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# The Early History of the Colorado Court of Appeals

by Robert M. Linz and Claire E. Munger

The history of courts is more or less a history of their judges, for courts are very much what the judges make them.

—Judge Wilbur F. Stone  
*History of the Appellate Courts of Colorado*<sup>1</sup>

In 1969, the Colorado General Assembly enacted legislation to create the Colorado Court of Appeals.<sup>2</sup> In 1970, the court held its first session. It immediately began to alleviate the overcrowded docket of the Supreme Court as an intermediate appellate court. However, this was not the first time Colorado was served by a court of appeals; in fact, it was the third time.

In 1891 and again in 1911, the Colorado General Assembly created a court of appeals for the same reason it did in 1969—to relieve the Supreme Court of the burden of overcrowded dockets. Unlike today's court, however, the earlier appellate courts struggled with their authority and acceptance.

Although the concept of an intermediate court of appeals is now well settled, the earlier courts were uncertain about the place of an intermediate appellate court in the Colorado judicial system. The early history of the Colorado Court of Appeals reflects this struggle to define a judicial solution to providing efficient and effective appellate review.

## The Original Court: 1891–1905

In the second half of the 19th century, settlers from the East were staking their claims for Colorado's land and minerals. The economic growth resulted in increased litigation for a court system still in its infancy. In the years when Colorado still was part of Kansas Territory, citizens organized various people's courts to administer justice.<sup>3</sup> When the Territory of Colorado was established in 1861, it provided for a judicial system comprising a Supreme Court, three district courts, and various other courts.<sup>4</sup> Each district court was composed of one judge. The three judges would sit as justices on the Supreme Court to review the decisions of the district courts—decisions they had rendered.<sup>5</sup> Naturally, this would require them to rule on one another's decisions. Justice Stone reported that the Chief Justice would:

request one of his associates to retire while the two conspired to reverse the absent member, and thereafter the two associates politely hint that the Chief Justice should step out—to see a man—one at the bar, for example—while the two associate conspirators got even by taking the Chief down a peg in the reversal of his proudest decision.<sup>6</sup>

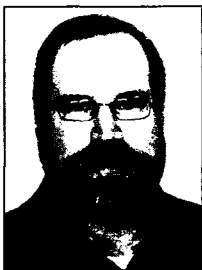
As the territory was transformed into the state of Colorado in 1876, the judicial system expanded. Even so, the Supreme Court still comprised only three justices.<sup>7</sup>

## The Need for a Court

By the mid-1880s, the continued growth of Colorado resulted in an overburdened Supreme Court docket. It could take as long as three to five years for the Court to review a case.<sup>8</sup> This delay was a cause of great concern for the Bench and Bar alike, because neither counsel nor the Court wanted the overcrowded docket to delay resolution of legal matters, thus forcing unfavorable settlements.

Many solutions were presented to solve the crowded docket problem; however, the two solutions that gained most favor were: (1) create an additional appellate court, or (2) create a commission that would aid the Supreme Court in the review of cases. These two solutions were introduced as separate pieces of legislation in the 1887 session of the Colorado General Assembly.

Senate Bill (S.B.) 76. S.B. 76 was entitled “a bill for an act to create a court of appeals, [to] provide for the appointment of justices thereof, and to regulate the practice therein.”<sup>9</sup> The bill was referred to the legislature's Committee on Judiciary. Judiciary committee members were concerned that the bill might not be constitutional, so they asked the Colorado Supreme Court to issue an opinion on the constitutionality of the bill.<sup>10</sup> The Supreme Court declared the bill unconstitutional, because it provided “that the decisions and opinions of the ‘court of appeals’ . . . shall have the same force and effect as the decisions of the supreme court.”<sup>11</sup> The Supreme Court expected that the proposed court of appeals would serve as an equal court, with like appellate jurisdiction and power, which violated section 28, article 6, of the Colorado Constitution.<sup>12</sup> Given this report of the Supreme Court, the judiciary committee voted to indefinitely postpone the legislation.<sup>13</sup>



