. From that place, they marched on — as best they could — to the next great risk, the next great opportunity.

## Handling Appellate Cases

When judges are sworn in to their positions under oath, they pledge to uphold the law and the Constitution. Judicial officers at the appellate level must realize that the decisions they make can have implications statewide or even perhaps nationwide. They are meticulously thorough in their analyses of cases, and they must be objective, comprehensive, and exhaustive. The integrity of the judicial system relies on the integrity of the judges and justices who serve the public.

When handling an appellate case, judges and justices must take into account:

1. The facts of the case, as set forth in the record presented on appeal;
2. Errors in the application of the laws;
3. The Colorado Constitution and the United States Constitution;
4. Statutory laws enacted by legislative bodies and legislative intent;
5. Precedents and/or persuasive authority; and
6. The lawyers' written briefs and oral arguments.

When preparing to hear oral arguments, appellate judges and justices review the documents submitted by the case's attorneys to learn about the case and identify questions they want to ask the lawyers. They review previous court decisions and other applicable authorities. They sort through the precedents and decide which ones they find most appropriate for application in Colorado.



## Lecture outline

### Role of judges

- Pledge to uphold the law and Constitution
- Decisions they make can have implications statewide and nationwide
- Thorough, objective, comprehensive, exhaustive

### Preparation for oral arguments

- Judges take into account:
  - Facts of the case
  - Errors in the application of the laws
  - Colorado Constitution and the United States Constitution
  - Statutory laws enacted by legislative bodies and legislative intent
  - Precedents and/or persuasive authority
  - Lawyers' written briefs and oral arguments
- Review briefs and documents on the cases
- Identify questions they want to ask the lawyers
- Review previous court decisions and other applicable authorities
- Sort through the precedents
- Decide which ones they find most appropriate for application in Colorado

## Class activity

*Note: This activity should be done after the class has discussed the characteristics of good judges through the "What it Takes to Become a Judge" lesson.*

1. Hand out copies of "The Trial and Appellate Process Overview" and "Protocols of the Court of Appeals" and "The Protocols of the Supreme Court."
2. Have students take turns reading sections of the documents.
3. Stop periodically to talk about different responsibilities that involve teamwork, individuality, writing skills, reading skills, listening skills, analytical skills, compromise, knowledge of laws, etc.
4. Then hand out the "Trial Court Judges and Appellate Court Judges" worksheet and have students complete, comparing the skills of trial court judges with the skills of appellate court judges on the diagram.



# The Trial and Appellate Process Overview

by former Chief Justice Michael L. Bender

All cases begin in the trial court. At this level, a decision about the facts occurs and the court enters a judgment in favor of one of the parties. In the Colorado judicial system, we have two kinds of trial courts: district court and county court. District court hears all felony criminal cases (any crime which is punishable by at least a year in the penitentiary), civil cases involving \$25,000 or more, divorce cases, juvenile cases, dependency and neglect cases, and probate cases. This is the court where the most serious cases are filed and tried, such as murder. County court hears all misdemeanors, (which are crimes punishable by a year or less in the county jail) and civil cases which involve less than \$25,000.

Trials and juries occur in the trial court where, if the case goes to trial, findings of fact are made. For example, in the district court, the jury will decide that the defendant committed a robbery or award damages to an injured person in an automobile accident. District courts also decide divorce cases and child custody disputes. Typical criminal cases in county court are driving under the influence, shoplifting and suits by landlords to evict a tenant who doesn't pay the rent.

Most cases are settled by the parties and never go to trial. However, when a case goes to trial, the losing party has one right to appeal on matters of law or legal mistakes that it claims the trial court made. In county court the losing party has a right to appeal to the district court, and, in the district court, the losing party has the right to appeal to the Court of Appeals. Either winning or losing party on the first appeal may appeal to the Supreme Court by what is called a discretionary appeal, by way of writ of certiorari. The Supreme Court decides whether the legal issues raised by the appeal are important issues for the state and, if so, will agree to hear the appeal. When the Supreme Court takes this action, it is said to have granted the writ of certiorari.

It is important to remember that appeals do not involve a determination about whether the jury or the fact-finding was correct. Appeals concern questions of law that the judge made on the case that may be incorrect. All the appeals heard by either the Court of Appeals or the Supreme Court involve legal mistakes or questions of law. Most questions of law involve decisions made by the trial court that are raised either through motions made to the trial court by the losing party or errors the trial court made in instructions to the jury.

## Reference Information: General Background

Criminal cases are first filed in a judicial district's trial court. A **misdemeanor** offense (which is punishable with up to two years in county jail) is handled in the county court. A **felony** offense (which is defined as a crime for which a penitentiary sentence may be imposed) is handled in a district court.

