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0425 A Guide to the Judicial Branch of Colorado State Government

Colorado Legislative Council

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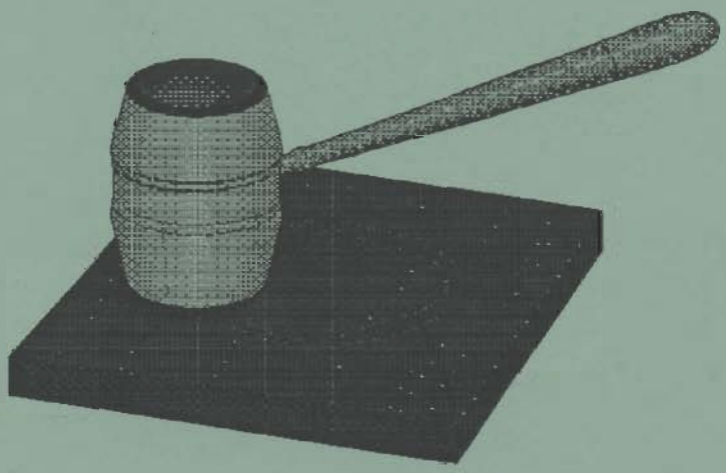

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A Guide To The Judicial Branch of Colorado State Government

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THE ROLE OF THE JUDICIAL BRANCH

The role of the judicial branch is to explain, apply, and interpret both constitutional and statutory laws. Judges must apply general laws to particular situations. They must interpret prior case law in light of the values and goals of contemporary Colorado. When asked, judges decide if statutory or governmental acts violate either the United States or Colorado Constitutions.

The Relationship Between the Judicial Branch and the Other Two Branches of Government

The state constitution divides Colorado government into three coordinate branches - legislative, executive, and judicial. The constitution is the paramount law; each branch of government receives its authority from the constitution.

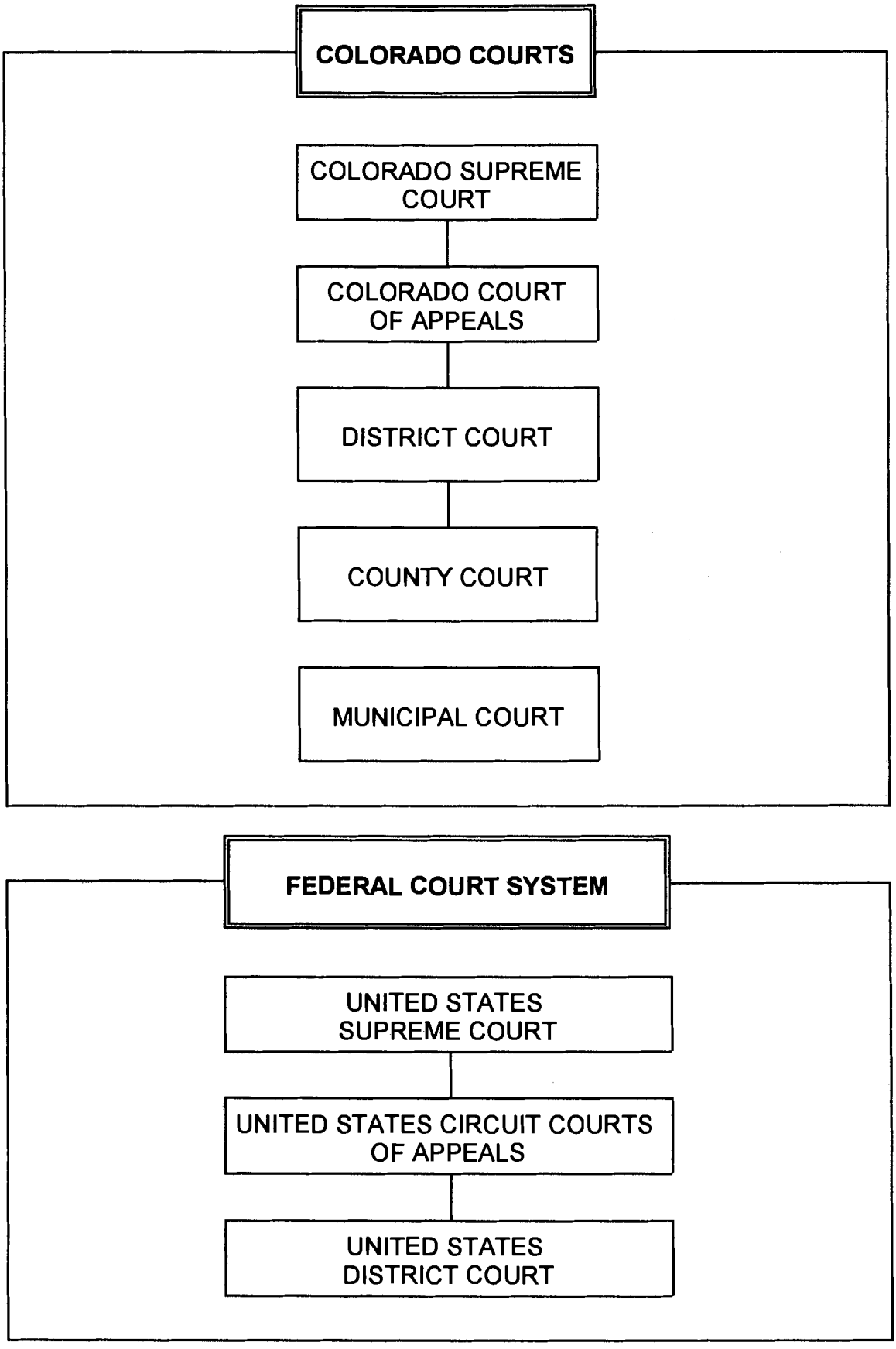
All Colorado courts interpret and apply the law. Laws enacted by the General Assembly cannot cover every single possibility that may occur. It is the job of judges, therefore, to apply a general law to the facts of a specific case. To help ensure justice, the lawmakers (the General Assembly) and the law interpreters (the judges) are kept separate and distinct.

The Colorado Constitution (Article VI, Section 1) vests the judicial power of the state in the Supreme Court, district courts, a probate court and juvenile court in the City and County of Denver, county courts, and other such courts or judicial officers with jurisdiction subordinate to the Supreme Court, as the General Assembly (Legislature) may establish.

The General Assembly is specifically empowered by the Constitution to establish other courts or judicial officers, as long as the other courts or judicial officers are jurisdictionally subordinate to the Supreme Court.

The Supreme Court can give its opinion on important questions when requested to do so by the Governor or the General Assembly. (These requests are called interrogatories.) The Supreme Court's answers are publicly reported as are its other opinions and the answers and have the force and effect of judicial precedents.

THE COLORADO AND UNITED STATES COURT SYSTEMS



State Courts and Federal Courts

The Relationship Between State And Federal Courts

The United States Constitution provides for two separate systems of law — that of the states and that of the federal government; therefore, two separate and distinct sets of courts, state and federal, exist side-by-side in the United States.

Like our state court system, the federal judiciary is composed of a supreme court and lower federal courts. The federal courts interpret and apply the United States Constitution. When asked, they decide whether laws passed by Congress and the states violate the United States Constitution. In addition, the federal courts define the absolute minimum standard of rights guaranteed to all United States citizens. No state can remove rights that are guaranteed by the United States Constitution.

It is important to note that while the United States Constitution defines the minimum standard of rights guaranteed to all United States citizens, the Colorado Constitution, and other state constitutions can guarantee more rights to their citizens in their own bill of rights.

If a citizen feels that he or she is being denied a right guaranteed by the United States Constitution, the citizen can ask a federal court to rule on the issue, but the federal courts can review only those cases which involve a federal right that may unjustifiably have been denied at the state level. If the federal courts could review every decision made by state courts, then the balance of power between the state and federal governments would be lost.

Today, the federal court system in the United States includes district courts, courts of appeals, special federal courts, and the Supreme Court. There is at least one district court in each state. Colorado's federal district court and the Tenth Circuit Court of Appeals are located in Denver.

Federal courts hear different types of cases than the state courts. The federal courts hear (1) disputes that address federal questions, such as cases involving the United States Constitution, federal laws and treaties; (2) cases in which the United States is a party; or (3) controversies between two or more states, between a state and citizens of another state, or between citizens of different states when $50,000 or more is involved.

Federal district courts, with few exceptions, have original jurisdiction over all civil and criminal cases involving criminal federal matters and are the only federal courts that normally use a jury.

The federal district court is much like the state district court; it conducts trials, and its decisions may be appealed. It is primarily a trier of fact, and it issues initial

judgments based upon exhibits and testimony that have been presented. The facts may be decided by a judge or jury.

An appeal from the federal district courts is heard by a federal appellate court called the Circuit Court of Appeals, which considers errors and issues of law. The United States is divided into 11 numbered circuits plus the District of Columbia (Washington D.C.) and all of the federal judicial districts. Colorado is part of the Tenth Circuit along with Kansas, New Mexico, Oklahoma, Utah, and Wyoming.

The Supreme Court of the United States is the highest court in the federal judicial system and the nation. It primarily hears appeals from decisions of the federal courts of appeals. This is also the court that one would appeal to from a decision of the highest appellate court of a state if it can be shown that the rights prescribed in the United States Constitution were violated. The United States Supreme Court has the final word on federal cases and in matters pertaining to the United States Constitution. It is not possible to appeal from this level. Cases are appealed to the Supreme Court from the state courts, from the federal courts of appeals, and from the federal district courts.

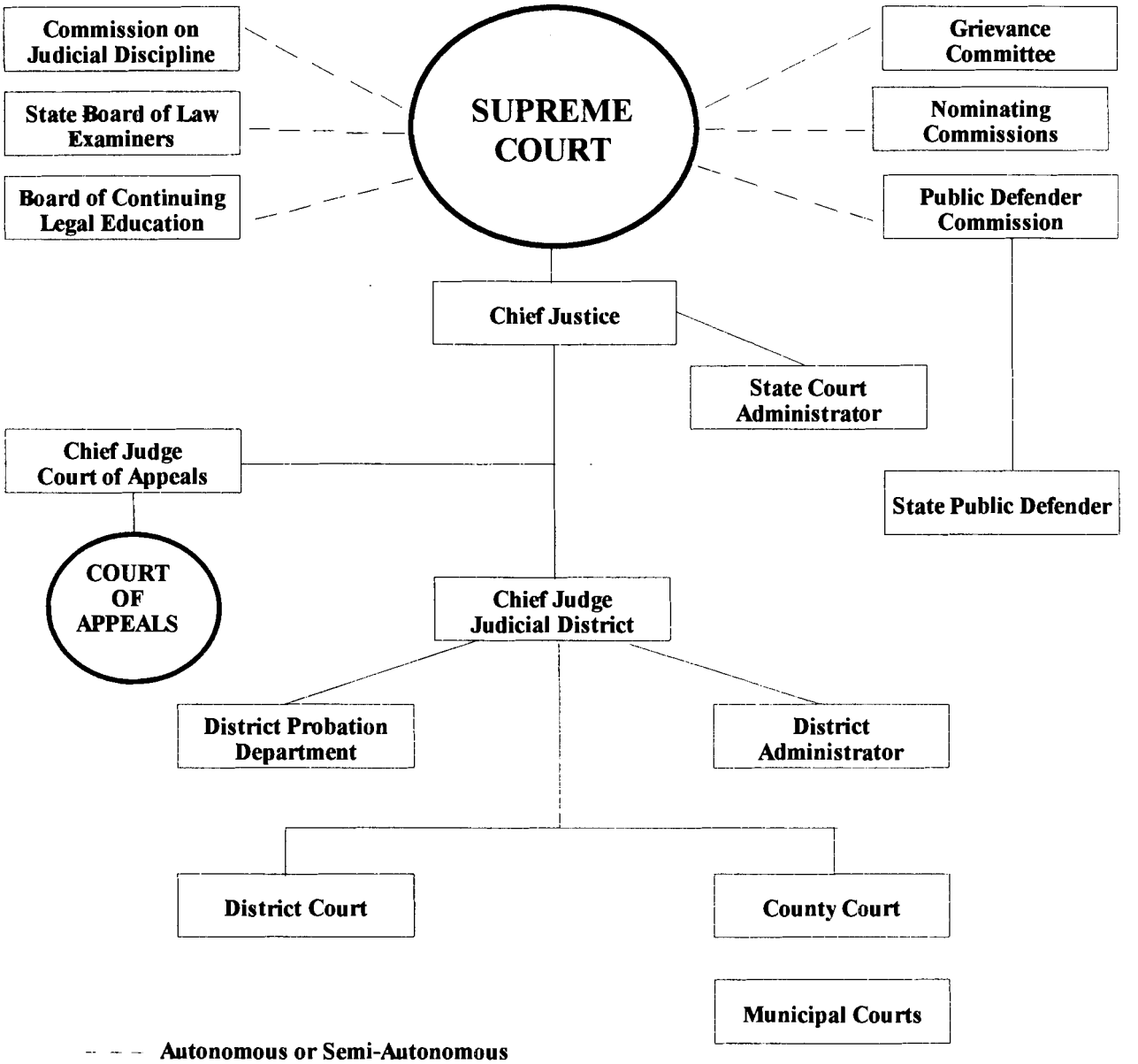
Cases may be taken to the United States Supreme Court from state courts by writ of certiorari where a state statute or federal statute is questioned as to its validity under the United States Constitution or where any title, right, privilege, or immunity is claimed under the Constitution.

How Do Colorado State Courts Work?

The power of a court to hear and decide disagreements is called jurisdiction. There are two kinds of jurisdiction: original and appellate. A trial court (a municipal, county, or district court) has original jurisdiction in a case. For a court to have original jurisdiction in a case, that case must involve an incident that occurred within that court's geographical boundaries, or the parties in the case must live within those boundaries. The case must also be of the type that a particular court handles.

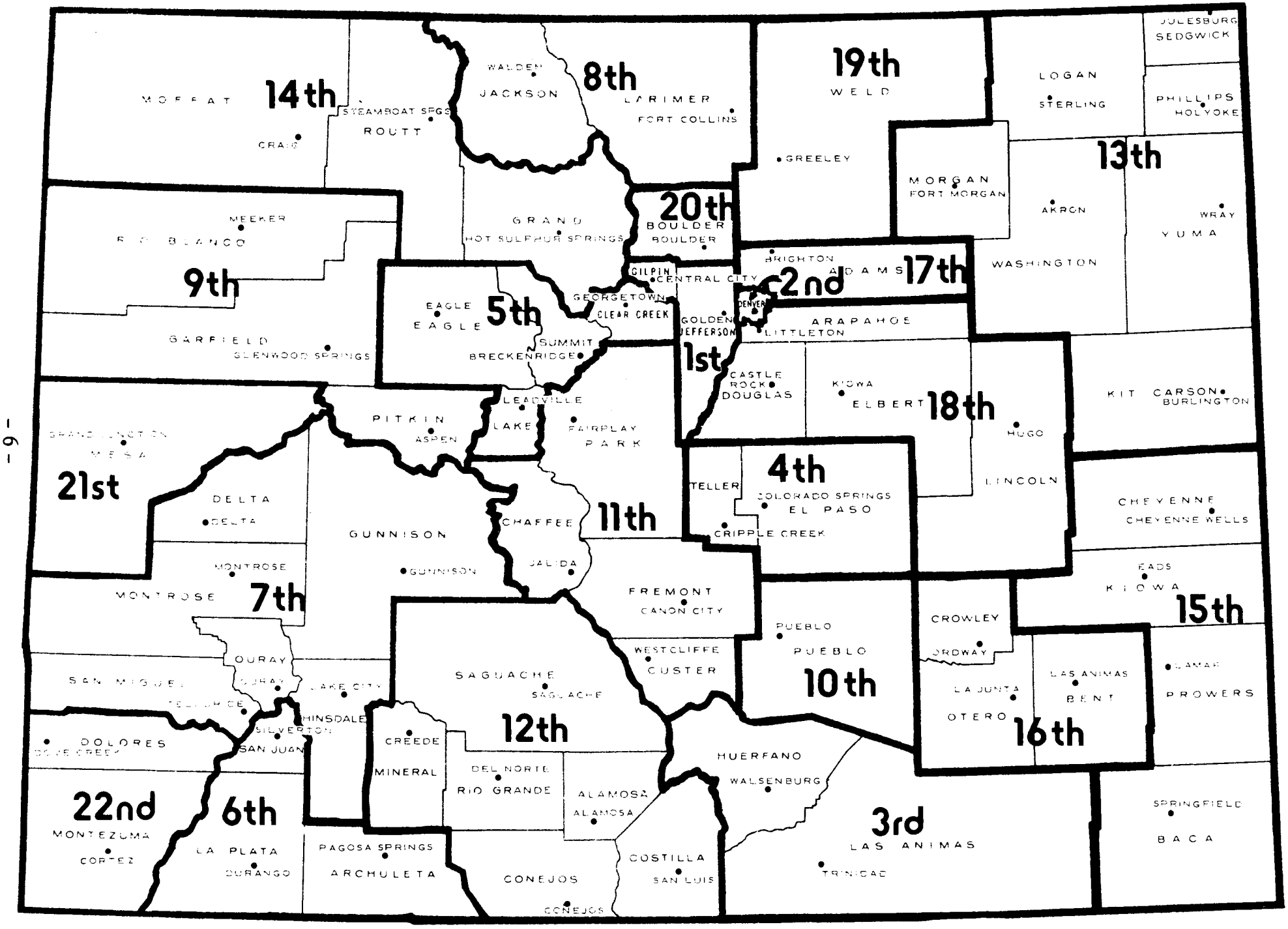
Appellate jurisdiction is the power of a higher court; e.g., the Colorado Court of Appeals or the Colorado Supreme Court, to hear cases that have already been decided at the trial court level. Generally, such courts hear a case when one of the parties in the trial court feels that an error in the application of law was made and wishes the appellate court to conduct a review.

Organization Chart
of the Colorado Judicial Branch



This is a composite representation of 22 judicial districts.
The second Judicial District, which includes the Denver District, Juvenile, County, and Probate Courts, varies substantially from this composite.

Judicial Districts of Colorado



The Structure of Colorado Courts

The Colorado Constitution of 1876 set forth the powers and jurisdiction of the Supreme Court, district courts, justices of the peace, and police magistrates. (See section on "Merit Selection and Retention System".) Before 1970, counties financed all courts of record in the state. Beginning in 1970, the state of Colorado assumed the full responsibility for funding all courts of record, including juvenile and adult probation, except for the Denver county courts and municipal courts.

Today the Colorado Judicial Branch consists of several levels. The Supreme Court and the Court of Appeals make up the appellate level. The district courts and county courts constitute another level. The probate court and juvenile court in the City and County of Denver are unique courts. Finally, locally-funded municipal courts with limited jurisdiction must be considered.

Municipal Courts

Municipal courts are also called city courts. These courts deal with city laws that are violated within city limits. These laws include shoplifting, speeding, disturbing the peace, or violating any other municipal ordinance (law of the city or town). In municipal court a person has the right to a jury trial. If a person is found guilty, he or she will probably have to pay a fine, or, in the case of a traffic violation, he or she may be able to waive part or all of the fine by attending a driver's education course. A person may be required to serve a short jail sentence or participate in a community service project.

Cases in municipal courts not of record may be appealed to county courts; appeals in municipal courts of record are heard in district courts. In Colorado, municipal courts are not state courts; however, you may appeal a municipal court decision to a state court.

County Courts

County courts are courts of limited jurisdiction as prescribed by statute. The judges can hear any case involving a matter as long as the amount in controversy does not exceed $10,000. These courts can also handle traffic cases and misdemeanor criminal cases. (A misdemeanor is sometimes called a "minor" crime because the sentence is much less severe than in the case of a felony, or serious crime.)

County courts also hear appeals from judgments of some municipal courts. A person convicted of a misdemeanor may serve a sentence in jail or pay a fine or receive

both sanctions. Appeals from judgments and decrees of the county courts are taken to the district courts.

Every county in Colorado has a county court with at least one county judge. Currently there are 116 judges serving the county courts including Denver. Full-time county judges serve the metropolitan counties; in smaller counties judges serve on a part-time basis.

Small Claims Courts

In Colorado, the small claims court is a division of the county court. The small claims court is an informal court that hears civil cases involving less than $5,000.

While they are official court cases, small claims trials are designed to be inexpensive and speedy. Any person, corporation, partnership, or other organization can file or defend an action in small claims court. No attorneys are allowed in small claims actions, unless requested by the defendant; juries are prohibited; sometimes a referee hears the case instead of a judge; and no other person not a real party to the transaction sued upon, such as a collection agency, can bring a small claims action.

Examples of small claims actions include a landlord refusing to return a security deposit, a dry cleaning company losing or damaging clothes, someone damaging another person's car and refusing to pay for the repairs, owing money on bad checks or past-due bills, and someone being defrauded into signing a contract.

A plaintiff (person bringing a civil case to court) may not file more than two claims per month, 18 claims per year, in the small claims court.

For a free pamphlet giving specific information about filing a small claim, contact Court Services, Office of the State Court Administrator, 1301 Pennsylvania Street, Suite #300, Denver, CO 80203.

District Courts

There are 22 judicial districts in Colorado. Each county in the state has a district court. Both district and county courts are organized into judicial districts. Unlike county courts, where there is at least one judge per county court, district judges are assigned to the judicial district and may serve more than one district court within that judicial district, particularly in the rural areas of the state. One hundred fifteen district judges serve Colorado's district courts.

District courts are courts of general jurisdiction. They handle almost all civil and criminal cases; dissolutions of marriage; civil cases involving over $10,000; mental health cases; and juvenile and probate cases (except in Denver courts). District courts

also hear appeals from some municipal and county court judgments. Persons have the right to appeal the final judgments of a district court to the Colorado Court of Appeals or, in a few cases, directly to the Colorado Supreme Court. Appeals of errors in the application of law in district court cases may be filed with the Colorado Court of Appeals.

Water Courts

The water court is a division of the district court. There are seven water courts in Colorado, one in each of the major river basins (the South Platte, the Arkansas, the Rio Grande, the Gunnison, the Colorado, the White, and the San Juan). The Colorado Supreme Court appoints district judges from within each water division to act as water judges. The water court has exclusive jurisdiction over cases involving water rights; thus, the water judge is the only judge who can determine the outcome of that kind of case. There are no juries in water cases. All appeals from water judges' decisions are filed directly with the Colorado Supreme Court.

Denver Courts

County Court. The Denver County Court functions as both a county and a municipal court. It is the only court in Colorado to do so, partly because Denver is both a city and a county. This court is funded from Denver revenues rather than from state revenues.