## About the Authors

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S.B. 86. Contrary to S.B. 76, this act to create a Supreme Court Commission met with success.<sup>14</sup> S.B. 86 established the Supreme Court Commission (Commission), which comprised three commissioners who would review cases assigned to them by the Court. The Commission would submit a written report to the Supreme Court's Chief Justice to include the facts of the case, the opinion of the Commission, and the authority.<sup>15</sup> The Court then could adopt the recommendation or prepare an opinion in the usual manner.<sup>16</sup> Importantly, the Commission would exist only for two years, "unless their services shall sooner be dispensed with by law."<sup>17</sup> The Commission was a failure, because its work lacked independence and finality; the Supreme Court was spending about as much time reviewing the work of the Commission as if it simply had reviewed the case from the start.<sup>18</sup>

### The Court Created

With the failure of the Supreme Court Commission, a court of appeals once again was considered as a solution to the Court's overcrowded docket. In 1891, the General Assembly passed S.B. 98, an act "in relation to courts of review."<sup>19</sup> In this Act, the legislature created a court consisting of three judges with the same qualifications as the Supreme Court justices, appointed by the Governor and with the consent of the Senate.<sup>20</sup> This Act further established that the court "shall have appellate jurisdiction only" in civil and criminal cases, not capital cases, and that such jurisdiction would be final where the amount in controversy was less than \$2,500. However, its jurisdiction was not final

in cases where the controversy involves a franchise or freehold, or where the construction of a provision of the constitution of the state, or of the United States, is necessary to the decision of the case, also in criminal cases, or upon writs of error to the judgments of county courts.<sup>21</sup>

In addition to addressing various housekeeping matters regarding the court's organization, the Act also provided that the Supreme Court was to transfer cases to the new court of appeals.<sup>22</sup>

### The Court's Authority Challenged

The constitutionality of S.B. 98 was challenged almost immediately. In *People v. Richmond*,<sup>23</sup> the Supreme Court was required to consider: (1) what authority the legislature had to create an intermediate appellate court, and in so doing, (2) whether the legislature violated the constitutional guarantee of the supremacy of the Supreme Court in the state's judicial system.

In answer to the first issue, the Court cited Colorado Constitution, Article 6, § 1, which states that the legislature has the power to create courts in addition to those established in the Constitution.<sup>24</sup> As for the second issue, the Court stated that the Supreme Court's supremacy in the judicial system is not to be found in the extent of its jurisdiction but in the authority of its decisions and its place at the head of the judicial branch.<sup>25</sup> There is no language in the S.B. 98 to undermine this status. Furthermore, citizens possess "no natural or inalienable right" to a hearing in the Supreme Court and, as such, the legislature may reasonably vary the jurisdiction of the courts as public welfare may require.<sup>26</sup>

In its opinion, the Court also declared the "open secret" that it had been unable to timely process the number of appeals brought before it and that such delay had amounted to a denial of justice in many instances.<sup>27</sup> The Supreme Court upheld the constitutionality of the statute and the court of appeals commenced work on the

backlog of appeals. Apparently, the legislature corrected the defects in the 1887 bill.

### The Court Dissolved

Despite the Court's approval of creating the court of appeals and granting jurisdiction to the appellate court, many members of the Bar questioned the validity of the court of appeals. At the June 1900 Colorado Bar Association (CBA) annual meeting, the CBA's Committee on Law Reform (CBA Committee) proposed that the court of appeals be abolished. The CBA Committee urged that legislation be introduced at the next session of the legislature that would increase the number of justices on the Supreme Court from three to five or seven, abolish the court of appeals, and transfer that court's pending cases to the Supreme Court for disposition.<sup>28</sup> The supporters of the proposed legislation hoped that these changes would simplify legal proceedings, minimize the delay in processing appeals, and reduce the cost of litigation.<sup>29</sup>

