



COLORADO'S SPECIALTY BAR ASSOCIATIONS

c/o CHBA - 1550 Larimer Street, Box 636, Denver, CO 80202

PRESENTATION NOTES

"Getting Benched"
Holland & Hart LLP
July 8, 2008

Panel:

- Judge Gilbert M. Román, Colorado Court of Appeals
- Judge Diana L. Terry, Colorado Court of Appeals
- Elizabeth Ann Weishaupl, Appointee to the 18th Judicial District Court
- Trey Rogers, Chief Legal Counsel to Governor Bill Ritter, Jr.
- Craig Welling, Deputy Legal Counsel to Governor Bill Ritter, Jr.

Introduction:

Jennifer Weddle introduced the presenters and the objective of the breakfast panel discussion: to encourage members of the specialty bar associations to seek appointment for upcoming vacancies in an effort to increase the diversity of Colorado's judiciary (particularly in light of Sandra Rothenberg's and JoAnn Vogt's upcoming retirements).

From the Governor's Perspective – Trey Rogers and Craig Welling

Messrs. Rogers and Welling presented on the Governor's technical application process, followed by factors considered when reviewing applications, and finally information regarding the Governor's interview process.

Technical Process:

The process commences from the Governor's perspective when the respective nominating commission sends its slate of two or three nominees (depending on the vacancy) to the Governor for consideration. The Governor then has fifteen days to conduct his investigation and interviews, and to make his appointment. Given the short turnaround, the Governor's Office typically schedules blocks of 20 to 30 minute interviews with the Governor in advance of the commissions' announcements.

The Office of Legal Counsel then solicits comments from members of the bar via a group email to attorneys and others included in an over 800-name email distribution list. If you would like to be added to the email distribution list, please send an email to judicial.appointments@state.co.us.

Finally, prior to the nominee interviews with the Governor, his Office of Legal Counsel prepares a confidential memorandum which presents the following information about each nominee:

- Biographic information;
- Vetted solicited and unsolicited comments from interested parties;
- Colorado Women's Bar Association ("CWBA") due diligence memo on all nominees;
- Bar association and/or other endorsements; and
- Comments from the bench with the vacancy as to the unique needs of that bench.

Once completed, the Office of Legal Counsel circulates the memo to the team conducting the interviews, typically consisting of the Governor, Trey Rogers and Stephanie Villafuerte, Deputy Chief of Staff.

As to the solicited and unsolicited comments, these are confidential, but the Office of Legal Counsel does identify the source of the comment to the Governor. In contrast, the CWBA's memo does not identify the names of those interviewed.

What We're Looking For:

Mr. Rogers noted that some nominees appear to be running a campaign resulting in a slew of comments that are not very helpful. Mr. Rogers suggested that greater weight would be given to credentialed comments from people who would be able to speak to the nominee's qualities that make him/her best-suited for the bench (such as opposing attorneys on significant cases and/or judges). The comments should be substantive and relate to, for example, a person's legal ability, ethics, intellect, writing, etc.

Interviews:

As mentioned, a three-member team from the Governor's Office conducts the interviews, typically consisting of the Governor, Trey Rogers, and Stephanie Villafuerte. If Mr. Rogers or Ms. Villafuerte are not available, Mr. Welling or Deputy Legal Counsel Pam Campos assist with the interviews. All interviews for a particular vacancy are scheduled for the same day. Again, each consists of 20 or 30 minutes, with time built-in between the interviews for debriefing. Given the short length of the interviews, a nominee should watch her time carefully to not spend 15 minutes on the introductory question, "tell me a little about yourself." The team schedules one half hour of additional time at the conclusion of the interviews to discuss the slate of nominees and debrief.

Half of the time the Governor will make his selection during this follow-up period. The other half of the time the Governor will request additional investigation from his counsel before making a decision.

Factors Considered:

While the Governor's Office does not have a strict list of factors it considers when reviewing nominees, Mr. Rogers discussed four primary areas of consideration.