Denver Special Courts. Denver has the only separate juvenile court and the only separate probate court in Colorado. District courts handle juvenile and probate matters in other parts of Colorado. The Denver Juvenile and Denver Probate Courts are state courts.

Juvenile Proceedings

District judges, (or in Denver, juvenile judges) who preside over juvenile matters primarily hear cases under the Colorado Children's Code, plus other miscellaneous matters such as school attendance cases and cases under the Interstate Compact on Placement of Children.

The Colorado Children's Code was first enacted in 1967, codifying laws dealing with juvenile matters. The Children's Code establishes procedures to resolve cases in five areas: delinquency, dependency and neglect, paternity, adoption and relinquishment, and support.

Delinquency. These are criminal cases brought in the name of the state of Colorado against a juvenile. A juvenile is defined as a person between the ages of 10

and 18, with a few exceptions. Such a case must begin with the filing of a petition by the District Attorney and must allege a violation of a state criminal statute or municipal ordinance.

If the allegations would constitute a felony offense if committed by an adult, the juvenile is entitled to a preliminary hearing. Based on the evidence presented at the preliminary hearing, the court determines whether there is probable cause to believe the juvenile committed the charged acts and the case can proceed to trial. A trial is held before a judge or a magistrate. In limited circumstances, a juvenile is statutorily entitled to a trial by a jury of six persons unless the juvenile is charged as an aggravated juvenile offender in which case a jury of twelve may be had. An aggravated juvenile offender is a juvenile adjudicated for a class 1 or 2 felony, a juvenile adjudicated for a felony and subsequently adjudicated for a crime of violence, or a juvenile who is adjudicated for felonious unlawful sexual behavior, incest, or aggravated incest. In the case of a felony or a class 1 misdemeanor, the juvenile is entitled to a preliminary hearing to determine whether the case against the juvenile should proceed to trial. If the court determines that the case should go to trial, and the juvenile denies the allegations, then it would go to trial before a jury of six persons, or a judge, or a juvenile court commissioner (referee). The trial is similar to that for an adult case, except the jury is smaller.

If a juvenile is adjudicated a delinquent, he or she may face up to seven years commitment in the Division of Youth Corrections (DYC) if the offense is a class 1 felony or up to five years for any other offense. A juvenile adjudicated as an aggravated juvenile offender must be committed to the DYC. If the juvenile has turned eighteen at the time of sentencing the court may sentence him or her to the county jail for up to six months, or up to one year in a community corrections facility. Other sentencing options available to the court include probation. If a juvenile is adjudicated as a delinquent, he or she will face up to two years commitment in the DYC, up to 45 days in a detention center, a $300 fine and/or probation. If a defendant is over 18 years of age at the sentencing, the court can sentence him or her up to one year in the county jail.

Dependency and Neglect. These cases are ones of abuse or neglect of children. Children who suffer alleged physical, emotional, or sexual abuse are placed under the jurisdiction of the juvenile court for their protection.

A dependency and neglect case is a civil case and begins with the filing of a petition by the county attorney or, in Denver, the Denver city attorney. If parents deny the allegations, they may demand a trial with a jury of six persons, or their case may be heard by a judge or juvenile magistrate.

If a child is adjudicated as dependent and neglected, the juvenile court's duty is to order a treatment plan to resolve the problems. If a treatment plan is unsuccessful, the state may request termination of the parent-child relationship as the last resort. This occurs only when there is no hope that a parent will be able to carry on parental duties.

Also, the juvenile court may provide emergency protection to children who have been abused or neglected. This may involve emergency orders being issued to police or social workers verbally with follow-up orders to be written.

The court has the duty not to interfere in the life of a child and his or her parents, except as may be necessary to protect the child.

New Laws Affecting Juveniles

House Bill 96-1005

Concerning Juvenile Justice. Amends the juvenile delinquency provisions located in the Colorado juvenile Code. This act makes numerous changes to the Juvenile Code. A few of the changes are as follows: lowers the age for transfer; expands crimes for direct file, lowers age for aggravated juvenile offender and age for commitment to Division of Youth Corrections; grants juvenile court and county concurrent jurisdiction over offenses involving marijuana and marijuana concentrate; limits the right to jury trial only to juveniles charged as aggravated juvenile offenders and juveniles charged with offenses that would constitute a crime of violence; specifies that any juvenile who requests a jury trial is deemed to have waived the 60-day time frame for an adjudicatory trial; requires a district attorney to file a petition within 72 hours after the detention hearing in all cases in which a detention hearing is held; requires the first appearance to be held within 30 days after the issuance of the summons; requires the adjudicatory hearing within 60 days from the date of the plea of not guilty; and requires the sentencing hearing to be held within 45 days after completion of the adjudicatory trial; requires juvenile's parent, guardian, or legal custodian to attend all juvenile proceedings concerning the juvenile.

House Bill 96-1006

Concerning Child Care Licensing. Enables the Department of Human Services to inspect, license and regulate child care facilities. Defines and differentiates child care centers, child placement agencies, family child care homes, foster care homes and kindergarten schools. Establishes standards for child care facilities and agencies. Establishes provisions for the Department of Human Services that would enable it to revoke a facilities license.

House Bill 96-1017

Concerning the Management of Information Related to Children who Receive Services Under the Colorado Children's Code. Requires the state auditor's office to conduct, or cause to be conducted, programmatic reviews and evaluations of state and federally funded prevention and intervention programs for children and families. Allows the judicial department and agencies that maintain information about children pursuant to the Juvenile Code to exchange certain information with other agencies and the judicial department. Allows the victim and the complaining party to have access to juvenile delinquency court records. Restricts a court from prohibiting disclosures of identifying dependency and neglect information when an alleged juvenile offender is a victim of abuse, or neglect or when the suspected perpetrator is arrested or charged by law enforcement.

House Bill 96-1019

Concerning the Relocation of Definitions Affecting Children. Consolidates definitions currently contained in many sections of the Juvenile Code into one statutory provision.

House Bill 96-1363

Concerning Alternative Sentences for Juveniles. Authorizes a judge to sentence a juvenile to alternative community services. Allows a judge to sentence a juvenile to up to 45 days detention only if the juvenile is failing to make satisfactory progress in alternative community services, or if a sentence to alternative services would be contrary to the community interest. EFFECTIVE July 1, 1997.

PROBATE PROCEEDINGS

Throughout Colorado, district court judges determine probate matters, just as they sometimes determine civil cases, domestic relations cases, criminal cases, or juvenile cases. In some judicial districts, a specific district judge or referee handles all (or some) probate matters. In others, the probate work rotates among all of the district judges on a case-by-case basis.

Probate judges hear cases involving wills and estates, trusts, guardianships, and conservatorships. Their jurisdiction also extends to the involuntary commitment, care, and treatment of the mentally ill and alcoholics, if as a result of mental illness or alcoholism those respondents are gravely disabled or are a danger to themselves or others. (Probate courts are the forum for applying the rule of law to a wide range of "human interest" issues involving basic personal and property rights and protecting those in need of protection.)

Wills and estate matters concern the division of property after its owner has died. If there is no will, then the heirs must be determined. Occasionally, this requires deciding a common law marriage issue or answering a parentage question. From time to time, the validity of a will is questioned, resulting in a will contest. Will drafting involves precise semantics.

Guardianships and conservatorships involve two different kinds of legal incapacity: (1) a minor (under 18 years of age) is, by definition, "unable" to be responsible for his or her own property; and (2) an adult might be unable to adequately care for his or her own physical welfare (a guardianship issue) or to manage assets responsibly (a conservatorship issue). There are unlimited circumstances that might cause a disabling incapacity. The probate judge has authority to restrict or to determine the particular powers best suited to meet the needs of the incapacitated or protected person, subject always to the limitations of imposing only whatever external authority is reasonably necessary to further the best interests of the person involved.

The guardian's role is parent-like and concerns the person's physical needs. A conservator's role is that of financial manager. Courts monitor conservatorships closely.

Mental illness cases involve the probate court with the care and treatment of patients necessarily hospitalized, as a result of mental illness, who are either (1) gravely disabled or (2) dangerous to themselves or others.

Hearings, and, on occasion jury trials involve judicial review of these hospitalizations. Hearings also are held on motions to administer drugs or to provide other therapy involuntarily. Determination of release in these cases can be a critical issue for the courts.

The State Appellate Courts

Appellate courts are a vital part of our legal system. In their own way, they are every bit as exciting as trial courts. Moreover, since appellate courts have the power to prevent cases from ever going to trial or to overrule the verdicts (judgments) of trial (district and county) courts, it is important for informed citizens to know about their function.

There is an unavoidable responsibility for judges to make rules. This happens in several ways:

- There may be a need for a rule to resolve a "new situation," if there is no existing rule.
- There is a need to refine rules so that they can be applied to variations of old situations.
- There is often a need to apply the Legislature's rules in circumstances where it is uncertain as to what was intended in the statute.

The Colorado Court of Appeals

History

The first Court of Appeals, consisting of three judges, was created in 1891 by the General Assembly for an undetermined term. It was established to assist the Supreme court in clearing up its backlog, and it was abolished in 1904. The second Court of Appeals, consisting of five judges, was formed in 1911. This court was formed for the same purpose as the first, but for a specific period of four years.

In 1970, the General Assembly again authorized the formation of the Court of Appeals, consisting of six judges, to assist the Supreme Court in reducing its backlog of pending cases. The court's jurisdiction was limited to civil matters. In 1974, four more judges were added and its jurisdiction was expanded to include criminal cases.

The 1987 General Assembly recognized that the Court of Appeals was burdened with its own backlog and authorized an increase in the number of judges on the Court from 10 to 16. Three judges were appointed by the Governor and took office on January 1, 1988, and three more judges took office on July 1, 1988.

General Information

The Colorado Court of Appeals has 16 judges each serving an eight-year term. The judges must be qualified electors of the state and licensed to practice law in Colorado for at least five years prior to appointment by the Governor. This is not a trial court. The Court sits in panels of three to hear cases that have been appealed from district courts, Denver Probate Court, Denver Juvenile Court, and many state agencies and boards.

Chief Judge

The Chief Judge of the Court of Appeals is appointed by the Chief Justice of the Colorado Supreme Court. The Chief Judge assigns the judges to five divisions and rotates assignments from time to time. In addition to handling administrative duties, the Chief Judge provides backup coverage on all of the divisions by substituting for judges during vacations, illnesses, and disqualifications.

Jurisdiction

The Court of Appeals is not a trial court; it has initial appellate jurisdiction, with exceptions over appeals from the Colorado district courts and juvenile and probate courts of the City and County of Denver. In addition, the Court has initial jurisdiction over appeals from certain final orders of many state agencies and boards.

Appeals

Appeals from the decisions of the Court of Appeals are directed to the Colorado Supreme Court by means of a petition for certiorari. Under certain circumstances, the Court of Appeals may request transfer of an appeal to the Supreme Court for review before final determination. The Supreme Court then determines which court should have jurisdiction. The Supreme Court may also order the Court of Appeals to transfer any case to the Supreme Court for final determination.

Processing an Appeal

Forty-five days after a case is completed in a Colorado district court or before an administrative agency, the party who loses may file an appeal, in most cases, with the Colorado Court of Appeals. Once the notice of appeal is filed, the record of the proceedings in the lower court or agency (the papers that were filed there and a transcription of all the testimony given at the trial) is filed in the Court of Appeals. Often, the court reporter from the district court is unable to get the transcript of the trial completed within the 60 days, and brief extensions must be obtained.

After the record is filed, the party bringing the appeal must file a brief, usually not more than 30 pages in length, which sets forth the factual and legal arguments as to why the lower court committed error. The winning party in the lower court then has an additional 30 days to file a brief, which is an answer to the appellant's brief. Once this answer brief is filed, the party who brought the appeal has another 15 days to file a reply brief, which responds to the answer brief. Reply briefs may not exceed 18 pages.

When all the briefs have been submitted, the case is ready for assignment to a panel of three judges. At oral argument, lawyers for the two parties are allowed usually 15 minutes each to further explain their case and to clear up matters that may not have been made clear in the briefs.

Whether there is an oral argument or not, the three judges assigned to consider the case will read all of the briefs regarding that case. After an oral argument is completed or, if there is no oral argument, after all three judges have had an opportunity to read the briefs, the judges will hold a meeting and discuss the case. At that time they will make a preliminary decision as to how the case will be decided. If

they all agree as to the outcome of the case, one of the three judges will be selected to author the opinion. That judge, with the aid of a law clerk or staff attorney, will read the record, or pertinent parts thereof, do necessary further research, and submit a draft opinion which expresses the result and reasoning that the division (the panel of the three judges) desires. In some cases, there is also a written advisory prepared by one of the staff attorneys who has also read the briefs and the record.

After the draft opinions are prepared, they are presented to the division, and another meeting is held to review the opinion in detail and make such changes as all three judges believe are necessary to make the opinion as correct as possible. Sometimes a draft opinion is sent back to the writing judge for rewriting, and several rewrites and meetings may have to be held before an opinion is satisfactory to all three judges, or to the majority judges, if there is a dissent.

The division will then decide if the case appears to have any precedential value; whether it might be of help in other cases in the future to lawyers and persons having cases of similar types in Colorado courts.

If the division believes that the opinion is not of precedential value to the general public and the practicing bar, it recommends issuing the opinion to interested parties only; however, the opinion must be circulated to all members of the Court. The other members of the Court must read the opinions not selected for publication before the announcement date. If any judge feels that the opinion as drafted merits discussion by the entire court, that judge must notify the author and ask that the opinion be brought into full court conference for discussion.

If the division thinks that the opinion has precedential value, it is submitted to all of the 16 members of the Court and an all court conference (usually held every other Thursday morning) will discuss that case and any others submitted by other divisions.

At the full court conference, every judge on the Court has the right to discuss any cases brought before the conference so that the members of the division panel issuing the case will have the benefit of "fresh eyes" before the opinion is finally issued and published. When all discussion is completed, and the division panel is ready to release it, the entire Court of 16 judges will vote as to whether the opinion should be officially published for future use, or whether it should be "unpublished," in that copies would be sent to only the lawyers and parties involved, and the judge who rendered the decision in the district court.

If any of the parties is dissatisfied with the written opinion of the Court of Appeals, that party may ask to have the case reconsidered. If the panel does not grant this reconsideration, the party may have the case certified to the Supreme Court of Colorado. The Supreme Court then may decide whether the case is of sufficient importance that it should consider it and write its own opinion regarding the case. It is entirely up to the Supreme Court to accept or reject a request to review a decision of a panel of the Court of Appeals.

Colorado Supreme Court

General Information

The Colorado Supreme Court is the highest court in the state of Colorado. It is similar to the United States Supreme Court, the highest court in the nation. The Colorado Supreme Court derives its existence and authority from Article VI of the Colorado Constitution. It is comprised of seven justices, who are appointed by the governor and serve ten-year terms. Justices of the Colorado Supreme Court must be registered voters and licensed to practice law in this state for at least five years prior to their appointment.

The Colorado Supreme Court selects the chief justice from its own membership to serve at the pleasure of a majority of the court. The chief justice serves as the executive head of the Colorado Judicial Branch and is the *ex officio* chair of the Supreme Court Nominating Commission. The chief justice also appoints the chief judge of the Colorado Court of Appeals and the chief judges of each judicial district and is vested with authority to assign judges (active or retired) to perform judicial duties.

Jurisdiction

The supreme court sits *en banc.* This means that the entire court hears the oral arguments for a case. The court has both appellate and original jurisdiction.

Appellate jurisdiction is the power of the court to review a case already decided by a lower court. The scope of the court's appellate jurisdiction may be changed by legislation. The supreme court has direct appellate jurisdiction over cases in which a statute is held constitutional; cases involving decisions of the Public Utilities Commission; writs of *habeas corpus;* cases involving adjudications of water rights; summary proceedings initiated under the Election Code; and prosecutorial appeals concerning search and seizure questions in pending criminal proceedings. All of these appeals are filed directly with the supreme court.

Original jurisdiction gives the Colorado Supreme Court the power to hear cases in the first instance and is more limited than appellate jurisdiction. Original jurisdiction is fixed by the Colorado Constitution and may not be altered by legislation. Under original jurisdiction, the supreme court has the power to issue writs of *habeas corpus, mandamus, quo warranto*, prohibition and other remedial writs when a later appeal cannot provide effective relief or the lower court has acted in excess or refused to exercise its jurisdiction.

The Colorado Supreme Court is the court of last resort and the final arbiter of disputes arising under state law. It reviews judgments and rulings of the lower state

courts including county courts, district courts, and the Colorado Court of Appeals, and decisions of governmental agencies. Supreme Court decisions interpreting the law set standard precedents that must be followed by all lower courts in future similar cases.

Appeals brought to the supreme court do not constitute a retrial of the case. No witnesses appear, and no evidence is taken. The court's appellate role is limited to correction of errors in the application of the law, such as correct application of the United States and Colorado Constitutions, proper adherence to previous decisions, rulings on the admission of evidence, or interpretations of a statute.

The written opinions of the seven justices either affirm (which means that the judgment or ruling is correct), reverse (which means that the judgment or ruling is rejected), or modify the judgment or ruling that is the focus of the appeal.

Other Responsibilities

The supreme court has many other judicial branch responsibilities. The supreme court has exclusive jurisdiction to promulgate rules governing practice and procedure in civil and criminal actions. The supreme court licenses and disciplines Colorado attorneys. The Supreme Court Grievance Committee, funded by attorney registration fees, polices the profession and makes recommendations to the court concerning discipline of attorneys. The court oversees the state court administrator, the board of continuing legal education, the board of law examiners, the commission on judicial discipline, and the unauthorized practice of law committee.

Processing An Appeal

To process an appeal, the petitioner from the lower court either files a notice of appeal with the Supreme Court (in cases where the appeal of right must be filed with the Supreme Court) or files a petition requesting *certiorari* review. The party appealing (the appellant) must file a written opening brief which sets forth specific errors in the lower court's proceedings and lists and explains the laws and case decisions the lawyer wants the Colorado Supreme Court to consider. The responding party (the appellee) has a specified time within which to file an answer brief. The appellant may then file a reply brief in response to the appellee's answer.

The appellant must also prepare and file a record of the proceedings, although the appellee may also request the inclusion of items in the record.

The lawyers may request that the court permit oral arguments on the case. If there is no oral argument, the case is decided on the basis of the record and the briefs. If the case is argued, appellate court rules give each party a set time (30 minutes) to present its side of the case orally to the Supreme Court sitting *en banc* (full bench). The appellant argues first, then the appellee. During oral arguments, the lawyers highlight key points of

their positions and answer questions from the justices. On appeal the lawyers can discuss only the facts included in the record of the earlier proceedings. As mentioned before, no new evidence can be presented to the Supreme Court.

In deciding the cases the seven justices read and study the briefs submitted by the parties, as well as the record. This requires a voluminous amount of reading. Only issues presented in the briefs and at oral arguments will be considered, but the justices perform additional research concerning those issues on their own during the decision-making process. Of course, not every error in the application of law will result in a reversal of the judgment or ruling that is the subject of the appeal.

Conferences

Oral Argument Conferences. Immediately after the completion of the oral arguments, the justices meet in conference to determine the views of the members of the court and to take a tentative vote. The chief justice presides, and, in general, the members of the court express their views in order of seniority, with the most junior justice opening the discussion. The chief justice assigns the case to one of the justices who has voted in the majority. The justice assigned the case, will, in most instances, write the court's opinion. An opinion is a statement of the Supreme Court's decision and the reason upon which that decision is based.

Weekly Thursday Conference. The Colorado Supreme Court holds a conference every Thursday at 9:00 a.m., unless otherwise directed by the chief justice, during which proposed opinions and dissents (texts and the notes) are discussed. Each author initially discusses the content and form of the proposed opinion, dissent, or special concurrence. The other justices may make suggestions related to modifying, adding to, or deleting from the proposed opinion, dissent, or special concurrence. At times, a proposed opinion is withdrawn from the conference for revision and resubmission at a later conference.

After the proposed opinions, dissents, and concurrences have been discussed, votes are taken in accordance with the juniority rule. All opinions together with any dissents or concurrences, (texts and the notes) are usually announced on the Monday following their approval, unless otherwise ordered by the chief justice. (Opinions are released on Tuesday if Monday is a holiday.)

Preparation of Opinions and Dissents

After the case is assigned to a particular justice for an opinion, the following rules are generally followed:

- Priority is given to original proceedings and interlocutory (provisional or temporary) appeals.

- Generally, the oldest case file assigned to a justice is the first one on his or her list for publication of an opinion.

- Companion cases which involve the same issue are announced, if at all possible, at the same time, and opinions relating to the same issue are usually circulated and considered at the same conference.

When opinions are prepared, they are circulated to all other members of the court by the author one week prior to the Thursday conference during which the draft opinion is to be considered.

Concurring opinions and dissents are circulated as early as possible by the justices who concur or dissent. A concurring opinion is one in which a justice agrees with the majority opinion but not for the same reasons. A dissenting opinion is one in which a justice dissents or disagrees with the result reached by the majority of the other justices (in Colorado, at least four of the justices).

Concurring and dissenting opinions are circulated before the time that the proposed opinion is considered so that both the majority opinion and the concurring opinion or dissent can be discussed at the same conference; however, any justice may request that a case be passed at conference for a reasonable time for further study or until a dissent or a concurring opinion may be prepared.

Preparation of dissents and concurring opinions takes priority over other work of the justices. When appropriate, the court issues a per curiam opinion. A *per curiam* opinion (by the court) is one that states the decision of all of the justices and is not signed by any particular justice.

Colorado Supreme Court decisions, or opinions, are published by West Publishing Company in the Pacific Reporter, which is found in law libraries.

What Is The Role Of Precedent?

The decisions of the Colorado Supreme Court and the United States Supreme Court are recorded for public use. Although not the law in the sense of legislation, Supreme Court opinions help "flesh out" the "body of law" because they are often the interpretations of the law, i.e., applications of a general law to a particular case. The court's decisions set precedent for all Colorado courts. In this sense, the decisions made in the cases argued before the court are far more reaching than just the cases being considered.

In the United States, the doctrine of precedent or the rule of *stare decisis*, "let the decision stand," prevails and past decisions are generally considered to be binding in future cases involving the same material facts and in such cases only. The rule of *stare decisis* is rigidly adhered to by lower courts when following decisions by higher courts in the same

jurisdiction. Courts can limit the impact of the doctrine of precedent by carefully distinguishing facts in cases being decided from facts established in precedent-setting cases.

What Is Persuasive Authority?

Precedent is authoritative only for courts in the same jurisdiction or judicial system. In other words, a Minnesota decision is not a precedent for the courts of Colorado, but it is persuasive authority. Likewise, a Minnesota decision would be precedent for Minnesota courts. A Colorado decision in Minnesota would be viewed as persuasive authority.

