



Denver County Court

The Pursuit of Procedural Fairness

BY ANDREA EDDY AND MORGAN CALI

People come to court for various reasons, especially Denver County Court, which handles over 150,000 cases each year ranging from civil disputes to traffic tickets to criminal felony advisements. Historically, courts are outcome-oriented, focused on the decision-making process through the application of law. Judicial officers and other courtroom stakeholders often fail to appreciate the impact that the process itself has on human lives. Denver County Court is working to shift its focus to the human side of this process through its pledge to “procedural fairness.” There are four key elements to procedural fairness: “(1) treating court users with dignity and respect, (2) ensuring that they understand the process, (3) that they have a voice, and (4) that decisions are made neutrally.”¹

The Denver County Court judges recognize that how they handle cases affects how well individuals comply with court orders and how

they feel about the overall court system. This is not to suggest that practicing procedural fairness will make people happy when they lose a hearing or receive a ruling that harms their life, but they might have a better understanding of what happened and why. National research shows that “when court users perceive the justice system to be fair, they are more likely to comply with Court orders and follow the law in the future—regardless of outcomes in the case.”² The conscious implementation and practice of procedural fairness in court proceedings helps us as judicial officers shift the focus from outcomes and consequences toward fairness of the process.

Overview of Denver County Court

Denver County Court is unlike any other jurisdiction in Colorado in that it is not a combined court with the district court.³ The Colorado Constitution carved Denver County Court out

as separate from the Second Judicial District, and it handles both municipal and state cases. The City and County of Denver’s charter and ordinance determines (1) the appointment, retention, and succession of judges; (2) the county court’s jurisdiction, powers, and procedure; (3) the court’s administration; and (4) the performance and discipline of its judicial officers.⁴ The State does not fund the court. Instead, the City and County of Denver funds the court through appropriations. The court is an independent body from the State even though most cases that fall within the court’s jurisdiction are state criminal and civil cases.

The Denver County Court Nominating Commission nominates judges, who are appointed by the Denver Mayor rather than the Governor. A separate discipline commission handles complaints filed against the court’s judges. The court has the same appeals process as municipal and state appeals in other counties and jurisdictions; Denver District Court hears the court’s appealed municipal and state cases.

Denver County Court is the largest court in Colorado. It handles a wide array of legal matters, including state criminal cases, preliminary felony hearings, state civil cases, state protection orders, city municipal cases, and traffic matters. Currently, its courtrooms span three courthouses in Denver: the City and County Building, the Lindsay Flannigan Courthouse, and the Van Cise-Simonet building. Our bench consists of 17 judges and three full-time magistrates. We are lucky to serve among the most diverse judicial officers in the state. Our judges are experienced, varied in legal background, and often recognized as progressive and forward-thinking.

The National Policy Movement Toward Procedural Fairness

“Treat litigants the way you would like for others to treat your loved ones. Simply treating them in the way you would like to be treated is not good enough.”

—Judge Andre Rudolph

Courts across the nation struggle with overburdened dockets. People who often access the courts do so with great frustration and

experience long wait times. Others feel lost and confused in a foreign and overwhelming system. Many are experiencing financial hardship and struggling to make ends meet—some are just a few dollars away from falling into homelessness, losing a vehicle, or losing child care. Going to court adds to these existing life stresses.

When parties go to court, especially high-volume courts, many report feeling like a widget in a factory rather than a human being. They feel discouraged because they do not believe that the court will hear them, and they lose confidence in the justice system. The best practices of procedural fairness encourage the court to pause and consider how court proceedings are conducted and the resulting effect on people's lives. Judicial officers and stakeholders are asked to consider:

- The defendant who has been waiting all morning to have her case called, and

therefore is not at work earning wages needed to support her family.

- The defendant standing before the court who is anxious and scared, facing serious consequences such as incarceration, eviction, loss of employment, or immigration implications, and who lacks any support resources.
- The defendant who may be too intimidated to ask questions and may not understand that the judge cannot make frequent and meaningful eye contact while entering his case information into the computer system.
- The defendant who is suffering from an untreated mental illness.
- The defendant whose belongings remain in a single grocery cart behind a local grocery store as she sits in custody because she cannot post a \$50 bond.