Any trial or evidentiary hearings on motions are done in the trial court. If a defendant is acquitted of a crime after a trial, the district attorney generally cannot appeal the verdict and re-prosecute the defendant in another trial because the defendant is protected from re-prosecution by constitutional protections against **double jeopardy**. If a defendant is convicted in the trial court, he or she may **appeal** the judge's decisions and rulings that occurred in the case. The appeals for felony convictions from district courts go to the Court of Appeals in Denver. Appeals from misdemeanor convictions in the county court are done in the local district.

After the first round of appeals occurs, either party may ask the **Colorado Supreme Court** to review the decision of the first appellate court. The Supreme Court usually does not take such requests (known as "Petitions for writ of certiorari") as many petitions are filed and few cases can be dealt with by the Supreme Court. After the Supreme Court either issues a ruling on the case or denies the



request to hear the case, either party may ask the **United States Supreme Court** (or sometimes a federal district court) to review the case if there is **some federal constitutional or statutory issue** involved. The United States Supreme Court accepts very few cases for review.

It is important to understand that an appellate court does not re-try the facts of the case. Except in unusual circumstances, **an appellate court must accept the facts that were ruled upon by the trial court**. If a jury verdict is returned, an appellate court cannot simply change a jury's verdict, although it may rule that the trial court committed such errors (such as admitting evidence that should have been suppressed or admitting really prejudicial evidence) that the conviction must be reversed and the defendant given another, more fair trial.

Appeals are argued in **briefs**, which contain the relevant law and recitation of the facts in the case that were presented to the trial court. **Oral arguments** (such as the ones that will be heard as part of this program) are done to allow parties to answer questions from the appellate judges and to give the attorneys a chance to argue their cases directly to the justices.

When there is a hearing on a motion in a trial court, the trial court issues **findings of fact**. For example, in a motion to suppress the search of a car, the defendant may argue that he did not give police his consent to search and an officer may testify that the defendant did give consent. The trial judge makes a **factual ruling** as to what they believe happened. These findings of fact are usually binding on an appellate court when the case is reviewed on appeal. What is argued on appeal is whether the trial court erred in applying the law in ruling on an issue. If the trial court made a mistake in law, the appellate court will usually send the case back down to the trial court with instructions to correct the legal ruling it made.

If a defendant received an unfair trial because of a trial court ruling that the appellate court disapproved of, the defendant's conviction will be reversed and the case re-set for trial again.

A ruling by the United States Supreme Court on a **federal constitutional issue** (such as the Fourth Amendment issue) is the law of the entire United States. A state court can provide **more protection under its own state constitution, but it cannot provide less constitutional protection than the minimum found by the United States Supreme Court**.

In general, trial courts have to follow the constitution and state statutes. Of course, the constitution overrides any statutes passed by the legislature. If the legislature passes a law that violates a constitutional provision (such as only men can use a public swimming pool), a court may rule that the statute is unconstitutional and strike it down.

Any rulings about law by appellate courts are supposed to be followed by lower courts. Appellate courts must follow superior appellate courts' legal rulings (for example, the Colorado Court of Appeals must follow the law decided by the Colorado Supreme Court), and the whole body of appellate law is supposed to grow consistently as opinions generally follow the reasoning and ruling of prior opinions (this is known as "**stare decisis**").



# Protocols of the Colorado Court of Appeals

by David Furman, Former Judge, Colorado Court of Appeals

## Who We Are *Judges and Staff*

The Colorado Court of Appeals currently consists of 22 judges including the Chief Judge. Read their biographies on the [Judicial website](#).

When a judge position opens on the court, candidates apply. A judicial nominating commission selects three candidates and passes these names on to the governor. The governor appoints one of the three.

Approximately two years after a judge is appointed, a judicial performance commission reviews the judge's work, interviews the judge, and suggests whether the judge's performance meets the necessary standards. Coloradans vote on retention in the general election. After this first review, the performance commission reviews each judge every four years and makes a voter recommendation every eight years.

The Chief Justice of the Colorado Supreme Court selects one judge to serve as the Chief Judge. The Chief Judge develops court policies, works on budget issues, manages facilities, and supervises all staff. He or she is also involved in reviewing cases and writing opinions, often substituting for recused judges and sitting on panels with senior judges.

Each judge hires two support staff, who are usually law clerks, although a judge may hire one administrative assistant instead of a law clerk. Each law clerk is a confidential employee and serves at the pleasure of the judge. Law clerks usually work in these positions for one or two years, although some work for their judge indefinitely. These clerks take several classes each year to learn about writing, legal topics, and their administrative duties.

Nine senior judges currently work for the court. They sit on cases with the Chief Judge or substitute for other judges who are recused or otherwise unable to participate on a case.

## **Clerk of the Court**

The clerk of the court has a combined staff of about 13 employees. These employees make sure the court runs smoothly: receiving pleadings, issuing out orders, announcing cases, managing dockets, and organizing case files.

