

HISTORY OF THE COLORADO COURTS



Early History

For thousands of years, the land that is now Colorado was inhabited by Native Peoples.¹ The original inhabitants included the Jicarilla Apache Nation (Haisndayin),² the Arapaho Tribe (Hinono'ei), the Cheyenne Tribe (Tsistsistas)³, the Ancestral Puebloans,⁴ the Shoshone Tribe (Newe)⁵ and the Ute people (Nuche)⁶. Spanish explorers arrived in the 1600s, followed by people of Mexican heritage who settled in Trinidad and other areas of southern Colorado. These groups brought their own customs and systems of justice.⁷

In 1803, the United States acquired territory that included land that is now northern and eastern Colorado through the Louisiana Purchase. National borders changed again in 1848 at the end of the Mexican-American War. Signed on February 2, the Treaty of Guadalupe Hidalgo officially ended the war and transferred the territory that is now southern and western Colorado from Mexico to the United States.⁸ Eager to populate the new land, the U.S. government encouraged migration of primarily white settlers to the newly acquired territory and made treaties with native populations to ensure settlers could access this land. The government rarely adhered to these treaties and ignored Indigenous land use customs as it sought to overlay an economic system based on individual property ownership.⁹ Spanish and Mexican civil law allowing women to own property was also ignored.¹⁰

Gold Rush

The discovery of gold in 1858 drew thousands of would-be miners to the area.¹¹ "As many as 100,000 gold seekers may have started for the Pike's Peak goldfields over the course of 1859, but observers believed only 40,000 reached Denver."¹² A fledgling judicial system developed along the Front Range to attempt to bring order to the rapidly expanding population. Prior to 1861, most of what is now Colorado was part of Arapahoe County in the Territory of Kansas. In 1855, the Territory of Kansas' legislature appointed Allen P. Tibbitts as probate judge of Arapahoe County. Tibbitts was effectively Colorado's first judge, although he never visited Arapahoe County, much less held court there. He likely never claimed the bench because travel in this region could be treacherous.¹³

"Recognizing a need for a single judicial authority to cover the region, the residents [of Arapahoe County] organized an election" in March of 1859 and elected S.W. Wagoner as probate judge.¹⁴ Shortly after, a restlessness to secede from Kansas began to grow. As a response, an election held on October 24, 1859, established the extralegal Territory of Jefferson. This self-proclaimed government instituted the region's first Supreme Court with a chief justice and two associate justices. Within two months, Jefferson Territory's legislature expanded the judicial system to include district, county, and justice of the peace courts, in addition to the already established Supreme Court.¹⁵

The new "territory" was not recognized by the U.S. government, and many residents refused to acknowledge its presumed authority, or that of its courts. Inevitably, conflict arose between the Arapahoe County courts and the Jefferson Territory courts. Neither had a good grip on its claimed jurisdiction, and criminals frequently slipped through gaping loopholes in the system. As a result, People's Courts emerged. These were not permanent, or even official institutions, but they were summoned to deal with serious crimes, such as murders. The courts followed general procedures, allowing for both prosecution and defense, but the sentence was usually death, and it was carried out immediately after the ruling.¹⁶



Miners' districts and claim clubs

Miners' districts, claim clubs, and other local government entities were also created to "provide a sense of order until the United States government organized the region."¹⁷ In the mountains, "Miners' Districts" sprung up whenever a large enough group of miners settled in one area. The residents in the district established boundaries, defined property rights, elected officers, set up courts, tried lawsuits, and punished criminals. Among the first districts were Gold Hill near present day Boulder, Jackson Diggings in Clear Creek County, and Gregory District near Blackhawk, all established in 1859.¹⁸