- The defendant who was incarcerated at the pretrial phase for two or three days waiting for a charging decision by the state; meanwhile, he is losing employment, housing, and possibly parenting rights.
- The juror who came to the courthouse at 7:00 a.m., found parking, went through security, missed work without pay, sat in the jury assembly room and, after hours of waiting, was told to return the next day because the trial did not start until mid-afternoon.

A person's unique circumstances should not impair the court's application of law. But under procedural fairness, judicial officers are committed to engaging each person as an individual with unique circumstances rather than as a number. This practice creates improved public trust and confidence in our justice system.

COLORADO LAWYER ASSISTANCE PROGRAM



The Colorado Lawyer Assistance Program (COLAP) is an ***independent and confidential*** program exclusively for judges, lawyers, and law students.

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Denver County Court's Journey toward Procedural Fairness

Denver County Court can assess and create change to better serve the community in the interest of procedural fairness because it is uniquely positioned as a separate court. In 2017, the court spent time assessing its court assignments, staffing, docket settings, dispositions, and trends for case filings and trial settings. In doing so, we discovered that it was operating ineffectively in a few specific areas, thus creating a disservice to our community.

- **Scheduling.** We found continuous and unnecessary delays in the court's seven trial divisions.⁵ One-day trials did not start until midday and often spilled over into the next day simply because the court had to attend to other scheduled docket matters in the morning. Many jurors waited hours to find out whether they would be called and missed work unnecessarily. Victims, witnesses, attorneys, and court staff were often at the courthouse from 8:00 a.m. until late into the evening.
- **Criminal Division.** The increase in felony filings, up by 41% at the time, pushed jail courtrooms in the Van-Cise-Simonet Courthouse to the brink. Detectives struggled to find judges to sign arrest and search warrants. The judges, burdened with heavy dockets, were spending most of their time on the bench, so detectives often had to bounce among three buildings to find an available judge. This created a substantial safety concern, as warrants carry a sense of urgency and often must be signed as soon as possible.
- **Civil Division.** In 2017, there were over 24,000 civil returns and small claims cases with as many as 400 processed in one day—yet all the court's civil returns were processed in a small room. This was too many people, in too small a room, and generally an inappropriate space for the return process. Further, a judge did not welcome parties or explain to them a comprehensive general advisement. Instead, a video advisement played on a loop. The room's overall environment gave the impression that the plaintiffs had the

upper hand, which left litigants feeling they would not be treated impartially, fairly, or even humanely.

This assessment of the Denver County Court system made it abundantly clear that what worked in the past no longer constituted best practices. The court was not practicing procedural fairness in all areas, and there was generous room for improvement to better serve the Denver community.

The first step in reorganizing the court was to explore national procedural fairness best practices. So, in March 2018, the court held a two-day symposium at the University of Denver Sturm College of Law. Over 150 people attended, including representatives from Pretrial Services, the Denver District Attorney's Office, the State Public Defender's Office, the City Attorney's Office, the Municipal Public Defender's Office, the Private Defense Bar, Denver County Court staff, and Denver County Court judges. The symposium brought stakeholders together in a law school setting to challenge the group and to explore the question: Are there places in our court system where we can do better? This provided a thought-provoking environment where the stakeholders could collectively explore how our court system could do less harm while improving the safety of our community and outcomes for those who access the court. This opportunity brought new ideas and practices from all over the country. Attendees engaged in the symposium with great enthusiasm.

Procedural Fairness in Practice

"Denver County Court is focused on creating an environment based on neutrality, respect, and trust in the criminal proceedings."

—Judge Olympia Fay

After the symposium, the Denver County Court clarified and defined its goals by putting procedural fairness practices into action. The court's goal is for each litigant to leave the courthouse feeling that he or she (1) was treated fairly and humanely; (2) experienced an impartial court process; and (3) was provided a timely, neutral, and comfortable courtroom. We are proud to say Denver County Court

implemented significant changes to better achieve these goals.

First, the court expanded the criminal trial divisions from four to five courtrooms and the general sessions trial divisions from three to four courtrooms. A rotating duty week was created so one division could handle various docket matters, thus generating an opportunity for the trial division to start trials at the beginning of the day and resume within an efficient and reasonable timeframe. As a result, jurors are selected no later than 10:00 a.m. These changes positively impacted everyone—from courtroom staff and attorneys, who found better work/life balance, to jurors, victims, and defendants, who provided unsolicited positive feedback to judges, courtroom supervisors, and the Jury Commissioner's Office. The Jury Commissioner's Office reported to the court that jurors often leave the courthouse with a positive impression, appreciated the process, and generally enjoyed their experience.