## **Staff Attorneys**

The Reporter of Decisions and Assistant Reporter of Decisions are both attorneys with excellent editorial skills. They are responsible for editing all the cases announced by the court.

The court 19 nineteen full-time Staff Attorneys and a small support staff. These Staff Attorneys are individuals who have practiced law and have developed particular expertise in certain areas of appellate law. They draft PDMs for divisions, as more fully described below.

The court also employs three Motions and Jurisdiction Counsel. They review and rule on many routine motions, present more complex motions to one or three judges for resolution, and screen cases to ensure the court has jurisdiction under section 13-4-102, C.R.S. 2016. Motions and Jurisdiction Counsel may issue orders to "show cause" directing the parties to address potential jurisdictional issues.

In all, the court employs about 102 staff, including judges.



## Location

The court is in the Ralph L. Carr Colorado Judicial Center, which opened in December 2012.

## Filing Statistics

Cases begin their life in the court when a party files a notice of appeal. Parties filed 2,305 new cases in the fiscal year ending June 30, 2024, which included 925 criminal cases, 1,016 civil cases, 86 industrial claim cases, and 315 juvenile cases. The civil cases included domestic, probate and agency cases. The number of total filings stayed the same as the previous fiscal year.

## Jurisdiction and Motions

After a party files a notice of appeal, the case moves through a few preliminary stages.

As noted, the Motions and Jurisdiction Counsel screen new cases for jurisdictional issues.

Parties also may file motions. Again, the Motions and Jurisdiction Counsel review and process these motions for resolution.

A panel of three judges serves as a “motions division” and will decide any dispositive motions. The membership of this panel rotates every month.

After parties file briefs, the law clerks screen the briefs to ensure that they comply with the court’s formatting rules. The law clerks rotate these screening duties every month.

## Recusal Review

Once a case is fully briefed, it becomes “at issue.” The clerk’s office circulates at-issue sheets to all judges. These sheets contain the case number; the names of the parties, attorneys, and participating trial court judges; and the court, agency, or tribunal from which the appeal originates. Each judge reviews the “at-issue” sheets to determine if he or she must recuse based on the Code of Judicial Conduct.

## Divisional Nature of the Court

After a case has been checked to ensure the court has jurisdiction, any appropriate motions have been ruled on, and all the briefs have been filed, the clerk’s office randomly assigns it to a “division.”

A “division” is a three-judge panel that serves together for four months. The Chief Judge assigns these divisions, with the Chief Justice’s approval § 13-4-106, C.R.S. 2016. The goal is to rotate assignments so that each judge sits with every other judge within a two-and-a-half to three-year period.

All the divisions function independently from each other, similar to the way the federal circuits function in the federal system; however, the court is not authorized to sit en banc.

Each division decides its cases based on its own interpretation of binding and persuasive authority. But divisions are not bound by the decisions of another division. That is, although judges recognize the importance of deference to earlier decisions, each division may view the law differently and issue a conflicting decision. Conflict between division decisions is one reason the Colorado Supreme Court may grant certiorari. C.A.R. 49(a)(3).

## Case Assignments

As noted, the clerk’s office assigns cases randomly, not attempting to match cases with any particular division or judge. Because of this, judges see a wide variety of cases. This random assignment helps



attract qualified applicants for judicial vacancies and, because contact with lawyers and the public is limited, helps avoid burnout by engaging judges' intellectual curiosity. The process of random selection also ensures that diverse ideas from the judges' varied backgrounds will inform a division's decision.

The most senior judge among the division members serves as the presiding judge, and seniority is based on how many years each judge has served on the court. After cases are assigned to the division, the presiding judge makes assignments within the division, and directs authorship of opinions; however, authorship is typically assigned on a random basis.

### **Staff Attorney Case Assignments**

The Chief Staff Attorney reviews all cases filed and recommends to the Chief Judge that certain cases be assigned to Staff Attorneys. This recommendation is based on such factors as the level of difficulty of the issues in the case, the expertise that each Staff Attorney possesses, and whether the case involves areas in which the law is settled.

Once assigned a case, the Staff Attorney reviews the briefs and the record, conducts appropriate research, and prepares a "predisposition memorandum," or PDM. The case is then assigned to a division.

### **Sittings**

Each division meets about every two weeks to decide orally argued and waived cases, which are assigned by the clerk's office. The clerk's office normally assigns seven cases for each sitting, including three or four cases set for oral argument.

The clerk's office schedules these "sittings" approximately five to six weeks in advance. The clerk's office notifies parties of the date set for oral argument and indicates how conflicts in scheduling are to be handled. The clerk's office does not notify parties of the date waived cases will be set, although parties may request this information from the clerk's office.