Persuasive authority is a decision rendered by a court in another jurisdiction, most notably the decision of another state's appellate or supreme court. The Colorado Supreme Court may look to the law established and followed by other state's courts in decisions dealing with similar facts and issues. In examining the decisions of other states, our court is often able to profit from the expertise and experience of other states in determining similar issues. Bear in mind that the key word is "persuasive." It is always within the discretion of the Colorado Supreme Court as to whether it will adopt or discard the reasoning and decisions of other states.

Supreme Court Commissions, Committees, and Boards

The Supreme Court exercises supervisory and administrative responsibilities in a variety of areas. Citizen volunteers, both attorneys and nonattorneys, serve on boards, committees, and commissions which assist the Court in performing its duties.

Every year modifications of both legislative law (statutory) and case law (judge-made) cause extensive changes in the law. Consequently, a number of committees meet throughout the year to propose new or amended rules and procedures to the Supreme Court; this insures compliance with the law.

Supreme Court Boards, Committees, and Commissions

Board of Law Examiners

Civil Jury Instructions Committee

Gender & Justice Committee

Integrated Information Services Committee

Judicial Discipline Commission

Minority Participation in the Legal Profession

Probation Committee

Rules of Civil and Appellate Procedure

Unauthorized Practice of Law Committee

Westlaw Committee

Continuing Legal Education

Criminal Jury Instructions

Grievance Committee

Judicial Advisory Council

Library Committee

Multicultural Commission

Committee on Public Education

Rules of Criminal Procedure

Water Judges Committee

Board of Continuing Legal and Judicial Education

The Board of Continuing Legal and Judicial Education was established to guarantee that practicing attorneys and judges in Colorado continue their legal education after being admitted to practice law in the state. Every three years each practicing judge and attorney must complete 45 units of continuing legal education, including at least two units in ethics.

Board of Law Examiners

The Board of Law Examiners administers the system that governs admission to the Colorado Bar. (An attorney/lawyer cannot practice law in Colorado without passing the Colorado Bar Examination or meeting other means approved by the Board and Colorado Supreme Court for admission to the Colorado Bar.)

Commission on Judicial Discipline

The Commission on Judicial Discipline was created in 1966 by a state constitutional amendment. The 10-member commission is composed of 4 citizens, 2 attorneys, 2 district court judges, and 2 county court judges. The commission preserves the integrity of the judicial process by protecting the public from improper conduct or behavior on the part of judges. The Commission strives to maintain public confidence in the judiciary and attempts to create a greater awareness of proper judicial conduct. The Commission provides a forum for the expeditious and fair disposition of all judicial conduct complaints against state judges. The Commission's staff consists of a part-time executive director and a part-time administrative secretary. The Commission operates independently from the judiciary, but it is housed within the judicial branch of government. Its procedural rules must be approved by the Colorado Supreme Court and its operating budget is provided by the Judicial Department.

Commission on Judicial Performance

The Commission on Judicial Performance was created by statute during the 1988 session of the Colorado General Assembly (House Bill 1079).

The Commission consists of ten members. The Governor and the Chief Justice of the Supreme Court each appoint two attorneys and one nonattorney; the President of the Senate and the Speaker of the House each appoint two nonattorney members.

The statute provides for the establishment of a system for evaluating judicial performance. The purpose of the Commission is to provide persons voting on the retention of justices and judges with fair, responsible, and constructive information about judicial performance. It is also intended to provide justices and judges with useful information concerning their own performance. The statute created a Commission on Judicial Performance in each judicial district.

The State Commission on Judicial Performance develops uniform criteria and procedures for use statewide and within each of the 22 judicial districts and consults with district commissions on judicial performance evaluation criteria, techniques, and sources.

Judicial Administration

In 1959, the supervisory function of the Supreme Court was increased by the Judicial Department Reform Act. This act created an administrative office of the courts to gather statistics, study administrative activities of the courts, and to assist the Supreme Court in lessening barriers in the just, speedy, and inexpensive determination of causes in all courts of record in the state. This office currently functions as the State Court Administrator's office.

State Court Administrator's Office

The State Court Administrator's Office assists the Colorado Supreme Court and the Chief Justice, who is the chief administrative officer of the state's court system, in carrying out the administrative functions for the Colorado Judicial Branch. The State Court Administrator, hired by the Supreme Court, is responsible for the execution of administrative policies and rules in Colorado's judicial branch.

With the assistance of a support staff, the State Court Administrator performs the following functions: compiles case management statistics; develops and promotes updated and uniform management procedures to accommodate the needs of the state's courts; continuously studies and evaluates information relating to the operations and administrative methods of the judicial system; develops and implements new methods and techniques to provide cost-effective management of all aspects of the judicial system; prepares and submits budget and accounting estimates relating to state appropriations for the judicial system; and provides administrative support to the appellate and trial courts, probation department, and other judicial personnel.

The office also interacts with and responds to inquiries from legislative committees, state auditors, the Attorney General, other legislative and executive offices of the state, the public, other states' judicial branches, and national organizations.

The office is now comprised of the following divisions: Executive, Court Services, Financial Services, Human Resources, Planning and Analysis, and Integrated Information Services.

Visiting and Senior Judges

The judges of Colorado's trial courts are provided assistance by both visiting judges and senior judges. The State Court Administrator's office provides visiting and senior judges to facilitate judicial business in a variety of circumstances throughout Colorado's courts, e.g., over-scheduled dockets, illness or death of an active judge, judicial vacancies, disqualification of one or more judges in a judicial district, attendance at educational seminars.

A visiting judge is an active, sitting judge who is assigned by the Chief Judge of the same judicial district to sit in another court within that judicial district, or by the Chief Justice of the Supreme Court to sit in a court outside the judicial district. A senior judge, however, is a judge who, prior to retirement, has asked and been approved by the Chief Justice to serve in Colorado's Senior Judge Program. The Senior Judge Program provides retired judges with additional retirement monies in exchange for their agreeing to provide 60 or 90 days of judicial service every year. Both visiting judges and senior judges are provided for under the Colorado Constitution.

Merit Selection and Retention System

History

The early method of selecting judges at the federal and state levels in the United States was the appointive process. At the federal level, the power was placed in the executive branch with the advice and consent of the United States Senate; the states vested the appointive power in the legislative and executive branches in varying ways.

The Jacksonian era resulted in the first use of the elective system for selecting judges. By the Civil War, 24 of the 34 states elected rather than appointed them.

Political control of judges during the late 1800s and early 1900s brought discussions back to the value of the appointive system. By the turn of the century the call for judicial reform became widespread, and, as a result, the American Judicature Society was formed in 1913. The society's efforts resulted in what is now referred to as the "merit system." The system seeks to preserve informed and intelligent choice, which is the strong point of the appointive system, while maintaining ultimate voter control.

The Colorado Judicial System Before the Mid-1960s. The Colorado Constitution of 1876 granted the state Supreme Court supervisory power over lower courts in the state, although that power was not exercised until 1953. In 1953, the Colorado General Assembly authorized the Supreme Court to divide the state into separate sections, not more than six, called judicial departments. The statute (law) also authorized one or more judges to supervise each department and report the currency of the court dockets, e.g., workload in each department, to the Supreme Court.

The state was divided into 16 judicial districts. Each district court was one of general jurisdiction with authority to hear any civil or criminal matters as well as appeals from the county courts which had limited jurisdiction. The qualifications of a district judge were to be: learned in the law, a citizen of the United States residing in Colorado, and at least 30 years of age.

The county courts were courts of record with jurisdiction over probate, settlement of estates, appointments of guardians, conservators, and administrators, and settlement of their accounts, and such other civil and criminal jurisdiction conferred by law. Civil jurisdiction was limited to claims under $2000 and juvenile matters. County courts also had appellate jurisdiction over cases from justice of the peace courts, police magistrate courts, and municipal courts.

Justice of the peace courts had original jurisdiction over misdemeanors and other minor offenses such as disturbances of the peace. They were not courts of record, so any appeal required that the case be retried (trial de novo) in the county or district courts. There were no qualifications for justice of the peace other than being a resident of the state.

The Colorado Constitution authorized police magistrates and allowed for separate criminal and juvenile courts. No separate courts existed in the state during the 1950s except for Denver.

By the mid-1950s specific problems existed in the judicial branch of Colorado:

- No definition was provided for district judges' qualifications other than they be "learned in the law."

- Qualifications of county judges were nonexistent in the Colorado Constitution and there was even some question whether the General Assembly had the power to establish qualifications for county judges.

- Although the constitution stated that the county courts were courts of record, e.g., that a record should be made of the testimony taken in cases tried before them, in many of the county courts no record was made. When a county court decision was appealed, no record of the proceedings existed which could be transmitted to the Supreme Court for review.

- In 42 of the 63 counties in Colorado, the county judge was not a lawyer.

- Justice of the peace courts were not courts of record. Any appeals had to be completely retried trial de novo) in the county or district courts. In 1956, 237 justice precincts existed in Colorado although the statutes permitted county commissioners in each county to increase or decrease the number in their county.

- No constitutional or statutory qualifications existed for justices of the peace and police magistrates.

- No effective administrative authority (unified court system) existed in Colorado to ensure the efficient operation of the entire judicial system.

- No state judicial council existed in Colorado. Since the 1920s councils had been developing in numbers and effectiveness. The councils served in an advisory capacity, collected statistics, advised the courts as to rules, and received complaints and made suggestions as to appropriate action.

- No judicial conference of judges in the state was required.

- Disadvantages of the partisan election of judges were increasingly apparent.

- Political party selection made judgeships a partisan reward rather than a process determined by merit.

Legislative Developments. In 1959, the General Assembly enacted the Judicial Department Reform Act, which created an administrative office of the courts. The judiciary article (Article VI) of the Colorado Constitution was revised in 1962, and it became effective in January of 1965. This amendment changed the organizational structure of the courts. Also, it explained in detail the jurisdiction of the appellate, district, and county courts, and it specified minimum qualifications for all judges. That constitutional change did not include a merit selection and retention system, mandatory retirement, or a system to discipline and remove judges. (Missouri was the first state to adopt the American Bar Association's proposed merit selection system in 1940. The system is now commonly called the "Missouri Plan.") In 1966, an initiative was presented to the voters which included these provisions. It was adopted at the 1966 General Election by a vote of 52.9 percent in favor to 47.1 percent opposed. The amendment became effective in January of 1967.

The changes in the judicial article of the Colorado Constitution that resulted from the 1962 and 1966 amendments were:

- The judicial duties of the Colorado courts were divided among a Supreme Court, district courts with general jurisdiction, separate juvenile and probate courts in the City and County of Denver, and county courts with limited jurisdiction (except the Denver County Court which was specifically excluded by the constitutional amendment). The General Assembly was also given authority to create courts or judicial officers inferior to the Supreme Court.

- Minimum qualifications were outlined for all state judicial offices.

- Justices and judges were to be appointed by the Governor after recommendation by a nominating commission which was to screen all applicants.

- Each justice and judge appointed to an office was to serve an initial two-year provisional term and, if retained by a majority of the voters at the next general election, he or she would serve a full term of office. (See terms of office in the "Questions & Answers" section.)

- Justices and judges were prohibited from participating in partisan political activities.

- The Chief Justice of the Colorado Supreme Court was granted general superintending authority over the entire system. He or she was also given the authority to appoint active or retired justices or judges who meet minimum qualifications outlined in the constitution, to courts which need additional assistance.

- The Chief Justice was required to appoint a Chief Judge in each judicial district in the state. The Chief Judge was to exercise administrative powers over all judges within the judicial district.

In 1966, the people of Colorado passed a constitutional amendment which provides that state judges be appointed rather than elected. Before that time, judges sought judicial office by conducting political campaigns. Judges maintained political party affiliations and ran contested elections. Campaign funds were solicited to finance election expenses. Now, when a vacancy occurs in a state court, county court, district court, court of appeals or supreme court, a judicial nominating commission interviews applicants and recommends two or three individuals to the governor for consideration.

Colorado was among the first states in the country to adopt a merit system based on the nonpartisan selection and retention of judges. Merit is determined by examining factors such as legal training and background, judicial temperament, intellectual capacity, neutrality, fairness, and ability to uphold the law.

Colorado's method for appointment of judges focuses on the qualifications of judges and has specific time limits controlling when the commission and the governor must act. Within 30 days after a vacancy occurs, the commission must meet and select its nominees based upon written applications, recommendations, and personal interviews.

The governor must select one of the nominees for the appointment within 15 days after receiving the list of nominees. If the governor does not appoint someone within those 15 days, then the Chief Justice of the Colorado Supreme Court appoints one of those individuals to fill that vacancy. The judge so chosen serves an initial term of two years or until the next general election when the judge must stand for retention.

Judicial Nominating Commissions

The merit selection plan created judicial nominating commissions to screen applicants for every judicial vacancy and submit a list of two to three nominees to the Governor for appointment. That plan established 23 judicial nominating commissions for the state courts. The commissions are divided into two categories: (1) a nominating commission for the Supreme Court and Court of Appeals; and (2) 22 judicial district nominating commissions for district and county courts, excluding the Denver County Court. Denver County Court judges are appointed by the Mayor, who maintains a separate nominating commission, and are constitutionally separate from the state judicial system.

The Supreme Court Nominating Commission. The Supreme Court Nominating Commission has 13 voting members, consisting of one lawyer and one layperson from each of the six congressional districts and one additional nonlawyer. The Commission is convened when a vacancy occurs on the Supreme Court or Court of Appeals. The Chief Justice serves as a nonvoting chairperson. Not more that one-half of the Commission members plus one (exclusive of the Chief Justice) can be members of the same political

party. Members serve staggered six-year terms and are not eligible for reappointment to succeed themselves, but former members can be reappointed after an absence from the Commission.

Judicial District Nominating Commissions. Each of the 22 judicial district nominating commissions has seven members and convene when vacancies occur in either the district or county court within the district. A Supreme Court justice, assigned by the Chief Justice on a rotating basis, serves as the nonvoting chairperson of each district nominating commission. Other members include four laypersons and three lawyers, who all must reside in that judicial district.

In judicial districts with more than one county, there must be at least one voting member from each county in the district. Not more than four members (exclusive of the Supreme Court member) can be affiliated with the same political party. Members serve staggered six-year terms and are not eligible for reappointment to succeed themselves.

Voting members on a commission are not eligible for appointment to a judicial office in that district while serving as a member of the commission and for a period of one year thereafter.

Denver County Court Judicial Nominating Commission. This Commission, established under the Denver City and County Charter, selects nominees for Denver County Court judgeships. It consists of the Denver County Court Presiding Judge (who serves as an ex-officio nonvoting member), four Denver-resident laypersons and three Denver-resident lawyers. Members are appointed by the Mayor for a four-year term. Commission members are not prohibited from reappointment at the expiration of their term. No more than four members may be affiliated with the same political party; and no member shall hold an official position in any political organization.

State law requires that nominating commissions be balanced according to several criteria including lawyers and nonlawyers, geographic representation, and political party. Employment restrictions, elective office, reappointment to the commissions, and eligibility for judicial office apply to all members of the commissions.

Judicial Performance Commissions

In 1988, the Colorado Legislature created the commissions on judicial performance. The purpose of these commissions is to provide voters with fair, responsible, and constructive evaluations of trial and appellate judges and justices seeking retention in general elections. The results of the evaluations also provide judges with information that can be used to improve their professional skills as judicial officers.

Judicial Performance Commissioners serve four-year terms. The chief justice and the governor each appoint one attorney and two non-attorneys. The president of the senate

and the speaker of the house each appoint one attorney and one non-attorney. Each commission is a 10-member body.

The State Commission on Judicial Performance developed evaluation techniques for district and county judges, judges of the court of appeals, and justices of the supreme court. According to the law, those criteria include the following:

- integrity;
- knowledge and understanding of substantive, procedural, and evidentiary law;
- communication skills;
- preparation, attentiveness, and control over judicial proceedings;
- sentencing practices;
- docket management and prompt case disposition;
- administrative skills;
- punctuality;
- effectiveness in working with participants in the judicial process; and service to the legal profession and the public.

SELECTION PROCESS

Strict time constraints are established by the Colorado Constitution as to convening a nominating commission when a vacancy is created in a judicial office through death, resignation, retirement, or removal by the Colorado Supreme Court at the recommendation of the Commission on Judicial Discipline.

Rules of procedure. All nominating commissions have adopted written rules of procedure, although the areas covered vary from commission to commission.

Time constraints. The list of nominees must be submitted to the Governor (or the Denver Mayor in the instance of nominations for the Denver County Court) not later than thirty days after the death, retirement, tender of resignation or removal of the judge (or other triggering events) giving rise to the vacancy. Accordingly, depending on the manner in which a vacancy occurs, applications can be due within less than two weeks after a vacancy is announced, with interviews following shortly thereafter.

Interviews. Commissions have varying policies on interviewing applicants. Some will afford all applicants an interview; others will pre-screen on the basis of the applications alone and decide which of the applicants will be interviewed.

Some commissions conduct interviews on an informal basis and ask a wide range of questions; others are more formal and ask each applicant a series of prepared questions. One question applicants can usually count on being asked is why they wish to become a judge. Other questions may cover a spectrum of personal and professional subjects, including legal issues of current general interest.

The length of the interviews may vary substantially depending on the commission involved and is generally influenced by the number of applicants being interviewed.

Selection of nominees. The Supreme Court Nominating Commission is required to certify three nominees to the Governor for a vacancy in the Supreme Court or the Court of Appeals, and the judicial district nominating commissions must certify at least two nominees for a vacancy in the district or county courts. The Denver County Court Judicial Nominating Commission is required to certify a list of three or more nominees.

Confidentiality of names. Provisions regarding confidentiality will vary by commission. For example, the Rules of Procedure for the Second Judicial District Nominating Commission provide that the names of applicants are confidential; however, the rules require the names of nominees selected by the Commission to be released to the public with the transmittal of the names to the Governor. The identity of both the applicants and nominees for the Denver County Court are confidential.

Selection of appointee. The appointment of a judge from the list of nominees (whether by the Governor or by the Denver Mayor in the case of a Denver County Court

judgeship) must be made within fifteen days from the day the list is submitted. If the appointment is not made within the time limit, the appointment is made from the list of nominees by the Chief Justice of the Supreme Court (or by the presiding judge of the County Court in the case of a Denver County Court judgeship).

Retention of Judges

Today, the Colorado merit selection plan maintains the public's involvement by establishing a retention process that places all newly appointed judges on the general election ballot in November following a two-year provisional term and following each full term.

If judges decide to stand for retention, they must file a declaration of intent within a specified time period before the General Election. The Colorado Secretary of State is responsible for placing the names of all candidates, including justices and judges, on the ballot.

The judicial retention question is a "Yes" or "No" vote, and provides: "Should Justice (Judge) be retained as a Justice (Judge) of the Court?" If a majority of the voters say "Yes," the justice or judge is retained. If a majority of the voters say "No," a vacancy will exist in the judicial office at the expiration of the term the following January.

In the event of a "No" vote, or if a vacancy occurs in a judicial office for any reason, such as resignation or retirement, the appropriate judicial nominating commission must submit a list of nominees to the Governor within 30 days. The Governor must appoint someone from the list within 15 days. If a gubernatorial appointment is not made in 15 days, the Chief Justice has the power to fill the vacancy from the list within the next 15 days.

For more information about your local nominating commission or for an application to serve as a member, please contact the Office of the State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, #300, Denver, CO 80203.

Evaluating Judges

In 1988, House Bill 1079 established commissions for the purpose of evaluating judicial performance. (See Commission on Judicial Performance in the section on "Supreme Court Commissions, Committees, and Boards" and the "Questions and Answers" section.)

Disciplining Judges

Any person who has knowledge of possible misconduct by a judge has the right to report such behavior to the Colorado Commission on Judicial Discipline. (See Commission on Judicial Discipline in the section on "Supreme Court Commissions, Committees, and Boards" and the "Questions and Answers" section.)

Court Procedures

This section is based on the Colorado Rules of Civil Procedure and the Colorado Rules of Criminal Procedure. The rules are drafted by the Colorado Supreme Court Committee on Civil Procedure and the Colorado Supreme Court Committee on Criminal Procedure, whose members are appointed by the Chief Justice. The committees submit recommendations for proposed rule changes and/or proposed new rules to the Supreme Court for consideration. All rules must be approved by the Supreme Court before they are implemented. These rules are periodically updated as changes occur in legislation and case law.

Criminal

Misdemeanors and Petty and Traffic Offenses. Usually, a summons and complaint can be issued by a police officer for a misdemeanor, traffic, or petty offense. The summons and complaint directs the defendant to appear in county court at a stated date and time. At that date, the defendant is advised of his or her rights and a trial date is set.

A misdemeanor case can be determined by a county judge in a trial to the court, (in which the defendant waives his or her right to a jury and allows a judge to hand down a verdict), or by a jury trial involving three or six jurors.

If a defendant pleads guilty or is found guilty after a trial, he or she may be sentenced to jail, fined, granted probation, or ordered to do public service, or a combination of these penalties.

Possible sentences include class 1 misdemeanors - six months to eighteen months in jail and/or $500 to $5,000 fine; class 2 misdemeanors three months to one year in jail and/or $250 to $1,000 fine; and class 3 misdemeanors - up to six months in jail and/or $50 to $750 fine.

A DUI (Driving Under the Influence) conviction can carry a sentence of between five days and one year and/or a $500 to $1,000 fine and 48-96 hours of public service plus alcohol abuse education.

When a person is arrested for some petty or traffic offense, the arresting officer may, in some cases, simply issue a penalty assessment notice. If the defendant wishes to acknowledge guilt, he or she may pay the specified fine in person or by mail. If the defendant chooses not to acknowledge guilt, he or she shall appear in court as required by the notice.

Common cases in county court include driving under the influence, third-degree assault, sexual assault without force, arson (under $100 damage), and theft (under $300).

Felonies. Upon a finding of probable cause by a judge, a search warrant or arrest warrant may be issued. Search warrants may be issued before or after the arrest of a suspect. Police officers may file requests for search warrants with trial courts. The request must be supported by an affidavit explaining the basis for the request.

When an arrest is made, a suspect is advised of his or her rights under the "Miranda Rule" if law enforcement officers seek to question the suspect concerning a crime. The suspect is advised that he or she has the right to remain silent, that anything the suspect says can and will be used against him or her in a court of law, that the suspect has the right to have an attorney present during questioning, that, if the suspect cannot afford an attorney one will be appointed at no charge, and that the suspect may end the questioning at any time.

Upon being booked into a jail, most defendants are eligible to post bail based upon a set schedule or based upon a judge's decision. Most defendants arrested on a complaint of first-degree murder and other violent offenses may be held overnight without bail until a judge sets a bail amount.