Many members of the Bar supported this proposed legislation because they favored having a single appellate court. In an interview of Bar members about this pending legislation, one lawyer was quoted as saying that he could "see no advantage of having two appellate courts"; another lawyer thought the idea of having two appellate courts was "all nonsense."<sup>30</sup> It appeared that lawyers were concerned about the lack of uniformity in the law. One attorney thought that elimination of the court of appeals would be a "good thing to prevent any probable clashing in the matter of decisions between the two courts."<sup>31</sup> Another attorney favored eliminating the court because too often "the court of appeals overrule[d] the supreme court."<sup>32</sup>

Some support for these points of view may have derived from the 1899 case of *Mullen v. Western Union Beef Co.*<sup>33</sup> The appellate court's decision in *Mullen* was appealed directly to the U.S. Supreme Court, bypassing the Colorado Supreme Court. The U.S. Supreme Court ruled that when a matter is appealable to the state Supreme Court, the parties first must take their matter to the state's highest court before seeking relief from the federal courts. Therefore, the parties were required first to appeal to the Colorado Supreme Court.

Despite the support for the legislation among members of the Bar, the measure was not adopted by the Thirteenth General Assembly.<sup>34</sup> Judge Moses Hallett,<sup>35</sup> speaking as CBA President, stated: "Dual courts of review have not been satisfactory in any of the States and it is not probable that they can be made so in this jurisdiction."<sup>36</sup>

The CBA Committee returned to the legislature in 1903 and succeeded in getting a constitutional amendment placed on the 1904 ballot.<sup>37</sup> The proposed amendment would increase the number of judges on the Supreme Court from three to seven, terminate the court of appeals in April 1905, and enable two of the existing court of appeals judges to be appointed to the Supreme Court.<sup>38</sup> The amendment was approved by the voters. The legislature passed two additional acts in 1905 to provide for the transfer of cases from the court of appeals to the Supreme Court<sup>39</sup> and to transfer the property of the court of appeals to the Supreme Court.<sup>40</sup>

On April 4, 1905, members of the CBA, the Denver Bar Association, and other invited guests attended the last session of the court of appeals. Judge Charles D. Hayt presented a history of the court of appeals, in which he noted that "the object and purpose

for which the court was created has been realized.”<sup>41</sup> In his comments, T. J. O’Donnell, a prominent Denver attorney, noted that the court of appeals was:

an experiment feared by many and doubted by more, its very right to a habitation and a name challenged, its usefulness for many years hampered by the fact that its judgments were persuasive rather than conclusive[; even so, its opinions] secured an authority not given them by statute.<sup>42</sup>

After these remarks, Chief Judge Charles I. Thomson, in somber tones, thanked the assembled guests and requested that the bailiff announce “the adjournment of this court *sine die*.”<sup>43</sup>

On April 5, 1905, the new Supreme Court was installed in a bower of feminine and floral beauty, with the legal lights of the Colorado bench and bar . . . [such that] the enlarged supreme court burst into existence . . . in a mental and physical blaze of glory.<sup>44</sup>

During the ceremony, Colorado Court of Appeals Judges Julius C. Gunter and John M. Maxwell were installed as justices of the Colorado Supreme Court.

### The Court Reconstituted: 1911–15

When the court of appeals was abolished in 1905, the opponents of an intermediate appellate court could celebrate their victory; their goal had been accomplished. However, it soon became apparent that the underlying docket problems at the Supreme Court remained unsolved. In fact, the docket problems were exacerbated by the 1904 Constitutional Amendment in which cases pending before the court of appeals were transferred to the newly formed Supreme Court for resolution.

#### *Docket Problem Continues*

As early as 1908, jurists raised the docket issue, noting the negative affects that the three-to-five year delay in processing appeals had on the practicing Bar, on business interests in the state, and on aggrieved citizens.<sup>45</sup> At the CBA’s 1908 annual meeting held in Fort Collins, Judge Charles D. Hayt addressed these concerns to the assembled body.<sup>46</sup> He suggested that either the court of appeals or even the Supreme Court Commission be re-instituted as possible solutions, but that the CBA form a committee to study the problem.<sup>47</sup> Other members suggested the legislature modify or even eliminate the right of appeal in certain cases.<sup>48</sup> Although there was some disagreement about the number of backlogged cases on the docket and the time in which they could be disposed, the membership approved the formation of the committee.