In addition to these sittings, the clerk's office assigns to each division nine to 12 Staff Attorney cases per month, with three assigned per week. These are cases for which the Staff Attorneys draft tentative opinions. Each division normally decides these cases on Wednesday mornings in a separate sitting.

### **Case Adjudication**

#### ***Predisposition Memorandums (PDMS)***

Once a case arrives on the assigned judge's desk, he or she prepares a "predisposition memorandum," or PDM, directed to the other two panel members.

The judge, with the assistance of his or her law clerks, drafts the PDM after reviewing the briefs, pertinent law, and the record. Each chamber typically writes PDMS in draft opinion form with a proposed disposition of the case.

Each judge is responsible for drafting at least two PDMS for each sitting, and the authoring judge circulates the PDM to the other division members no later than the Friday before the scheduled sitting. Generally, a Staff Attorney also drafts one case that is assigned to this sitting, and the judges take turns editing and announcing this case. Thus, each judge and his or her chambers prepares two to three PDMS every two weeks. This means that each judge, after completing his or her PDMS, is also responsible for reading the briefs, pertinent law, and, if necessary, portions of the record in four to five other cases every two weeks. When the judges prepare for oral argument, the PDM serves to provide insight and to focus questions for each division member. When oral argument is waived, the PDM serves a similar function for discussion in conference.





## **Staff Attorney PDMs**

The Staff Attorney drafts a PDM for the case that is assigned to the regular division, and to the cases set for a Wednesday division. The judge decides the case in the same manner described above: reading the briefs, pertinent law, and the record, conducting independent research, and then reviewing the Staff Attorney's proposed draft. The judge then makes changes he or she thinks appropriate, and sends the revised draft to the other division members for consideration.

## **Oral Arguments**

Judges look forward to oral argument; it is a chance to meet with attorneys and discuss the law.

Attorneys for either side may request oral argument. These requests are routinely granted, although the division may, in its discretion, deny such a request. The division also may order a case be orally argued, even though a party did not request oral argument.

Before oral argument, each judge usually formulates questions to ask the attorneys. In some cases, a division may send pre-argument questions to the attorneys.

The court consistently aims to make oral arguments more accessible to the public. The court now streams oral arguments live. The link to watch the arguments is accessible from the court's homepage. The court also archives the arguments so the public may watch or listen to them later. Video files are available on the court's website going back to Dec. 2014; audio files are available going back to 2005.

## **Conference**

Immediately after oral arguments, the division meets in "conference" to discuss all the cases assigned for that sitting, including waived cases. If the division reaches consensus on a case, they confirm authorship, and the case continues toward announcement. If they cannot reach consensus, the judges may decide to discuss it again at a later division conference. These cases may require additional research, further record review, or supplemental discussion before the panel reaches a decision.

All PDMs are tentative, as is authorship. The PDM may form the basis of the majority opinion. But it may represent a dissenting view, if the other two judges disagree with it, in which case one of the remaining two division members will author the majority opinion. It is not uncommon for all division members to disagree with at least part of the PDM; the initial author-judge may then prepare one or more revised drafts before a draft is acceptable to the other members of the division.

## **Division Conference**

Nearly every Wednesday, each division will meet to discuss staff attorney cases, cases that were held over from prior division conferences, and any other outstanding issues.

## **Cases Proposed for Publication**

### ***Why Publish?***

During conference, the division also discusses whether a draft opinion merits publication. Colorado Appellate Rule 35(e) provides that a case should be published when the opinion: (1) lays down a new rule of law, alters or modifies an existing rule, or applies an established rule to novel facts; (2) involves a legal issue of continuing public interest; (3) directs attention to the shortcomings of existing common law or statutes; or (4) resolves an apparent conflict of authority.



If the opinion may merit publication, the author will indicate possible publication and state the grounds for such when he or she circulates the PDM to the other division members. If the division agrees that the opinion merits publication, the opinion will be circulated to the full court for a majority vote.

### **Full Court Review and Conference**

A majority of the 22 judges reviews every draft opinion circulated for publication. During this review, the judge may conduct additional research, determine whether the opinion merits publication, and offer suggested edits to the opinion. The authoring judge receives a comment sheet, which records the reviewing judge's publication vote and comments. These comments may be substantive or editorial. Votes on publication and comments are circulated to the full court the Monday before the next full court conference, which is held on alternating Thursdays.

Each judge has the power to call any draft opinion "into conference." This means that the judge can request a full discussion of the opinion at the full court conference based on the opinion's content, based on the opinion's apparent conflict with prior decisions, or for any other reason.

Before full court conference, any judge calling a case into conference typically discusses his or her concerns with the authoring judge. At that time, the judges may discuss proposed changes, which, after further discussion with the other division members, may obviate the need for discussion at full court conference.