In most felony cases in Colorado, on the day after arrest the defendant is brought into court for advisement of rights. (This is not to be confused with an arraignment. An arraignment is the formal declaration of a plea of a defendant, something that almost never occurs at an advisement of rights hearing.) The judge then finds out whether the defendant is able to hire a lawyer or whether an attorney needs to be appointed. If a defendant states that he or she cannot afford a lawyer, an investigation is conducted as to his or her financial eligibility. Pending the results of that investigation, a public defender may be assigned temporarily to represent the defendant.

In class 1 felony cases or in jurisdictions where there are no set bail schedules, a judge may set bond at this time. Also, a judge may determine if the defendant is eligible for a personal recognizance bond - where a suspect is released upon his or her promise to appear at all court hearings.

If the defendant requests one, a preliminary hearing is held several days thereafter to discover whether there is probable cause to believe that the defendant committed a crime within the jurisdiction of the court. Prosecutors present basic evidence, usually testimony of law enforcement officers or eyewitnesses, but are not obligated to present all the evidence they might present at a trial. The defense may present evidence, but is not obligated to do so. If the judge finds that no probable cause exists, charges are dismissed. If the judge determines there is probable cause, the defendant is "bound over" for trial. A preliminary hearing does not determine guilt or innocence.

Although no preliminary hearings are scheduled in cases of grand jury indictments, a judge may be asked to review a grand jury transcript to determine if there is probable cause for the indictment. If the judge determines that probable cause exists, an arraignment is scheduled. If it is determined that probable cause does not exist, the indictment is dismissed.

At an arraignment, the defendant may enter one of several possible pleas: guilty, not guilty, nolo contenders (no contest), not guilty because of impaired mental condition, or not guilty by reason of insanity. In the latter case, a not guilty plea may be entered at the same time.

The entering of a not guilty plea may mean a defendant does not believe he or she is guilty of a particular charge, although he or she may be guilty of a different or lesser offense, or a not guilty plea may be the exercise of the defendant's right to require prosecutors to prove him or her to be guilty beyond a reasonable doubt.

During this pre-trial stage, two procedures occur. One is discovery, which is standard in all cases. Discovery allows the defendant to learn facts that are known by prosecutors, investigators and witnesses, and it includes a requirement that the defense disclose some of its information to the prosecution, e.g., a notice of an alibi.

The other procedure that sometimes can be crucial to a case is a defense motion to suppress evidence. This motion, filed before trial, contends that certain evidence was illegally seized or obtained and, therefore, cannot be used as evidence by the prosecution. The state has the burden of showing the evidence was legally obtained.

If a plea agreement is reached between prosecutors and the defense, it is not binding on a judge, and a judge may reject it. Sometimes a defendant pleads guilty to one of the original charges in exchange for dismissal of other charges. Sometimes, as part of a plea agreement, a prosecutor may agree to either recommend a sentence urged by the defense or to remain silent on sentencing.

If a trial occurs, the first step, unless the defendant wants a "trial to the court," is jury selection. Potential jurors are selected from a master list of voter registrations and drivers' licenses lists.

In most Colorado felony cases that end in convictions, sentencing is continued for several weeks to allow post-trial motions and for preparation of a pre-sentence investigation report. These reports, prepared by probation officers, include the defendant's prior criminal record, social history, exact damage or loss estimates from victims, and suggestions from victims concerning sentences or punishment.

Several weeks after a guilty plea or a jury conviction, a sentencing hearing will be held. Witnesses may be called, or attorneys may make arguments based upon the pre-sentence investigation report. Immediately before this hearing, often on the same day, a judge considers post-trial motions such as motions for a new trial. These motions sometimes act as previews of upcoming appeals by a defendant.

Sentences are handed down within ranges established by the Colorado General Assembly. Although provisions are made for mitigating and aggravating circumstances, most sentences fall into presumptive ranges established by the General Assembly.

Although a judge may make a recommendation as to which division of the state Department of Corrections may be appropriate for a defendant, corrections officials decide where a defendant serves his or her sentence within the prison system. Virtually all inmates are initially sent to a diagnostic center where they are evaluated for placement within the prison system.

A judge may sentence a defendant to probation while establishing certain conditions such as successful completion of alcohol and drug treatment programs. Also, a condition of probation may be a jail term of up to 90 days.

If a defendant is later paroled, his or her parole was either granted by a parole board or mandated by a sentencing law in effect for crimes committed between July 1, 1979, and July 1, 1985. Under that law, parole release is virtually automatic. For crimes committed before or after those dates, the parole board has the power to grant or deny parole.

Parole decisions are made by the parole board, which is part of the executive branch of government. Judges have no authority to grant or deny parole.

Civil

Procedure in civil cases is similar in many respects to the manner in which criminal cases are handled; however, the Colorado Rules of Civil Procedure govern the procedure in all civil cases.

The first action taken is usually filing a complaint. A complaint must contain a concise statement of the facts which give rise to the complaining party's (plaintiff's) case. Unlike criminal law, which requires a specific statute prohibiting behavior, civil law allows a plaintiff to bring suit on various theories developed in the common (non-statutory) law. Civil law includes tort law (personal injury), contract law, and property law.

For example, a plaintiff may bring suit in negligence, e.g., tort law, arguing that the defendant has injured the plaintiff. In deciding civil cases, a court may refer to statutory law, if any exists, or refer to appellate decisions, which explain the principals of law which guide a judge in making a decision.

Once a plaintiff has filed the complaint in the district court, a copy of the complaint and a summons must be given to the defendant. A summons contains the name of the court in which the case has been filed and the names of the parties to the action. The summons also contains the address of the plaintiff's attorney, if any, and, if not, the address of the plaintiff. This information must be included so the defendant knows to whom he must respond.

Sometimes, the plaintiff may ask for a temporary restraining order (TRO) and for a preliminary or permanent injunction. These special orders are often sought to prevent any change in the parties' position or to preserve the status quo. For example, injunctions are

often sought in environmental actions to prevent a land development from occurring until the court has determined its legality. Special proceedings are held for a TRO or injunction, and the plaintiff bears a high burden of proof. The hearing for a TRO is usually held before any other proceeding.

Standard civil procedure. If no injunction is sought, the following is the usual procedure in a civil case. After the defendant receives a copy of the summons and complaint, there are several courses of action he/she may take.

First, the defendant may decide not to act at all. In this case, a default judgment is entered against the defendant in favor of the plaintiff. The court then determines the damages to which the plaintiff is entitled.

Second, the defendant may file an answer. In the answer, the defendant may admit that he or she has injured the plaintiff in some way, in which case the court will determine the damages to which the plaintiff is entitled and enter an order, (judgment), in favor of the plaintiff for the appropriate amount. Or, the defendant's answer may deny that he or she has injured the plaintiff. As part of the denial, the defendant may file a counterclaim, which asserts that the plaintiff has injured the defendant in some way and should pay damages to the defendant. If the defendant files a counterclaim, the plaintiff must be given an opportunity to respond by filing a document called a reply.

The defendant may also argue that other parties are liable to the plaintiff, and may bring in (implead) these parties as defendants. If more than one defendant has been sued, an individual defendant may also cross-claim against his or her fellow defendant, arguing that there is a claim between them.

In his or her answer, the defendant may also argue that he or she has a defense. There are two different forms of defenses. The first is an affirmative defense, which states that, even if all the facts the plaintiff has alleged are true, the defendant is not liable to the plaintiff. Some examples of affirmative defenses are waiver, discharge of a debt in bankruptcy, payment, and fraud. The defendant may also file a general defense, which does not admit the facts the plaintiff has stated, but gives some reason why the plaintiff should not be entitled to recover the damages he or she is claiming.

The defendant also has the option of filing various motions instead of answering the complaint immediately. The first of these is a motion for more definite statement, which is a request that the plaintiff clarify the facts stated in his or her complaint. The defendant may also argue that the court lacks jurisdiction over the subject matter of the plaintiff's complaint or over the person of the plaintiff or the defendant. The defendant may also argue that service of the summons and complaint was insufficient or that the complaint as a whole fails to state a claim required under the law. These initial motions must be decided by the court before the defendant files an answer.

If the court decides the motions against the defendant, further proceedings must be held. The rules of procedure require that in any action in which a contested trial is to be held, the court must hold a pre-trial conference with the parties to clarify the theories upon

which they will proceed, and to establish a discovery schedule which the parties must follow.

The Discovery Process. Discovery allows each side to learn facts that are known by the other side's witnesses. Unlike criminal discovery, where only the defendant has access to the prosecutor's file, in civil discovery the parties have access to everything the other side knows. There are various forms of discovery which may be used.

One form of discovery is the deposition, which may be taken of any person involved in the case. A deposition is testimony taken under oath and recorded, outside the presence of a judge. Both attorneys have the opportunity to question the person being deposed.

A second common form of discovery is the interrogatory. Interrogatories may only be used to present questions to a party (i.e., the plaintiff or the defendant) and not to any other witness. An interrogatory is a series of written questions addressed to the opposing party, which must be answered truthfully under notary seal. If one party wishes to use an interrogatory, he or she must send the written questions to the attorney representing the opposing party who then has a period of time in which to answer.

A party also has the option of seeking a physical or mental examination of a person involved in the case. Physical examinations are frequently used in personal injury cases where the plaintiff claims a long-standing or debilitating injury.

Another form of discovery is the request for admission. If this form of discovery is used, one party asks the other to admit a fact as true. The written statement for which admission is sought is sent to a party and the answer must be given within particular time periods. The party responding may either admit or deny the statement is true. If the party fails to either admit or deny, within the appropriate time, the fact is deemed admitted.

If any party fails to cooperate in the discovery process, the opposing party may ask the court to impose sanctions for the failure to cooperate in discovery. Sanctions may consist of an order requiring cooperation, an award of expenses incurred for the filing of the motion to compel, an award of attorney fees, prohibition of the use of certain evidence, or, in extreme cases, dismissal of the case. Either before or after discovery has been completed, a party may file a motion for summary judgment to end the case without a trial. A motion for summary judgment argues that there are no issues of material fact to be decided and that the court can decide the questions of law without a trial. Summary judgment is an extraordinary remedy, which precludes a party from having a trial and is awarded only under strict rules.

The civil trial. If a party has asked for summary judgment, but it has been denied, or if a party has failed to make a motion for summary judgment, a trial will be held. In many cases, the trial will be to a jury. For example, if the plaintiff is seeking to recover real or personal property damages, money claimed as due on a contract or as damages for breach of a contract or for injury to a person or property, the issue of fact may be tried before a jury. In other cases, there is no right to a jury trial; however, the parties may

stipulate that a jury is not necessary and conduct the trial before the judge alone, who must then decide all issues in the case.

The trial begins with opening statements by attorneys for each side. The plaintiff then presents his or her case. Each party can call witnesses, cross-examine the other side's witnesses, and present documentary evidence to prove the case. Frequently, experts may testify on special matters. For example, a specialist in accident-scene reconstruction may be called to testify as to how an accident probably occurred.

After the presentation of the plaintiff's case, the defendant may file a motion to dismiss, which states that the plaintiff has failed to prove his or her case based upon all the evidence presented. If the court grants the motion to dismiss, the trial ends. If the court denies the motion to dismiss, then the defendant can present his or her case and any evidence he or she may have which shows why the plaintiff should not be entitled to recover or why the defendant should recover on any claims he or she may have made against the plaintiff or against any other defendant.

When all of the evidence has been presented, the attorneys meet with the judge to assist in deciding the jury instructions. The instructions explain the law pertaining to a particular case. The instructions are then read to the jury and the case is submitted to it for a verdict. While the jurors are deliberating, they have no outside contacts. The jury may find the plaintiff was injured and that the defendant does not have to pay all of the damages claimed. Unlike criminal cases, the jury not only determines whether someone has done something wrong, it also determines what damages the defendant should be required to pay.

Once the issue has been submitted to the jury, and the jury has returned a verdict, any party may file a motion for judgment notwithstanding the verdict, also called a judgment n.o.v. If a judgment n.o.v. is granted, the jury's verdict is set aside and the court enters judgment in favor of the other party. A party may also file an appeal, arguing that error has occurred in the trial, requiring that the verdict not be enforced.

The option of settlement is available to the parties at any stage of the proceedings. A settlement is an agreement between the parties which resolves the dispute between them. Once a settlement is reached, the parties notify the judge and the proceedings terminate.

Alternative Dispute Resolution

Alternatives to the traditional court process take many forms. They usually involve impartial decision-makers such as mediators and arbitrators. In civil cases, the two most common alternatives to court trials are mediation and arbitration.

Mediation. The Colorado Judicial Department houses its mediation program, the Office of the Dispute Resolution, in the Division of Court Services at the State Court Administrator's Office.

Mediation is an informal process in which an independent third party helps people in conflict negotiate a mutually acceptable settlement. Mediators provide a problem-solving process that helps disputants make their own decisions about the issues.

The court-affiliated mediation program (Section 13-22-301, C.R.S.). The Colorado Judicial Branch's Office of Dispute Resolution (ODR) directs this program. Parties may choose to mediate or they may be ordered by the court to mediate. The parties may select either ODR mediators or private mediators. Court-affiliated mediation programs exist in the following Colorado areas:

Denver Metro Area
Colorado Springs Area
Alamosa & San Luis Valley
Grand Junction
Aspen, Glenwood Springs,
Breckenridge & Georgetown
Eagle & Leadville
Arapahoe County Justice Center
Pueblo Area
Fort Collins Area
Delta, Gunnison & Montrose
Meeker & Rifle
Steamboat Springs & Hot Sulphur Springs

Benefits of mediation. The benefits of mediation are as follows:

- Mediation may be less expensive than going to court.
- Mediation is usually faster than going to court.
- Mediation is private and confidential.
- Mediation gives parties a chance to fashion an agreement that meets their needs.

Most conflicts can be mediated if parties are open to the idea of settling the dispute. mediation has worked well in the following types of cases:

Domestic Relations. This includes divorce, custody, property divisions, parenting time, and child support. Mediation my not be appropriate in cases that involve domestic violence.

Civil. This includes contracts, fee disputes, landlord/tenant, employer/employee, money demands, personal injuries, malpractice, and property damages.

Juvenile. This includes victim/offender restitution, dependency and neglect matters.

Probate. This includes guardianships, conservatorships, and estate distribution.

Criminal. This includes victim/offender restitution.

What happens during mediation is dependent upon the mediator's style. Generally, the mediator begins by describing the process, and the parties are given an opportunity to tell their side of the story. The mediator helps identify the issues, suggests a negotiation process, encourages communication, and aids the parties in looking at all possible agreement

options. During the mediation, the mediator may meet with each party separately. These separate meetings give the parties the opportunity to discuss with the mediator specific concerns or goals that they might not want to reveal to the other parties.

Confidentiality. Colorado law requires confidentiality in all mediations. Also, anything a party tells the mediator in confidence will not be revealed to other parties, unless the party has specifically given the mediator permission to do so. At the beginning of the mediation, parties are asked to sign an agreement not to call the mediator as a witness in any legal or administrative proceeding about the dispute.

Mediators. Mediators from the Office of Dispute Resolution in the State Court Administrator's Office come from a variety of backgrounds and professions. All have received specialized training in mediation and conflict resolution. They have extensive mediation experience, receive on-the-job training and review, and have agreed to abide by the codes of professional and ethical conduct.

Cost of mediation. The Office of Dispute Resolution charges the following fees for mediation. These rates are subject to change without notice.

Domestic Relations (Divorces): $35 per party per hour when both parties are present. $70 per hour when only one party is present. A $30 administrative fee per party may be assessed for complicated cases.

Probate, Juvenile, County Court civil: $35 per party per hour. An administrative fee of $30 per party may be assessed for complicated cases.

District Court civil cases: $65 per party per hour. A $30 per party administrative fee is assessed in all cases.

It is the mediator's job to help both parties clarify issues, establish a negotiation agenda, identify needs, and generate settlement options. He or she will help each side understand the other's problems and perspectives and try to facilitate a mutually satisfactory agreement.

Arbitration. In arbitration, the parties agree to let an impartial arbitrator or panel of three arbitrators hear evidence and decide the outcome of their dispute. The hearing has less formality and fewer rules than a court trial, but it is usually more formal than a mediation session. At the hearing, the parties present testimony or documents to support each position. Parties may appear at the arbitration proceeding with attorneys if they choose to do so.

THE TRIAL – CIVIL OR CRIMINAL

Officers of the Court

Judge. The judge presides in the courtroom. If a case is tried before a jury, the judge rules on points of law and gives instructions to the jury, informing the jury about the law which governs the case. If there is no jury, the judge determines the facts and decides the verdict - e.g., a finding of guilty or not guilty in a criminal case or a finding for or against the plaintiff or defendant in a civil trial.

Court Clerk. The court clerk is responsible for the administration of the cases assigned to the judge. The clerk makes certain the files are correct and complete, prepares the judge's orders and enters them in the computer, or in the book titled "Judgment Record," answers the telephone, and generally handles a myriad of administrative functions to ensure that the docket operates smoothly.

Bailiff. The bailiff usually administers the oath or affirmation to prospective jurors and to witnesses. The bailiff keeps order in the courtroom, calls the witnesses, and supervises the jury as directed by the judge. It is the bailiff's duty to be sure that no one outside the courtroom attempts to influence the jury.

Court Reporter. The court reporter records everything that is said as part of the formal proceedings in the courtroom, including the testimony of witnesses, objections made by the lawyers, and the judge's rulings on those objections. In some courts, reporters are being phased out and audio tapes record the trial.

Lawyers. The lawyers for both sides are also officers of the court. Their job is to represent their clients zealously on the premise that justice can be best achieved if the arguments of each side are vigorously presented by competent legal counsel.

Constitutional basis for right to a jury trial. The right to trial by jury applies to every person in the United States, whether a citizen or an alien. The United States Constitution guarantees the right to a jury trial in all criminal cases (except impeachment). The trial will be held in the state where the crime occurred (Article III, Section 3). The Bill of Rights served to further define the place of the jury in the judicial system.

The Fifth Amendment of the United States Constitution requires indictment by a grand jury as a prerequisite for a criminal prosecution, except for the "militia" in time of war or "public danger." The Sixth Amendment guarantees "the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed." The provisions of the Fifth and Sixth Amendments have been held applicable to the states, as well as to the federal government.

In addition to the provisions of the federal constitution, the Colorado Constitution also outlines the right to trial by jury. Article II (the state's Bill of Rights), section 23, states:

> The right of trial by jury shall remain inviolate in criminal cases; but a jury in civil cases in all courts, or in criminal cases in courts not of record, may consist of less than twelve persons, as may be prescribed by law. Hereafter a grand jury shall consist of twelve persons, any nine of whom concurring may find an indictment; provided the general assembly may change, regulate or abolish the grand jury system; and provided, further, the right of any person to serve on a jury shall not be denied or abridged on account of sex, and the general assembly may provide by law for the exemption from jury service of persons or classes of persons. (Amended Nov. 7, 1944)

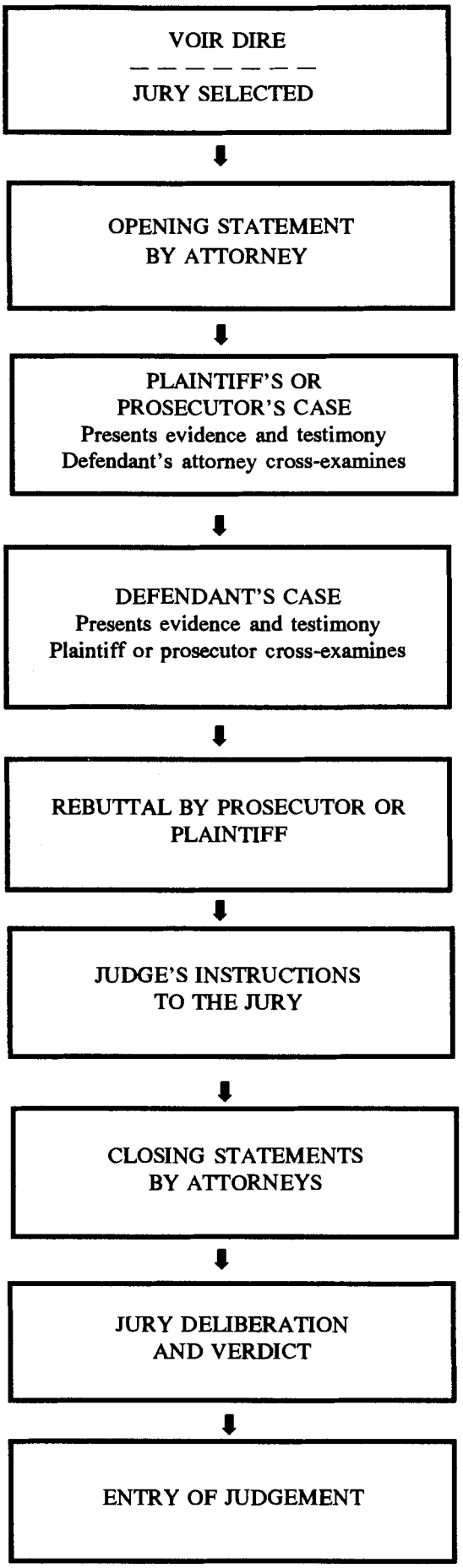
The trial. The reason we have trials is to allow two or more parties to have their dispute settled by a court. Some civil lawsuits or criminal matters are decided by the judge alone; others are decided by a jury. A jury is a body of citizens sworn or affirmed to make an impartial decision based on the evidence or information presented during a trial.

Jurors serve in two kinds of cases - civil and criminal. In a civil case one person or company - the plaintiff - asks the court to protect some right or to help recover money or property from another person or company - the defendant. In a criminal case the state of Colorado - the prosecutor - charges that the person - the defendant - committed a crime and asks that the defendant be fined or sent to jail or prison.

Before the trial. Not all cases are heard by a jury. These include some civil matters such as dissolution of marriage, custody, and child support cases. Also, in both criminal and civil cases, the parties may waive their right to trial by jury and have the case heard by a judge. This is termed a trial to court.

The law encourages people to settle their disputes out of court. In fact, lawyers will negotiate right up to the moment the trial begins. The trial may even be delayed while the lawyers try to work out a settlement with the judge in chambers. The lawyers may continue to negotiate out of the jury's hearing while the trial is going on. Jurors will not be told what is happening unless the two sides come to terms, in which case the trial will be ended and the jurors dismissed. When this happens jurors must remember that they have performed a service just as important as if a verdict had been reached. In fact, the jury's presence may have been the deciding factor in bringing the parties to terms.