In January 1909, the special committee reported to the CBA the following statistics:

1. When the Court of Appeals was abolished in 1905, it transferred 637 cases onto the docket of the Supreme Court, giving that court a total of 933 cases to decide, including its own cases.
2. By January 1909, the number of cases had been reduced to 777.<sup>49</sup>

Given this progress, the special committee recommended that legislative action be postponed until the 1911 legislative session, giving the court more time to reduce the backlog of cases.<sup>50</sup> In September 1909, however, the special committee reported that the number of cases on the docket actually had increased since January to 792 and was likely to increase further.<sup>51</sup>

In his report of the special committee’s work, Hayt set forth the remedies devised by the special committee.

➤ First, the committee suggested that appeals could be limited by raising the amount in controversy requirement. However, Chief Justice Robert W. Steele, Jr.<sup>52</sup> informed the committee that this solution was not likely to help, because when it had been done previously, it did not result in the reduction of any cases.<sup>53</sup>

➤ Second, the committee suggested that the Supreme Court need not file a written opinion when affirming the judgments of the lower courts. The committee believed that the Court already had this authority, but that members of the Bar would not favor this solution.<sup>54</sup>

➤ Third, it was suggested that the court of appeals be recreated. Because the court was abolished by constitutional amendment in 1904, the committee was concerned that the legislature now lacked the authority to create this court.<sup>55</sup>

➤ Fourth, the committee suggested the Supreme Court should increase the number of justices on the Court. However, the committee felt that this proposal would gain little support, because the CBA had just succeeded in securing the increase to seven members without correcting the overcrowded dockets problem.<sup>56</sup>

➤ Finally, the committee suggested that a commission be appointed to assist the Court. This commission would function in a similar capacity as the previous Supreme Court Commission of the late 1880s. However, the special committee acknowledged the objections to this proposal, given the history of the early Commission, the fact that the Commission lacked judicial power, and the fact that it could not enter a final judgment.<sup>57</sup> CBA members noted that Governor John F. Shafroth intended to call a special session of the legislature and that he was on record in favor of limiting appeals. Nonetheless, the CBA decided to postpone action until the 1911 legislative session and authorized the special committee to continue its work for another year.

#### *A Consensus Emerges and a Legislative Solution Succeeds*

In 1910, the docket problem worsened. By July 1910, the number of pending appeals increased to 825 cases.<sup>58</sup> Given the growing problem, the special committee proposed a two-pronged solution. It recommended that legislation be drafted that would create a new court of appeals. If that legislation failed, it would introduce legislation to create a commission to assist the Supreme Court with its backlog of cases.<sup>59</sup>

This report was discussed at length by the membership at its annual meeting held in Colorado Springs in July 1910. The main concern expressed with the creation of the court of appeals was whether such legislation would be constitutional in light of the 1904 Amendment abolishing the court of appeals.<sup>60</sup> The question was not answered by the body; it was deferred to review by the Supreme Court. Other members queried whether this new court of appeals would serve as an intermediate court or resemble the former court.<sup>61</sup> Still other members asked whether existing cases on the Supreme Court’s docket could be legally transferred to the court of appeals.<sup>62</sup> Most important, members were concerned about the impact on the stability of the law when the Supreme Court overrules a decision of the court of appeals.<sup>63</sup> At this meeting, members raised other solutions, including abolishing the statute that required the Court to issue written opinions,<sup>64</sup> ex-

panding the number of justices on the court,<sup>65</sup> and limiting the right to appeal.<sup>66</sup> Ultimately, these alternative solutions gave way to the approval of the special committee's report, with instructions to the committee to draft the two pieces of legislation for submission into 1911 legislative session.