Claim clubs provided a similar function. "As on earlier frontiers, miners, farmers, and land boomers agreed amongst themselves to respect and defend each other's claims until the extension of the federal land survey made legal purchase possible."¹⁹ Also referred to as neighborhood clubs, claim clubs were organized to settle land disputes and address other issue like water rights.²⁰ Two of the most prominent were the Arapahoe County Claim Club, which included the City of Denver, and the El Paso Claim Club, which included much of present day El Paso County.²¹

After Kansas made the transition from territory to state in January 1861, people living in the region recognized the necessity, and inevitability, of coming under United States authority. An application for territorial status was filed, and in February 1861 Congress passed a bill creating the Territory of Colorado. Immediately upon becoming an official territory, all existing governing entities ceded power to the new government.²²

The territory was divided into three judicial districts. President Abraham Lincoln appointed three justices to the first legal Supreme Court in the territory. Chief Justice Benjamin F. Hall was given jurisdiction of the Denver District; Justice Charles Lee Armour, the Central City District; and Justice S. Newton Pettis, the Southern District, near Pueblo.²³ The first case to be tried before the Territorial Supreme Court was *Gardner v. Dunn* on appeal from Park County.²⁴

Colorado was admitted to the union as a state on August 1, 1876. The state's original constitution provided for a Supreme Court with a bench of three justices, as well as four judicial districts, with one judge serving each.²⁵

Colorado Supreme Court

As discussed above, the history of Colorado's highest court began even before Colorado became the 38th state in the nation. The first Supreme Court was established in 1859 by the Territory of Jefferson, an extra-legal government existing prior to the Territory of Colorado. When Colorado became an official territory, a new Supreme Court was established. This court held its initial session in Denver on July 10, 1861. The court convened in a 7-by-9-foot room in the 12-by-25-foot Commonwealth Building on the corner of Larimer and 13th Street.²⁶

The court continued with the same structure when Colorado became a state. It moved into a grand courthouse in the state capitol's north wing in the early 1890s, and heard arguments there until 1977, when a new courthouse was built a block away at 2 E. 14th Avenue. That courthouse served the Supreme Court and the Court of Appeals until 2010, when it was razed to make way for the Ralph L. Carr Colorado Judicial Center, the court's current location.

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The Supreme Court grew to seven justices in 1905 to help address its heavy caseload. That number remains the same today. The Supreme Court is the highest court in Colorado. It is often referred to as the court of last resort. The justices sit en banc, or in a full panel, for every case. Requests to review decisions of the Colorado Court of Appeals constitute a majority of the Supreme Court's filings. The Supreme Court also has direct appellate jurisdiction over cases in which a statute has been held to be unconstitutional, cases involving decisions of the Public Utilities Commission, writs of habeas corpus, cases involving adjudication of water rights, summary proceedings initiated under the Election Code, and prosecutorial appeals concerning search and seizure questions in pending criminal proceedings. All of these appeals are filed directly with the Supreme Court, and, in these cases bypass the Court of Appeals. The Supreme Court also has exclusive jurisdiction to promulgate rules governing practice and procedure in civil and criminal actions.²⁷

Colorado Court of Appeals

Colorado's Court of Appeals has a fragmented, yet fascinating, history.

- The first Court of Appeals was established in 1891 by the Colorado General Assembly for an indeterminate term to help the Supreme Court with its heavy caseload. This court consisted of three judges and lasted until 1904, when it was no longer believed to be necessary.²⁸
- In 1913, a second Court of Appeals was created, this time with five judges, but with a pre-established term of only four years. Its mandate expired in 1917.²⁹
- In 1970, the third and present Court of Appeals was established, with six judges at its inception. In 1974, the number of judges increased to 10; on January 1, 1988, that number increased to 13. Effective July 1, 1988, three additional positions were created by the General Assembly, bringing the number of judges to 16. The most recent court expansion became effective on July 1, 2008, bringing the number of judges to 22.³⁰

The court's location during its first two terms is unclear, but due to its close relationship with the Supreme Court, it may have been held in the same location. The third Court of Appeals began hearing cases in 1970 at the Supreme Court courtroom in the Capitol. When the court expanded to 10 judges in 1974, it moved to a new courtroom on the sixth floor of the Farmer's Union Building on 16th and Sherman.³¹ In 1977 it joined the Supreme Court in the former Colorado Judicial Department Building at 14th and Broadway, and it now has two courtrooms in the Ralph L. Carr Colorado Judicial Center.

