

**Lesson:** What it takes to become a Judge

**Objective:** Students know how power, authority, and responsibility are distributed, shared, and limited in the Colorado judicial system. (*Colorado Model Content Standards: Civics, Standard 2.2, grades 9-12*)

**Activities:** Teacher lecture (background material and lecture outline provided); class participation activity; and homework assignment.

**Outcomes:** Students develop an understanding of how judges became judges, what criteria qualified them for the job, and what attributes they must have to maintain their positions.

**Grade Level:** Grades 9-12

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

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**Message from Court of Appeals Judge Daniel M. Taubman:**

Although there are about 37,000 licensed lawyers in Colorado, there are only about 320 judges. Thus, only a very small percentage of lawyers have the opportunity to serve the citizens of the State of Colorado as a judge. In almost all cases, a person must be a Colorado lawyer before becoming a judge (in some rural areas, a non-lawyer may serve as a county court judge).

Whether for county court, district court, the Colorado Court of Appeals, or the Colorado Supreme Court, a judicial applicant must apply to a nominating commission that reviews his or her qualifications. Typically, the nominating commission makes three recommendations to the governor, who then appoints one of the nominees to serve as a judge.

Both the nominating commission and the governor look to certain traits in order to find well-qualified judges. Among the primary criteria are open-mindedness, fairness, and lack of bias. The nominating commissions and governor also seek to appoint those who are polite, courteous, and patient. An important consideration is a good reputation obtained as a practicing lawyer or as a judge of one court seeking to move to a higher court. In addition, a judge must have common sense, the ability to learn about a wide variety of areas of the law, good communication skills, and, frequently, a good sense of humor.

Judges in Colorado must be of the highest integrity, because both lawyers and non-lawyers in their communities often look up to them. Because judges decide cases that have a significant impact on the lives of thousands of Coloradans, ranging from criminal cases to divorces to accidents, a judge must be able to decide a case fairly and explain his or her ruling clearly so it is understood and respected by the parties involved, by lawyers in the community, and by the public at large.

To ensure that appointed judges continue to serve Colorado's citizens effectively, judges are evaluated periodically by judicial performance commissions who recommend whether they should be retained in office. Each judge must appear before the voters on a regular basis so the voters can decide whether a judge should continue to serve. There is also a judicial disciplinary commission that may take action when necessary to deal with unethical or otherwise improper behavior by a judge.

Because of Colorado's merit selection system, Colorado has an excellent record of choosing judges who are hard-working, conscientious, fair, and impartial.

## **Teacher background information:**

### **Judicial Merit Selection and Retention**

#### **Introduction**

Too often, because our third branch of government functions so efficiently and quietly, the only time the public considers the way our courts are performing is when the media gets involved. Polls indicate a large portion of the population does not even realize that our Constitutional Government is based upon three independent, but equal, branches of government, and it is the third branch, the judicial branch, that is the least visible and the least understood. In Colorado, the state constitution designates the judicial branch as the Colorado Judicial Department.

Colorado's judicial branch is one of the best court systems in the nation, in no small part due to the 1966 Amendment to our state Constitution that mandates a merit selection system for the appointment of our judges and ensures that our courts are responsive to the citizens through the requirement for periodic retention elections.

In the decades since the enactment of the Colorado merit selection system and the consequent removal of judges from partisan political elections, no judge in Colorado has been removed from the bench for criminal behavior.

#### **Merit Selection**

No one becomes a state judge in Colorado without being thoroughly screened by a cross-section of people in the community in which the judge will serve. The individuals who do the screening evaluate the experience, temperament, and knowledge of each candidate for the bench.

Qualified lawyers living within the judicial district in which a vacancy occurs may apply to the judicial nominating commission in that district for appointment to the bench. Within 30 days after a vacancy occurs, the judicial district's nominating commission interviews applicants and recommends two or three individuals to the Governor for consideration (three nominees must be submitted for an appellate judgeship). After the nominating commission picks the candidates, the Governor has 15 days to make the appointment from the list of names submitted to him. If the Governor does not act in that time period, the Chief Justice of the Colorado Supreme Court appoints one of the individuals recommended by the commission.