ANATOMY OF A JURY TRIAL



SEQUENCE OF JURY TRIAL EVENTS

- Jury Selection (Voir Dire)
- Opening Statements
- Plaintiff's or State's (Prosecutor's) Case
- Defendant's Case
- Plaintiff's or State's Rebuttal
- Judge's Instructions to the Jury
- Closing Arguments
- Jury Deliberations
- Verdict

Jury selection. In any trial in which a jury is required, the first step is to choose names from a computer-generated, random list called the jury wheel. The jury wheel is created each year from the voters' registration and drivers' license lists. Several weeks before a jury trial is scheduled, the local jury commissioner will summon the number of people needed to ensure selection of a jury for the case. The day of the trial, the clerk of the court will call the names of people who were summoned for jury service. Those first called may be seated together in the jury box, an enclosed area of the courtroom where the jurors will sit to hear the trial, or they may be seated individually. The judge or the attorneys will identify themselves and the parties to the lawsuit and explain the type of case to be tried.

The judge then initiates the questioning of the jurors. Potential jurors, called veniremen, will be asked questions. about their background, general feelings, and opinions, if any, about the issues in the case. The parties or their counsel are then permitted to ask the prospective jurors any additional questions. The court may limit the time available for examination in order to eliminate undue delay in the proceedings.

This process is called voir dire, meaning "to speak truthfully." It is the process of selecting those persons who are qualified to decide the factual issues of that particular case in an honest and unbiased manner. It is not simply a process that is conducted out of curiosity; these questions are the only way that the attorneys and the judge can find out about each juror.

Any potential juror who is related to or personally knows any of the persons, attorneys, or parties in the case, who has already made up his or her mind about how the case should be decided, or who has been represented by one of the attorneys, may be excused from serving on a particular jury, if he or she cannot make an honest and fair decision. The plaintiff's attorney, then the defendant's attorney, completes challenges for cause. If a juror is excused for this reason, it is done by an attorney requesting a challenge for cause, which may be granted or refused by the court.

A peremptory challenge is another method of excusing a potential juror, but no reason need be given by the attorney making the challenge. In a civil trial, each side is

entitled to at least four peremptory challenges. other peremptory challenges may be allowed by the court in its discretion.

In a capital (criminal) case the state and the defendant, when there is only one defendant, are each entitled to at least ten peremptory challenges. In all other criminal cases where there is one defendant and the punishment may be by imprisonment in a correctional facility, the state and the defendant are each entitled to at least five peremptory challenges. In all other cases, each side is entitled to at least three peremptory challenges. (A capital case is one in which a class 1 felony is charged.) The process continues until finally the required number of jurors are sworn or affirmed to try the case.

A civil trial jury consists of six people, unless the parties agree to a smaller number, not less than three. A criminal trial jury consists of twelve people. In both civil and criminal trials, an alternate juror may be selected to sit with the other jurors. If a regular juror is unable to serve, he or she is replaced by the alternate.

Presentation of cases. The opening statements outline the proof to be presented to the jury at the trials beginning. Opening statements are not evidence, only explanations of what each side expects the evidence to prove.

After the opening statements, the plaintiff's or state's case is presented in the form of evidence. Evidence can be testimony by a trial witness or physical exhibits such as a gun or photograph. Case presentation begins with the plaintiff's or the District Attorney's direct examination of a witness. Direct examination discloses points important to the case. Next, the defendant's attorney may cross-examine the witness to disclose facts favoring the defendant. Then the plaintiff's attorney or District Attorney may conduct redirect examination to clarify statements during cross-examination.

The defendant's case is presented after the plaintiff's or state's case. The defendant's case presentation follows the same format as the plaintiff's or state's case.

The judge's instructions to the jury follow presentation of the evidence. The judge instructs the jury on the issues to be decided and the rules of law that apply to the case.

Jury instructions. Jurors must follow certain rules. Before the attorneys' closing arguments, the judge instructs the jury on the issues to be decided and the rules of law that apply in the case. The judge's instructions tell the jury what must be proved in order to find the defendant guilty, or, in a civil suit, to find for the plaintiff. The state must prove a criminal case beyond a reasonable doubt and the plaintiff must prove a civil case by a preponderance of the evidence.

The jury instructions consist of lengthy statements of legal propositions accompanied by definitions of the legal terms used. There is a reason for all of these legalisms; improper instructions can be a basis for reversal by an appellate court. All jury instructions are part of the court record.

Closing statements by attorneys. Closing statements (often called closing arguments) follow the judge's instructions on the law. Both sides summarize the case from their

viewpoint. Closing statements are not evidence but summaries of the evidence presented during the trial. At the conclusion of closing statements by attorneys for both parties, the jury retires to the jury room to begin its deliberations.

In the jury room. Before the jury retires the court submits a written form for the verdict. When the jury retires to consider its verdict, the bailiff swears or affirms to conduct the jury to a private and convenient place and to keep the jurors together until they have reached a verdict. The bailiff is not allowed to speak to the jurors about the case except to ask if a verdict has been reached. The bailiff will not allow others to speak to any jurors.

The jurors then go into a private room to begin jury deliberations. Selection of a foreperson, most commonly called foreman, is the jury's first duty. This person presides over the case discussions or deliberations.

Jurors should not be afraid to speak out as they and the other jurors go over the evidence. At the same time, it is important for all jurors to respect the opinions of others. One of the strengths of the jury system is that a decision is reached only after full and frank discussion and calm, unbiased reasoning.

The verdict. Jury deliberations conclude when a unanimous verdict has been reached. The foreperson records the verdict on the form provided by the court and calls for the bailiff to accompany the jury to the courtroom. The clerk enters in the record the names of the jurors. The verdict is read by the judge or, at his or her request, by the court clerk.

If the jury is unable to agree upon a verdict after lengthy deliberations, the foreperson must inform the judge. If the judge is satisfied that the jurors are unable to reach a unanimous verdict, a mistrial is declared and the jury is discharged. The case is then set for another time, and is tried anew.

If the verdict is unanimous, then it is received and recorded, and the jury is discharged. If the jurors do not agree on the verdict, then the jury may be sent out again or may be discharged.

Poll of jurors. Sometimes one of the parties will request that the jury be polled when the verdict is returned and before it is recorded. This can be at the request of either party or upon the court's own motion. When the jury is polled, the names of each of the jurors are called, and the jurors are asked by the judge or clerk if they have agreed upon a verdict. If the poll discloses that the vote is not unanimous, then the jury may be directed to retire for further deliberations or may be discharged.

Entry of judgment. Once the jury verdict is accepted by the judge, he or she will enter judgment in the case. The judgment is the official decision of a court that determines the final outcome of a case.

JURY SERVICE

Colorado law makes jury service as convenient as possible by using the one day/one trial system. This means that citizens need only serve one day, or if selected for a trial, for the length of that trial. The statutory reference for jury service is Section 13-71-101 *et seq.*, Colorado Revised Statutes (C.R.S.).

Qualifications to serve on a jury. A person must have the following qualifications to serve on a jury:

- Must be 18 years of age or older.
- Must live in the county or municipality in which summoned.
- Must be a United States citizen.
- Must be able to read, speak, and understand English.
- Must not have served on a jury for five or more days in the past twelve months.
- Must not be solely responsible for the daily care of a permanently disabled person living in his or her home.
- Must not have a physical or mental disability that would affect his or her ability to serve as a juror.

If a person does not qualify to serve because of any of the reasons listed above, this person should discuss his or her situation with the jury commissioner. Written proof of disqualification may be required.

Selection of names for jury service. Each year, the State Court Administrator's Office receives computerized lists of all citizens registered to vote, and all holders of drivers' licenses and non-driver identification cards, throughout the state. The names are consolidated, duplicates and names of deceased citizens are removed, and the resulting names are divided into county boundaries. Each county then receives a random selection of names from its available citizens.

As the selection is completely random, there is no easy explanation as to why some citizens are called several times, while their neighbors do not receive summonses. Each name goes into the system with a different random number attached to it each year. In some counties with small populations, almost every citizen will be called to jury service every year because of the number of jury trials requested. While citizens may receive more frequent jury summonses, they now serve for only one day or the length of one trial. This is a big improvement over previous years, when citizens were on call for weeks and even months at a time. If a person has other commitments for the day he or she is called for jury service, then jury service can be postponed to a date that is more suitable, but the jury commissioner's office must be notified.

Payment for jury service. If an employee is regularly employed, the employer must pay for the first three days of jury service. Self-employed people, in effect, must compensate themselves for the first three days. From the fourth day, all jurors receive

$50 per day from the state. There are provisions for special hardships and certain expenses; these should be discussed with the jury commissioner.

Employment. A juror's employment status is protected by state statute (Section 13-71-134, C.R.S.): "An employer shall not threaten, coerce, or discharge an employee for reporting for juror service as summoned." Employers have a duty under state statute (Section 13-71-126, C.R.S.) to pay regular wages up to $50 per day if you are regularly employed. Employers may pay more than $50 by mutual agreement. Part-time or temporary workers who have worked for the same employer for three months are considered a regular employee. In a civil action, an employee can sue an employer who fails to pay that employee for jury service.

Conclusion. About 95 percent of all jury trials in the world take place in the United States. The jury system is a very important part of the court process in Colorado. The opportunity to serve on a jury allows people to become better informed about their courts and the law. People who serve as jurors usually feel a sense of pride and respect for their system of justice.

Section 13-71-126, C.R.S.: Compensation of employed jurors during first three days of service. All regularly employed trial or grand jurors shall be paid regular wages, but not to exceed $50 per day unless by mutual agreement between the employee and employer, by their employers for the first three days of juror service or any part thereof. Regular employment shall include part-time, temporary, and casual employment if the employment hours may be determined by a schedule, custom, or practice established during the three month period preceding the juror's term of service.

Section 13-71-127, C.R.S.: Financial hardship of employer or self-employed juror. The court shall excuse an employer or a self-employed juror from the duty of compensation for trial or grand juror service upon a finding that it would cause financial hardship. When such a finding is made, a juror shall receive reasonable compensation in lieu of wages from the state for the first three days of juror service or any part thereof. Such award shall not exceed $50 per day of juror service. A court hearing on an employer's extreme financial hardship shall occur no later than thirty days after the tender of the juror service certificate to the employer. The request for a court hearing shall be made in writing to the jury commissioner. (Note: the employer must request the hearing no later than five days after receiving the employee's certificate.)

Section 13-71-133, C.R.S.: Enforcement of employer's duty to compensate jurors. Any employer who fails to compensate an employed juror under applicable provisions of this article and who has not been excused from such duty of compensation shall be liable to the employed juror. If the employer fails to compensate a juror within thirty days after tender of the juror service certificate, the juror may commence a civil action in any court having jurisdiction over the parties. Extreme financial hardship on the part of the employer shall not be a defense to such an action. The court may award treble damages and reasonable attorney fees to the juror upon a finding of willful misconduct by the employer.

Section 13-71-134, C.R.S.: Penalties and enforcement remedies for harassment by employer. (1) An employer shall not deprive an employed juror of employment or any incidents or benefits thereof, nor shall an employer harass, threaten, or coerce an employee because the employee receives a juror summons, responds thereto, performs any obligation or election of juror service as a trial or grand juror, or exercises any right under any section of this article. An employer shall make no demands upon any employed juror which will substantially interfere with the effective performance of juror service. The employed juror may commence a civil action for such damages or injunctive relief or both, as may be appropriate, for a violation of this section. The court may award treble damages and reasonable attorney fees to the juror upon a finding of willful misconduct by the employer. Any trial of such an action shall be to the court without a jury. (2) Any employer who willfully violates this section commits willful harassment of a juror by an employer, as defined in section 18-8-614, C.R.S., which is a class 2 misdemeanor punishable as provided in section 18-1-106, C.R.S.

SENTENCING

Sentencing options and limits are established by the Colorado General Assembly. Legislators establish minimums and maximums of sentencing lengths as well as criteria to determine if a prison sentence should be mandatory.

The Department of Corrections determines the adult correctional facility in the prison system where each inmate will serve his or her sentence. Also, up to 120 days after sentencing, either the prosecutor or the defense may ask a judge to reconsider the sentence. A request for this reconsideration is called a "Rule 35" motion.

Classification of Offenses

Degrees of sentences relate to the seriousness or depravity of the offense. For example, first-degree murder is intentionally causing the death of another person after deliberation. Second-degree murder is knowingly causing the death of another person without deliberation. Both involve the intentional taking of a human life, but there is a difference in the state of mind, so the crimes are not treated the same.

Offenses are divided into "classes" for the purpose of establishing uniform ranges of punishment.

Class (Felonies)	Example
Class 1	First-degree murder First-degree murder of a peace officer or firefighter
Class 2	First degree burglary of controlled substances Second-degree murder First-degree kidnapping
Class 3	Reckless endangerment Aggravated robbery First-degree arson First-degree burglary First-degree sexual assault (under certain circumstances it is a Class 2 felony)
Class 4	Vehicular homicide Robbery Manslaughter First-degree forgery Second-degree arson (if more than $100)

Class (Felonies)	Example
Class 5	Criminally negligent homicide Possession of burglary tools First-degree criminal trespass Vehicular assault Menacing by use of deadly weapon Violation of custody
Class 6	Repeat gambling offender Inciting destruction of life or property Harassment — Stalking Wiretapping

FELONIES COMMITTED
On Or After July 1, 1993

Class	Minimum	Maximum	Mandatory Parole
1	Life Imprisonment	Death	None
2	8 Years $5,000 Fine	24 Years $1,000,000	5 Years
3	4 Years $3,000 Fine	12 Years $750,000	5 Years
Extraordinary Risk Crime	4 Years $3,000 Fine	16 Years $750,000	5 Years
4	2 Years $2,000 Fine	6 Years $500,000	3 Years
Extraordinary Risk Crime	2 Years $2,000 Fine	8 Years $500,000	3 Years
5	1 Year $1,000 Fine	3 Years $100,000	2 Years
Extraordinary Risk Crime	1 Year $1,000 fine	4 Years $100,000	2 Years
6	1 Year $1,000 Fine	18 months $100,000	1 Year
Extraordinary Risk Crime	1 Year $1,000 fine	2 Years $100,000	1 Year

The court must impose a determinate sentence. A determinate sentence is one in which there is a set of number of years, months, and days in the sentence. Judges must consider the nature and elements of the offense (crime), the character and record of the defendant, and any extraordinary aggravating and mitigating factors.

A mitigating factor might be the lack of prior criminal record, the chance of rehabilitation, or other factors specific to the defendant and the crime committed. An aggravating factor might be a defendant's conviction of a "crime of violence." "Crime of violence" is defined by statute in section 16-11-309 of the Colorado Revised Statutes. A violent crime is:

- a crime in which a defendant possessed, used, or threatened the use of a deadly weapon or caused serious bodily injury or death to any other person except another participant.

- a crime against an at-risk adult or at-risk juvenile; murder, first-or-second-degree assault; kidnapping; sexual assault; aggravated robbery; first-degree arson; first-degree burglary; escape or criminal extortion.

- a crime in which the defendant caused serious bodily injury or death to any person, other than himself or herself or another participant, during the commission or attempted commission of any of the crimes listed above.

- any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim.

Other aggravating factors include whether a defendant was on parole or probation when the felony occurred, whether the defendant was in a correctional facility at the time of this offense, or whether he or she was an escapee at the time of the offense.

Other factors considered during sentencing may allow for consecutive terms. If a defendant is convicted of committing two or more crimes of violence during the same criminal episode, consecutive sentences must be served. Also, consecutive sentences must be imposed if a person escapes from legal confinement, attempts to escape, aids in an escape, or assaults someone while trying to escape.

Habitual Criminal

If a person is convicted of a class 1, 2, 3, or 4 felony and has been twice previously convicted of any felony within ten years, he or she will be sentenced to 25 to 50 years. If a person is convicted of any felony and has three or more prior felony convictions, then he or she will receive a life sentence. In order for a judge to sentence

under this provision, the defendant must be convicted of being a habitual criminal by a jury in a separate hearing.

Alternatives to Prison Sentences — Probation

A defendant is eligible to apply for probation unless he or she has been convicted of a class 1 felony or a class 2 petty offense or has been convicted of two prior felonies.

The court, under authority granted by the Colorado General Assembly, in its discretion may grant probation to a defendant unless it is satisfied that imprisonment is the more appropriate sentence for the protection of the public because:

- there is undue risk that during a period of probation the defendant will commit another crime; or
- the defendant is in need of correctional treatment that can most effectively be provided by a sentence to imprisonment as authorized by statute; or
- a sentence to probation will unduly depreciate the seriousness of the defendant's crime or undermine respect for law; or
- the defendant's past criminal record indicates that probation would fail to accomplish its intended purposes; or
- the crime, the facts surrounding it, or the defendant's history and character when considered in relation to statewide sentencing practices relating to persons in circumstances substantially similar to those of the defendant do not justify the granting of probation.

The following are to be accorded weight by the court when considering the granting of probation:

- the defendant's criminal conduct neither caused nor threatened serious harm to another person or property;
- the defendant did not plan or expect that his or her criminal conduct would cause or threaten serious harm to another person or property;
- the defendant acted under strong provocation;
- conduct was justified by substantial grounds though they were not sufficient for a legal defense;

- the victim of the defendant's conduct induced or facilitated its commission;

- the defendant has made or will make restitution or reparation to the victim of his or her conduct for the damage or injury which was sustained;

- the defendant has no history of prior criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense;

- the defendant's conduct was the result of circumstances unlikely to recur;

- the character, history, and attitudes of the defendant indicate that he or she is unlikely to commit another crime;

- the defendant is particularly likely to respond affirmatively to probationary treatment;

- the imprisonment of the defendant would entail undue hardship to himself or herself or his or her dependents;

- the defendant is elderly or in poor health;

- the defendant did not abuse a public position of responsibility or trust; or

- the defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise.

As a condition of probation, a judge may require a jail sentence of up to 90 days for a felony, 60 days for a misdemeanor, or 10 days for a petty offense unless it is a part of a work release program, or a fine.

As a condition of every sentence to probation, the court provides that the defendant make restitution (pay back or compensate) to the victim or to an immediate member of the victim's family for the actual damages suffered. If a defendant fails to pay restitution, he or she is returned for resentencing to the court, which may modify the amount of the restitution, extend the period of probation, order the defendant to go to jail with work release privileges, or revoke probation and impose a sentence to incarceration as otherwise required by law.

Offenders, persons who have been convicted of or who have received a deferred sentence for a felony or misdemeanor, may be sentenced to community correctional facilities or programs, usually a half-way house arrangement that allows them to keep

working at a civilian job while incarcerated. Offenders are required to work and must help pay for the costs of their confinement.

Violent offenders may not be placed in community correctional facilities. An offender accused of or convicted of committing a crime of violence or a class 1 misdemeanor in which a deadly weapon was used may not be sentenced to a community correctional facility. The corrections board, which is appointed by the local unit of government, has the authority to accept, reject, or reject after acceptance the placement of any offender in its community correctional program.

Intensive Supervision Program (ISP) is another alternative to prison. ISP selects prison-bound offenders for an intensified level of community supervision. The program design consists of an objective selection tool and intensive supervision standards. Potential participants are identified by a sentencing matrix that describes types of offenders historically sent to prison in Colorado, documentation of aggravating factors, and review by a screening committee. These recommendations are then submitted to the court for a sentencing decision.

Mandatory prison sentences are required for those convicted of violent crimes. If a specific finding is made, by the jury or the court, that a violent crime was committed, the judge must sentence the defendant to prison for a term of at least the midpoint in the presumptive range but not more than twice the maximum term.

GLOSSARY

The judiciary has a special language. some familiar words may have a different meaning when they are used in connection with our courts. The following glossary is provided to help you understand some common legal terms.

Abatement. Generally, a lessening or reduction; also, either a termination or temporary suspension of a lawsuit.

Accusation. A charge of wrongdoing against a person or corporation, in the form of indictment, presentment, information, etc.

Accuse. To institute legal proceedings charging someone with a crime.

Accused. The person charged with a crime; the defendant; the respondent.

Acquit. To set free from an accusation of guilty by a verdict of not guilty.

Acquittal. A legal finding that an individual charged with a crime is not guilty and is therefore set free.

Act. A bill that is approved by both houses of the Colorado General Assembly and has become a law either with or without the Governor's signature. The acts adopted in each session of the legislature are published annually in bound volumes, Session Laws of Colorado. Acts are also compiled, edited, and published in the Colorado Revised Statutes.

Action. A court proceeding in which one party prosecutes another party for a wrong done, for protection of a right, or for prevention of a wrong.

Adjourn. To postpone; to delay briefly a court proceeding through recess. An adjournment for a longer duration is termed a continuance.

Adjudicate. To determine a controversy and pronounce a judgment.

Admission. The voluntary acknowledgment that certain facts are true; a statement by the accused or by an opposing party that tends to support the charge or claim against him or her but is not necessarily sufficient to establish guilt or liability.

Adversary system. The system of trial practice in the United States and some other countries in which each of the opposing parties presents its views before the court.

Affidavit. A written statement made under oath before an officer of the court, a notary public, or other person legally authorized to certify the statement.

Affirm. To approve or confirm; refers to an appellate court decision that a lower court judgment is correct.

Affirmation. A solemn and formal declaration that an affidavit is true, that the witness will tell the truth, etc; this is substituted for an oath.

Affirmative defense. One that serves as a basis for proving some new fact, whereby the defendant does not simply deny a charge but offers new evidence to avoid judgment against him or her.

Aggravating circumstances. A judge may increase, up to double the maximum presumptive range, a sentence if he or she finds certain circumstances such as conviction of a crime of violence; the defendant was on parole, probation, or bond at the time of the commission of the felony; defendant was already a prison inmate or an escapee from a prison.

Allegation. In a pleading, an assertion of fact; the assertion, declaration, or statement of a party to an action made in a pleading, stating what he or she expects to prove.

Answer. The defendant's principal pleading in response to the plaintiff's complaint made in a written statement and filed with the court. It must contain a denial of all the allegations the defendant wishes to dispute.

Appeal. A proceeding by which a case is taken to a reviewing court from a trial court or other tribunal; also used to refer to the reviewed case. No new evidence may be introduced during the appellate process; the reviewing court is limited to considering whether errors occurred during the prior proceedings.

Appearance. The required coming into court of a plaintiff or defendant in an action by himself or herself (PRO SE) or through his or her attorney.

Appellant. The party appealing a decision or judgment to a higher court. One who presents a petition to a higher court to review the decision of the lower court. The appellant can be either the plaintiff or the defendant in the trial court case.

Appellate court. A court having authority to review the law applied by a lower court in the same case. In most instances, the trial court first decides a lawsuit, with review of its decision then available in an appellate court. In Colorado, there are two levels of appellate courts - the Colorado Court of Appeals and the Colorado Supreme Court.

Appellate jurisdiction. The power of a court to review a decision previously rendered in a case.