The Court of Appeals has initial jurisdiction, with exceptions, over appeals from the Colorado District Courts, Denver Probate Court, and Denver Juvenile Court. In addition, the Court of Appeals has specific appellate jurisdiction over decisions originating from a number of state administrative boards and agencies, including the Industrial Claim Appeals Office. Reviews of the Court of Appeals' decisions are directed to the Colorado Supreme Court.³²

Judicial Districts

When Colorado became a state on August 1, 1876, it was divided into four large judicial districts, each with a district court to hear major cases and crimes and a county court for lesser issues.³³ Geographic barriers and widely spread populations were significant challenges for the new judicial system. The need for local courts became quickly evident, and "justice of the peace courts were organized in each community to provide local law enforcement and to settle minor disputes." As the state grew, so too did the number of "j.p. courts".³⁴ "There was little or no coordination between these local courts.

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The elected justices of the peace were often local residents who had minimal or sometimes no legal training.”³⁵ Additional judicial districts were added over time as the state’s population grew. By 1962, the inadequacies of the j.p. courts had grown to a level that prompted the state legislature to refer “to the voters a constitutional amendment that provided for the first major reorganization of the court system since 1876.”³⁶ The adopted amendment abolished the justices of the peace and gave the Supreme Court the power to create uniform standards and procedures for the various courts. “This court plan went into effect in 1965 and provided an integrated statewide rather than localized focus for the state judicial system.”³⁷

There are 23 judicial districts in the state today. Each district is a distinct geographic area that includes one or more of the state’s 64 counties. Each judicial district has district and county courts to serve the judicial needs of its population. District Courts hear civil cases in any amount, as well as domestic relations, criminal, juvenile, probate, and mental health cases. District court decisions may be appealed to the Colorado Court of Appeals (in some cases directly to the Colorado Supreme Court). County Courts handle civil cases under \$25,000, misdemeanors, traffic infractions, felony complaints (which may be sent to district court), protection orders, and small claims. County court decisions may be appealed to the district court.³⁸

Tribal Courts

Modern tribal courts were established in the United States in 1934 with passage of the Indian Reorganization Act. Tribes were encouraged to enact their own laws and establish their own governments, constitutions, and justice systems. Many tribes, impoverished from years of Indian policy that had decimated their communities and culture, couldn’t afford to adopt their own tribal codes or develop courts and chose to operate under provisions of the Code of Federal Regulations (CFR). Additional federal laws were passed to establish and strengthen tribal courts and police departments.

Today, there are 400 tribal justice systems in the United States; they operate separately from the federal and state courts and are governed by tribal law. There are two tribal courts in Colorado: the Southern Ute Indian Tribal Court in Ignacio and the Ute Mountain Ute Agency (Southwest Region) in Towaoc. These courts exercise and protect the sovereignty and jurisdiction of the tribes, providing a forum for the enforcement of tribal law and the administration of justice, while honoring tribal culture. Based in tribal traditions, they focus on restorative justice and communal resolution.

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¹Carl Ubbelohde et al., *A Colorado History* 20 (10th ed. 2015).

²Jicarilla Apache Nation, <https://tentribespartnership.org/tribes/jicarilla-apache-nation/> (last visited May 29, 2025).

³Tisististas/Hinono'ei Cheyenne and Arapaho Tribes, Language and Culture, <https://www.cheyenneandarapaho-nsn.gov/> (last visited May 29, 2025).

⁴Indian Pueblo Cultural Center, <https://tinyurl.com/yk3adeh4> (last visited March 28, 2025).