1. *Years in practice:* While not a hard and fast rule, Mr. Rogers explained that typically they are looking for a candidate with at least 10 years experience for county court vacancies, 15 years experience for district court vacancies, and "more than 15 years" for the Court of Appeals. Mr. Welling commented that sometimes the Governor deviates from these criteria in parts of the State where the pool of applicants is somewhat limited given the relatively few attorneys applying for those vacancies. Also, the Governor's Office only receives a slate of three nominees who have already been selected out of a larger pool by the respective nominating commission, so the experience is relative to the others on the list of finalists.
2. *Diversity of experience:* The more varied and deeper a candidate's experience the better. Ideally, a nominee would have experience in family law, criminal law, and commercial litigation.
 - a. *Commercial litigation:* Messrs. Rogers and Welling both commented on the importance of a candidate's familiarity with the commercial litigation given the unique nature of civil practice compared to other types of practices such as criminal law. A common question of nominees with criminal defense or prosecution background is whether the nominee understands the volume of paper and briefing that the nominee will have to contend with as a judge. In many respects, a commercial litigation practice is distinct from a criminal litigation practice and a candidate should be familiar with the commercial practice. The Governor's Office is also concerned with potential bias towards plaintiffs or defendants in civil practice.
 - b. *Criminal:* Aside from practical experience in the in criminal law, the Governor is interested in whether a nominee has a potential bias towards defendants or the prosecution. Given that many nominees come from a private defense practice or from a prosecutor's office, the Governor wants to know whether a nominee, if appointed, will be able to fairly enforce the law. For example, stern application of mandatory sentences where appropriate, as well as alternative sentencing schemes when those are called for by the circumstances.
 - c. *Family law:* Generally, nominees have the least experience in the area of family law. The fundamental question for nominees regarding family law is typically whether or not the candidate will give the family law cases the attention they deserve. A candidate must show a dedication to learning the area.

3. *Love of the law*: Perhaps the most important question asked during the interview of each nominee is why they want to be a judge. "Because it's the next logical step in my career" is not the correct answer. A nominee must demonstrate a passion for their profession and their work – they love being a lawyer, they love the law, and they are passionate about serving the community.
4. *Diversity*: The Governor's Office recognizes the lack of diversity in Colorado's courts relative to the makeup of the state's demographics. The Governor's Office wants to see an increase in the number of diverse judges in Colorado and is looking for opportunities to deal the problem.

From the Bench – Judge Gilbert M. Román

Judge Román explained that there are presently 22 judges on the Court of Appeals, of which only five are women and one is ethnically diverse. Two of the five women judges will be retiring later this year. The bench can and should be diversified.

Application Process Pointers:

▪ *The Application and Writing Sample:*

Spend a lot of time with the application. It is an extremely important document that will be reviewed by a lot of people. The Supreme Court Nominating Commission, which handles the nomination process for Court of Appeals and Supreme Court vacancies, will review the application and contact opposing counsel, judges and co-counsel listed in response to question 19 to interview them regarding the candidate. The Commission is made up of representatives from throughout the state, both Republican and Democrat, some lawyers and some non-lawyers. When seeking endorsements, organizations will typically want to review your application as well, so dedicate time to its preparation. The same goes for the writing sample. Read, re-read and proof your writing sample before submitting your application.

▪ *Letters of Recommendation:*

Think hard about the letters of recommendation. Noting Mr. Rogers' earlier comments, I would encourage applicants to seek out references from individuals from diverse professional backgrounds. For example, seek out references from those who managed you and your work, those you litigated against, those you worked with in a past-life when not practicing law, those that can speak to your community service or pro bono work, a former judge, etc. The Commissioners will call each reference and press them about their knowledge and opinion of a candidate, so these references should be prepared to back-up their letters.

▪ *Commission Interviews:*

If you receive the call to schedule an interview, you should not sit back and wait for the interview. You should prepare. You should be asking people to conduct mock interviews. Your own specialty bar associations typically offer such services.

The interview with the Supreme Court Nominating Commission takes place in a large conference room with you, the candidate, in the hot seat at the end of the table, the Chief Justice on the other end of the table directly in front of you, and eight commissioners on either side conducting what seems to be a rapid-fire interview of prepared questions.

When I interviewed, it appeared that the questions were divided-up before the interview and were likely the same questions posed to each candidate. The Chief Justice went right into my letter as to why I wanted to be a judge and asked for my elaboration on the statements made in the letter.

The questions generally related to the following:

- Questions regarding why you want to be a judge;
- Questions regarding how you would analyze a case in an area where you do not have extensive experience;
- Questions regarding bias and how you would deal with bias; and
- Questions regarding your judicial philosophy.

▪ *Making the Short List – Commission Nomination:*

If you receive the call that you have been selected as a finalist, you cannot be passive. Create a list of people and/or organizations that you want to endorse your candidacy. The Governor only has 15 days to make his appointment, so you should begin working on collecting endorsements as soon as possible.