Appellee. The party against whom the appeal is brought. This party responds to or answers the petition or request of the appellant to the appellate court to review the lower court's decision. The appellee can be either the plaintiff or the defendant in the trial court case.

Arbitration. Submitting a controversy to an impartial person, the arbitrator, chosen by the two parties in the dispute to determine an equitable settlement. Where the parties agree to be bound by the determination of the arbitrator, the process is called binding arbitration.

Arbitrator. An impartial person chosen by the parties to solve a dispute between them, who is empowered to make a final determination concerning the issue(s) in controversy, and from whose decision there is generally no appeal. An arbitrator is not a judge.

Argument. (Closing or opening). A course of reasoning intended to establish a position and to induce belief.

Arraignment. An initial step in the criminal process in which the defendant is formally charged with an offense, given a copy of the complaint, indictment, information, or other accusatory instrument, and informed of his or her constitutional rights, including the pleas he or she may enter.

Arrest. To deprive a person of liberty by legal authority; in the technical criminal law sense, to seize an alleged or suspected offender to answer for a crime.

Associate justice. A member of the Colorado Supreme Court, other than the Chief Justice; also a member of the United States Supreme Court, other than the Chief Justice.

At law. That which pertains to or is governed by the rules of law, as distinguished from the rules of equity.

Attorney at law. One who is qualified to represent clients in a court of law and to advise them on legal matters; a lawyer.

Attorney general. The chief law officer and legal counsel of the government of a state or nation.

Bail. The release of arrested or imprisoned persons when security, cash, or property is given or pledged to insure their appearance at a specified date and place. The most common bond is a surety bond in which bail is guaranteed by a commercial bonds person. In Colorado, some jurisdictions have established bond rates and other area judges determine bail amounts for each case.

Bailiff. An officer or attendant of a court of law who has charge of a court session in the matter of keeping order, custody of the jury, and custody of prisoners while in the court.

Bench. The court; the judges composing the court together. The place where the trial judge sits.

Bench warrant. A court order for the arrest of a person; commonly issued to compel a person's attendance before the court to answer a charge of contempt or if a witness or a defendant fails to attend after a subpoena has been duly served.

Beyond a reasonable doubt. Refers to the degree of certainty required of a juror before he or she can make a legally valid determination of a criminal defendant's guilt. These words are used in jury instructions in a criminal trial to show that innocence is to be presumed unless the jury can see no reasonable doubt of the guilt of the person charged. It means that the evidence must be so weighty that all reasonable doubts are removed from the mind of the ordinary person. It is the highest degree of proof.

Binding. Obligatory.

Bond. An undertaking, with or without sureties or security, entered into by a person in custody by which he or she binds himself or herself to comply with the conditions of the undertaking and in default of such compliance to pay the amount of bail or other sum fixed in the bond.

Breach of contract. A wrongful nonperformance of any contractual duty of immediate performance; failing to perform acts promised, by hindering or preventing such performance or by repudiating the duty to perform.

Brief. A written document containing a summary of relevant facts, a statement of legal questions to be answered, and a legal argument referring to judicial decisions that support the positions of the party preparing the document.

Burden of proof. In the law of evidence, the necessity or duty of positively proving the fact or facts in dispute.

Capital case. A criminal case in which the death sentence may be imposed.

Case. An action, cause, suit, or controversy, at law, or in equity.

Case law. See common law.

Cause of action. A claim in law and fact sufficient to form the basis of a valid lawsuit.

Certiorari (Latin-to be informed of). A means of gaining appellate review; a legal order by which a higher court commands a lower court to certify or to send up a record of a trial or other proceedings in the lower court for the purpose of judicial review. "Granting certiorari" means agreeing to consider a request for review.

Challenge for cause. A challenge based upon a particular reason (such as bias) specified by law or procedure as a reason that a party may use to disqualify a prospective juror.

Change of venue. The removal of a suit begun in one county or district to another county or district for trial, though the term is also sometimes applied to the removal of a suit from one court to another court of the same county or district.

Charge. 1) In criminal law, a formal written statement presented to a court accusing a person of the commission of the crime. The charge may be made by **complaint, information, or indictment.** 2) in trial practice, an address delivered by the court to the jurors at the close of the case, telling them the principles of law they are to apply in reaching a decision.

Chief justice. The presiding member of certain courts with more than one judge; the Colorado Supreme Court has seven justices, one of whom serves as Chief Justice - the executive head of the court system; the U.S. Supreme Court has a Chief Justice, who is the principal administrative officer of the federal judiciary.

Civil case. All legal proceedings that are not criminal actions.

Civil law. The law concerned with noncriminal matters. Civil law usually deals with private rights of people, groups, or businesses.

Closing statement. An oral summation made to the judge or jury at the end of a trial setting forth a party's view of the facts, the applicability of relevant rules of law, and the appropriate outcome.

Code. A systematic compilation of laws; for example, in Colorado we have the Colorado Children's Code.

Common law (Judge-made law). The system of **jurisprudence,** which originated in England and was later applied in the United States, that is based on judicial **precedent** (court decisions) rather than legislative enactment (statutes).

Commutation. Change; in criminal law, substituting a lesser punishment for a greater one, such as life imprisonment for a death sentence, a shorter term for a longer one. Commutation is the Governor's prerogative and can be granted only after a conviction. A **pardon** is different; it can be granted any time by the Governor.

Complaint. 1) In a civil action, it is the first **pleading** of the **plaintiff** setting out the facts on which the claim is based; it includes a written statement of the wrong

or **harm done** to the plaintiff by the defendant and a request for **a specific remedy from** the court. 2) in criminal law, it is the preliminary **charge** or accusation (sworn statement) made by one person against another to the appropriate court or officer.

Concur. To have the same opinion; to agree.

Concurrent sentences. Sentences for two or more crimes that may be ordered by a judge to be served simultaneously rather than consecutively.

Concurring opinion. An **opinion** in a case written by an appellate judge expressing agreement with the result reached in the majority opinion but stating different reasons for that result.

Consecutive sentences. Sentences for two or more crimes that are served one after another instead of simultaneously.

Conservator. Temporary court-appointed **guardian** or custodian of property.

Constitutional law. The area of law that deals with the interpretation of the Constitution. The Constitution describes (1) the fundamental principles that determine the relations of the government and the people and (2) the general plan and method according to which the affairs of the state are to be administered. A constitutional law or action is one that agrees with the plan or fundamental principles laid out in the Constitution.

Continuance. The adjournment or postponement, to a specified subsequent date, of an **action** pending in a court.

Controversy. A dispute. In order to make a case or controversy sufficient to permit an **adjudication** by the court, a controversy must be real, not one inquiring what the law would be in a hypothetical situation.

Conviction. The result of a legal **proceeding** in which the guilt of a **party** is ascertained and upon which **sentence** or **judgment** is founded.

Correctional facility. Any facility under the supervision of the department of corrections in which persons are or may be lawfully held in custody as a result of **conviction** of a crime.

Counsel. 1) Attorney or legal adviser; 2) the advice or aid given with respect to a legal matter; 3) in criminal law, the term may refer to the advising or encouraging of another to commit a crime.

Counterclaim. Following the claim by the plaintiff, a claim made by a **defendant** against a **plaintiff** in a civil lawsuit; it is not a mere **answer** or denial of the plaintiff's allegation, but asserts an independent **cause of action** in favor of the defendant.

Court. A place where justice is administered and where judges are formally engaged in administering justice.

Court of record. A court that is required by law to keep a record of its proceedings, including the orders and judgments it enters, and that has the authority to imprison and to levy fines.

Courts of record include the Supreme Court, Court of Appeals, the district and county courts, the juvenile court in the City and County of Denver, the probate court in the City and County of Denver, and any court established by law and expressly denominated a court of record. (Section 13-1-111, Colorado Revised Statutes.)

Court reporter. A person who makes a **record** of what is said by the judge, the lawyers, and the witnesses during the trial.

Courtroom. A room where a court of law is held.

Court rules of procedure. Written rules governing the methods of practice in the courts.

Crime. A wrong that the government has determined is injurious to the public and that may therefore be prosecuted in a criminal proceeding. Crimes include **felonies** and **misdemeanors**.

Criminal. 1) Done with malicious intent, with a disposition to injure persons or property; 2) one who has been convicted of a violation of the criminal laws.

Criminal case. A lawsuit involving a public wrong, a crime for which the defendant, if found guilty, could receive a fine or be ordered to jail or prison.

Criminal matters. Matters or cases concerned with acts considered harmful to the general public that are forbidden by law and are punishable by fine, imprisonment, or death.

Cross appeal. Where both parties to a case appeal from the judgment rendered by the trial court.

Cross-claim. A claim **litigated** by **codefendants** or **coplaintiffs** against each other, and not against the party on the opposite side of the litigation.

Cross-examination. Questions asked of a witness by the opposing party concerning the witness's testimony on direct examination.

C.R.S. Colorado Revised Statutes. The compilation of Colorado laws.

Custody. 1) As applied to property, the condition of holding a thing within one's personal care and control; 2) as applied to persons, such control over a person as

will insure his or her presence at a hearing, or the actual imprisonment of a person resulting from a criminal conviction; 3) custody of children in legal guardianship.

Decree. The judicial decision in a litigated cause rendered by a court of **equity**.

Default judgement. 1) A judgment against a defendant who has failed to respond to a plaintiff's action or to appear at the trial or hearing; 2) judgment given without the defendant's being heard in his or her own defense.

Defendant. A party against whom a lawsuit is filed and who, therefore, is required to defend the action; a person sued (**civil**) or accused (**criminal**).

Defense. A denial, answer, or plea disputing the validity of the plaintiff's case, or making some further contention that renders the defendant not liable upon the facts alleged by the plaintiff.

Deliberation. The jury's discussion of the evidence in order to reach a fair and impartial verdict.

Delinquent act. An act which would be a crime if committed by an adult but which is committed by a child under the age of eighteen years.

Denial. A contradiction; in practice, a refutation of affirmative **allegations** contained in the pleading of an adversary. A defendant in his or her **answer** must admit, deny, or state he or she has insufficient information upon which to admit or deny the allegations.

Deposition. A method of pre-trial **discovery**, outside of the courtroom, that consists of a stenographically transcribed statement of a witness under oath, in response to an attorney's questions, with opportunity for the opposing party or his or her attorney to be present and to cross-examine. Depositions may be taken upon oral examination or written questions.

Direct examination. The initial questioning of a witness by the party calling the witness.

Discovery. Pre-trial procedure by which one **party** obtains information held by the opposite party concerning the case; the disclosure by the opposite party of facts, deeds, and documents that are exclusively within its possession or knowledge and that are necessary to support the other party's position. Common kinds of discovery are **depositions**, **interrogatories**, production of documents, and requests for admissions.

Discretion. The freedom of a public officer to make choices, within the limits of his or her authority, among possible courses of action.

Disposition. A final settlement or result of a case.

Dissenting opinion. An **opinion** in a case written by an appellate judge who disagrees with the result reached by the majority of judges on the **appellate court**.

District attorney. The prosecuting officer of a given judicial district. Colorado has 22 judicial districts; each judicial district elects a District Attorney every four years.

Docket. 1) A list of cases on a court's calendar; 2) in procedure, a formal record of the proceedings in the court whose decision is being appealed.

Double jeopardy. Prosecution or punishment twice for the same offense, which is prohibited by the United States Constitution and by the Colorado Constitution.

Element. An ingredient or factor, e.g., an element of an offense.

En banc. Refers to a session where the entire membership of the court will participate in the decision rather than the regular quorum.

Equity. The term "equity" denotes the spirit and habit of fairness, justice, and right dealing.

Evidence. Matters presented during judicial **proceedings**, such as a statement of a witness, an object, etc., that suggest the occurrence of some prior conduct or event, or establish the existence of some object at a prior time.

Excuse. A reason alleged for doing or not doing something. A matter alleged as a reason for relief or exemption from some duty or obligation.

Exhibit. An item of physical **evidence** presented by a party during trial.

Expert witness. A witness having special knowledge of the subject about which he or she is to testify because of special education, training, skill, or experience. Such knowledge is generally that not normally possessed by the average person.

Ex post facto **(Latin-after the fact)**. Refers especially to a law that makes punishable as a crime an act done before the passing of the law. An ex post facto law is also one that makes a crime more serious than when it was committed, inflicts a greater punishment, or alters legal rules of evidence to require less or different evidence to convict than the law required when the crime was committed. Such laws violate provisions of the United States and Colorado Constitutions, which provide that no ex post facto laws shall be passed.

Eyewitness. A person who testifies about what he or she saw.

Fact. A thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence; an actual happening in time, space or an event mental or physical; that which has taken place. "Fact" is very frequently used in opposition or contrast to "law." Questions of fact are for the jury; questions of law are

for the court (judge). During a trial, facts are established by **evidence**, such as testimony or exhibits.

Felony. A serious criminal offense, punishable by incarceration in prison.

Felony complaint. A written statement of the essential facts constituting the **offense** charged and made under **oath** or **affirmation** before any person authorized to administer oaths within the state of Colorado.

Finding. The decision of a court on issues of **fact**. Findings of fact are made by a jury in an action at law, or, if there is no jury, they are made by the judge.

Foreman. A member of the jury who acts as chairperson and spokesperson.

Gag order. A court-imposed order to restrict information or comment about a case. The apparent purpose of such an order is to protect the interests of all parties and preserve the right to a fair trial by cutting down on publicity likely to prejudice a jury.

Grand Jury. A jury that determines whether the facts and accusations presented by the **prosecutor** warrant an **indictment** and eventual trial of the accused; called "grand" because of the relatively large number of jurors impaneled (traditionally consisting of 23 persons) as compared with a petit jury (usually consisting of 6 or 12 persons).

Guardian. One who legally has care and management of the person or estate, or both, of a mentally incapacitated person; an officer or agent of the court who is appointed to protect the interests of minors or other persons and to provide for their welfare, education, and support.

Guardian ad litem. A court-appointed representative charged with defending or protecting the interests of a person under legal disability, such as a child or person involved in litigation.

Guilty. The condition of having been found by a **jury** to have committed the crime charged or some lesser-included offense.

Habeas corpus (Latin-you have the body). The requirement that a person in custody be brought before a judge "without delay," be informed of the charges against him or her and be freed on bail whenever the circumstances justify. A person in custody may demand to be brought before a judge by filing with the court a document titled a "writ of habeas corpus."

The writ is used in the civil context to challenge the validity of child custody and deportations.

Hung jury. A divided jury that cannot agree on a verdict.

Impaneled. Juries are impaneled by 1) selection and swearing in of jurors; 2) listing of those selected for a particular jury.

Impeach. To question the truthfulness of the **testimony** of the **witness** by means of **evidence** that contradicts the witness's testimony.

Incapacity. Lack of legal, physical, or intellectual power.

Incompetency. Inability, disqualification, incapacity. 1) lack of legal qualifications or fitness to discharge a required duty; 2) lack of physical, intellectual or moral fitness.

Indictment. A formal written accusation, written and submitted under **oath** to a **grand jury** by the public prosecuting attorney (District Attorney), charging more or one persons with a crime. The grand jury must determine whether the accusation, if proved, would be sufficient for conviction of the accused, in which case the indictment is endorsed by the foreman as a true bill. Indictments also serve to inform an accused of the offense with which he or she is charged and must be clear enough to enable him or, her to prepare an adequate defense.

Indigent. 1) Generally, a person who is poor, financially destitute; 2) in a legal context, a person found by a court to be unable to hire a lawyer or otherwise meet the expense of defending a criminal matter, at which point defense counsel is appointed by the court.

Information. A written accusation of crime signed by the prosecutor, charging a person with the commission of a crime; an alternative to indictment as a means of starting a criminal prosecution. The purpose of an information is to inform the defendant of the charges against him or her and to inform the court of the factual basis of the charge.

Injunction. An order of the court, at the request of a complaining party, which prohibits another party from doing some act he or she is threatening to do, is attempting to do or has already done. An injunction may also require a party to perform some act.

Insanity. Mental illness. The term is used to signify a lack of criminal responsibility.

Instruction. The judge's directions to the jury before their deliberation, informing them of the law applicable to the case, to guide them in reaching a verdict according to law and the evidence. An instruction to the jury is a charge to the jury, more a command than a request.

Intensive supervision probation (ISP). A probation program that protects the community in a cost effective manner by providing supervision, surveillance, and appropriate services to offenders who without intensive supervision probation (ISP) would have been incarcerated in the Colorado Department of Corrections.

Interlocutory. Provisional; temporary. An order that does not determine the issues but directs further proceedings preliminary to a final judgment.

Interrogatories. In civil **actions**, a pre-trial discovery tool in which one party's written questions are served on the opponent, who must serve written replies under oath. Interrogatories can be served only on parties to the action. They are not as flexible as depositions, which include the opportunity of cross-examination, but they are regarded as a good and inexpensive means of establishing important facts known to the opposing side.

Judge. A public official who is responsible for conducting the trial in a fair, orderly, and efficient manner; the person who decides what is right or fair in a court of law.

Judge-made law. Law made in the common law tradition; law arrived at by judicial precedent rather than by statute.

Judgment. The official decision of a court that determines the outcome of a lawsuit.

Judiciary. The branch of government invested with the power to interpret and apply the law in the context of cases and controversies; the court system; the body of judges.

Jurisdiction. The power or authority of a court to hear and try a case; also a definition of the types of cases a particular court is authorized to decide.

Jurisprudence. 1) The science of law, the study of the structure of legal systems and of the principles underlying those systems; 2) a collective term denoting the course of judicial decision, e.g., case law, as opposed to legislation; 3) sometimes a synonym for law.

Juror. 1) Person sworn or affirmed as a member of a jury. 2) person selected for jury service but not yet chosen for any particular case.

Jury. A certain number of persons selected according to law and sworn or affirmed to inquire of certain matters of fact, and declare the truth upon evidence to be laid before them.

Jury instructions. A direction given by the judge to the jury concerning the law governing the case; a statement made by the judge to the members of the jury informing them of the law applicable to the case in general or some aspect of it.

Juvenile. A child, as defined in section 19-1-103 of the Colorado Revised Statutes (Colorado Children's Code). "**Child**" means a person under 18 years of age.

Juvenile courts. Tribunals designed to treat children and their problems separately from adults. In Colorado, juvenile justice matters are handled by district court judges for all areas except Denver. The Denver Juvenile Court handles all of the cases for the City and County of Denver.

Juvenile delinquent. A juvenile who has been found guilty of a delinquent act. (See **delinquent act**.)

Law. 1) Rules which guide one's actions in society; 2) the totality of those rules of conduct put in force by legislative authority or court decisions, or established by local custom.

Lawsuit. A common term for a suit, action, or cause instituted or pending between two private persons in the courts of law. A suit at law or in equity; an action or proceeding in a civil court.

Lawyer. A person learned in the law; as an attorney or counsel; a person licensed to practice law. Any person who prosecutes or defends causes in courts of record or other judicial tribunals of the United States, or of any of the other states, or whose business it is to give legal advice or assistance in relation to any cause or matter whatever.

Liable. Responsible for; obligated in law.

Limited jurisdiction. Refers to courts that are only authorized to hear and decide certain types of cases.

Litigants. The parties actively involved in a lawsuit; plaintiffs or defendants involved in litigation.

Litigation. Judicial proceedings begun to determine and enforce legal rights.

Magna Carta (Latin-Magna Charta). The "great charter" to which King John gave his assent in 1215; it is considered the fundamental guarantee of rights and privileges under English law.

Majority opinion. A written opinion by an appellate judge that is approved by, and joined in by, a majority of judges on a multi judge court.

Mediate. To interpose between parties in order to reconcile them; to reconcile differences.

Mediation. A method of settling disputes outside of a court setting; the imposition of a neutral third party to act as a link between the parties.

Misdemeanor. A criminal offense less serious than a felony punishable by incarceration in jail.

Mistrial. An erroneous or invalid trial declared by a judge because of an incurable error or omission of some fundamental aspect of due process or where a jury cannot unanimously agree on the verdict. A mistrial is followed by a completely new trial.

Mitigating circumstance. A circumstance which does not constitute a justification or excuse for an offense, but which may be considered as reducing the degree of moral culpability.

Motion. A party's request directed to a judge or a panel of judges for a ruling or order in favor of the applicant. Motions may be made orally or in writing.

Motion to dismiss. A motion requesting the judge or judges to end the case. During a trial, the defendant often files a motion to dismiss after the plaintiff's case has been presented.

No bill. Phrase, endorsed by a grand jury on the indictment, that is the same as "not found," "no indictment," or "not a true bill." It means that, in the opinion of the jury, there was not enough evidence to warrant the return of a formal indictment. (See indictment)

Nolo contendere (Latin-I will not contest it). A plea in a criminal case which has the same legal effect as a guilty plea. A nolo contendere plea neither admits nor denies the charge; however, the defendant is subject to penalties identical to those following a guilty plea.

Not guilty. 1) A plea by the accused in a criminal action that denies every essential element of the offense charged. A plea of not guilty on an arraignment obliges the state to prove the defendant's guilt beyond a reasonable doubt and preserves the right of the accused to defend against the charge. 2) the form of the verdict in criminal cases, where the jury acquits the defendant; i.e., finds him or her not guilty.

Oath. An affirmation of the truth of a statement.

Objection. A request made by a party or the party's attorney to a judge for an immediate ruling that some question, proposed question, testimony, or other piece of evidence is improper and, therefore, should be prohibited from consideration in the case.

Offender. A person who violates the law.

Offense. Synonymous with crime; a violation of, or conduct defined by, any state statute for which a fine or imprisonment may be imposed.

Opening statement. A statement made during a trial by a party or the party's attorney to the jury or, if there is no jury, to the judge before any evidence has been

presented by the party. An opening statement outlines the evidence the party intends to present and describes the party's theory of the case.

Opinion. A written document stating the decision of a court in a lawsuit and explaining the reasons for the decision.

Oral arguments. After each side has submitted its brief on an appeal to the Court of Appeals or the Supreme Court, the attorneys are given the opportunity to argue directly to the judges or justices. The judges or justices in turn will ask questions of the attorneys to clarify any vagueness or omission in the briefs. The lawyer's objective in the presentation of an oral argument and the preparation of a written brief is to persuade the court that his or her position is, or should be, the correct one.

Order. A decree, disposition, or command issued by a judge. An application for an order is a motion.

Original jurisdiction. Authority to consider and decide cases in the first instance, as distinguished from appellate jurisdiction, which is the authority to review a decision or judgment of a lower court.

Overrule. A court's denial of a motion or objection raised to the court.

Overturn. To reject. One option of the Colorado and United States Supreme Court in deciding a case on appeal is to overturn or decide a case in the opposite manner from the lower court.