Any opinion receiving a majority vote for publication will be published, unless it is withdrawn before or during full court conference. The authoring judge and the rest of the division may, but need not, modify the opinion to take into account suggestions from the reviewing judges and the Reporter of Decisions, and may recirculate the opinion to the full court for further review.

### **Unpublished Cases**

Draft opinions that do not meet the requirements for publication are announced as unpublished cases. For these cases, the authoring judge, incorporating the views of the other division members, submits the draft opinion to the Reporter and Assistant Reporter of Decisions. They review each opinion for style, form, language, punctuation, and general readability. The authoring judge then reviews suggested edits from the Reporter and Assistant Reporter of Decisions, and if they are substantive, the other division members will also review them. The authoring judge then finalizes the draft opinion.

### **Announcements**

The court announces cases every Thursday, but only announces published cases every other week. An announcement sheet lists which cases are published and which are unpublished, states the disposition of each case, and lists determinations on motions for rehearing.

When the court announces opinions, it provides copies of the opinion to all parties, the trial court or agency, the press, and the public. Opinions selected for official publication also are provided to West Publishing and The Colorado Lawyer.

All Colorado Court of Appeals opinions are also available on the Colorado Judicial Department website, [www.coloradojudicial.gov](http://www.coloradojudicial.gov).

### **Petitions for Rehearing and Certiorari**

After the court announces an opinion, the parties may petition for rehearing. Petitions for rehearing state whether the opinion misapprehended the law or facts of the case. The clerk's office circulates a petition for rehearing to each division member, who reviews it and makes a recommendation. The



division may grant the petition and withdraw the opinion deny the petition or deny the petition with minor modifications to the opinion.

In about one third of the cases decided by the court, one of the parties petitions the Colorado Supreme Court to review the case. Historically, the supreme court only grants review in about 6% of these petitions. Petitions for rehearing are no longer required before a party seeks certiorari review in the supreme court. C.A.R. 52.

## **Workload**

The workload of the court and of each judge is significant. In the fiscal year ending June 30, 2024, the court resolved 2,320 cases, including written opinions issued and dismissals due to settlement or lack of jurisdiction. The judges of the court issued 1,544 opinions, requiring each judge to author about 70 opinions per year.

In addition to being responsible for his or her own “authored” opinions, each judge must review all of the briefs, pertinent law, and record for each case in which he or she participates; conduct independent research; discuss the case; author dissenting or concurring opinions if necessary; read other division members’ opinions; and review all draft opinions proposed for publication.

Each judge also strives to be informed of recent Colorado Supreme Court and United States Supreme Court opinions.

Consequently, each judge reads an estimated 3,000 pages of material per month. Weekend reading is inevitable, and 10- to 12-hour workdays are not uncommon.

## **Extra-Judicial Activities**

In addition to his or her judicial duties, court judges participate in numerous outside activities related to the legal system. These activities include participation in bar associations and giving frequent continuing legal education (CLE) lectures. A court of appeals judge also serves as the chair for nearly every supreme court rules committee.

### ***Colorado Court of Appeals Extended Community Outreach Program***

In recent years, the court has focused on greater transparency and engagement with Colorado communities through educational outreach programs. This program is made up of three initiatives: (1) district outreach, (2) Courts in the Community, and (3) Goldilocks trials.

#### ***District Outreach***

There are 22 judges and 23 judicial districts in Colorado. Each judge is assigned by the Chief Judge to one of these districts as a liaison, with one judge serving as a liaison to both the 18<sup>th</sup> judicial district and the newly formed 23<sup>rd</sup> judicial district. Each judge tries to visit his or her respective district at least once per year to meet with the local judges, bar, administrative staff, and community.

#### ***Courts in the Community***

As part of the courts in the community program, divisions hold oral arguments at high schools around the state and at the two law schools in Colorado. This provides students with the opportunity to observe appellate arguments firsthand. In preparation for oral argument, judges and judicial staff meet with teachers to provide an overview of the judicial system and the court, review the cases that will be presented during oral arguments and discuss event logistics. After the oral arguments, students ask the judges and attorneys general questions about their careers.



### ***People v. Goldilocks Mock Trial***

To introduce elementary school students to the law, the division may conduct “Goldilocks trials” at schools. In this trial, the state has charged the defendant, Sarah Goldilocks, with trespass and theft. The students play the roles of attorneys, parties, witnesses, and judge, and interact with the division judges participating in the outreach program.

### **Conclusion**

The court, in recognizing and valuing the importance of our judicial system, fosters a commitment to excellence, integrity, and collegiality. And through the hard work and dedication of every judge and staff member, the court has a long-standing reputation for implementing these principles.



# Protocols of the Supreme Court

## Membership of the Court

The Colorado Supreme Court is comprised of seven justices appointed by the Governor pursuant to Colorado's merit selection process. Information about the judicial selection and retention process is available at on the [Judicial Nominating Commissions page](#).