⁵Eastern Shoshone Tribe, History, <https://easternshoshone.org/about/> (last visited March 28, 2025).

⁶Southern Ute Indian Tribe, History, <https://www.southernute-nsn.gov/history/> (last visited March 28, 2025); Ute Mountain Ute Tribe, <https://www.utemountainutetribes.com/> (last visited March 28, 2025); History Colorado, Ute Tribal Paths, <https://exhibits.historycolorado.org/ute-tribal-paths> (last visited March 28, 2025).

⁷Carl Abbott et al., *Colorado: A History of the Centennial State* 14 (5th ed. 2013).

⁸*Id.* at 23-24. See generally Virginia Sánchez, *Pleas and Petitions: Hispano Culture and Legislative Conflict in Territorial Colorado*, (2020).

⁹Thomas J. Noel and William J. Hansen, *Boom and Bust Colorado* 8-9 (2021).

¹⁰Carol Archer, "El Amparo de la Ley" Hispanas' Use of Spanish Mexican and Anglo American Law in Northern New Mexico and Southern Colorado, 1848-1912 (Doctoral thesis, University of Calgary, Calgary, Canada) (<http://hdl.handle.net/11023/1986>).

¹¹Robert G. Athearn, *The Coloradans* 7 (1976).

¹²Abbott, *supra* note 7, at 52.

¹³*Id.* at 57; Fred Y. Holland, *Early Colorado Courts and Judges*, 9 *Dicta* 22, 22 (1931).

¹⁴Barbara Bintliff, *A Jurisdictional History of the Colorado Courts*, 65 *U. Colo. L. Rev.* 577, 585 (1994).

¹⁵Ubbelohde, *supra* note 1, at 108-10; Denver Public Library Special Collections and Archives, Brian K. Trembath, *Jefferson Territory: The Renegade State that Almost Replaced Colorado* (June 24, 2020), <https://history.denverlibrary.org/news/literary-research/jefferson-territory-renegade-state-almost-replaced-colorado#:~:text=Back%20then%2C%20much%20of%20what,been%20located%20on%20another%20planet>, (last visited May 30, 2025).

¹⁶Bintliff, *supra* note 14, at 582-83.

¹⁷*Id.* at 585.

¹⁸*Id.* at 580-81.

¹⁹Abbott, *supra* note 7, at 54.

²⁰Bintliff, *supra* note 14, at 582.

²¹*Id.*

²²Holland, *supra* note 13, at 25.

²³David L. Erickson, *Early Justice and the Formation of the Colorado Bar* 24 (2008).

²⁴*Gardner v. Dunn*, 1 *Colo.* 1 (1864).

²⁵Erickson, *supra* note 23, at 53-56.

²⁶The United States Court of Appeals for the 10th Circuit, *Building History*, <https://www.ca10.uscourts.gov/building-history>, (last visited June 1, 2025).

²⁷Colorado Judicial Branch, Supreme Court, <https://www.coloradojudicial.gov/supreme-court> (last visited June 1, 2025).

²⁸Jeanie Towle Mellinger and Molly Wingate, *The Colorado Court of Appeals: History of Colorado's Intermediate Appellate Court* 9-20 (2008).

²⁹*Id.* at 21.

³⁰*Id.* at 33-76.

³¹*Id.* at 57.

³²Colorado Judicial Branch, Court of Appeals, <https://www.coloradojudicial.gov/court-appeals> (last visited June 1, 2025).

³³Thomas e. Cronin and Robert D. Loewy, *Colorado Politics and Policy: Governing a Purple State*, 238 (2012).

³⁴*Id.*

³⁵*Id.*

³⁶*Id.*

³⁷*Id.*

³⁸Colorado Judicial Branch, *Trial Courts by County*, <https://www.coloradojudicial.gov/trial-courts-county> (last visited June 2, 2025).