Pardon. An exercise of the sovereign prerogative to relieve a person from further punishment and from legal disabilities resulting from a crime of which he or she has been convicted. Its effect is that of relaxing the punishment and blotting out the guilt, so that in the eyes of the law the offender is as innocent as if he or she had never committed the offense.

Parole. In criminal law, a conditional release from imprisonment that entitles a prisoner to serve the remainder of the term of the sentence outside prison if he or she complies with all of the conditions connected with the release. In Colorado, parole is granted at the discretion of the Colorado Parole Board, a function of the executive branch of government.

Party. A person or entity whose legal interests will be determined by the result in a civil or criminal case; a plaintiff or defendant.

Peace officer. Any officer having powers of arrest.

Peremptory challenge. A right given to attorneys at trial to dismiss a prospective juror for no particular reason; the number of times an attorney can invoke this right is usually limited. If a specific reason exists why a particular juror may not fairly decide a matter, the juror may be challenged for cause.

Petitioner. A person who presents a petition to a court or other body either to institute an equity proceeding or to take an appeal from a judgment. The adverse party is called the respondent.

Plaintiff. The party who files a complaint in a civil action.

Plea. Statement made by the defendant concerning guilt or innocence to the charge made against him or her.

Plea bargaining. The process whereby the defendant and the prosecutor negotiate a mutually satisfactory disposition of the case. The defendant may plead guilty to a lesser offense or to only one or some of the counts in a multicount indictment. In return, the defendant seeks concessions on the type and length of his or her sentence or a reduction of the counts against him or her. He or she may also, for some offenses, choose to avoid serving jail time by pleading guilty and serving a probationary sentence. By doing so, he or she waives his or her right to a jury trial for the offense committed, and waives most of his or her constitutional rights during the probation period, when he or she is under supervision of a probation officer.

Pleadings. Formal written allegations by the parties of their respective claims and defense for the judgment of the court.

Precedent. Judicial decisions in earlier cases involving the same or similar rules of law. A rule of law announced in a case in a particular jurisdiction must be applied in all later cases involving substantially similar facts arising in that jurisdiction; the earlier case thus becomes "controlling" precedent and remains so unless modified or overruled.

Preliminary hearing. A hearing to determine if there is probable cause to believe that an offense has been committed and that the person charged with the crime committed it.

Preponderance of the evidence. The degree of proof required to prevail in most civil actions. It is evidence which is of greater weight or more convincing than the evidence that is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Presentment. A written accusation of crime by the grand jury upon its own initiative, without consent or participation of a prosecutor, in the exercise of the jury's lawful inquisitorial powers.

Presumption of innocence. The basic concept of the American judicial system in which a defendant is presumed innocent until proven guilty beyond a reasonable doubt.

Pre-trial conference. Procedural device used before trial to narrow issues to be tried, to secure stipulations as to matters and the evidence to be heard, and to take all other steps necessary to aid in the disposition of the case.

Probation. A sentence releasing the defendant into the community under the supervision of a probation officer. The status of a convicted person who is allowed freedom after conviction subject to the condition that, for a stipulated period, conduct shall be in a manner approved by a special officer to whom periodic reports must be made.

Probation officer. One who supervises a person placed on probation by a court in a criminal or juvenile delinquency proceeding. He or she is required to report to the court the progress of the probationer and to surrender the probationer if violations of the terms and conditions of probation have occurred.

Proceeding. 1) The succession of events in the process of judicial action; 2) the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them; the mode of deciding them, of opposing and of executing judgments.

Pro se (Latin-for himself or herself; in one's own behalf). Refers to a person who represents himself or herself in court without the aid of a lawyer.

Prosecution. 1) The act of pursuing a lawsuit or criminal trial; 2) the party initiating a criminal suit, e.g, the state.

Prosecuting attorney. A lawyer who represents the government (state) and presents the evidence against the defendant in court.

Public defender. An attorney appointed by a court or employed by a government agency whose work consists primarily of defending indigent defendants in criminal cases.

Question of law. Disputed legal contentions that are left for the judge to decide. The occurrence or nonoccurrence of an event is a question of fact; its legal significance is a question of law.

Rebuttal. The introduction of refuting evidence; the attempt to show that statements of witnesses as to what occurred are not true.

Recess. Temporary adjournment of a trial or hearing after the beginning of the trial or hearing. The recess may be short, for lunch, overnight, or for a few days. If it amounts to a substantial delay in the proceedings, then it is called a continuance.

Record. 1. To preserve in a written, printed, filmed, or taped form; 2. A precise history of a suit from beginning to end.

Record on appeal. A record that consists of those items introduced in evidence in the lower court, as well as a compilation of pleadings, motions, briefs and other papers filed in the proceedings of the lower court.

Redirect examination. Follows cross-examination and is exercised by the party who first examined the witness.

Referee. A judicial officer appointed by a court for a specific purpose to whom the court refers power and duty to take testimony, determine issues of fact, and report findings for the court to use as a basis for judgment.

Remand. To send back, as for further deliberation; to send back to the court of origin for further proceedings. When a judgment is reversed the appellate courts (Court of Appeals or Supreme Court) usually remand the matter for a new trial to be carried out consistent with the principles announced by the appellate court in its opinion ordering the remand.

Remedy. The means by which a right is enforced or the violation of a right is prevented, redressed, or compensated.

Render judgment. To pronounce, state, declare, or announce the judgment of the court in a given case or on a given state of facts. Judgment is "rendered" when the decision is officially announced, either orally in open court or filed with the clerk.

Render verdict. To agree on and to report the verdict in due form; to return the written verdict into court and hand it to the judge who announces it in open court.

Reply. Pleading by the plaintiff in response to the defendant's written answer.

Reprieve. Temporary relief from or postponement of execution of criminal punishment or sentence; it stays the execution of a sentence for a time. It differs from a commutation which is a reduction of a sentence and from a pardon which is a permanent cancellation of a sentence. Reprieves, commutations, and pardons are responsibilities of the executive branch of government.

Respondent. In equity, the party who answers a pleading.

Restitution. Act of making good or of giving the equivalent for loss, damage, or injury. In criminal law, restitution is ordered as a condition of a probationary sentence.

Restraining order. An order granted without notice of hearing, demanding the preservation of the status quo until a hearing to determine the propriety of injunctive relief, temporary or permanent. A restraining order is always temporary, since it is granted pending a hearing; thus, it is often called a T.R.O. (temporary restraining order).

Reversal. An appellate court's decision which is contrary to the result reached by the lower court.

Reverse. A term describing one of the possible actions by the Colorado Supreme Court or Court of Appeals; e.g., declaring an opposite opinion from a lower court in an appealed case.

Rules of law. Standards regulating conduct developed by the appellate courts when interpreting law.

Search warrant. A written order issued by a judge or magistrate of a court giving certain law enforcement officers the authorization to conduct a search of specific premises for specific things or persons. In those cases where warrants are required, a judge can issue a search warrant only upon a showing of probable cause that the described item is located in the designated place and that it was involved in the planning or commission of the crime.

Sentence. The punishment ordered by the judge to the defendant who has been found guilty of a crime.

Sequester. To separate from; to hold aside.

Sovereign. A person, body or state in which independent and supreme authority is vested; a chief ruler with supreme power; a king or other ruler with limited power.

Statutes. Laws enacted by legislatures under constitutional authority.

Stay. A halt in a judicial proceeding where, by its order, the court will not take further action until the occurrence of some event.

Stipulation. An agreement or concession made by parties in a judicial proceeding or by their attorneys, relating to a matter before the court.

Subpoena (Latin-under penalty). A writ issued under authority of a court to compel the appearance of a witness at a judicial proceeding; disobedience may be punishable as contempt of court, resulting in a jail sentence and/or fine.

Substantive law. That part of the law that creates, defines, and regulates the rights and duties of the parties, e.g., contract law, property law, tort law, law of wills, etc.

Suit. A lawsuit or civil action in court.

Summon. To serve a summons; to cite a defendant to appear in court to answer a suit which has been begun against him or her; to notify the defendant that an action has been instituted against him or her, and that he or she is required to answer it at a time and place named.

Summons. A written order or notice directing that a person appear before a designated court at a stated time and place and answer to a charge against him or her.

Summons and complaint. A document combining the functions of both a summons and a complaint.

Supreme Court. The highest court which hears appeals from lower courts; gives advisory opinions, as requested, to the other two branches of government; and supervises the judicial branch of government.

Sustain. To support; to approve; to adequately maintain.

Testify. To bear witness; to give evidence as a witness; to make a solemn declaration, under oath or affirmation, in a judicial inquiry, for the purpose of establishing or proving some fact.

Testimony. A statement made by a witness under oath; evidence given by a competent witness under oath or affirmation, as distinguished from evidence derived from writing and other sources.

Tort. An injury or wrong committed, either with or without force, to the person or property of another.

Transitory. Passing from place to place; that which may pass or be changed from one place to another.

Trial. A judicial proceeding to determine the facts involved in disputes between or among parties in a civil or criminal case, to examine which rules of law are relevant to the disputes, and to resolve the disputes by applying the appropriate rules of law to the facts.

Trial de novo. A new trial or retrial in which the whole case is retried as if no trial had ever taken place.

Trial to court. A trial before a judge alone, in contrast to a trial before a judge and jury.

True bill. The endorsement made by a grand jury upon a bill of indictment, when the jury finds it supported by the evidence, and is satisfied of the truth of the accusation; the endorsement made by a grand jury when it finds sufficient evidence to warrant a criminal charge; an indictment.

Venire (Latin-to come). The name of the writ for summoning a jury; the list of jurors summoned to serve as jurors for a particular term.

Verdict. The opinion rendered by a jury, or a judge where there is no jury, on a question of fact.

Voir dire (Latin-to speak the truth). The phrase denotes the preliminary examination at trial by the judge and lawyers questioning prospective jurors.

Waiver of immunity. A means authorized by statutes by which a witness, in advance of giving testimony or producing evidence, may renounce the fundamental right guaranteed to him or her by constitutions that no person shall be compelled in any criminal case to be a witness against himself or herself.

Waiver of rights. A formal declaration made by an accused person in which that person gives up his or her constitutional rights.

Ward. A person whom the law regards as incapable of managing his or her own affairs and over whom or over whose property a guardian is appointed.

Warrant. A written order issued by a judge of a court of record directed to any peace officer commanding the arrest of the person named or described in the order.

Witness. One who personally sees or perceives an event or thing; one who testifies as to what he or she has seen, heard, or otherwise knows.

Writ. An order issued from a court requiring the performance of a specified act or giving authority to have it done.

Writ of certiorari. An order by the appellate court which is used when the court has discretion whether to hear an appeal. If the writ is denied, the court refuses to hear the appeal and, in effect, the judgment below stands unchanged. If the writ is granted, then the appeal will be heard.

Questions and Answers

Does the Judicial Branch Work with the Other Branches of Government?

Yes. Although it is a constitutionally separate branch of government, the judicial branch works with both the executive and legislative branches of government.

How Do the Three Branches of Government, Working Separately, Contribute to the Way Our Government Works? In What Ways Do the Three Branches Work Together?

The legislative branch makes the laws and is responsible to its constituency; the executive branch administers that law; and the judiciary interprets and applies those laws to resolve disputes.

To operate effectively, each branch requires the cooperation of the others. The legislature can pass a law, but it must be implemented by the executive branch, which must get help from the legislature. The judicial branch depends on the legislative branch to adequately fund its operations, and the legislature depends upon the executive branch to implement laws, which depends on the judiciary to interpret the laws.

There is a healthy interdependence, but each branch also has a sense of independence from the others. Effective government is a cooperative effort.

What Is the Purpose of the Checks and Balances System?

First, the separation of powers was created; this allocated constitutional authority to each of the three branches of government. In order to reduce the danger of different officials with different powers pooling their authority and acting together, the checks and balances system was created in which each branch of government is given some role in the actions of others and is politically independent of the others. It serves to protect the people and government from having one branch take the power away from the others. It protects the people against governmental abuse.

What Is the Concept of Judicial Review?

Every person has the right to challenge governmental actions which affect him or her adversely. When those governmental acts are challenged, it is the responsibility of the judicial branch to interpret the United States Constitution and to determine the legality of the governmental actions. There are some limitations on the judiciary such as: (1) the judiciary cannot decide any issues which are not brought before it through the legal process; (2) the law presumes that a statute (law) is constitutional, and the

burden of showing otherwise is on the person who is challenging it; and (3) relief must be in the form of a legal remedy such as monetary relief, a declaration of unconstitutionality, or an injunction against certain parties.

What Is the Role of the Colorado Supreme Court in Interpreting Both the Colorado and United States Constitutions?

The United States Constitution is the supreme law of the land. It is the basis for the rights of the people in relation to the federal and state governments. It is what you could call the "common denominator." The Colorado Supreme Court is bound by its provisions in determining federal rights; the people can have more rights under the Colorado Constitution, but the Court can never abridge federal rights.

What Rights Do States Have?

The United States Constitution preserves states' rights in the Tenth Amendment, which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

Does the Colorado Judiciary Issue a Report to the Public?

Yes. Every fiscal year (July 1 through June 30) the Colorado Judicial Department publishes an annual report which reflects the accomplishments of the system over the past year. Free copies of the annual report can be obtained from the Executive Division, State Court Administrator's Office, Colorado Judicial Department, 1301 Pennsylvania Street, #300, Denver, CO 80203.

Are Court Sessions Open to the Public?

Yes. All sessions of court are public, except when it appears to the court that the action will be of such character as to injure public morals or when orderly procedure requires it. Colorado Rules of Civil Procedure, Rule 42(c).

Can States Establish a Death Penalty as Punishment for Certain Crimes?

The United States Constitution permits a state to establish a death penalty as punishment for certain crimes.

Does Colorado Have a Death Penalty?

Yes. Any person convicted of a class 1 felony is punished by life imprisonment unless the proceeding results in a verdict that requires the imposition of the death penalty. The way that the death penalty is inflicted in Colorado is by lethal injection.

Upon conviction of guilt of a defendant of a class 1 felony, a panel of three judges, as soon as practicable, conducts a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment, unless the defendant was under age 18 at the time the offense was committed or the defendant has been determined to be mentally retarded according to the law. In either case, the defendant will be sentenced to life imprisonment.

The panel of judges that conducts the sentencing hearing consists of the judge who presided at the trial or before whom the guilty plea was entered and two additional district court judges designated by the chief justice of the Colorado Supreme Court. (Section 16-11-103, C.R.S.)

Can a Juvenile Be Sentenced to the Death Penalty?

No. If the defendant is under the age of 18 at the time the crime was committed, then the defendant is sentenced to life imprisonment.

What Is the Difference Between a "Juvenile" and a "Juvenile Delinquent"?

According to the Colorado Children's Code, a "juvenile" is a "child" as defined in Section 19-1-103 (18), C.R.S., which states that a "child" is a person under 18 years of age. A "juvenile delinquent," as defined in Section 19-1-103 (71), C.R.S., is a juvenile who has been found guilty of a delinquent act. Section 19-1-103 (36), C.R.S., defines a "delinquent act" as the violation of any statute, ordinance, or order by any juvenile ten years of age or older who has violated (1) any federal or state law, except nonfelony state traffic, game and fish, parks and recreation laws or regulations, and offenses involving alcohol and tobacco; (2) any county or municipal ordinance except traffic ordinances; or (3) any lawful order of the court made under this title.

Can a Colorado Supreme Court Decision Be Overruled?

Yes. A decision involving the United States Constitution or federal laws can be overruled by the United States Supreme Court if the decision involves the interpretation of a federal statute or the United States Constitution.

Can Any Important Court Case Be Appealed from the State Courts to the United States Supreme Court?

No. Only cases related to the United States Constitution or federal laws can be appealed to the United States Supreme Court.

Do Trial Courts Rule on Federal Constitutional Questions?

Yes. It is their duty to do so by virtue of paragraph 2 of Article VI, U.S. Constitution, which provides that the Constitution of the United States and all laws made are the supreme law of the land; the judges of every state are bound to this. Section 8 of Article XII of the Colorado Constitution requires officers to take an oath to support the United States and Colorado Constitutions.

Who Requests a Trial by Jury?

A jury trial will be granted upon demand by either party. The demand must be made on or before the appearance date. The demand can be made orally at the time of the appearance or the demand may be endorsed on the face of the complaint or answer.

What Is the Average Length of a Jury Trial?

The average length of a criminal jury trial is three days; the average length of a civil jury trial is one day.

What is Evidence?

Generally speaking, these things are evidence:

1. Answers to questions asked by the lawyers or judge.

2. Exhibits admitted by the judge (documents, contracts, court records and material objects such as a gun).

3. Stipulations. These are agreements between both sides as to certain facts in the case such as a time or date.

Who Orders a Grand Jury?

Rule 6 (a) of the Grand Jury Rules in the Colorado Rules of Criminal Procedure provides that the Chief Judge of the district court in each county or a judge designated

by the Chief Judge may order a grand jury summoned where authorized by law or required by the public interest.

Does a Grand Jury Differ from a Jury (Petit) Trial?

Yes. The grand jury's proceedings occur before a trial begins. The grand jury ordinarily hears evidence only in support of a charge made by the prosecutor. This procedure is called a "grand jury investigation." The investigation results in either a "true bill" (an issuance of an indictment based on probable cause) or a "no bill" (a refusal to indict). Although exceptional cases may justify a departure from this rule, there is no right for a potential defendant to be present when the grand jury is considering returning an indictment. Grand jurors work very closely with the prosecuting attorney in assessing the evidence.

On the other hand, a jury (petit) trial is generally composed of three to twelve jurors plus alternates. It consists of a group of impartial jurors who listen to evidence presented by both the prosecution and the defense. A trial jury concerns itself only with the issues at hand for one particular trial. The issues may involve civil or criminal matters.

During their deliberation, the jurors discuss the evidence and apply the law as presented by the court. The result of a trial jury's deliberations is called a "verdict." The verdict is the determination of the innocence or guilt of the defendant in a criminal case or a finding for the plaintiff or defendant in a civil case. Although the trial jury's deliberations are conducted in secret, all evidence presented to the jury is public information. With the exception of sentencing and possible appeals, the trial jury's verdict ends the judicial process for that case.

Is a Grand Jury Secret?

Yes. Rule 6.2 (a) of the Colorado Rules of Criminal Procedure provides for all proceedings of the grand jury to be secret. Witnesses or persons under investigation are to be dealt with privately to insure fairness. The oath of secrecy continues until the indictment is made public, if an indictment is returned, or until a grand jury report is issued dealing with the investigation. The exposure of the general purpose of the grand jury's investigation by the prosecutor is allowed.

Any procedure whereby the grand jury examines witnesses in the presence of other witnesses, bystanders, or judges destroys the principal oath of secrecy that all grand juries are required to take.

Why Are Grand Juries Secret?

Grand juries are secret for several reasons:

- To prevent the escape of those whose indictment may be contemplated;
- To prevent exposure of derogatory information presented to the grand jury against someone who has not been indicted;
- To encourage witnesses to come before the grand jury and speak freely with respect to a commission of crimes; and
- To encourage grand jurors in an uninhibited investigation of and deliberation on suspected criminal activity.

Are There Times When Grand Jury Proceedings Are Not Secret?

Yes. Exceptions to this rule are made; for example, if a witness does not speak English and requires an interpreter to be present, or a witness requires a police guard, or additional members of the prosecuting staff are present for various reasons. Rule 6.2(b) of the Colorado Rules of Criminal Procedure states that a witness is entitled to have legal counsel (attorney) present when the grand jury questions him or her. The legal counsel (attorney) is permitted only to counsel with the witness and cannot make any objections, arguments, or address the grand jury.

If You Have Been Accused of a Crime, Are You Automatically Guilty?

No. A person charged with a crime is innocent until proven guilty and shall not be convicted of any crime unless his or her guilt is proved beyond a reasonable doubt.

Can Judges Be Disqualified from Hearing a Case?

Yes. A judge should disqualify himself or herself in a proceeding in which impartiality might reasonably be questioned, including but not limited to instances where:

- he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- he or she served as lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

- he or she knows that he or she, individually or as a fiduciary, or his or her spouse or minor child residing in the household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

- he or she or spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

  (I) is a party to the proceeding, or an officer, director, or trustee of a party;
  (II) is acting as a lawyer in the proceeding;
  (III) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
  (IV) is to the judge's knowledge likely to be a material witness in the proceeding.

Colorado Code of Judicial Conduct, Canon 3 (C) (1) (a) (b) (c) (d).

What Is the Difference Between a "Verdict" and a "Judgment"?

A "verdict" is the decision issued by a jury, or by a judge where there is no jury, on a question of fact. A "judgment" is the official decision of a court that determines the outcome of a lawsuit. A verdict differs from a judgment in that a verdict is not a judicial determination, but rather it is a finding of fact that the trial court may accept or reject and utilize in formulating its judgment.

How Many Nominating Commissions Exist in Colorado?

There are 23 nominating commissions — the Supreme Court Nominating Commission, which selects nominees for the Supreme Court and the Court of Appeals, and 22 judicial district nominating commissions, which select nominees for the district and county courts.

What Is the Composition of the Judicial Nominating Commissions?

The Colorado Constitution requires that the commissions consist of lawyers and nonlawyers. Lawyer members are appointed by majority action of the Governor, the Attorney General, and the Chief Justice of the Colorado Supreme Court. Nonlawyer members are appointed by the Governor. Article VI, Section 24(4), of the Colorado Constitution provides that nominating commission members cannot hold any "elective and salaried United States or state public office" or any "elected political party office."

What Criteria Are Used by a Nominating Commission in Evaluating Applicants for Judgeships?

By using concisely defined criteria for judicial selection, a nominating commission is equipped to effectively screen and evaluate candidates for judicial office. The qualities for all judges include suitable age, good health, impartiality, industry, integrity, professional skills, community contacts, and social awareness. Additional qualities for appellate judges include collegiality and writing ability. Additional qualities for trial judges include decisiveness, judicial temperament, and speaking ability. Additional skills for supervisory judges include administrative ability and interpersonal skills.

Do Judges Serve Terms of Office?

Yes. All judicial appointments are for a two-year provisional term. Colorado Constitution, Article VI, Section 20(l); Denver Charter, Section A13.8-4 (l).

After this term, the appointee will stand for election. When you vote at your precinct, you will be asked on the ballot whether the judge should be retained in office, a simple "YES" or "NO." If a judge is retained in office, then he or she serves the following terms:

Supreme Court	10 years
Court of Appeals	8 years
District Court	6 years
County Court	4 years
Denver Probate Court	6 years
Denver Juvenile Court	6 years

Denver County Court judges are elected to four-year terms following their two-year provisional term.