The seven members of the Colorado Supreme Court are: Chief Justice Monica M. Márquez; Brian D. Boatright; Justice William W. Hood, III; Justice Richard L. Gabriel; Justice Melissa Hart; Justice Carlos A. Samour, Jr., and Justice Maria E. Berkenkotter. Brief biographies of the Justices can be found on the [Supreme Court page](#).

## The Supreme Court's Jurisdiction and Caseload

The Colorado Supreme Court is the state's court of last resort. The Court has both original and appellate jurisdiction. Most appeals are initially taken to the Colorado Court of Appeals. Appeals may also be taken to a District Court sitting as an appellate court in a case initially filed in a County or Municipal Court, with the Supreme Court retaining discretionary jurisdiction to review decisions of that court. Supreme Court cases are filed with the Supreme Court Clerk.

In fiscal year 2024, a total of 1,340 cases were filed with the Supreme Court. Of those, 925 were certiorari petitions seeking review of intermediate appellate court (primarily Court of Appeals) decisions. The Supreme Court generally does not grant discretionary review simply to correct an erroneous decision that will affect only the parties to that case. See Colorado Appellate Rule (C.A.R.) 49 and 50. Instead, because the Court's primary role in reviewing such decisions is to set precedent that develops and clarifies the law on important issues of broad impact, it grants review in a small percentage of cases. The Court has no set number of certiorari petitions it will grant, but it typically grants around 5 to 10 percent of the petitions filed each year. In addition to certiorari jurisdiction, the Supreme Court has discretionary jurisdiction to consider original proceeding petitions under C.A.R. 21; certified questions from the federal courts; important questions upon solemn occasions when required by the Governor or General Assembly; and a number of other proceedings.

In addition to its discretionary jurisdiction, the court has direct appellate jurisdiction in certain types of cases, including water cases, Public Utility Commission cases, cases in which the trial court has declared a statute unconstitutional, death sentence cases, attorney and judicial discipline cases, interlocutory appeals by the prosecution from suppression orders in criminal cases, initiative ballot titles set by the Title Setting Board, election cases, and other cases that bypass the Court of Appeals by law. An appendix outlining sources of the Supreme Court's discretionary and direct appeal jurisdiction appears at the bottom of these protocols.

The Supreme Court issued 73 majority opinions in FY 2024; it resolved the rest of its caseload by order of the court issued through the Clerk of the Supreme Court.

## The Role of the Chief Justice, Committees and Supreme Court Staff

The Chief Justice, who is selected by the other justices under a provision of the Colorado Constitution, is the executive head of the Colorado Judicial Branch and is the leader in its administration. In this capacity, Chief Justice Márquez manages an \$700 million budget and oversees 4,100 employees of the Supreme Court, Court of Appeals, State Court Administrator's office, and 23 judicial districts. Reporting directly to the Chief Justice are the Clerk of the Supreme Court and the State Court Administrator. The Chief Justice also has counsel.



The Chief Justice has authority to issue Chief Justice Directives pertaining to matters of judicial administration. The Chief Justice presides over quarterly meetings of the Chief Judges of the judicial districts to discuss matters concerning the administration of justice. The Chief Justice also presides over all conferences, oral arguments, and hearings of the Court; assigns all opinions for authorship; and designates, in consultation with the Court, which justice or justices will serve as liaison to the Court's various committees.

Justices oversee more than 30 committees and working groups. For example, Supreme Court committees include: the Attorney Regulation Advisory Committee; the Appellate Rules Committee; Board of Law Examiners; Civil Rules Committee; Criminal Rules Committee; Chief Justice Commission on Professional Development; Family Issues Committee; Rules of Professional Conduct Standing Committee; Judicial Ethics Advisory Board; and Water Court Committee, among others. A complete list of Court committees can be [found on the Committees page](#).

In addition, the Supreme Court and the Colorado Bar Association have jointly established the Access to Justice Commission. The Court maintains a publicly available pro bono legal services law firm commitment and recognition [list on the Pro Bono page](#).

Each justice has three full-time law clerks who provide legal and administrative support. The law clerk responsible for the administrative management of chambers is called the judicial assistant. At the end of 2022, the Court added a part-time Reporter of Decisions, who edits the opinions of the Court. The Court also has four staff attorneys, who provide legal research and guidance to the Clerk's Office, the Court as a whole, and many of the standing committees appointed by the Court. They also assist with research and analysis of certiorari, habeas corpus, and original proceeding petitions.

The Court uses its [Homepage](#) to post matters of interest to the public and the bar on the Internet, such as rule changes, Chief Justice Directives, certiorari announcements, original proceeding announcements, and opinions of the Court. On Friday mornings from September through June, the "Case Announcements" page lists the names of the cases for which opinions will be issued the following Monday morning.

