

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.

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 former Justice Bender's "The Trial and Appellate Process Overview" and Justice Hobbs' "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 Supreme Court

by former Colorado Supreme Court Justice Gregory J. Hobbs, Jr. (updated October 2021)

Membership of the Court

The current members of the Colorado Supreme Court are Chief Justice Monica M. Márquez, Justice 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.

The Role of the Chief Justice and Staff to the Justices

The Chief Justice is the executive head of the Colorado Judicial Branch and is the leader in its administration. The State Court Administrator, who is appointed by the Court, reports directly to the Chief Justice and oversees an administrative staff.

The Chief Justice is elected by the Justices and serves at the pleasure of the Court. In addition to administrative responsibility for the entire court system, the Chief Justice 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 shall serve as liaison to the various committees and special committees of the Court. These committees include the Civil Rules Committee, the Criminal Rules Committee, the Appellate Rules Committee, Attorney Regulation Advisory Committee, Board of Law Examiners, and the Judicial Advisory Council, among others. The Supreme Court and the Colorado Bar Association have jointly established the Access to Justice Commission.

The Chief Justice has authority, in consultation with the full Court, to issue Chief Justice Directives pertaining to matters of judicial administration.

The Court works collegially. During the typical week, there is much visitation and informal discussion among the Justices on all matters pending for decision. Each Justice has three full-time positions for law clerk and administrative work.

Each chamber has a personal computer for each Justice and employee. The computers are networked to tie the seven chambers and the Clerk's office together. The Supreme Court Library is available to the judiciary, the legal profession, and the public for legal research. In addition, the judiciary has a master contract for electronic research.

The Court uses the [Supreme Court webpage](#) to post matters of interest to the public and the bar, such as rule changes, Chief Justice Directives, certiorari grant or denial announcements, and opinions of the Court. On Fridays from September through June, the webpage contains an announcement of the names of the cases for which opinions will be issued the following Monday morning.

Case Decisions and Other Matters

Approximately 65 percent of the Court's caseload represents appeals from the Colorado Court of Appeals. The Court receives and reviews over 1,000 certiorari petitions each year concerning decisions rendered by the Court of Appeals. The Court has no set number of certiorari petitions it will grant, but generally averages a grant on approximately one out of 14 certiorari petitions. Under C.A.R. 50, the Court may grant certiorari in a case that is pending but has not gone to decision in the Court of Appeals. This power is rarely exercised.

The Court also reviews original proceeding petitions under C.A.R. 21; petitions for habeas corpus review; interlocutory appeals by the prosecution from suppression orders in criminal cases; ballot title submissions; attorney discipline cases; certified questions from the federal courts; and direct appeals,



such as water cases, Public Utility Commission cases, and capital punishment cases that bypass the Court of Appeals by law. In FY 2020, the Court decided a total of 1,571 matters that included denial of certiorari and Rule 21 petitions. The court issued 137 published opinions, including dissents and concurrences.

Oral Argument and Case Assignment

The Court has a 12-month work year. However, 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 their vacations; and vote by written vote sheet on pending certiorari petitions, and original proceedings. From September to June, except during a two-week Christmas break and in the midst of oral argument, the Justices meet each Thursday in conference to decide all pending matters that are ready for vote.

Oral arguments are held approximately seven times a year for two or three days during the period of September through June. Oral arguments are open to the public. The Chief Justice makes opinion drafting assignments based on the preliminary vote in the case, which is taken after the oral arguments in the morning and, again, when the afternoon arguments have been concluded.

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.

The Court sits en banc. Four votes are required to decide any matter coming before the Court, except for the grant of a certiorari petition, which requires three votes.

Twice a year the Court convenes at a high school for oral argument in two cases. Members of the bar association meet with teachers to help prepare the students in advance for the arguments they will witness. Justices return after oral argument to answer questions, except questions concerning the merits of the cases just argued or other matters pending for decision before the Court.

Thursday Decisional Conference

The Court's weekly decisional conference (September through June) is called to order at 9:00 a.m. each Thursday morning. 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 and votes are taken, proceeding from junior to senior Justice, with the Chief Justice voting last. When rendering the vote, each Justice recites his or her reasons therefore. 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 at Thursday conference is as follows: proposed opinions; petitions for rehearing on issued opinions; voting on, and assignment for opinion, of cases submitted on the briefs without oral argument; certiorari petitions; original proceedings requesting a Rule to Show Cause; attorney discipline cases for assignment and preparation of an opinion; 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 matter as "improvidently granted" because the Court, on reflection, determines not to issue an opinion in the matter and to let the lower court decision stand.