NOTE: (All of the above is set forth in the Colorado Constitution, Article VI; Colorado Revised Statutes, Section 13-4-104(l); Denver Charter, Section A13.8.)

Is There a Limit to the Number of Times a Judge Can Be Retained in Office?

No. There is no limit to the number of times a judge can be retained in office, but it is mandatory for a judge to retire at age 72. Colorado Constitution, Article VI, Section 23; Denver Charter, Section A13.8-7.

How Can I Find out the Background and Judicial History of a Judge/Justice Who is Seeking Retention?

Every election year, the State Commission on Judicial Performance prepares and publishes a voter's guide, which gives the voters information about the judges seeking retention. The information provides voters with fair, responsible, and constructive evaluations of trial court and appellate court judges and justices seeking retention in general elections.

Each evaluation includes a narrative profile with a recommendation stated as "retain," "do not retain," or "no opinion." If a judge receives a "no opinion," then a detailed explanation will be included. Two weeks before the elections, the evaluations are published in most local newspapers and are available at most local courthouses.

For a copy of the guide, call the State Commission on Judicial Performance (303)861-1111. You can also find the guide on the Colorado Home Page.

Can Justices and Judges be Removed if They are Unqualified?

Yes. The Colorado Constitution provides a procedure whereby justices or judges of any court of record may be removed for willful misconduct in office, for willful or persistent failure to perform their duties, or for intemperance. They may also be retired for physical or mental disabilities that interfere with the performance of their duties. This is the responsibility of the Commission on Judicial Discipline.

What Is the Origin of the Commission on Judicial Discipline?

Colorado's first disciplinary commission for judges was created in 1966 by constitutional amendment.

Under this amendment, the voters of Colorado replaced the political process of electing judges with a system based on merit selection, appointment, and retention. At the time it was created, only five other states had disciplinary commissions to supplement impeachment as the traditional method of removing judges. Now, all of the states and the District of Columbia have such commissions.

In 1982, the voters amended the Colorado Constitution and made substantial changes in the Commission's procedures and membership. The Commission now has ten members: two district court judges and two county court judges appointed by the Supreme Court; two lawyers, who have been licensed to practice law in Colorado for at least ten years, appointed by the Governor; and four citizens appointed by the Governor. All appointments made by the Governor must be approved by the Colorado Senate. Commission members are appointed to four-year terms.

Are Judicial Discipline Proceedings Confidential?

Yes. Colorado law provides that all papers and pleadings filed with and proceedings before the Judicial Discipline Commission are confidential. Colorado Constitution, Article VI, Section 23 (3) (g); Colorado Revised Statutes, Section 24-72-401 and 402; Rule 6 of the Colorado Rules of Judicial Discipline (C.R.J.D.).

This confidentiality provision in all disciplinary matters involving Colorado state judges remains in effect until the commission files a recommendation with the Colorado Supreme Court for the public removal, retirement, suspension, censure, reprimand, or other discipline of a judge. At the time the action takes place, the recommendation, together with the supporting record of the proceeding, is no longer confidential.

This means that the parties to all disciplinary proceedings before the Commission are not allowed to discuss the nature of the complaint nor the outcome of a hearing with people outside of the proceeding except their attorneys. This confidentiality rule applies to members of the Commission, Commission staff, complainant, judge, and any attorneys or witnesses involved in the proceedings.

Are There Any Exceptions to this Confidentiality?

Yes. Rule 6 of the Colorado Rules of Judicial Discipline (C.R.J.D.) provides some exceptions to this rule of confidentiality. For example, the Commission may release confidential information in a case involving widespread public concern if the judge signs a waiver for this purpose and it is deemed that the release of such information would benefit the judge and the public. Also, if a judge applies for another judicial position, the state nominating commissions or the Chief Justice may request a release of confidential information from the Commission.

Do All States Have Provisions Governing Confidentiality?

Yes. All 50 states and the District of Columbia have enacted provisions governing confidentiality. Thirty-nine commissions obtain authority to maintain confidentiality by state constitutional provision; the other 12 commissions maintain confidentiality by state statute or court rule.

When is the Colorado Supreme Court in Session?

The Colorado Supreme Court generally holds oral arguments four days during the third week of each month excluding August and September. The Court's sessions are conducted in the Supreme Court Courtroom, located on the fifth floor of the Colorado Judicial Building, Two East Fourteenth Avenue, Denver. The oral arguments are open to the public. For more information, call 861-1111, and ask for Mac Danford, clerk, Supreme Court.

When Is The Colorado Court of Appeals in Session?

The Colorado Court of Appeals holds oral arguments at 9:00 a.m. and 1:30 p.m. on every Monday and Tuesday. The oral arguments are usually conducted in the Court of Appeals Courtroom, located on the fifth floor of the Colorado Judicial Building, Two East Fourteenth Avenue, Denver. Oral arguments are open to the public. For more information, call 837-3785, and ask for Patrick Stanford, clerk, Court of Appeals.

What Are the Qualifications of a Supreme Court Justice?

The Colorado Constitution, Article VI, Sections 8 and 20, states that to be qualified for a position on the Colorado Supreme Court, a nominee must be:

- A qualified elector of the state of Colorado;
- Licensed to practice law in Colorado for at least five years; and
- Under the age of 72 at the time his or her name is submitted to the Governor.

What Are the Qualifications of a Court of Appeals Judge?

Section 13-4-103 (2), 6A C.R.S. (1987), states that the qualifications are the same as those for the Supreme Court.

What Are the Qualifications of a District Judge?

To be qualified for a judgeship on a district court, a nominee must be:

- A qualified elector of the judicial district at the time of election or selection;
- Licensed to practice law in Colorado for at least five years; and
- Under the age of 72 at the time his or her name is submitted to the Governor.

Colorado Constitution, Article VI, Sections 11 and 20.

How Are Judges' Salaries Set?

Judges' salaries, except for those of Denver County Court judges, are set by the Colorado Legislature. Colorado Constitution, Article V, Section 30. Denver County Court judges' salaries are established by a Denver City Council ordinance and are currently $58,551 per year.

What Are the Salaries of Judges?

JUDICIAL TERMS AND SALARIES

Court	Term	Salary*
Supreme Court Chief Justice Justice	10 Years	$93,500 $91,000
Court of Appeals Chief Judge Judge	8 Years	$89,000 $86,500
District Court Judge	6 Years	$82,000
Probate Court Judge (Denver only)	6 Years	$82,000
Juvenile Court Judge (Denver only)	6 Years	$82,000
County Court Judges **Class B** **Class C & D****	4 Years	$75,000

* After July 1, 1997, all salaries will increase by $3,000.

** Class C & D county court judge salaries are determined by caseload (20 percent to 90 percent of Class B salary).

What Is a Magistrate?

A magistrate is an attorney who conducts hearings with the prior consent of the parties, makes evidentiary rulings, findings of fact and conclusions of law which are transmitted to the assigning judge. He or she is appointed by and serves at the pleasure of the Chief Judge in the judicial district. Almost all magistrates in Colorado have been licensed practicing attorneys for five years or more.

Examples of work include: hearing ex parte and contested civil matters; making evidentiary rulings, findings of fact, conclusions of law and recommendations to the court in default judgments; writs of execution; foreclosure; temporary orders concerning the custody of minor children, child support, alimony, and other domestic relations matters; hearing all matters under the Colorado Children's Code except jury trials and transfers to the district court; conducting hearings in small claims courts; conducting settlement conferences; and hearing civil and criminal nonjury trials.

Must Denver Probate and Juvenile Court Judges Have the Same Qualifications as District Court Judges?

Yes. Colorado Constitution, Article VI, Sections 14 and 15.

What Are the Qualifications of a County Court Judge?

For a judgeship on a county court, a nominee must be:

- A qualified elector of the county at the time of his or her election or appointment and a resident of the county; and
- Licensed to practice law in Colorado - this is not a requirement in the less populous counties as designated by statute.

Colorado Constitution, Article VI, Section 16; Section 13-6-203, C.R.S., (1987 Repl. Vol).

What Are the Qualifications of a Denver County Court Judge?

For a judgeship on the Denver County Court, a nominee must be:

- A qualified elector of the City and County of Denver;
- Licensed as an attorney in Colorado; and
- A licensed practicing attorney for a minimum of five years.

The Charter states that nominations to the Denver County Court are to be based "solely upon merit, legal experience, ability and integrity." Denver Charter, Section A13.8 - 4(2).

The number, manner of selection, qualifications, term of office, tenure, and removal of judges are to be provided for in the charter and ordinances of the City and County of Denver. Colorado Constitution, Article VII, Section 26.

Do You Have to Be an Attorney to Be a Judge?

No. Section 13-6-203 (3), C.R.S. (1987 Repl. Vol.), provides that in certain Colorado counties no person shall be eligible for the appointment to the office of county judge unless he or she has graduated from high school or has attained the equivalent of a high school education as indicated by possessing a certificate of equivalency used by the Colorado Department of Education, based upon the record made on the general educational development test.

How Many Women Have Served on the Colorado Supreme Court?

Three. Justice Jean E. Dubofsky was the first woman appointed to the Colorado Supreme Court. She was appointed to the Court on June 16, 1979, by Governor Richard D. Lamm. She served on the state's highest court until June 9, 1987 (eight years). Justice Mary J. Mullarkey was the second woman appointed to the Court. She was appointed on May 22, 1987, by Governor Roy Romer, and she still serves on the Court. Justice Rebecca Love Kourlis is the third woman to serve on the state's highest court. Governor Romer appointed her in May of 1995.

Why Can't Judges Respond to Questions about Cases Which Are of Public Interest?

The Code of Judicial Conduct, Canon 3(A)(6), prohibits a judge from commenting on any open case. A case remains open or pending until all case issues are resolved, including appeal. A judge would be subject to discipline by the Commission on Judicial Discipline for commenting to the press, or others, about the case.

What Can You Do If You Have a Complaint about a Judge?

The Colorado Commission on Judicial Discipline oversees the ethical conduct of state justices and judges. Call the Commission at (303-861-1111 or 837-3601) and request a complaint form, or you can request a form by mail. The complaint form should be completed and returned to the Commission's office. There is no charge for filing a complaint. The Commission's address is: Commission on Judicial Discipline, Colorado Judicial Department, 1301 Pennsylvania St., #300, Denver, CO 80203-2416.

Will Your Complaint to the Commission on Judicial Discipline Be Made Public?

Normally no, although a complaint may become public if the Commission files a recommendation with the Supreme Court.

Will Filing a Complaint with the Commission Change the Decision in my Lawsuit?

No. The Commission's proceedings have absolutely no affect on any legal decision or appeal.

Does the Commission on Judicial Discipline Act on Every Complaint?

Yes. Every complaint is reviewed by the staff and the commission.

Does The Commission on Judicial Discipline Handle Complaints Against Lawyers?

No. Complaints against lawyers should be filed with the Supreme Court Grievance Committee, Suite #500 South, 600 17th Street, Denver 80202.

If my Complaint is Justified, Will the Commission on Judicial Discipline Tell me how the Judge was Disciplined?

Yes. A letter describing the disciplinary action will be sent to you at the close of the case.

How Are the Names of Prospective Jurors Selected?

The Office of the State Court Administrator compiles and maintains a master list consisting of all voter registrations supplemented with names from drivers' license lists.

Some states use voter registration lists as the sole source of names for jury service. A multiple-source list such as Colorado's expands the pool from which jurors are drawn making the jury pool more representative.

What Are the Qualifications of a Juror?

The Colorado statutes indicate you are qualified to be a juror if:

- You are a citizen of the United States; and
- You are at least 18 years old; and
- You are reside in the county or municipality from which you have been summoned; and
- You can read, speak, and understand the English language; and

- You do not have a physical or mental disability that would affect your ability to serve; and

- If you have not lost the right to vote by reason of a criminal conviction; and

- You have not appeared at a courthouse for juror service for five days or more in the last 12 months; and

- You do not have sole responsibility for daily care of a permanently disabled person living in the same household where your juror service would cause substantial risk of injury to the health of the disabled person.

If I Am Summoned to Jury Service, How Long Will I Have to Serve?

Colorado uses a one day/one trial system. If you are selected to serve, your service depends upon trial length. The majority of trials last one or two days. If you are not selected for a trial, your service is complete for that year.*

* Except in some rural counties, where you may have to be called again because of a shortage of jurors.

How Much Will I Get Paid for Jury Service?

If you are summoned, your employer is responsible for paying the first three days. From the fourth day on, the state of Colorado pays $50 per day. (Sections 13-71-126, 127, 128, 129, C.R.S.)

There are provisions for hardship and additional costs, such as day care.

Unemployed jurors may ask the court for reasonable expenses for the first three days of juror service. (Section 13-71-119, C.R.S.)

Can I be Excused from Jury Service?

If you are not disqualified from jury service, you may be excused from jury service by the court or an officer designated by the court for extreme hardship or ill health. You are entitled to one postponement of your jury service for a more convenient date.

Will my Employer Excuse me from Work for Jury Service?

If you are called for jury service, you should present the summons to your employer to be excused for the days that the service is required. If you are released from jury service earlier than expected, then return to work.

State law prohibits your employer from depriving you of your employment or threatening or coercing you if you are summoned for jury service. An employer who violates this is guilty of criminal contempt and when convicted will be punished by a fine of $1,000 or less, or by imprisonment in the county jail for not more than 12 months, or by both a fine and imprisonment. (Section 13-71-134, and Section 18-1-106, C.R.S.)

If I Serve as a Juror, Will I Have to Stay Overnight?

Occasionally it is necessary to "sequester" or keep a jury overnight. If this happens you may call a relative or friend to bring your personal necessities.

In civil cases, any expenses incurred in providing meals or provisions to jurors impaneled are taxed as costs in the suit against the unsuccessful party. (Section 13-71-145, C.R.S.)

In criminal cases, the costs incurred are paid by the state.

How Is a Civil Case Different from a Criminal Case?

A civil case is an action between parties seeking impartial settlement of a dispute. The plaintiff sues and brings the case to court. The defendant is the party being sued.

A criminal case is an action brought by the state against a person or corporation charged with violating a state law. In criminal cases the state is the prosecutor (District Attorney), while the defendant(s) is (are) alleged to have committed the crime.

How Are Crimes Defined?

In the United States, what is criminal is specifically in the written law, primarily the state statutes. In Colorado they are compiled in the Colorado Revised Statutes. The definition of crime varies among federal, state, and local jurisdictions.

Does a Defendant Have Certain Rights?

Yes. At the first appearance or arraignment, the court informs the defendant of the following:

- He or she need make no statement, and any statement made can and may be used against him or her;
- He or she has the right to counsel;
- If he or she is indigent, he or she will be assigned counsel at the expense of the state;
- Any plea he or she makes must be voluntary on his or her part;
- He or she has the right to bail, if the offense is bailable and the amount of the bail that has been set by the court is met;
- He or she has the right to a jury trial, which can be waived except when the charge is a class 1 offense, e.g., first degree murder; and
- He or she is informed of the charges against him or her.

Is There a Difference Between Probation and Parole?

Yes. "Probation" is the sentencing of an offender to community supervision by a probation agency. Such supervision normally entails the provision of specific rules of conduct while in the community. If violated, a sentencing judge may impose a sentence to confinement. It is the most widely used correctional disposition both in Colorado and in the United States.

On the other hand, "parole" is the status of an offender conditionally released from a prison by discretion of a paroling authority prior to expiration of sentence given by a judge, required to observe conditions of parole, and placed under the supervision of a parole agency.

Parole differs from probation in that parole status is determined by an executive authority and follows a period of confinement, while probation status is determined by judicial authority and is usually an alternative to confinement. Probation for an adjudicated person is a court ordered conditional freedom, whereas parole is a conditional freedom granted by a paroling authority after commitment to a period of confinement.

How Are Juvenile Matters Handled?

Juvenile justice matters in Colorado are handled by district court judges sitting as juvenile courts for all areas except Denver. Judges of the Denver Juvenile Court handle all juvenile cases for the City and County of Denver.

Do Certain Laws Deal Only with Juveniles?

Yes. The Children's Code of Colorado was first enacted in 1967, codifying laws dealing with juvenile matters. It is periodically revised and is regarded by professionals as one of the most detailed in the United States.

The Colorado Children's Code deals with different areas: juvenile justice, dependency and neglect, parentage, children's trust fund, adoption and relinquishment, and child support.

Do Most of the Cases Concern Delinquency?

No. The majority of the cases concern dependency and neglect.

If a Young Person is Tried in Juvenile Court, Can He or She Later be Transferred to Criminal Court for Trial on the Same Charge?

No. The United States Supreme Court has ruled that young people are protected by the Fifth Amendment of the United States Constitution. If a child is tried as a juvenile in a juvenile court, he or she cannot be tried again in an adult court for the same offense.

Can a Young Person Ever Be Tried as an Adult in a Criminal Case?

Yes, a person 14 years old and older can be transferred to the adult criminal system. The District Attorney completes a series of transfer hearings in the juvenile court before the decision can be made to transfer the juvenile to the adult court.

How is it Decided Whether a Young Person's Case Should be Transferred?

The United States Supreme Court strongly suggested, in Kent v. U.S., that the decision be made by a juvenile court, which is the case in Colorado and in most other states.

In Colorado, when a petition filed in juvenile court alleges a juvenile 14 years of age or older committed a delinquent act, and, after an investigation and hearing the juvenile court finds that it is in the best interest of the juvenile or of the public, the court may enter an order certifying the juvenile be held for criminal proceedings in the district court.

Is a Juvenile Treated the Same as an Adult in Colorado?

The juvenile's constitutional rights are virtually the same, i.e., advisement procedures, the right to bond, and trial to a jury. Sentencing options are different basically in length of time.

Are Teachers Required to Report Child Abuse and Neglect?

Yes. School officials or employees are required by law to report or cause a report on known or suspected child abuse and neglect and circumstances or conditions which might reasonably result in abuse or neglect.

Section 19-3-304 (2), C.R.S. (1986 Repl. Vol.).

Failure to immediately report or cause a report on known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect to the county department or local law enforcement agency is a class 3 misdemeanor and the person is liable for damages "proximately caused." Section 19-3-304 (4), C.R.S. Sentences for this crime range from a minimum sentence of a $50 fine to a maximum sentence of six months imprisonment, or $750 fine, or both.

"Proximate cause" is that cause which in natural and continuous sequence, unbroken by any new independent cause, produces an event, and without which the injury would not have occurred.

Do Children Have Constitutional Rights?

Yes. Although the answer was less certain before 1967, it is now clear that children enjoy fundamental rights that are guaranteed by the United States Constitution. This does not mean that all of the rights guaranteed by the Constitution belong to children, or that all children have the same constitutional rights. Applications differ depending on a number of factors.

Why Are Children Not Always Entitled to The Full Constitutional Protections That Adults Receive under Similar Circumstances?

There are two related reasons for this. First, a child may lack the maturity, experience, or capacity necessary to exercise a right that adults ordinarily enjoy. Second, the state may exercise power over the lives of children in order to maximize their potential for development into healthy functioning adults. In similar circumstances, the state could not act if it were regulating the conduct of adults.

Does the Judge Participate in Plea Bargaining?

No. The judge does not participate in the plea discussions but decides whether to grant charge and sentence concessions. If a tentative agreement has been reached, the trial judge may permit the description of the tentative agreement and its reasons. The judge may then indicate whether he or she will concur in the proposed disposition if the information in the pre-sentencing report is consistent with the representations made

to him or her. The judge in every case should exercise an independent judgment in deciding whether to grant the charge and sentence concessions.

Does the Supreme Court and the Court of Appeals Always Hear Cases in the Colorado Judicial Building in Denver?

No. The Colorado Supreme Court, as part of its efforts to provide public education about all aspects of the judiciary, has conducted oral arguments in high school settings since 1986. The Court has held oral arguments in Alamosa, Colorado Springs, Greeley, Longmont, Grand Junction, and two separate locations in the Denver metro area.

In the weeks before the oral arguments, the student members of the audience study the issues raised in the cases which will be argued. Synopses of the facts and issues are discussed with the students by volunteer attorneys from the local community.

Every year the Colorado Court of Appeals hears oral arguments in Pueblo, Fort Collins, Colorado Springs, Montrose, and Grand Junction.

Can a Person Find out the Cases That the Supreme Court and the Court of Appeals Will Hear?

Yes. The person may contact Mac Danford, clerk, Supreme Court, at (303) 861-1111 for information concerning Supreme Court cases and Patrick Stanford, clerk, Court of Appeals, at (303) 837-3785 for information concerning Court of Appeals' cases.

How Many Justices Sit on the Colorado Supreme Court?

Not less than seven, but its membership may be enlarged to nine, by request of the Supreme Court, upon the concurrence of two-thirds of the members of each house of the General Assembly. Section 5 (1), Article VI, Colorado Constitution.

How Is the Chief Justice Selected?

The Chief Justice is selected by the members of the Colorado Supreme Court and serves at the pleasure of a majority of the Supreme Court. Colorado Constitution, Article VI Section 5(2).

What Are the Duties of the Colorado Chief Justice?

- He or she serves as the executive head of the judicial system of the state of Colorado. Section 5(2), Article VI, Colorado Constitution.

- He or she is vested with the authority to assign judges (active or retired) to perform judicial duties. Section 5(3), Article VI, Colorado Constitution.

- He or she appoints the Chief Judge of the Court of Appeals and a Chief Judge for each judicial district who serve at the pleasure of the Chief Justice. Section 5(4), Article VI, Colorado Constitution.

How Are Judges Evaluated?

House Bill 1079, enacted by the 1988 General Assembly, requires that information be provided to the public about a judge's performance so that an informed decision can be made in the retention election. The bill was the result of the work of the Colorado Judicial Institute, a nonprofit organization of laypersons formed to promote an effective court system in Colorado, and the Colorado Judicial Department's Judicial Advisory Council, a group of interested citizens appointed by the Chief Justice to make recommendations for the improvement of the judicial process. (The bill was based on the experience of pilot projects conducted by the Colorado Judicial Institute in 1984 and 1986.) Thirty days before the retention election, the results of the evaluations are made available to the general public. Evaluation results are presented as narrative profiles of the judges with specific recommendations for or against retention.

What Is Colorado's Senior Judge Program?

Under the law, eligible senior judges, who agree to serve 60 days of temporary service during a 12-month period, receive additional retirement income equal to 20 percent of the current salary of the position from which they retired. Senior judges may serve a maximum of 12 years in the program.

How Long Does it Take Cases to Be Heard in the Colorado Court System?

In most civil matters, cases are set within one year of the date of filing. In criminal matters, under the speedy trial rule, cases must be heard within six months of the date of arraignment unless waived by the defendant. Minor traffic matters are handled more informally within three to six months of the date of the ticket. Most civil matters in Colorado are heard within one year of the date of filing.