## **Oral Argument, Case Assignment and Decision Making**

The Supreme Court works collegially. During the typical week, there is much visitation and informal discussion among the justices on all matters pending for decision. The Court has a 12-month work year. From September through June, the justices meet almost every Thursday in conference to decide all pending matters that are ready for vote. The Court does not meet on Thursdays during the last two weeks of December, on any state holiday falling on a Thursday, the last week in March, and any week when the Court hears oral arguments as part of Courts in the Community. During July and August, the Court does not hold weekly conferences or issue opinions. During this time, the justices write proposed opinions they have not yet presented to the Court for review, attend educational conferences, take vacations, and vote electronically on pending certiorari petitions and original proceedings.

The Court typically schedules nine to ten oral argument calendars between September and June, with each calendar lasting two or three days. From May 2020 to June 2021, oral arguments were held virtually through Webex due to the pandemic. After oral argument, the justices deliberate and the Chief Justice makes opinion-drafting assignments based on the preliminary vote in each case, which is taken after all the cases set on a calendar have been heard. You may watch Oral Arguments live on the [Oral Arguments Broadcast page](#).



The Court also decides cases submitted on the briefs without oral argument, such as interlocutory appeals from suppression orders in criminal cases, review of constitutional or statutory citizen initiative ballot titles set by the Secretary of State's hearing board, original petitions when a Rule to Show Cause has been issued by the Court, and attorney discipline cases.

Generally, four affirmative votes of the seven justices are required to decide any matter coming before the Court, except for grant of a certiorari petition, which requires three votes. However, one or more justices may decide not to participate in a particular case. If an even number of justices are participating in a case, a tie vote among the justices will result in affirming the decision under review by operation of law without an opinion.

### **Thursday Decisional Conference**

The Court's weekly decisional conference is called to order at 9 a.m. on Thursday mornings. Each justice is expected to attend or, if absent, must leave a vote sheet for all pending matters ready for decision. The Chief Justice presides over the discussion and votes are taken, proceeding from junior to senior justice, with the Chief Justice voting last. Any justice may request a matter to be passed to the next conference for a vote, and the present conference may be used for discussion of the case instead. Passing a matter is a courtesy asked by one justice of the others; a justice's request to pass the case for vote at a future conference is always honored.

The order of business for vote at the Thursday conference follows this order: decisions on proposed final opinions; petitions for rehearing on issued opinions; cases submitted on the briefs without oral argument, followed by assignment of the opinion by the Chief Justice to one of the justices; grant or denial of certiorari petitions; grant or denial of petitions in original proceedings for a Rule to Show Cause under C.A.R. 21 that have not otherwise been voted on during the week; and administrative matters, including rule changes and any other matter concerning governance of the Court or the Judicial Branch. Sometimes, the Court acts to dismiss a certiorari granted matter as "improvidently granted" because the Court, on reflection, determines that the lower court decision should remain without further review.

Decisions of the Court are announced the Monday following the Thursday conference as [Case Announcements](#). Links to the full opinions are posted on the website on Monday, but the case numbers and case captions of opinions to be issued on Mondays are posted the preceding Friday.

### **Original Petitions/Duty Judge**

Original petitions under C.A.R. 21 may be filed with the Clerk of the Court and decided by the Court at any time. Granting review of an original petition, which results in the issuance of an order to show cause, is within the sole discretion of the Court, and rarely occurs. In fiscal year 2024, 234 original petitions were filed with the Court. The Court issued an order to show cause in only 23 of them.

At least four justices must agree to issue such an order, the effect of which is to stay all proceedings in the court below. When received, the Clerk of the Court assigns petition review filed by an attorney to one of the seven justices, in random rotation. The assigned justice reports on the petition for vote, with reasons for the grant or deny recommendation, to the other justices by email, at an in-person ad hoc conference of the Court called by the assigned justice at any time, or at the Thursday conference. The assigned justice may issue, but is not required to, a short-term stay or other temporary order pending the Court's decision on the petition, upon the petitioner's motion. Petitions filed by persons not represented by counsel are first reviewed by a staff attorney who makes a dispositional recommendation to the Court.



There is a monthly Duty Judge assigned in rotation by the Chief Justice to rule on matters brought to that justice by a staff attorney or the Clerk of the Court, such as motions for amicus curiae appearance, extensions of time, or extended-page briefing.

### **Certiorari Petitions**

Based on the briefs and issues raised and the guidelines set forth in C.A.R. 49, a staff attorney separates out approximately half of the certiorari petitions for circulation and decision without preparation of a certiorari memorandum (“non-memo”). Each justice reviews the intermediate appellate court’s decision, together with the certiorari petition and any response thereto, and votes on whether to deny the petition or request preparation of a certiorari memorandum before a vote is taken.