As for endorsements, be selective. Look to influential people representing varied political interests. They could include bar association heavy weights, prominent members of your law firm, the specialty bar associations, etc.

▪ *Interview with the Governor:*

Because Mr. Rogers covered the specific of this area, Judge Román shared a story about receiving the call from the Governor's Office to schedule an interview at 8 a.m. or 10 a.m. on a certain date. He responded that he was in mediation that day, followed promptly with, "I'll take 10 a.m." Judge Román shared that his appointment was a fantastic experience and that he would gladly answer any questions from anyone interested in applying for a judicial vacancy.

From the Bench – Judge Diana L. Terry

Judge Terry was sworn in July 5, 2006, and despite having only served for two years, after Vogt's and Rothenberg's retirements, she will be the second most senior woman judge on the Court of Appeals. Judge Terry noted the need to increase diversity on the Court of Appeals bench.

Judge Terry recalled receiving a call from Judge Rothenberg after Judge Terry was appointed, in which Judge Rothenberg said "there are not partners in this firm; you have the same voice on the Court of Appeals as everyone else." Judge Terry found the comment to be 100% true. Although there is an enormous learning curve, from the moment you walk into the Court, you represent one of three votes in your division. You research and do as much as possible to make the correct determination, but your voice carries the same weight as the others. Judge Terry explained that seven days after she was sworn in she had ten cases to help decide, four of which included oral argument.

There were some things that Judge Terry was not really prepared for. Noting the often "lonely" experience of a senior litigator who typically makes all the decisions regarding her case independently without spending too much time debating and discussing the law, her experience on the Court of Appeals has been wonderful in that she has two colleagues with which to discuss and debate the law before making a decision. As for the panel, they typically consist of a senior judge, a mid-level judge, and a "baby judge."

As for the culture, Judge Terry explained that they have been fortunate because, although they have no control over who is appointed, all of the judges get along and the culture is very collegial.

Regarding caseload, each judge is expected to issue 90 opinions a year individually, resulting in 270 opinions a year per panel.

From a Recent District Court Appointee – Elizabeth Ann Weishaupl

Elizabeth opened with some wisdom imparted on her by U.S. District Court Judge Zita L. Weinshienk – persistence pays off. Before becoming a U.S. District Court Judge, it took judge Weinsheink seven tries to become a Denver County Court judge, then five tries to get on the district court. Ms. Weishaupl said that one of the hardest things you have to learn to do when applying for judicial vacancies is how to handle rejection. You may not get appointed the first time, so be persistent.

Ms. Weishaupl shared her list of four pointers for those applying to the bench:

1. *Practice Dharma*: It pays to maintain good relationships. Don't burn bridges, network, and get colleagues to write letters and submit email comments to the Governor's Office.

2. *Know the people who can get you the endorsements:* Get your name out there. Be active in the legal community.
3. *Be persistent, be courageous, and be thoughtful about how you approach the application process.*
4. *Call people that have gone through the process to give you pointers.*

Pointers from Q&A

- (Rogers) – The best feedback the Governor has received regarding candidates who are magistrates comes from the judges in the district. Also, magistrates have the distinct advantage of “on-the-job” training as a magistrate judge. Mr. Rogers noted that they recently appointed a career clerk to the bench.
- (Rogers) – One way of addressing the issue of diversity on the bench is to increase diversity on the nominating commissions. Apply for the nominating commissions.
- (Terry) – Avoid discouragement. Judge Terry mentioned that she applied four times, and although discouraging, applicants should recognize that it takes time. Most applicants are not selected their first time through the process. Mr. Rogers echoed the comment, stating that it is common to see applicants three to four times before they are selected. Persistence is critical.
- (Terry) – In addition to the feedback from the bench the Governor receives regarding a particular vacancy, the nominating commissions also solicit information from their courts as to the court’s specific needs. On the Supreme Court Nominating Commission, the Chief Justice tells the Commission the appellate court’s needs, such as its need for judges with trial experience.
- (Weishaupl) – When applying for a vacancy in a large judicial district such as the 18th, know the communities in that district. The commissions are generally comprised of representatives from throughout the district, not just the metropolitan area.
- (Terry) – If there are areas where you may not have significant experience, you should not highlight those in your application, but be ready to deal with those in your interview.
- (Rogers) – Candidates with substantive experience in all three areas of law discussed are rare, however some candidates have changed their practice in order to meet this criterion.
- All judicial panelists invited attendees to call them with any questions about the judicial selection process.