Despite the misgivings of the committee, the legislation to create a new court of appeals met with resounding success in the legislature.<sup>67</sup> In eleven sections, the Act of June 5, 1911 gave the court of appeals structure and addressed the jurisdictional issues raised by having two appellate courts in Colorado. The Act creating the second Colorado Court of Appeals provided that the "court shall consist of five judges who shall possess the same qualifications required of judges of the Supreme Court, and shall receive like compensation."<sup>68</sup> The Act gave the Colorado Governor authority to appoint judges to the new court "with the advice and consent of the Senate" and provided that "no such appointment shall take effect until a confirmation thereof by the Senate."<sup>69</sup>

More important, the Act addressed the jurisdiction issues between the two appellate courts. The Act granted the court of appeals broad jurisdiction "to review and determine all judgments in civil cases now pending upon the docket of the Supreme Court" or to arise during the existence of the court of appeals.<sup>70</sup> Furthermore, Section 4 of the Act repealed all "statutes granting and regulating appeals from the district and county courts to the Supreme Court"<sup>71</sup> and provided that most<sup>72</sup> cases now pending on the docket of the Supreme Court be transferred to the court of appeals.<sup>73</sup> For its part, the Supreme Court retained jurisdiction to review decisions of the court of appeals that fell within certain classes of cases. These classes were: (1) decisions involving construction of a provision of the federal or state constitution; (2) those relating to a franchise or freehold; and (3) judgments for more than \$5,000, exclusive of costs.<sup>74</sup> With these exceptions, however, the decision of the court of appeals in all remaining matters was final and conclusive.<sup>75</sup>

Finally, the Act provided that the Colorado Court of Appeals would "terminate and cease to exist at the end of four years" after the Act took effect.<sup>76</sup> With the passage of this Act, the combined appellate courts could begin to reduce the backlogged docket.

### *The Constitutionality of the Court Challenged*

In August 1911, Governor Shafroth appointed the five judges to sit on the new court of appeals. These appointments included Tully Scott as Chief Judge; Alfred R. King; Stuart D. Walling; Edwin W. Hurlbut; and Louis W. Cunningham. However, the appointments were not effective until October 1, in part to give time to these lawyers to conclude their private practices, as well as to await for the new session of the Colorado Supreme Court in which it would transfer cases to the new Colorado Court of Appeals.

Governor Shafroth was moved by one other consideration, namely, that the law required the state Senate to confirm the appointments. Some lawyers argued that the appointments would be invalid until confirmed by the Senate, which would not be in session in the later half of 1911. Governor Shafroth, however, read the law to enable the Governor to appoint and swear into office the judges within three months of the next regular session of the legislature, at which time the Senate could confirm the appointments.<sup>77</sup>

On October 2, 1911, the five judges of the new appellate court took office. Soon thereafter, a lawsuit was filed by the CBA against these judges, challenging the constitutionality of the court.<sup>78</sup> This lawsuit may have been a strategic move on the part of the CBA. In the opinion, there is reference to a statement made at oral argument by the CBA president "that the object of this action was to set at rest some doubt that had existed in the minds of the some of the profession relative to the legality of the new court."<sup>79</sup> In the discussion at the CBA annual meeting, when discussing the constitutionality of the court of appeals, the membership decided to leave that issue to a review by the Supreme Court.<sup>80</sup> Perhaps this lawsuit was that review.

The litigants raised two issues on appeal. First, they asserted the Act was unconstitutional because it limited the jurisdiction of the Supreme Court. Second, they asserted that even if the Act was constitutional, the manner in which the Governor appointed the initial panel of judges violated the provisions of the Act, and therefore are invalid.

Justice Musser, writing for the Court, answered the first issue by stating the Act simply regulates "the quantity of business before the court for a limited period."<sup>81</sup> He further contended that as the right of appeal is established by statute, it too can be altered or even eliminated by the legislature by statute.<sup>82</sup> Furthermore, the legislature is vested with a constitutional power to create "such other courts as may be provided by law."<sup>83</sup> Because the Act does not alter the Supreme Court's role as the head of the judicial branch, both the Act and the court of appeals are constitutional.<sup>84</sup>

