



My Meandering Path to the Bench

BY KAREN M. ASHBY

This series explores what it means to be a judge or justice at various levels of the state court system. Authors share their personal journey to the bench and help others navigate their way to a judgeship.

I had no childhood dream of becoming an attorney or a judge. And when I became an attorney, I had no aspirations to sit on the bench. One could describe my path to the bench as meandering. Perhaps a more accurate description of my path would be an evolution.

I went to law school with one goal: to be a criminal defense attorney. Frankly, as I began my legal career, I saw judges as part of a system that I needed to navigate through, over, and around. But over time, several experiences in my career shaped a different view of the judicial role and my desire, ultimately, to apply to the

bench. The experiences that most significantly influenced me were my two years clerking for Judge Leonard Plank in Denver District Court (before he later joined the Court of Appeals himself) and my growing understanding that, as an advocate, I could certainly influence, but did not control, the decision-making that could mean the difference between freedom or prison, having a relationship with one's child or not, or who prevailed in a civil dispute.

In this article, I describe my family's narrative and how my perception of judges and "judging" evolved over the course of my career, what a "day in the life" of an appellate judge looks like

as compared to that of a trial judge, and the application process for the Court of Appeals.

A Family History of Forging New Paths

I was born to a family of "firsts." My father, a Tuskegee Airman, was the first African-American pilot to retire from a commercial airline. As the only African-American officer stationed at his base in Cambridgeshire, England, he and my mother faced daily challenges on and off the base. My mother was valedictorian of her high school class in Helen Keller's hometown of Tuscumbia, Alabama. In 1960, after overcoming resistance from realtors and homeowners, and threatening lawsuits, we were the first Black family to purchase a home in Rye Beach, New Hampshire. Though neither of my parents had the opportunity to attend college, they knew the value of education. Even so, though I was the youngest child in our family, I was the first among my siblings to graduate from high school and the first in our family to attend and graduate from college. While I did not purposely seek out opportunities to do so, I knew that forging new paths was often, intentionally or not, part of what we did and who we were. My path to the bench became another example.

When I went to college, my plan was to major in chemistry and have a career as a forensic chemist. In my sophomore year, my plan hit a life-changing bump during my first semester of organic chemistry. Not only was I no longer enamored of the idea of a career as a chemist (I didn't particularly like it), but I also realized that I would not succeed as a chemistry major because I wasn't very good at it (it was my lowest grade in college). Upon graduating with my BA in Spanish and no idea of what to do next, I headed to England (where I was born and have dual citizenship) to ponder my next steps. Realizing that the common thread running through my various interests (forensic sciences, correctional institutions, police-community relations) was criminal law, I took the LSAT in London and applied to law schools while waiting tables in Oxford. It was this point in my career that I was most clearly focused: I was going to law school specifically to become a criminal defense attorney.

During law school, I clerked for Leonard Plank, then a Denver District Court judge, and went to night school for the last two years. Although I was working for a judge whom I highly respected, and who would shape many things about my career, at that time I had no interest in becoming a judge. But my plan to be a criminal defense lawyer was on track. I was hired as an attorney for the Denver trial office of the Colorado Public Defender's Office and loved it. But after five years I was ready to open my own solo practice. I loved practicing criminal defense but began to consider how I could make a difference by making decisions about what I thought was the right thing to do rather than advocate a particular position. I looked back to my time clerking for Judge Plank and recognized how a judge could and did use his or her authority to support just outcomes. For the first time, I thought of becoming a judge.

I unsuccessfully applied to the Denver County Court bench several times and thought my judicial aspirations might remain unrealized. But then, out of the blue, I received a call from the presiding judge of the Aurora Municipal Court asking me to apply for a half-time time position that was vacant. I was appointed to that bench and spent the next three-and-a-half years alternating weeks between my law practice and the bench. I loved the bench, especially the time I spent in the juvenile division of the

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court. Interacting with the kids and their families and trying to be creative with ways to help them avoid tumbling more deeply into the criminal justice system became a passion.

Because of my love for working with children and families, when there was an opening on the Denver Juvenile Court bench, I applied. Governor Roy Romer appointed me, and within seven months of my appointment, then-Chief Justice Mary Mullarkey asked me to serve as the

presiding judge of the court. As was the case when I was appointed to the Aurora Municipal Court bench, I was unintentionally following in my parents' footsteps: I was the first African-American woman to be appointed to each of those courts and the first to be appointed as a Colorado state court judge. At my swearing-in ceremony, I expressed my hope that soon such an event would not be newsworthy.