Decisions of the Court on cases and certiorari petitions are announced the Monday following the Thursday decisional conference by means of an announcement sheet and issued opinions, all of



which are made available at the Clerk's Office in hard copy. While the full text of opinions is posted on the website on Mondays, the case numbers and case captions of opinions to be issued on Mondays are posted the preceding Friday. The newly issued announcements and opinions are available on the on the [Supreme Court's case announcements page](#).

Ad Hoc Conferences on Original Petitions/Duty Judge

Original petitions under C.A.R. 21 are assigned to each of the seven chambers in rotation by the Clerk of the Court. The assigned Justice reports on the matter, with his or her recommendation, at the regular Thursday decisional conference, by internal e-mail communication to all the other justices, or a Justice may call an in person ad hoc conference of the Court if the petition merits immediate action. At least four Justices must agree in order to take a Rule 21 matter. An individual Justice may issue a short-term stay or other temporary order pending the Court's decision on the petition.

There is a monthly Duty Judge assigned by the Chief Justice, in rotation, to rule on matters brought to that Justice by the Clerk of the Court, such as motions for amicus curiae appearance, extensions of time, or extended-page briefing. The Duty Judge may act on any matter requiring immediate attention when the other Justices are not available.

Certiorari Petitions

Based on the briefs and issues raised and the guidelines set forth in C.A.R. 49, the staff attorney to the Chief Justice separates out approximately half of the certiorari petitions for circulation and decision without preparation of a certiorari memorandum. Each Justice reviews the Court of Appeals decision (whether published or not published), together with the certiorari petition and any response thereto, and may request preparation of a certiorari memorandum before a vote is taken. The Justices vote on "non-memo cert." petitions by means of vote sheets maintained in the Clerk's Office.

The other certiorari petitions and those extracted from non-memo consideration by any Justice are delivered in random rotation by the Clerk to the seven chambers. The assigned Justice in turn 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 and the Court of Appeals opinion to the other six Justices, noting on the face of the memorandum the recommendation of the assigned Justice regarding which issues, if any, should be taken on certiorari.

Votes of three Justices are required to grant any issue by way of certiorari. When certiorari is granted on one or more issues in a case, the certiorari memorandum usually serves as the bench memorandum for oral argument. Pending certiorari petitions are decided at the weekly Thursday decisional conference, except during July and August when each Justice's vote is entered on a written vote sheet kept in the Clerk's Office.

Proposed Opinions

Proposed majority opinions must be circulated by the authoring Justice to the other six Justices by 5:00 p.m. Thursday. Any Justice has until the following Tuesday at 5:00 p.m. to propose a written concurrence or dissent. Generally, before a Justice presents a concurrence at a decisional vote conference, that Justice confers with the authoring Justice regarding potential revisions in the proposed majority opinion to accommodate the concurring view, if possible. The vote on the proposed majority opinion and concurring or dissenting opinions, if any, occurs on the following Thursday. Any Justice, including the authoring Justice, may request that the vote be passed to the next 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 justice may determine not to participate in an opinion, under the Code of Judicial Conduct. An opinion or order of the Court will identify any justice who is not participating.

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, it is becoming the practice that the Justices will confer concerning the disagreement, to the extent possible, before conference. Every change to a proposed opinion must be circulated to the other six chambers.

A majority opinion that has received at least four votes at the weekly decisional conference is prepared in final slip opinion form, together with any concurring or dissenting opinion, by Friday noon. The authoring Justice's law clerk or judicial assistant is responsible for copying and assembling the required copies for the Clerk's Office by Friday noon for distribution upon announcement Monday morning. Each issued opinion is accompanied by a cover page synopsis of the case prepared by the authoring Justice.

Governance of the Judicial Department/Community Outreach

The Court is responsible for governance of the Judicial Department, and each Justice is active, by assignment by the Court, on various committees and in bar association activities. In addition, each Justice engages in discretionary community activities subject to the Colorado Code of Judicial Conduct. All members of the Court are engaged in educational activities of their choosing.

Conclusion

The Court's work lies not only in deciding cases, but also in the overall administration of justice and the judicial system in Colorado. Each Justice plays a direct role in all decisions of the Court, unless the justice has determined that he or she should not participate in a proceeding because of the standards set forth in Rule 2.11 of the Colorado Code of Judicial Conduct.



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.