For the second issue, Justice Musser engages in a somewhat creative analysis of the Act to reach the conclusion that the actions of the Governor in appointing the judges was properly done. Although a plain reading of the Act indicates that the appointments to the court must be confirmed by the Senate prior to their taking office, he supports this position primarily by resorting to the absurdity of the result of the court of appeals lacking judges while awaiting confirmation by a session of the Senate not to take place some months later. The court of appeals would be created on the Act taking effect, and cases transferred to that court from the Supreme Court; even so, the court of appeals would lack judges to decide those cases.<sup>85</sup> He also cited the grave need for the court of appeals to relieve the congested docket of the Supreme Court.<sup>86</sup>

### **CBA-CLE Book on History of Colorado's Appellate Courts—Coming Soon**

In late 2008, Colorado Bar Association Continuing Legal Education (CBA-CLE) will publish *The Colorado Court of Appeals: A History of Colorado's Intermediate Appellate Courts*, a fun and fascinating look at the makings and workings of the Colorado Court of Appeals. Written by Jeannie Towle Mellinger and Molly Wingate at the request of Chief Judge David Enoch (now deceased) and his family, the book provides an insider's look at the court's three iterations, along with the judges and staff members who made the court work. For ordering information, call Kristen Wolfe at CBA-CLE at (303) 860-0608, or visit [www.cobar.org/cle](http://www.cobar.org/cle).

Justice Gabbert, who concurred in upholding the constitutionality of the Act, disagreed with the Court's analysis of the appointments issue.<sup>87</sup> Relying on the plain language of the statute to infer legislative intent, Justice Gabbert concluded that the appointees could not take office until confirmed by the Senate, regardless of the merit of the policy arguments set forth by the majority.<sup>88</sup> Interestingly, during discussion of the bill, an amendment to the Act was proposed in the Senate to remove the language of requiring "confirmation thereof by the Senate"; however, the amendment failed.<sup>89</sup> The *Griffith v. Scott*<sup>90</sup> decision was handed down on December 19, 1911, proving that the Court did not require three to five years to decide at least one type of case on its overburdened docket.

### Expiration of the Second Court of Appeals

In April 1915, the court of appeals was scheduled for termination. Section 9 of the Act creating the court provided that the court would "terminate and cease to exist at the end of four years" of the effective date of the Act.<sup>91</sup> The termination was premature. Chief Justice Musser appealed to the legislature for it to continue the court of appeals for another two years. He reported that the number of cases on the docket was significantly reduced in the past three years—from 917 in 1911 to 446 as of December 1914. He further noted that the court of appeals was not able to transact much business until 1912, pending the outcome of the *Griffith* case.<sup>92</sup>

The legislature agreed with the Chief Justice and appropriated funds to continue the operation of the appellate court. Governor George Alford Carlson, however, did not share the legislature's view and vetoed the appropriation.<sup>93</sup> On August 4, 1915, the court of appeals held its last session. The five judges and seven court employees were thanked for their contribution, and the court was dismissed.<sup>94</sup>

### Conclusion

When the second Colorado Court of Appeals disbanded in 1915, the state would not again enjoy the services of an intermediate appellate court until 1970, decades after the controversy and debate about authority and jurisdiction of the first two intermediate appellate courts had subsided. In the eighteen years that the early Court of Appeals existed, the court issued 2,325 opinions, filling the first twenty-seven volumes of the *Colorado Court of Appeals Reports*.<sup>95</sup> If the history of the courts is a history of the judges who occupy them, then those twenty-seven volumes are the history books of those judges' efforts to provide to the citizens of the growing state of Colorado a fair and efficient administration of justice. Our current appellate courts no longer conflict on matters of authority and jurisdiction; however, their history is the continuation of the hard work of these early settlers of the Colorado judicial landscape.

### Notes

1. Stone, "History of the Appellate Courts of Colorado," 8 Rpt. Colo. Bar Assoc. (CBA Rpt.) 15, 16 (1905). Wilbur F. Stone served as justice on the Colorado Supreme Court from 1877 to 1886. For a profile of Stone, see Bohning, "Six of the Greatest: Wilbur Fisk Stone," 31 *The Colorado Lawyer* 23 (July 2002).

2. Act of May 31, 1969, ch. 106, 1969 Colo. Sess. Laws 265 (an act to create a court of appeals and provide for the jurisdiction thereof).