The other certiorari petitions and those extracted from non-memo consideration by any justice are delivered in random rotation by the Clerk of the Court to the seven chambers. The assigned justice, in turn, then assigns a law clerk to prepare a certiorari memorandum on the case. The assigned justice reviews the certiorari petition, any response thereto, and the memorandum, makes any desired change to the memorandum, and circulates the memorandum along with the underlying appellate court’s opinion to the other six justices, noting on the face of the memorandum the assigned justice’s recommendation regarding which issues, if any, should be taken on certiorari.

Votes of three justices are required to accept a case on certiorari review. The order granting a petition will specify the issues taken for review and those issues for which review is denied. To be voted on at the weekly Thursday decisional conference, certiorari memoranda must be circulated to all the justices by the preceding Friday. During July and August, each justice’s vote is entered on an electronic vote sheet.

### **Proposed Opinions**

Newly proposed majority opinions must be circulated by the authoring justice to the other six justices by 5:00 p.m. Thursday afternoon. Each justice may propose only one new opinion for the next Thursday conference. By noon on Tuesday, all seven justices make known to each other whether they intend to concur with or dissent from a proposed majority opinion that has been scheduled for vote at the Thursday conference. Any justice has until Tuesday at 5:00 p.m. to propose a written concurrence or dissent. The vote on the proposed majority opinion and concurring or dissenting opinions that are ready for vote occurs at the Thursday conference. Any justice, including the authoring justice, may request that the vote be passed to the following week’s conference in favor of a discussion of the matter at the pending conference or because the justice needs more time to consider the matter or to write a concurring or dissenting opinion.

A majority opinion does not argue with a concurring or dissenting opinion; instead it is written to stand on its own. Each justice works to review the proposed opinions of the other justices as a first priority in dealing with pending work. When disagreement between justices occurs on any matter, they confer with each other concerning the disagreement, to the extent possible, before conference. This process results in changes to proposed opinions that are circulated to all of the justices. An opinion that has received a majority vote at the weekly decisional conference is prepared in final slip opinion form, together with any concurring or dissenting opinion, by noon on Friday. The authoring justice’s law clerk or judicial assistant is responsible for assembling the required copies for the Clerk’s Office by noon on Friday for distribution upon announcement Monday morning. Each issued opinion is accompanied by a cover page synopsis of the case prepared by the authoring justice.





A justice may determine not to participate in any decision upon considering the Canons of Judicial Conduct. An opinion of the Court will identify any justice who is not participating. A non-participating justice need not explain the reason for not participating.

## **Judicial Nominating Commissions**

The Chief Justice chairs, ex-officio, the statewide Judicial Nominating Commission that selects up to three candidates for each vacancy that occurs periodically on the Supreme Court and Court of Appeals. The other six justices take turns in chairing, ex officio, the 23 Judicial District Nominating Commissions that select up to three candidates for each vacancy occurring periodically for district court and county court judgeships. In fiscal year 2024, the justices as a whole chaired 27 nominating commission sessions. These involved 9 vacancies at the County Court level; 18 at the District Court level; and 2 for the Court of Appeals. More information regarding the judicial nominating process is available on the [Judicial Nominating Commissions page](#).

Under the Colorado Constitution, the City and County of Denver has its own nominating commission process for Denver County Court judges.

## **Supreme Court Library**

The Supreme Court Library serves judges, lawyers, staff, and members of the public. It specializes in issue-specific legal research, legal reference, and historical legal research.

The library is open to all members of the bench, bar, and general public. Library services include free access to LexisNexis and other legal databases, use of legal treatises and other print materials in the library, and professional reference and research assistance. The library staff may not provide legal advice; however, all members of the library team are highly skilled in providing access to legal information. Please see the [Library's website\(link is external\)](#) for additional information.

## **Community Outreach**

During one fall and one spring oral argument calendar, the Supreme Court convenes at a high school, college, or law school for oral argument in two cases as part of [Courts in the Community](#). This educational outreach program gives high school students a firsthand look at how the Colorado judicial system operates and how disputes are resolved in a democratic society. Using curriculum specially designed for this program, teachers prepare Colorado students to hear oral arguments in these cases. After the oral arguments, students get an opportunity to ask the attorneys questions about the cases and justices about their careers and their lives as Supreme Court justices.

The Supreme Court Justices are engaged in other educational activities of their choosing, including speeches at legal events, visits to local schools and universities and law school lectures.

## **Conclusion**

The Court's work is multi-faceted. Each justice plays a direct role in all business coming before the Court, unless the justice has determined that he or she should not participate in any particular matter. Upon invitation, justices often participate in civic education programs throughout Colorado.



## TRIAL COURT JUDGES AND APPELLATE COURT JUDGES

Fill in this Venn diagram with qualities of trial court judges and qualities of appellate court judges. Write the qualities that both types of judges must possess in the overlapping area in the middle.