Denver Juvenile Court

I served on the juvenile court bench for over 15 years and loved every minute. Although there were certainly depressing cases, circumstances, and outcomes, I loved being in a position to make decisions that I hoped would benefit parents, their children, and my community. Unfortunately, too often I was ending familial relationships, which meant I was effectively overseeing the raising of a child through the child welfare and juvenile justice systems. I believed in therapeutic jurisprudence, meaning that I was aware that judicial intervention in children's and families' lives could have positive and unintended negative effects. I therefore had the responsibility to minimize and mitigate any negative effects and better understand how the law and court process could be a positive support to children and families. Because Denver Juvenile Court was the only juvenile court in the state, I felt strongly that we should be a model

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Being a judge on the juvenile court bench was my dream job, and I could have happily continued to work at that court for many more years. But my judicial evolution continued when I received an email that there was an opening on the Colorado Court of Appeals (COA). I forwarded the email to my husband with one word: “hmmm.” I had not been planning to leave Denver Juvenile Court, but something was drawing me to apply for the COA—a move that many of my trial court colleagues perceived as my going over to the “dark side.”

I believe what was drawing me to apply was my recognition that, while I enjoyed handling individual cases and could use my position to benefit children and families one case at a time, being able to resolve legal issues in a way that would have a more widespread impact had its appeal (no pun intended). As a trial judge, in part because of how few trial judges had been serving on the intermediate appellate court in recent years, I had shared some of my colleagues’ perceptions of the COA as isolated, impractical, and unknowledgeable of what was going on in trial courtrooms across the state and the practical impact of its decisions. But as I considered applying and took the time to talk to COA judges who had been trial judges and learned more about the work of the COA, I learned that many of my perceptions were ill-informed and incorrect.

I was lucky to be appointed to the COA on my first application. My hope that an appointment of an African-American woman would not be newsworthy was still not realized, however. Fifteen-and-a-half years after my appointment to Denver Juvenile Court, I was the first, and remain the only, African-American woman to be appointed to an appellate court in Colorado. I hope this article encourages future applicants of all backgrounds.

A Day in the Life of a COA Judge

The COA is the statutory-intermediate-appellate court for the entire state and comprises 22 judges, including the chief judge.¹ The COA has initial jurisdiction, with a few exceptions, over appeals from the Colorado District Courts, Denver

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Probate Court, and Denver Juvenile Court. In addition, the COA has appellate jurisdiction over decisions originating from several state administrative boards and agencies, including the Industrial Claim Appeals Office (workers’ compensation). Review of the COA decisions is directed to the Colorado Supreme Court. The COA is located in Denver, near the state Capitol, and is housed in the same building as the Colorado Supreme Court. There are few COA judges who reside outside of the Denver metropolitan area.²

Applications for a COA opening are submitted to the Supreme Court Nominating Commission, which submits the names of three candidates to the governor. One of the three candidates is then appointed by the governor and first serves a two-year probationary term and then, if retained by the voters across the state, serves an eight-year term after evaluation by the Judicial Performance Commission.

Each COA judge has two chambers staff (usually two law clerks), and the Court has 19 staff attorneys. The chief staff attorney reviews all cases filed and recommends to the chief judge that certain cases be assigned initially to staff attorneys. This recommendation is based on such factors as the level of difficulty of the issues in the case, the expertise that each staff attorney

possesses, and whether the case involves areas in which the law is settled.

Once assigned a case, the staff attorney reviews the briefs and the record, conducts appropriate research, and prepares a tentative draft of an opinion called a predisposition memorandum (PDM). Staff attorney cases are then assigned to a division.

Judges sit in divisions of three and rotate every four months. The chief judge, appointed by the chief justice, makes the division assignments. Cases are randomly assigned by the clerk’s office to divisions, and judges are not assigned to cases because they have expertise in a particular area of the law. Each judge therefore will handle cases of all types over which the COA has jurisdiction. Each division is responsible for issuing opinions in approximately 14 cases every two weeks, in addition to three staff attorney cases each week. The most senior judge on each division is designated as the presiding judge and, with input from the other division judges, will decide how cases will be assigned to each judge and when the division will sit to hear oral arguments.

Each division judge and his or her chambers prepare two to three PDMs every two weeks, in addition to reviewing the weekly staff attorney cases that have been assigned to the division. This requires the author judge to review the briefs, the record, and applicable law to prepare a draft opinion representing the analysis and outcome he or she believes the law and record require. And each judge, after completing his or her own PDMs, is responsible for reading the briefs, pertinent law, and, as necessary, portions of the record, in four to five other cases every two weeks. The volume is high, and each judge reads approximately 3,000 pages per month. Although there is somewhat of an assembly line nature to the work because of the volume of cases and the fact that divisions always aim to complete their cases on a timely basis, each case receives careful consideration by all three judges. Even though we do not always reach consensus, testing our positions against those of our fellow judges is invaluable.

In addition to the work of adjudicating cases, most COA judges also serve on Supreme Court, bar association, or other committees dedicated to improving the legal system.