3. Holland, "Early Colorado Courts and Judges," 9 *Dicta* 22 (1931-32). See also Bintliff, "A Jurisdictional History of the Colorado Courts," 65 *U. Colo. L. Rev.* 577 (1993-94).

4. Act of Feb. 28, 1861, ch. 59, § 9, 12 Stat. 172, 174 (1859-63) (an act to provide a temporary government for the Territory of Colorado).

5. *Id.*

6. Stone, *supra* note 1.

7. Colo. Const. art. VI, § 5 (1876).

8. Letter to the Editor, "A Bad Law," *The Daily News* (Denver) 2 (Sept. 3, 1885).

9. *Senate Journal of the General Assembly of the State of Colorado* at 242-43 (1887).

10. *Id.* at 255.

11. *In re Constitutionality of Senate Bill No. 76*, 21 P. 471 (Colo. 1886).

12. *Id.* at 472.

13. *Senate Journal, supra* note 9 at 282.

14. Act of March 7, 1887, 1887 Colo. Sess. Laws 428 (an act to regulate the practice in the Supreme Court by appointing commissioners).

15. *Id.* at 429, § 2.

16. *Id.* at 429, § 3.

17. *Id.* at 428, § 1.

18. Stone, *supra* note 1 at 19.

19. Act of April 6, 1891, 1891 Colo. Sess. Laws 118 (an act in relation to courts of review creating the court of appeals).

20. *Id.* at 119, § 2.

21. *Id.* at 119, § 4.

22. *Id.* at 120, § 5.

23. *People v. Richmond*, 26 P. 929 (Colo. 1891).

24. *Id.* at 930.

25. *Id.* at 931.

26. *Id.*

27. *Id.* at 933, 934.

28. "Bills Suggested by the Committee on Law Reform," 3 CBA Rpt. 149 (1900).

29. "Changes in the Judiciary," *The Denver Times* 4 (June 25, 1900).

30. "The Court of Appeals: Will it be Abolished and the Supreme Court Enlarged?" *The Denver Times* 2 (June 25, 1900).

31. *Id.*

32. *Id.*

33. *Mullen v. Western Union Beef Co.*, 173 U.S. 119 (1899).

34. "Address of Moses Hallett, CBA President," 4 CBA Rpt. 81 (1901).

35. Judge Moses Hallett served as Chief Justice of the Territorial Supreme Court from 1866 to 1876 and also as judge for the U.S. District Court. For a profile of Moses Hallett, see Kane, Jr., "Five of the Greatest: Moses Hallett," 27 *The Colorado Lawyer* 17 (July 1998).

36. "Address of Moses Hallett, CBA President" *supra* note 34 at 82.

37. "Report on the Committee on Law Reform," 6 CBA Rpt. 145 (1903).

38. Act of April 6, 1903, ch. 73, 1903 Colo. Sess. Laws 148 (an act to submit a constitutional amendment to the voters to enlarge the Supreme Court and eliminate the court of appeals).

39. Act of April 5, 1905, ch. 90, 1905 Colo. Sess. Laws 177 (an act to transfer causes pending in the court of appeals to the Supreme Court).

40. Act of April 5, 1905, ch. 91, 1905 Colo. Sess. Laws 178 (an act to transfer records, books, papers and other property belonging to the court of appeals).

41. Hayt, "History of the Court of Appeals," 8 CBA Rpt. 5, 6 (1905).

42. "Address of T.J. O'Donnell," 8 CBA Rpt. 10 (1905).

43. "Address of Judge Charles I. Thomson," 8 CBA Rpt. 12, 13 (1905).

44. "New Supreme Court Installed," *Fort Collins Weekly Courier* 10 (April 12, 1905).

45. "Address of Charles D. Hayt," 11 CBA Rpt. 28, 31 (1908).

46. *Id.* at 28.

47. *Id.* at 30.

