

Lesson: The Roles and Responsibilities of Appellate Judges

Objective: Understand the functions and duties of judges and justices on an appellate level.
(*Colorado Model Content Standards: Civics, Standards 1.1, 2.1, and 2.2, grades 9-12*)

Activities: Teacher lecture (background information and lecture outline provided); class participation activity.

Outcomes: Students will develop an understanding of the roles and responsibilities of appellate judges and will become aware of Colorado's own high court judges.

Grade Level: Grades 9-12

Anticipated classroom time: 45-60 minutes

Message from Colorado Supreme Court Justice Gregory J. Hobbs:

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

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

The work is hard and important.

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

Second, you need the vote of a majority of the judges or justices who must decide the case. Otherwise, your opinion will never see the light of day. One of your colleagues may end up authoring the court's decision, simply by proposing a concurrence or dissent that gains enough votes to become the court's judgment. So you must listen carefully to the suggestions of your colleagues and take them into account if you think they contribute to the strength of the court's judgment in the case.

For example, the Colorado Court of Appeals sits in three-judge panels to decide a case — you need the vote of at least one other judge besides your own. Our Colorado Supreme Court — which chooses which of the decisions of the Colorado Court of Appeals we will undertake to review — has seven justices; you need the vote of at least three other justices.

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

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

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

Teacher background information:

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

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

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

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

Class participation activity: This activity should be done after the class has discussed the characteristics of good judges through the "What it Takes to Become a Judge" lesson. Pass out copies of Justice Hobbs' "The Protocols of the Supreme Court," found in the "Background Information" section of the binder. Have students read aloud. Stop periodically to talk about different responsibilities that involve teamwork, individuality, writing skills, reading skills, listening skills, analytical skills, compromise, knowledge of laws, etc. Then fill in the worksheet titled "Trial Court Judges and Appellate Court Judges" (attached), comparing the skills of trial court judges with the skills of appellate court judges on a Venn diagram.

Lecture outline:

Role of judges

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

Preparation for oral arguments

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

TRIAL COURT JUDGES AND APPELLATE COURT JUDGES

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