COA Application Process

The COA application process bears many similarities to that of the trial court bench. Because others have described that general process in prior articles in this series, I will focus on some of the more significant similarities and differences between the two application processes.

First, as with any trial court application, take the time to talk to current and former judges on the court to which you're applying to better understand what the workload and daily routine are like at the court. (Be aware that the COA can be isolating because of the nature of the work and limited personal interaction with parties and attorneys.) Because decisions are made collaboratively in divisions, your ability to work closely with other judges, even when you disagree with them, is a necessary skill that you should highlight in your application. The

COA prides itself on the level of collegiality among its judges.

Second, the non-voting, "ex officio" chair of the Supreme Court Nominating Commission (Commission) is the chief justice of the Colorado Supreme Court. The Commission is composed of one Colorado lawyer citizen and one non-lawyer citizen from each of the state's seven congressional districts, and one additional, at-large, non-lawyer citizen. Because of the Commission's geographical makeup, it is unlikely that the applicant will be familiar with many of its members or even all of the jurisdictions where Commission members reside. It is necessary to do your homework to learn what you can about each of the Commission members before submitting your application. This will help you be aware of how your application and its contents will be received and who you may choose as references.

Third, the Commission is larger than the local judicial district nominating commissions. The interview is therefore longer and you will be asked more questions than a local nominating commission would normally ask. Questions will focus on your ability to understand the needs of and serve communities across the state of Colorado, not just those in the judicial district where you reside or practice.

Fourth, because of the nature of work, there will be a strong focus on your writing abilities, in addition to your general legal experience and knowledge. Be attentive to the legal writing sample you choose to submit with your application.

Key Differences between Trial Court and COA Judgeships

Those of us who serve or have served on the trial court bench know that because of the daily volume of cases, the pace of the work is relentless.



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Typically, a trial court judge sits on the bench the majority of the time and is often required to make important decisions with little time for reflection or discussion with colleagues. Despite these challenges, the quality of the work of the trial bench in Colorado is impressive. When I interviewed with Governor Hickenlooper for the COA position, I was asked whether I would find it hard to adjust to moving from a court where I was making independent decisions to a court where, when possible, decisions were made by consensus after discussion with colleagues. I told the Governor that I welcomed the opportunity to discuss and decide difficult legal issues after reflection and discussion with well-informed colleagues. Having served on the COA for four-and-a-half years, I stand by my answer to Governor Hickenlooper's question.

Perhaps what I miss the most about being a trial judge is the direct interaction with attorneys

and parties. If a party makes a timely request for oral argument in the COA, the policy is normally to allow argument. However, a request for oral argument is made in a very small percentage of the cases.³ I am aware that the lack of personal contact with the parties requires me to consciously consider the people behind each case and how they are impacted by the decisions I make. Although I miss this personal interaction, it is outweighed by the other benefits of the job: the collegiality of the COA and the enjoyment I get from the joint decision-making process. Having trial judges on the appellate courts in Colorado has numerous benefits. Trial judges understand the pace of the trial court dockets and the practical impact of appellate decisions on the courts, parties, and staff. And, because of their leadership roles in their local communities, trial judges are a good resource for understanding ways in which the appellate courts can better

serve and engage with the legal and non-legal communities across the state. I hope that trial judges will continue to apply to the COA and Supreme Court.

Conclusion

Despite my inexperienced and jaundiced view of the judicial role when I began my legal career, I have been incredibly lucky to join the ranks of the trial and appellate judges in Colorado. Although, as in any profession, we can point to a rare judge who doesn't live up to our ideals or expectations, and we each make mistakes despite our best efforts, the commitment and competence of the judges in Colorado continues to inspire me in these later years of my career. I hope that as judges transition off the bench, we will see the number and diversity of applicants to Colorado's trial and appellate benches grow. 



Karen M. Ashby is a judge on the Colorado Court of Appeals, where she has served since December 2013. Before her appointment to the Court of Appeals, she served as a judge on the Denver Juvenile Court for over 15 years and was the presiding judge for approximately 15 years.

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NOTES

1. A helpful article detailing the structure and function of the COA can be found on the Colorado Judicial Branch website at www.courts.state.co.us/Courts/Court_Of_Appeals/Protocols.cfm.
2. In an effort to increase the transparency and public outreach of the COA statewide, the Court has initiated a COA liaison program where each COA judge is assigned to a judicial district and meets regularly with the trial bench and bar in his or her assigned district. In addition, and as part of that outreach program, the COA has extended its participation in the Courts in the Community program to ensure that we are regularly engaging with communities throughout Colorado to educate the public as to who we are and what we do, and to seek input into how we are doing meeting the needs of all Coloradans.
3. After conducting a pilot program in Grand Junction, the COA is now implementing a statewide program of remote oral arguments in several jurisdictions outside the Denver metropolitan area, allowing parties to orally argue their cases from courthouses near where they practice.

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