48. *Id.* at 33.  
 49. "Report of Special Committee of the CBA," 11 CBA Rpt. 236, 237 (1909).  
 50. *Id.*  
 51. "Report of Special Committee of the CBA," 12 CBA Rpt. 123, 124 (1909).  
 52. Robert W. Steele, Jr. was a member of the Colorado Supreme Court from 1901 to 1910, serving as Chief Justice from 1907 to 1910. For a short profile of Judge Steele, see Steele and O'Donnell, "Six of the Greatest: Robert W. Steele, Jr.," 20 *The Colorado Lawyer* 1349 (July 1991).  
 53. "Comments of Charles D. Hayt," 12 CBA Rpt. 10, 11 (1909).  
 54. *Id.* at 11.  
 55. *Id.*  
 56. *Id.* at 12.  
 57. *Id.*  
 58. "Report of Special Committee of the CBA," 13 CBA Rpt. 196 (1910).  
 59. *Id.* at 197.  
 60. "Comments of Luther M. Goddard," 13 CBA Rpt. 48 (1910).  
 61. "Comments of Charles D. Hayt," 13 CBA Rpt. 43, 44 (1910).  
 62. *Id.* at 45.  
 63. *Id.* at 53.  
 64. *Id.* at 47.  
 65. *Id.* at 45-46.  
 66. *Id.* at 49-52.  
 67. "Comments of D. F. Carpenter," 14 CBA Rpt. 31 (1911).  
 68. Act of June 5, 1911, ch. 107, 1911 Colo. Sess. Laws 266, 267 (an act in relation to courts of review).  
 69. *Id.* at 267.  
 70. *Id.*  
 71. *Id.* at 268.  
 72. Section 5 of the Act omitted writs of error to county courts, which the Supreme Court is constitutionally required to review.  
 73. Act of June 5, 1911, *supra* note 68 at 268.  
 74. *Id.* at 269, § 6.  
 75. *Id.* at 268, § 4.  
 76. *Id.* at 270, § 9.  
 77. "New Court of Appeals Appointed by Governor Shafroth Take Office Oct. 1," *The Denver Post* 9 (Aug. 7, 1911). For a short profile of Shafroth, see Shafroth, "Six of the Greatest: John Franklin Shafroth," 33 *The Colorado Lawyer* 15 (July 2004).  
 78. *Griffith v. Scott*, 120 P. 126 (Colo. 1911).  
 79. *Id.* at 135.  
 80. "Comments of Luther M. Goddard," 13 CBA Rpt. 48 (1910).  
 81. *Griffith, supra* note 78 at 128.  
 82. *Id.* at 129.  
 83. Colo. Const. art. VI, § 1 (1876).  
 84. *Griffith, supra* note 78 at 130.  
 85. *Id.* at 134.  
 86. *Id.* at 134-35.  
 87. *Id.* at 135.  
 88. *Id.* at 141.  
 89. *Senate Journal*, April 29, 1911 at 1257.  
 90. *Griffith, supra* note 78.  
 91. Act of June 5, 1911, *supra* note 68 at 270.  
 92. *Senate Journal*, 1915 at 70-71.  
 93. "Appeals Court Ends Existence," *Rocky Mountain News* 3 (Aug. 5, 1915).  
 94. *Id.*  
 95. Statistic derived by running a Westlaw search looking for all opinions published by the court of appeals prior to 1916. ■

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## New Rule Requires Lawyers to Disclose Insurance Status

Beginning on January 1, 2009, all attorneys engaged in the private practice of law in Colorado must publicly disclose whether they are covered by professional liability insurance under a rule approved by the Colorado Supreme Court.

On September 10, 2008, the Court approved an amendment to Rule 227 of the Colorado Rules of Civil Procedure requiring the disclosure on annual attorney registration forms. Attorneys who have professional liability insurance also will be required to state whether they intend to maintain the insurance while engaged in the private practice of law, and must notify the Supreme Court Office of Attorney Registration within thirty days if the coverage lapses or if they terminate the coverage.

Attorney disclosures regarding insurance coverage will be available to the public through the Office of Attorney Registration and on the office's website. Visit [www.coloradosupremecourt.com/Registration/Registration.asp](http://www.coloradosupremecourt.com/Registration/Registration.asp).