Second, the court created a dependable system for detectives to find an available judge. The civil division judges started a warrants rotation whereby the judges rotate weekly warrant duty to ensure a judicial officer is always available to sign warrants. During his or her duty week, the judge does not set anything on the docket so that detectives do not have to wait for the judge to conclude hearings and other docket matters.

Third, to address the increase in felony filings, both jail courtrooms now operate seven days a week. The court added a magistrate so that both courtrooms could handle all in-custody matters Saturday and Sunday mornings with efficiency. Pretrial services also began working 24 hours a day, seven days a week, to ensure necessary bond assessment reports were readily available to the court before bond settings. By making these changes, the court now issues more pretrial release bonds and personal recognizance bonds with appropriate expedience so that low-risk defendants maintain their employment, their housing, and a sense of stability while their criminal matter works through the criminal system.⁶

Fourth, the court reorganized its civil return process to accommodate new legislation and


to enhance procedural fairness.⁷ The Colorado Legislature passed a bill that raised the statutory limit for county court civil cases from \$15,000 to \$25,000 effective January 1, 2019.⁸ To better serve litigants and to accommodate the anticipated increase in civil cases, the court relocated all civil returns to a far larger courtroom. And, instead of the current advisement video, the judge assigned to duty week provides a morning welcome and judicial advisement. The court also advises parties of available resources, and defendants can now visit the legal self-help center. Additionally, a caseworker with Denver Department of Human Services is available in the courtroom who can help find other resources, such as temporary rental assistance, food stamps, and Medicaid. Defendants can also request to waive a filing fee or apply for legal representation with Colorado Legal Services based on indigency guidelines. In addition, tables have been placed outside the courtroom so parties can discuss possible settlement of the case. These changes help create an impartial and unbiased environment for both defendants and litigants.

While the four achievements discussed above exemplify some of our biggest improvements, other changes to the court include expansion of our sobriety courts to better serve and assist those who are drug-sick, suffer from mental illness, and are homeless. The court also improved its outreach and wellness courts to better accommodate the increasing mental health, homelessness, and general resource needs in our community. None of these changes could have been accomplished without the support and help of the many stakeholders, Denver County Court staff, and retired Judge John Marcucci.

The Continued Pursuit of Procedural Fairness

"We made these changes because procedural fairness demanded it. We knew that the people we serve deserved much better, including the public, the accused, victims, lawyers, and jurors. Our goal was to better serve and to increase public confidence in the justice system. It's one of our prouder moments."

—Judge Nicole Rodarte

Denver County Court is continuously improving its processes and changing to meet community demand. While the court has more to accomplish, it is committed to the fundamental principles of procedural fairness—that a justice system should treat everyone with dignity and respect from the first contact with the court through the conclusion of the case. Behind every case number and every case file are human lives that have been adversely impacted in some significant way. Our goal is to make sure all those individuals—whether victims, defendants, witnesses, family members, or jurors—feel heard, respected, and fairly treated throughout the process. 



Andrea Eddy was appointed to the Denver County Court bench in 2016. She served as a Denver County Court magistrate in 2015.

Before becoming a magistrate, Judge Eddy was a deputy district attorney for the Denver District Attorney's Office. **Morgan Cali** is the law clerk for Denver County Court Judge Theresa Spahn. She is a 2017 graduate of the University of Denver Sturm College of Law, where she participated in the school's Trial Advocacy Program and Civil Litigation Clinic.

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NOTES

1. See *generally* Procedural Justice, Center for Court Innovation, www.courtinnovation.org/areas-of-focus/procedural-justice.
2. *Id.*
3. Colo. Const. art. 20, § 6; Colo. Const. art. 6, § 26.
4. Denver, Colo. Charter art. IV; Denver, Colo. Ordinance ch. 14, art. I.
5. Before 2017, Denver County Court had four criminal trial divisions and three general session divisions.
6. Between 2017 and 2018, the pretrial services' felony P.R. bond rate increased from 48% to 57%.
7. SB 18-056, 71st Gen. Assemb., Reg. Sess. (Colo. 2018).
8. *Id.*



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