The judicial nominating commission in each of 22 Judicial Districts is comprised of four non-lawyers and three attorneys, with no more than four members of one political party. The non-lawyer members are appointed by the Governor, the lawyers are jointly appointed by the Governor, Chief Justice of the Colorado Supreme Court, and state Attorney General.

A 15-member Supreme Court Nominating Commission handles vacancies on the Court of Appeals and the Supreme Court. This commission is composed of one lawyer and one non-lawyer from each congressional district in the state and the 15th member of the commission is an at-large appointee who cannot be a lawyer. No political party can have a majority of more than one on this commission.

Once chosen, the new judge serves a two-year provisional term and then is subject to a retention vote on the next general election ballot. If successfully retained by the voters, a county court judge will serve for four years before again appearing on the general election ballot; a district court judge will stand for retention again in six years; a Court of Appeals judge must face

the voters again in eight years; and a Supreme Court justice will serve for a 10-year period before again being involved in a retention election. All judges must retire by age 72.

More information on judicial selection is available at <http://www.courts.state.co.us/userfiles/File/Media/Brochures/howajudge.pdf>.

### **Performance Evaluation**

In recent years, this merit selection system has been strengthened by the creation of 10-member judicial performance commissions charged with the responsibility of evaluating Colorado state judges and informing the public of these evaluations. Again, each judicial district has its own judicial performance commission composed of individuals living within the district. These commissions provide voters with fair, responsible, and constructive evaluations of judges and justices seeking retention in general elections. The Governor and Chief Justice of the Supreme Court each appoint one attorney and two non-attorneys. The President of the Senate and Speaker of the House each appoint one attorney and one non-attorney.

There is also a statewide judicial performance commission for judges and justices serving on the Court of Appeals and the Colorado Supreme Court. Its members are appointed in a similar manner.

The judicial performance commissions use, among others, the following criteria when evaluating a judge's performance:

- 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.

The judges' evaluations result from surveys; a personal interview with the judge; and information from other appropriate sources, such as court observations, letters submitted by interested parties, oral interviews with people appearing before the judge on a regular basis, and public hearings. The commissions then develop a narrative for each judge with a recommendation such as "retain," "do not retain," or "no opinion." The law requires a detailed explanation with a "no opinion" recommendation.

The evaluations and recommendations of the judicial performance commissions are widely published in local newspapers. Since 1998, when voters complained that information was difficult to obtain, they also have been published in the "Blue Book" of ballot issues, which is published by the Colorado legislature and sent to every voter household prior to the general election. In addition to informing voters about the abilities and record of those serving on the bench, the evaluation process gives valuable feedback to the judges and can be a significant help to them in improving their judicial skills.

Additional information is available at [www.coloradojudicialperformance.gov](http://www.coloradojudicialperformance.gov).

### **Discipline**

The provisions providing for the merit selection and evaluation of Colorado judges also provide a system for the discipline of judges in this state. The Colorado Judicial Discipline Commission is charged with the responsibility of removing a judge who is not performing

properly, who fails to serve the public as required by law, or who is guilty of malfeasance. Created in 1966, this commission is comprised of 10 members: four citizens who are not attorneys, two attorneys, two district court judges, and two county court judges. The citizen and attorney members are appointed by the Governor. The judge members are appointed by the Colorado Supreme Court. The judicial discipline commission does not have jurisdiction over Denver County Court judges (who are part of the Denver municipal court system) or over municipal court judges.

The commission's web page is at <http://www.coloradojudicialdiscipline.com/>.

## **Questions & Answers**

*What are the qualifications for serving as a justice or judge?*

For the Colorado Supreme Court or Court of Appeals – 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.

For district court or county court – A nominee must be a qualified elector in the judicial district, and a county court nominee must be a resident of that county at the time of the 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. In small counties with populations under 35,000, a nominee does not have to be licensed to practice law in Colorado, but must have graduated from high school or have attained the equivalent of a high school education. Residency and qualified elector requirements are the same.

*How can I get information about the judges in my judicial district?*

The best way to get information about your local county court and district court judges is to call your local judicial district administrator. You can also visit the Colorado Courts homepage: [www.courts.state.co.us](http://www.courts.state.co.us).

*How do I know which judges are up for retention during an election year?*

Your local judicial district administrator will know which judges are up for retention in the election. Information is also available on the Judicial Branch homepage: [www.courts.state.co.us](http://www.courts.state.co.us).

*How can I be an informed voter when I go to vote at the election?*

Narrative profiles are published in the *Legislative "Blue Book" Analysis of Ballot Issues*, which is mailed to every voter household prior to the election. Copies of the Blue Book are also available at most courthouses and public libraries.

*Whom do I contact if I have a complaint about a state court justice or judge?*

The Colorado Commission on Judicial Discipline oversees the ethical conduct of state justices and judges. The 10-member commission is comprised of four citizens, two attorneys, two district court judges, and two county court judges. For information, contact the commission at (303) 866-6431 in Denver.

## Characteristics of Good Judges

### A GOOD JUDGE HAS:

Common sense  
Ability to learn  
Balance  
Appropriate temperament  
Good listening skills  
Sense of humor  
Communications skills  
Integrity  
People skills  
Strength of conviction  
Awareness of personal biases  
Decorum on and off the bench  
Strong management skills  
Good time management  
Good work ethic  
Knowledge of the law  
Commitment to the law  
Litigation experience  
Private practice experience  
Commitment to community service  
Recognition of importance for public outreach

### A GOOD JUDGE IS:

Civil  
Humble  
Courteous  
Patient  
Empathetic  
Trustworthy  
Honest  
Skeptical yet trusting  
Open-minded  
Fair  
Unbiased  
Perceptive  
Helpful  
Realistic  
Self-confident  
Efficient  
Firm and in control  
Effective  
Diligent  
Reputable  
Responsive  
Deliberative  
Diversity conscious  
A recognized member of community  
A good role model

### Classroom activities:

1. Have students work in groups on the attached worksheet to consider whether the listed traits are essential, desirable, undesirable, or unnecessary qualities for a judge to have.
2. Based upon exposure to these ideas, have each student independently draft a short definition of a good judge.
3. Select 4-6 students to write their definitions on the board to open discussion about what makes a good or a bad judge.

### Homework assignment:

1. What is your opinion of the judicial nominating and retention process?
2. Under what circumstances would you vote to have a judge removed from office?

## **Class outline:**

### **How a judge becomes a judge**

- Qualifications
  - Supreme Court justice or Court of Appeals judge
    - Must be a qualified elector in the state of Colorado
    - Must have been licensed to practice law in Colorado for at least five years
    - Must be under the age of 72 at the time his or her name is submitted to the governor
  - District court or county court judge
    - Must be a qualified elector in the judicial district, and a county court nominee must be a resident of his or her respective county at the time of selection
    - Must have been licensed to practice law in Colorado for at least five years
    - Must be under the age of 72 at the time his or her name is submitted to the governor
    - In counties under a population of 35,000, a nominee does not have to be licensed to practice law, but must have graduated from high school or have attained the equivalent of a high school education and meet residency and qualified elector status
- Nomination and selection process
  - Colorado Supreme Court or Court of Appeals vacancy
    - A 15-member nominating commission reviews applications. This commission is composed of
      - One lawyer and one non-lawyer from each congressional district
      - One at-large appointee who is not a lawyer
      - No political party can have a majority of more than one
    - The commission must recommend two or three nominees to the governor within 30 days of the vacancy (three nominees for appellate vacancies).
    - The governor must select one of the nominees within 15 days.
    - If the governor does not do so in the allotted time, the Chief Justice of the Supreme Court then makes the selection.
  - District court or county court vacancy
    - A seven-member nominating commission reviews applications. This commission is composed of
      - Three lawyers and four non-lawyers
      - No more than four members can be of one political party
    - The commission must recommend two or three nominees to the governor within 30 days of the vacancy.
    - The governor must select one of the nominees within 15 days.
    - If the governor does not do so in the allotted time, the Chief Justice of the Supreme Court then makes the selection.

## How a judge stays a judge

- Terms
  - Once chosen, all judges in the state court system serve a two-year provisional term. After that term, they come up for their first retention election.
  - If a judge or justice is retained after this term, he or she can serve subsequent terms of the following lengths before coming up for evaluation again.
    - County court judges – 4 years; District court judges – 6 years; Court of Appeals judges – 8 years; Supreme Court justices – 10 years
- Performance evaluation
  - Judicial performance commissions
    - There are 10-member judicial performance commissions in each of the 22 judicial districts. The Governor and Chief Justice each appoint one lawyer and two non-lawyers to these commissions. The President of the Senate and Speaker of the House each appoint one lawyer and one non-lawyer.
    - There is a statewide judicial performance commission for judges and justices serving on the Colorado Court of Appeals and Supreme Court. The members of this commission are chosen in the same way as the process described above.
  - The evaluation
    - The process
      - Surveys
      - Personal interviews with the judges
      - Information from other sources, such as court observations, letters submitted by interested parties, interviews with people appearing before the judge on a regular basis, and public hearings.
      - After considering all the information, the commission recommends “retain,” “do not retain,” or “no opinion.” There must be substantial explanation given with “no opinion” recommendations.
    - Criteria
      - 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
      - Effectiveness in working with participants in the judicial process
      - Service to the legal profession and the public
  - How the public can access judicial performance evaluations before elections
    - Widely published in local newspapers
    - Included in the “Blue Book” of ballot issues published by the Colorado Legislature, which is sent to every voter household prior to general elections.
    - Online at [www.courts.state.co.us](http://www.courts.state.co.us).

## What Makes a Good Judge?

Adapted from “What makes a good Supreme Court Justice,” from a lesson by Debra Hallock Phillips, *Update*.

Assume that you are appointed to a committee to determine what qualities we should consider in selecting judges in Colorado. Review the characteristics listed below and categorize them on the chart under the most appropriate heading. Following the activity, develop a definition for a “good” judge.

1. Female
2. Old and wise
3. Mediator
4. Fair
5. Radical
6. Determined
7. Youthful
8. Pro environment
9. Collegial
10. Member of a gender-specific group
11. Good campaigner
12. Aggressive
13. Self-reliant
14. Honest
15. Good looking
16. Clear thinker
17. Concise writer
18. Rural background
19. Male
20. Single parent
21. Good health
22. Conservative
23. Humane
24. Traditional
25. Well-educated
26. Democrat
27. Liberal
28. Controversial
29. Strong communicator
30. Family-oriented
31. Supports welfare
32. Lobbyist
33. Trustworthy
34. Risk-taker
35. Feminist
36. Religious
37. Loyal
38. Impartial
39. Service to the public
40. Good fundraiser
41. Trial attorney
42. U.S. citizen
43. Independent thinker
44. Strict constructionist
45. Christian
46. Prosecution oriented
47. Defense oriented
48. Opposes school prayer
49. Ethnic minority
50. Opposes higher taxes
51. Civil rights activist
52. Held public office
53. Business background
54. Pro death penalty
55. Distinguished lawyer
56. Follows party line
57. Middle of the road
58. Tough on crime
59. DWI conviction
60. Eminent legal scholar
61. Brilliant mind
62. Judicial experience
63. Bilingual



## **Qualities of a good judge**

Assume that you are appointed to a judicial nominating committee to determine what qualities we should consider in selecting judges in Colorado. Outline below.

<b>Essential requirements</b>	<b>Desirable qualities</b>	<b>Undesirable qualities</b>	<b>Unnecessary qualities</b>
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Definition of a good judge: