



# A BRIEF HISTORY OF APPELLATE REVIEW IN OHIO AND THE ELEVENTH DISTRICT COURT OF APPEALS

By: Presiding/Administrative Judge Donald R. Ford

## ***Prologue***

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The concept of the right of appeal was implemented during the Roman Empire era and was later allowed in the ecclesiastical courts. Late in the thirteenth century, the function of appeal was introduced in the English law courts. Prior to that time, the judgment of the trial court was final.

However, the existence of appellate procedure far outdates the early Romans. Recorded data indicates that one of the oldest corpus of legal jurisprudence was the Chinese system which had established its roots before 2500 B.C. which survived for about 4,500 years until the Communists control of China occurred shortly after the end of the Second World War. Legal decisions under its penumbra were made only by judges which could be reviewed by higher courts without the existence or intervention of lawyers.<sup>1</sup> Hammurabi's code called for appellate rights as early as 1750 B.C.<sup>2</sup> The Egyptian case of *Mes v. Khay* took place in the reign of Ramses II around 1300 B.C. "It was an appeal from a prior judgment, forming the fifth stage in a long series of lawsuits over the title to land."<sup>3</sup>

The adoption of the appellate process in our common law heritage resulted in part as society became more complex and lawsuits more numerous. Another important factor contributing to this metamorphosis was the feeling that justice required that the unsuccessful party with his property, reputation, and the loss of liberty or life at stake should have the benefit of more than one judge's decision. The losing litigant may have had a logical basis to conclude that a trial court was not correct and was moved by passion or prejudice or improper

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<sup>1</sup> John C. Klotter, *Criminal Evidence*, 7<sup>th</sup> ed. (2000), p. 9.

<sup>2</sup> Wayne R. Barnes, *Contemplating a Civil Law Paradigm for a Future International Commercial Code* (2005), 65 *La.L.Rev.* 677, 700.

<sup>3</sup> John H. Wigmore, *A Panorama of the World's Legal Systems* (1936), p. 34.

application of the law. The judicial system to exist need not only render sound decisions in fact but judgments that not only the parties accepted but that the public believed to be just.<sup>4</sup>

Thus, the foregoing predicate created the impetus for the acceptance in the English legal community that an appeal was the submission to a superior court for the review of a cause which has already been tried in an inferior tribunal.

The Northwest Ordinance in 1787 introduced appellate jurisdiction in Ohio to its court system under which the General Court was composed of three judges appointed by the President with the advice and consent of the United States Senate was invested with original and appellate jurisdiction in all cases, civil and criminal, as well as capital cases. It possessed no chancery process, and was purely a common law court.<sup>5</sup> Pursuant to action by the legislative council in August 1788, “A General Court of Quarter Sessions of the Peace and County Courts of Common Pleas” were created as inferior courts to the General Court.<sup>6</sup> The Common Pleas Court consisted of three to seven judges in each county in the counties that then existed. Its jurisdiction was dictated by common law principles.

The General Court was “vested with original and appellate jurisdiction in all civil and criminal cases, and of capital cases. On questions of divorce and alimony, its jurisdiction was exclusive. It was a strictly common law court and had no powers in chancery. It was authorized to revise and reverse the

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<sup>4</sup> Pamphlet: *Your Court of Appeals, 7th District* (1968)

<sup>5</sup> F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 *Journal of the Ohio Historical Society* 195, 196.

<sup>6</sup> *Ibid.* At 199.

decisions of all other tribunals in the Territory. It held sessions at Cincinnati, in March; at Marietta, in October; and at Detroit, and in the western counties, at such time in the year as the judges might designate.”<sup>7</sup>

The court system of the Territory, like the other branches of its government was not a complex concept. At the apex of the system was the General Court composed of three judges. This court was concerned at first largely with non-judicial matters since it had multiple duties and responsibilities. When its legislative functions were detached, however, it was deeply immersed in its judicial role while it traversed a difficult and hazardous circuit. Below this court in the judicial hierarchy were the County Court of Common Pleas and the General Court of Quarter Sessions of the Peace. These courts, with the Probate Courts and Orphans Courts and the Justices of the Peace constituted the court system of the Territory.<sup>8</sup>

### **The Constitution of 1802**

The Convention which framed the first Constitution of Ohio met at Chillicothe on November 1, 1802. Pursuant to it, the Supreme Court was made up of three judges, chosen by the Legislature for seven years, “if so long they behave well.”<sup>9</sup>

“Any two of the judges constituted a quorum, vested with such original and appellate jurisdiction as was directed by law. The Legislature was authorized to add a fourth judge after five years, in which case the State might be divided into two circuits by the judges, within which any two of the judges might

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<sup>7</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 196.

<sup>8</sup> *Ibid.* at 200-201.

<sup>9</sup> *Ibid.* at 201.

hold court.”<sup>10</sup> The Supreme Court had original and appellate jurisdiction both in common law and chancery and exclusive jurisdiction in the trial of divorce, alimony and capital cases.<sup>11</sup>

“The Supreme Court was required by the original state Constitution to hold a term once a year in each county. This requirement kept the judges on horseback half the year and compelled them to give opinions in frontier towns where no law books were available. As the same judges were not always present, a given point of law was sometimes settled differently in different counties. To remedy this evil, the Legislature passed a law directing a special meeting, of all the judges of the Supreme Court, to be held at the seat of government, once a year, to consider and decide questions reserved in the counties, and sent up by order of the Court.”<sup>12</sup>

The resulting confusion in precedential chemistry was lessened by this practice, but not entirely. “Although no intermediate court was provided for by the Constitution of 1802, one was indirectly established in 1808 by the statute permitting the Supreme Court to divide the State into two districts for the purposes of its work. In each district two of the four judges held court and in each Common Pleas Circuit an extraordinary session was held. At least three of the

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<sup>10</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 202.

<sup>11</sup> Lee E. Skeel, *Constitutional History of Ohio Appellate Courts*, 6 *Cleve.Mar.L.Rev.* (1957), 323, 324.

<sup>12</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 202-203.

judges were required to be present at the hearing, to hear and determine cases reserved by the Supreme Court held in the district” to be heard in Columbus.<sup>13</sup>

“When the fourth judge was added to the Supreme Court in 1808, the state was divided into two districts with two of the four Supreme Court judges assigned to each district to review the cases of the common pleas court. When on circuit, two judges were required to constitute a quorum to do business. On occasion, these two jurists disagreed on a point of law. In such an event, no final decision could be made. In the same manner, when all four of the judges were together in Columbus holding their Court in Bank; if two were of one opinion, and two of another, on any question before them, no decision could be obtained. This court was promptly swamped with cases. The judges had to ride the circuit and hear cases in each of the then existing seventy-two counties every year. “The delay in the administration of justice became so severe that by 1834, over 1,459 cases were still pending final judgment.”<sup>14</sup>

“The effect of this law was to establish two branches of the Supreme Court, one the Supreme Court on Circuit; the other, the Supreme Court in Bank. The cases which came before the Court in Bank were those in which the judges holding the court on the circuit differed on a question of law, or in which a new and difficult question of law arose, or where in the trial of a cause the judges were divided in opinion as to the admission or rejection of testimony, and were

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<sup>13</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 205.

<sup>14</sup> *A History of the Courts and Lawyers of Ohio* (Carrington T. Marshall ed. 1934), Vol. I, 224.

unable for that reason to decide a motion for a new trial. This law was repealed on February 16, 1810.”<sup>15</sup>

### **1816**

Columbus is named the state capital (following Chillicothe and Zanesville).  
The Ohio Supreme Court moves to Columbus.

### **1823**

“In 1823, the two divisions of the court were reestablished, one of which was in effect an intermediate court. By the terms of this law all of the Supreme Court judges were required to meet annually in Columbus after the Circuit was over, to decide all questions arising in circuit, which were reserved by the judges for decision in Columbus.”<sup>16</sup>

The Supreme Court was now mandated to meet in Columbus once a year after close of their tour of their circuit. Again, this was known as the “Supreme Court in bank.” When the Supreme Court judges were riding circuit to the counties, this was known as the “Supreme Court on circuit.”<sup>17</sup>

“It might be of interest to note at this point that Ohio made no provision for publishing reports of cases decided in her courts until about 1824. The first official volume, *First Hammond (Ohio) Reports*, published in 1824, begins with a case decided on the circuit in August, 1821, and contains only a few cases decided prior to the December term, 1823. However, Benjamin Tappan, president-judge of the Fifth Circuit from 1816 to 1823, later published a small

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<sup>15</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 205.

<sup>16</sup> *Ibid.* at 205.

<sup>17</sup> Melanie Putnam, *Ohio Legal Research Guide* (1997), p. 121.

volume, referred to in the *Ohio Digests* as 'Tappan's Report.' See remarks by Judges Moses M. Granger, Randall and Ryan, *op cit.* Vol. V, p.117."<sup>18</sup>

"But few, comparatively speaking, of the circuit decisions of the Supreme Court have been reported. Several are contained in the first volume of Ohio Reports, having been published therein, by order of the Judges \*\*\* and some cases may be found in the Western Law Journal. The only volume of Circuit Decisions is Wright's Reports of cases decided in the years 1831 to 1834 inclusive, while he was on the bench."<sup>19</sup>

Thus, in summary, the Constitution of 1802 established a Supreme Court which consisted of three members whose number could be increased to four judges after 1807. The court then had original and appellate jurisdiction in common law and chancery which was to hold court annually in each existing county which by legislation was divided into two districts for appellate review purposes.<sup>20</sup> It also created Common Pleas Courts. The State was divided into three circuits with a president-judge in each of these circuits to function in each county within the circuit. It also provided for either two or three associate Common Pleas judges to be selected in each county to interact with the president-judge in each county common pleas court. By 1851, there were twenty such circuits.<sup>21</sup> Judges at all levels were selected by the Legislature.<sup>22</sup>

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<sup>18</sup> F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society, 195, 207.

<sup>19</sup> Reports of Cases Argued and Determined in the Supreme Court of Ohio (George W. McCook, 1853), Vol. I, preface p. 10.

<sup>20</sup> F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 207-208.

<sup>21</sup> *Ibid.* at 203.

<sup>22</sup> *Ibid.* at 207-208.

## 1831

In 1831 a new act of the Legislature again changed the procedures of the Ohio Supreme Court. Not only were the judges on circuit permitted to reserve questions for the Court in Bank, but parties before the court were also given the right to have all questions on which the judges were divided, reserved for the Court in Bank. The provisions of the Acts of 1808 to 1823 were combined in the establishment of a quasi-intermediate court and in granting parties the privilege of an appeal to the Court in Bank. The annual meetings of the Court in Bank under this new law were also held at Columbus. From 1831 until the new Constitution was adopted in 1851, the Supreme Court held its sessions in the circuit and in bank in accordance with this legislation.<sup>23</sup> “That the judges of the Supreme Court, or any of three of them, shall hold a Special Session in Bank, at Columbus, on the first Tuesday of January, in the year eighteen hundred and thirty-one, for the adjudication of all questions or causes in law or equity, which were continued or reserved for decision by the Special Session at the close of the Circuits of said Supreme Court.”<sup>24</sup>

## 1851

“The truth of the matter is that the State of Ohio had outgrown its judicial system. When it was established in 1802, it was adequate to the wants of the people. Rapidly changing conditions made it inadequate. When the Constitution of 1802 was adopted, there were but nine counties in the State, with a population of less than fifty thousand. When Governor Shannon spoke in December, 1843,

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<sup>23</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 206.

<sup>24</sup> 29 *Laws of Ohio*, p. 3.

there were seventy-nine counties in the State (in each of which the Supreme Court was required to hold an annual session), containing a population of almost two million. Trade, commerce, manufacturing, and wealth in the State had increased in like ratio.”<sup>25</sup> “As early as the 1810’s, Ohio governors had suggested that the constitution needed amendment. The supreme court, having both original and appellate jurisdiction and required to sit in each county once a year, had fallen behind on its docket.”<sup>26</sup>

The foregoing factors provided the impetus for dramatic changes in the organization of the courts in Ohio. The Constitution of 1851 declared that the judicial system would be restructured to be headed by the Supreme Court, and which also included the classification providing for District Courts, Common Pleas Courts, Courts of Probate, Justices of the Peace, and other courts inferior to the Supreme Court, with the Legislature having the discretion to establish such lower courts in the various counties apparently as might be needed.<sup>27</sup>

Perhaps the most seminal feature resulting from the Constitution of 1851 was the reinforcement of the separation of powers in the judicial branch of government. It provided for the first time for the popular election of Supreme Court judges. The number of Supreme Court justices was increased to five, a majority of whom formed a quorum, and their terms of office were fixed at no less than five years. It also required that the Supreme Court was to hold a term beginning each year in January at the State Capitol. The prior system of

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<sup>25</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 212.

<sup>26</sup> *The History of Ohio Law*, (Michael Les Benedict & John F. Winkler eds. 2004), p. 49.

<sup>27</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 215.

“Supreme Court on circuit” was also terminated since the new Constitution dictated that one judge of the Supreme Court, together with Common Pleas judges of the District, would hold one term of a “District Court” in each county annually for appellate review. The Common Pleas judges in each subdivision were popularly elected for five year terms.<sup>28</sup> The Supreme Court judges continued to travel the circuits until 1865 when the Legislature relieved them of that duty.<sup>29</sup>

The concept of popular election was also extended to the Common Pleas Courts which remained, as is true today, the central entity addressing the judicial business of the State. Under it, the State was divided into nine common pleas districts and each such district into three judicial subdivisions. The judges of each district were to meet and fix the annual calendar for three terms of court in each county in their district, and were to hold court in the counties of their respective subdivisions. With regard to both civil and criminal matters, the jurisdiction of the Common Pleas Court was limited to the county in which it was in session. Monetarily, it had original jurisdiction in civil matters involving a sum of more than \$100. Common Pleas Courts were also declared to have concurring appellate jurisdiction from cases appealed from the probate or other lower courts.<sup>30</sup>

“The new constitution required the creation of nine common pleas districts, each district containing three or more counties, with the exception of Hamilton

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<sup>28</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 215.

<sup>29</sup> *A History of the Courts and Lawyers of Ohio* (Carrington T. Marshall ed. 1934) Vol. I, 222.

<sup>30</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 216.

County, which would comprise a single district. The voters in the subdivisions of the districts would elect common pleas judges, and the jurisdiction of these courts was to be fixed by law. District courts were made up of common pleas judges and a judge of the supreme court were to meet in every county each year.”<sup>31</sup> District courts shall be composed of the judges of the Court of Common Pleas of the representative districts, and one of the judges of the Supreme Court, any three of whom shall be a quorum.<sup>32</sup>

“It was also given appellate jurisdiction from the Common Pleas Court in all civil cases over \$100 in which that court had original jurisdiction. Appeals in the District Court were decided in the same manner as though it had original jurisdiction of the case and upon the same pleadings, unless amendments were permitted for good cause. A judgment rendered, or a final order made, by the Court of Common Pleas, Superior Court of Cleveland, or Superior or Commercial Courts of Cincinnati might be reversed, vacated, or modified by the District Court for errors appearing on the record.”<sup>33</sup>

The right of appeal to the District Court was further qualified, however, in 1858 when its jurisdiction was limited so that it could only be taken “from final judgments, orders, or decrees in civil actions where the parties did not have a right to trial by jury.” This particular legislation also provided that a Common Pleas judge who decided a case in the Common Pleas Court should not be

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<sup>31</sup> The History of Ohio Law p. 59 (Michael Les Benedict & John F. Winkler eds. 2004), p. 59.

<sup>32</sup> Section 5, Article IV, of the Ohio Constitution of 1851.

<sup>33</sup> F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 218.

competent to review his or her own case on error, in the District Court, when there was a quorum without such judge.<sup>34</sup>

As a result of the constitutional amendment of 1851 in the years that passed its adoption, and the significant increase in docketing pressures, the sitting “in bank” of the Supreme Court at the State Capitol required that its judges spend a much greater amount of time there, thus reducing the ability of the individual judges to participate in the “on circuit” in the District Courts. As a result, adjustments were demanded. Thus, in 1865, the General Assembly adopted legislation exempting Supreme Court judges from duty in the District Court during that year. Also, in 1869, the Supreme Court declared that a District Court composed of three Common Pleas judges sitting without a Supreme Court judge constituted a valid court. Later, in 1870, another legislative enactment was adopted making it optional for the Supreme Court to attend District Court sessions during that year.<sup>35</sup>

A most negative feature of the declamation of the Supreme Court judges’ participation in the District Courts was that the decisions of the District Courts thus resulted in a lessening of respect for their decisions, and were viewed as a mere stop-gap necessity for such cases to be eventually heard by the Supreme Court itself. Another undesirable development in the progression of the District Court functioning was that the Common Pleas judges were required to participate in the District Court in addition to their regular duties with no additional compensation, and the Common Pleas judges assigned to District Court cases

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<sup>34</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 218.

<sup>35</sup> *Ibid.* at 219.

were unable to provide time necessary for the type of professional involvement that was most desired with respect to appellate review of the cases before such courts.<sup>36</sup>

“Both legal and equitable jurisdiction is vested in the same courts in Ohio. The Constitution of 1851 expressly limited the original jurisdiction of the Supreme Court and the newly created District Court, preventing these tribunals from exercising equitable functions as a matter of inherent power, except in aid of their original or appellate jurisdiction. To these courts, and to the Circuit Court, successor to the District Court, was given such appellate jurisdiction as might be provided by law. The intermediate courts formerly had jurisdiction to hear and determine chancery causes de novo on ‘appeal of questions of law and fact,’ and the Courts of Appeals held complete equitable jurisdiction in all cases properly appealed to them from lower courts.

In 1858, the right of appeal to the District Court was limited so it could only be taken from final judgments, orders, or decrees in civil actions where the parties did not have a right to trial by jury. The same act provided that a Common Pleas judge who had decided a case in a Common Pleas Court should not review his own case on error, or otherwise in the District Court, when there was a quorum in the District Court without him.”<sup>37</sup>

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<sup>36</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 219.

<sup>37</sup> 41 *Ohio Jurisprudence* 3d (2005), Equity, Section 4.

## FORMATION OF THE CIRCUIT COURT

The next significant modification of the appellate process in Ohio emanated as a result of the creation of the Ohio State Bar Association on July 8, 1880, in Cleveland. As part of its formative agenda, the association focused on proposals for the improving the administration of justice, and the District Court system was the recipient of harsh criticism.

“Rufus P. Ranney, the first President of the Bar Association, was among those who criticized the District Court. Judge Ranney was one of the ablest jurists in the State. He was a member of the Constitutional Convention in 1851, and was one of the first judges to serve on the Supreme Court, after the adoption of the Constitution of 1851. In view of his wide experience his words deserve consideration. Among other things, he said: ‘The framers of our judicial system created an intermediate Appellate Court, called the District Court, but they never contemplated that that court was going to be held exclusively by the very men who had decided the cases in the first instance; that they were going to turn reviewers of themselves.’

‘It was an essential feature of this system, without which it could never have passed the Convention, that a judge of the Supreme Court, with his knowledge and weight of character, should forever preside in that Appellate Court. What have we realized for years past in practice? That Court is held by the judges that decide in the first instance, the Common Pleas judges—doing as well as they can, I admit, but in no wise meeting the public expectation of an Appellate Court to put an end to controversies. The consequence is that cases finding their way into that court go there simply as a stopping . . . to be crowded

into the Supreme Court. What is the consequence then? A docket lying by of 700 or 800 cases undecided, the last of which there is no hope can ever be reached and finally determined, short of six or seven years from this time.’ *Report of the First Annual Convention of the Ohio State Bar Ass’n.*, July 8, 9, 1880, Cleveland, Ohio p. 66.”<sup>38</sup>

The foregoing rationale provided the basis for the appointment of the Bar Committee to review the problems and shortcomings that were expressed by Mr. Ranney and to later present recommendations to curtail the shortcomings of the District Court system.

The State Bar Association convened in December of that year in Columbus and received the Committee’s report which recommended a proposed form of an amendment to the judicial article of the Constitution.

The recommendation called for the abolition of the District Court system and for increasing the number of Supreme Court judges to nine along with other specific items. The report was adopted by the Association and, in turn, it submitted it to the Legislature, which was not amenable to improvising its specific features.<sup>39</sup>

In July, 1880, the State Bar Association convened in Toledo when the District Court issue was referred to the Committee for further review. The Committee’s efforts resulted in a new proposal which was submitted to the Bar Association at its meeting in Cincinnati, in 1882, and was later submitted to the

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<sup>38</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 220-221.

<sup>39</sup> *Ibid.* at 221.

General Assembly where it received its approval. The Legislature adopted a joint resolution submitting this proposition for a popular vote which received further approval. This amendment found form in Sections I, II, and III of Article IV of the Constitution.<sup>40</sup>

Thus, the Circuit Court of Appeals' format was established to provide an independent, intermediary court which was given the same original jurisdiction accorded to the Supreme Court and such other appellate jurisdiction as would be provided by law by the General Assembly. The Legislature was also authorized to organize the Supreme Court into circuits in organizing the duly established Circuit Courts. As a result, seven circuits were established as follows:

- 1st Circuit - Butler, Clermont, Clinton, Hamilton and Warren
- 2nd Circuit - Champaign, Clarke, Darke, Fayette, Franklin, Greene, Madison, Miami, Montgomery, Preble and Shelby
- 3rd Circuit - Allen, Auglaize, Crawford, Defiance, Fulton, Hancock, Hardin, Henry, Logan, Marion, Mercer, Paulding, Putnam, Seneca, Union, Van Wert, Williams, Wood and Wyandot
- 4th Circuit - Adams, Athens, Brown, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Monroe, Pickaway, Pike, Ross, Scioto, Vinton and Washington
- 5th Circuit - Ashland, Coshocton, Delaware, Fairfield, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, Tuscarawas, and Wayne
- 6th Circuit - Cuyahoga, Erie, Huron, Lorain, Lucas, Medina, Ottawa, Sandusky and Summit
- 7th Circuit - Ashtabula, Belmont, Carroll, Columbiana, Geauga, Guernsey, Harrison, Jefferson, Lake, Mahoning, Noble, Portage and Trumbull

Each circuit was composed of three judges who were elected for six-year terms, with one judge being elected every two years. In addition to the Constitutional provision establishing original jurisdiction in such court, the Circuit

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<sup>40</sup> F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 212-222.

Court was also authorized to issue writs of supersedeas in any case, as well as other writs not specifically provided for or prohibited by statute.

“The Circuit Court’s jurisdiction was the same as the original jurisdiction of the Supreme Court with regard to the extraordinary writs. It was also given such appellate jurisdiction as might be provided by law.”<sup>41</sup>

### **1885**

In February, 1885, the General Assembly enacted other legislation revising and consolidating the organization and jurisdiction of the Circuit Courts and other courts as well. The legislation included a provision that has some present existence with respect to the District Courts of Appeal. This act provided that the judges of the Circuit Court should meet annually in Columbus to fix the terms of court for the ensuing year and choose one of the members as the Chief Justice for the same period. Again, this act exists in part today.<sup>42</sup> An additional part of that statutory enactment provided that the Chief Justice of the Association was given power to transfer judges of the Circuit Court from one to another when required.

### **1887**

On March 21, 1887, the General Assembly adopted legislation which increased the number of circuits to eight as follows:

- 1st Circuit - Butler, Clermont, Clinton, Hamilton and Warren
- 2nd Circuit - Champaign, Clarke, Darke, Fayette, Franklin, Greene, Madison, Miami, Montgomery, Preble and Shelby

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<sup>41</sup> Lee E. Skeel, *Constitutional History of Ohio Appellate Courts* (1957), 6 *Cleve.Mar.L.Rev.* 323, 327.

<sup>42</sup> See R.C. 2501.03.

- 3rd Circuit - Allen, Auglaize, Crawford, Defiance, Hancock, Hardin, Henry, Logan, Marion, Mercer, Paulding, Putnam, Seneca, Union, Van Wert, and Wyandot
- 4th Circuit - Adams, Athens, Brown, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Monroe, Pickaway, Pike, Ross, Scioto, Vinton and Washington
- 5th Circuit - Ashland, Coshocton, Delaware, Fairfield, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, Tuscarawas, and Wayne
- 6th Circuit - Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams and Wood
- 7th Circuit - Ashtabula, Belmont, Carroll, Columbiana, Geauga, Guernsey, Harrison, Jefferson, Lake, Mahoning, Noble, Portage and Trumbull
- 8th Circuit - Cuyahoga, Lorain, Medina and Summit

It is interesting to note at this juncture the judges who served on the Seventh Circuit Court of Appeals until the Circuit Courts of Appeal were transformed into the District Courts of Appeal.

## JUDGES

### THE SEVENTH CIRCUIT COURT OF APPEALS

Hon. Peter A. Laubie	1885 – 1911	Salem
Hon. William H. Frazier	1885 – 1901	Caldwell
Hon. H. B. Woodbury	1885 – 1895	Jefferson
Hon. Jerome B. Burrows	1895 – 1909	Painesville
Hon. John M. Cook	1901 – 1910	Steubenville

The Seventh Circuit Court of Appeals was composed of the same counties that were later included in the Seventh District Court of Appeals until 1969.

## 1892

The Ohio Supreme Court was increased from five to six judges. Senate Bill 129, Section 410a, “The supreme court shall consist of six judges who shall be organized into two divisions by the court. The judges of the supreme court

now in office shall hold their offices during the terms for which they were respectively elected, and that on the first Tuesday after the first Monday in November in the year 1892, two judges of the supreme court shall be elected, one of whom shall be elected for the term of five years and one for the term of six years, and whose terms of office shall commence on the ninth day of February next after said election. And every year after the year 1892, at the election for state and county officers, one judge of the supreme court shall be elected, whose term of [office] shall commence on the ninth day of February next after such election and continue for six years.”<sup>43</sup>

### **1906**

The number of judges of the Ohio Supreme Court was increased to seven.<sup>44</sup>

The Supreme Court shall consist of a chief justice and six judges, each of whom shall have been admitted to practice as an attorney and counselor-at-law in this state for a period of six years immediately preceding his appointment or election.<sup>45</sup>

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<sup>43</sup> 89 Laws of Ohio (1892), 317.

<sup>44</sup> Gen. Code, Section 1466.

<sup>45</sup> 98 Laws of Ohio (1906), 269

## **THE FORMATION OF THE DISTRICT COURTS OF APPEAL**

Although judicial revision was not the primary cause for calling the Constitutional Convention in 1912 as it was in 1851, questions involving the judiciary were given high consideration, by a Convention which was concerned with a multitude of pressing problems. The judicial organization of the State came out of the Convention very materially changed.

The Constitution of 1851 included a provision that every twenty years there should be a determination as to whether or not a constitutional convention should be held by way of a popular vote. In 1911, there was an affirmative vote in favor of a constitutional convention and, thus, the convention body assembled in 1912. Over forty such issues were submitted for ratification. A number were rejected, but thirty-four were approved, including one for the revision of the Judiciary.<sup>46</sup> This had significant impact on the organization of the Courts.

Thus, the Circuit Court was made a Court of Appeals consisting of three judges and its judgments in ordinary cases were final. This prevented an appeal in such cases to the Supreme Court. Obviously, the result with respect to the Supreme Court was to significantly decrease time in which appeals would reach that Court, and had the ensuing effect of relieving its overcrowded docket which existed at that time and consequent delays in rendering its opinions.

Another interesting feature also obtained from the 1912 Constitutional Amendment: "Where constitutional questions are involved, it was provided that

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<sup>46</sup> F.R. Aumann, *The Development of the Judicial System of Ohio* (1998), 41 *Journal of the Ohio Historical Society* 195, 228.

cases might be carried directly from the Court of Appeals to the Supreme Court; the latter, however, could not reverse the finding of the former and hold a statute unconstitutional if more than one of the judges objected. A judgment of the Court below, holding a statute unconstitutional might be affirmed, however, by a mere majority of the Supreme Court. \*\*\* If in the judgment of the Court of Appeals a law is constitutional, it requires at least all but one of the Supreme Court judges to reverse this judgment and hold the law unconstitutional. On the other hand, if the Court of Appeals holds the law unconstitutional, then the concurrence of a mere majority of the Supreme Court is required to affirm this judgment and hold the statute unconstitutional. Other cases' judgments are by majority of the judges of the Supreme Court."<sup>47</sup>

Another important feature of the 1912 Constitutional Amendment was to provide for a Chief Justice of the Supreme Court which was formerly a position that was designated by statute. Additionally, it put the number of Supreme Court judges at seven, one of whom is elected as Chief Justice. This feature continues until the present time.

It should be noted that Article IV, Section I of the Constitution of 1851 resulted in the same Article being revised in the 1912 version, which provided: "The judicial power of the State is vested in the Supreme Court, Court of Appeals, Court of Common Pleas, Court of Probate, and such other courts inferior to the Courts of Appeal as may, from time to time, be established by law.

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<sup>47</sup> F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 229-230.

The effect of this provision was to eliminate the justice of peace office as a constitutional officer.”<sup>48</sup>

Thus, on closer scrutiny and analysis of the impact of the 1912 Constitutional Amendment, the effect which distinguishes it from its predecessor reviewing entities with respect to the role of the District Courts of Appeal, was that pragmatically it was the court of last resort in all cases, except those rising under the Constitution of the United States, felony cases, cases in which it has original jurisdiction, and cases of great general public interest in which the Supreme Court could direct the Court to certify its record to the Supreme Court for decision.

The Court of Appeals is required to sit in each of the counties comprising the district at least once each year. The District Courts were comprised of the following counties in 1912:

- 1st District - Butler, Clermont, Clinton, Hamilton and Warren
- 2nd District - Champaign, Clarke, Darke, Fayette, Franklin, Greene, Madison, Miami, Montgomery, Preble and Shelby
- 3rd District - Allen, Auglaize, Crawford, Defiance, Hancock, Hardin, Henry, Logan, Marion, Mercer, Paulding, Putnam, Seneca, Union, Van Wert, and Wyandot
- 4th District - Adams, Athens, Brown, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Monroe, Pickaway, Pike, Ross, Scioto, Vinton and Washington
- 5th District - Ashland, Coshocton, Delaware, Fairfield, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, Tuscarawas, and Wayne
- 6th District - Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams and Wood
- 7th District - Ashtabula, Belmont, Carroll, Columbiana, Geauga, Guernsey, Harrison, Jefferson, Lake, Mahoning, Noble, Portage and Trumbull

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<sup>48</sup> F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 231.

8th District - Cuyahoga, Lorain, Medina and Summit

### 1921

Effective July 25, 1921, the Ninth District Court of Appeals was created.<sup>49</sup>

The District Courts each had three appellate judges. The District Courts consisted of the following counties:

- 1st District - Butler, Clermont, Clinton, Hamilton and Warren
- 2nd District - Champaign, Clarke, Darke, Fayette, Franklin, Greene, Madison, Miami, Montgomery, Preble and Shelby
- 3rd District - Allen, Auglaize, Crawford, Defiance, Hancock, Hardin, Henry, Logan, Marion, Mercer, Paulding, Putnam, Seneca, Union, Van Wert, and Wyandot
- 4th District - Adams, Athens, Brown, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pickaway, Pike, Ross, Scioto, Vinton and Washington
- 5th District - Ashland, Coshocton, Delaware, Fairfield, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark and Tuscarawas
- 6th District - Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams and Wood
- 7th District - Ashtabula, Belmont, Carroll, Columbiana, Geauga, Guernsey, Harrison, Jefferson, Lake, Mahoning, Monroe, Noble, Portage and Trumbull
- 8th District - Cuyahoga
- 9th District - Lorain, Medina, Summit and Wayne

### 1922

Florence Ellinwood Allen was appointed as the first female member of the Supreme Court of Ohio.

### 1935

In 1935, Guernsey County was moved from the Seventh to the Fifth Appellate District.<sup>50</sup>

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<sup>49</sup> 109 Laws of Ohio (1921), 88.

<sup>50</sup> 116 Laws of Ohio (1935) 131, Gen. Code, Section 14227.

## 1944

*“Section 6, Article IV of the Ohio Constitution as amended in 1944 provided for the jurisdiction of the courts of appeals, granting the courts of appeals original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and such jurisdiction as may be provided by law to review, affirm, modify, set aside, or reverse judgments or final orders of boards, commissions, officers, or tribunals, and of courts of record inferior to the court of appeals within the district. The 1944 amendment expanded the jurisdiction of the court of appeals by adding writs of prohibition to the other original jurisdiction of the court, and by providing for its review of judgments or final orders of boards, commissions, officers, or tribunals, as well as of inferior courts of record. Inasmuch as the General Assembly took no action affecting the jurisdiction of the court of appeals upon review after the adoption in 1944 of amendments, the provisions of the Constitution as they appeared in the Constitution of 1912 were held to control the jurisdiction of the court of appeals as to the review of judgments of the courts of common pleas in civil and criminal cases. Statutes providing the method of procedure in the court of appeals, which were passed before or after that constitutional amendment, were effective in so far as they did not differ with the constitutional amendment. The court of appeals was held to retain jurisdiction to review judgments of the courts of common pleas notwithstanding the action might have originated in a municipal court. By empowering the General Assembly to establish such jurisdiction as may be provided by law, the amendment of Section 6, Article IV, of the Constitution returned to the General Assembly the power it originally had to provide by law for the appellate jurisdiction of the courts of appeals, and thus empowered the General Assembly to change the appellate jurisdiction of the courts of appeals. For example, the General Assembly changed the appellate jurisdiction of the court of appeals in appeals on questions of law and on questions of law and fact. Cases not falling squarely within the ten classes specified therein as appealable on questions of law and fact were held to be appealable on questions of law only.*

The reasons for the 1944 amendment were many: the elimination of the compulsory review of chancery cases by a retrial in the court of appeals; the return of power to the General Assembly to establish all appellate jurisdiction so that changes that the people desired could be made more readily; the establishment of a uniform procedure throughout the state in cases appealed on law and fact; the insuring of full and complete trials of chancery cases in the trial court; the simplification of litigation by providing for one trial and one review; and the reduction of disputes over the question of what is a chancery case. The 1944 amendment preserved the provision providing that all laws in force at the time of the amendment and not inconsistent with the amendment continued in force until amended or repealed.”<sup>51</sup>

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<sup>51</sup> 4 Ohio Jurisprudence 3d (2005), Appellate Review, Section 6.

## 1957

Effective February 9, 1957, the Tenth District Court of Appeals was created by Sub. House Bill 43.<sup>52</sup> The District Courts each had three appellate judges, except for the Second (which added one) and the Tenth (which added two). The District Courts consisted of the following counties:

- 1st District - Butler, Clermont, Clinton, Hamilton, Warren
- 2nd District - Champaign, Clarke, Darke, Fayette, Greene, Madison, Miami, Montgomery, Preble and Shelby
- 3rd District - Allen, Auglaize, Crawford, Defiance, Hancock, Hardin, Henry, Logan, Marion, Mercer, Paulding, Putnam, Seneca, Union, Van Wert, and Wyandot
- 4th District - Adams, Athens, Brown, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pickaway, Pike, Ross, Scioto, Vinton and Washington
- 5th District - Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark and Tuscarawas
- 6th District - Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams and Wood
- 7th District - Ashtabula, Belmont, Carroll, Columbiana, Geauga, Harrison, Jefferson, Lake, Mahoning, Monroe, Noble, Portage and Trumbull
- 8th District - Cuyahoga
- 9th District - Lorain, Medina, Summit and Wayne
- 10th District - Franklin

## 1961

On June 7, 1961, (1961) 129 Laws of Ohio, p. 11, Section 2501.012 was created providing for three additional judges in the Court of Appeals for the Eighth District and one additional judge for the Court of Appeals in the Tenth District. The additional judges assumed office in January 1963. All other courts remained with three appellate judges.

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<sup>52</sup> 126 Laws of Ohio (1956), 420.

Legislation proposing to increase the number of judges of courts of appeals, probate courts, municipal courts, or county courts requires only the concurrence of a majority of all the members elected in each house of the legislature.<sup>53</sup>

## 1968

The Eleventh District Court of Appeals was created by Am. House Bill 105.<sup>54</sup> All District Courts had three judges, except the Eighth which had six and the Tenth which had four. The District Courts consisted of the following counties:

- 1st District – Butler, Clermont, Clinton, Hamilton and Warren
- 2nd District – Champaign, Clarke, Darke, Fayette, Greene, Madison, Miami, Montgomery, Preble and Shelby
- 3rd District – Allen, Auglaize, Crawford, Defiance, Hancock, Hardin, Henry, Logan, Marion, Mercer, Paulding, Putnam, Seneca, Union, Van Wert and Wyandot
- 4th District – Adams, Athens, Brown, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pickaway, Pike, Ross, Scioto, Vinton and Washington
- 5th District – Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark and Tuscarawas
- 6th District – Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams and Wood
- 7th District – Belmont, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Monroe and Noble
- 8th District – Cuyahoga
- 9th District – Lorain, Medina, Summit and Wayne,
- 10th District – Franklin
- 11th District – Ashtabula, Geauga, Lake, Portage and Trumbull

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<sup>53</sup> 1961 Ohio Atty.Gen.Ops. No. 2168.

<sup>54</sup> 132 Laws of Ohio (1968), 2507.

## 1969

House Bill 858, (1969) 133 Laws of Ohio 2703, established one more judgeship in the Tenth District effective February 9, 1969, bringing the total to five judges in the Tenth District Court of Appeals.

“However, the Modern Courts Amendment of 1968 made sweeping changes in Article IV of the Ohio Constitution, and the rules of appellate procedure adopted pursuant to the amendment abolished the appeal on questions of law and fact, thereby eliminating the trial de novo of chancery cases in that tribunal. Thus, the courts of general jurisdiction, the common pleas courts, are the tribunals of first instance for equity cases.”<sup>55</sup>

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<sup>55</sup> 41 Ohio Jurisprudence 3d (2005), Equity, Section 4.

## **THE SEVENTH DISTRICT COURT OF APPEALS**

This Court of Appeals had a permanent office in the Courthouse of Mahoning County, Youngstown, Ohio, and included the counties that make up our present Eleventh District Court of Appeals.

It was the highest court in this district. Every litigant had a right to have its case reviewed by the Court of Appeals. Obviously, this is not true of the Supreme Court, where permission must be obtained from the court before the case can be heard. Therefore, in most instances, the Court of Appeals is a court of last resort.

The appellate court has jurisdiction under Section 6, Article IV, of the Ohio Constitution to review, affirm, modify, set aside or reverse judgments of boards, commissions, officers, or tribunals and of all lower courts of record.

The party seeking the review of the judgment is called the “appellant.” The appellant files a notice of appeal and a written argument why his appeal should be heard called a “brief.” The opposing party is labeled the “appellee” and also files an answer brief. If the appellant wishes, he may then file a reply brief.

All three judges traveled to the county where the case arose to hold court. At this time, the attorneys for the appellant and the appellee were given one-half hour each to orally argue their case. At least two of the three judges must agree before a decision could be reached.

Territorially, the Seventh District Court of Appeals was one of the larger districts. It consisted of thirteen counties and extended approximately one

hundred sixty miles along the eastern border of Ohio.” Pamphlet: *Your Court of Appeals, 7th District* (1968).

## JUDGES OF THE SEVENTH DISTRICT COURT OF APPEALS

1912 – 2006

Hon. Willis S. Metcalfe	Chardon	1912 - 1921
Hon. Myron A. Norris	Youngstown	1912 - 1914
Hon. John Pollock	St. Clairsville	1912 - 1934
Hon. William H. Spence	Lisbon	1914 - 1917
Hon. Louis T. Farr	Lisbon	1917 - 1934
Hon. James W. Roberts	Jefferson	1921 - 1937
Hon. Charles J. Lynch	Bellaire	1934
Hon. William M. Carter	Warren	1934 - 1949
Hon. Charles F. Smith	Youngstown	1934 -
Hon. Elmer T. Phillips	Youngstown	1934 -1935, 1939 - 1960
Hon. John C. Nichols	St. Clairsville	1935 - 1959
Hon. James E. Bennett	Youngstown	1938 - 1939
Hon. John Joseph Buckley	Youngstown	1949 - 1950
Hon. Lynn B. Griffith, Sr.	Warren	1950 - 1962
Hon. John L. Donahue	Youngstown	1959 - 1963
Hon William T. Allmon	Carrollton	1960 -
Hon. Paul W. Brown	Youngstown	1960 -
Hon. James G. France	Kent	1962 - 1965
Hon. George M. Jones	Liberty Township, Trumbull	1963 -
Hon. Nils P. Johnson	Canfield	1965 - 1967
Hon. Donald J. Morrisroe	Youngstown	1965 -
Hon. John J. Lynch	Youngstown	1965 - 1982
Hon. Joseph E. O'Neill	Youngstown	1967 - 1997
Hon. Joseph Donofrio	Youngstown	1967 - 1993
Hon. Edward A. Cox	Youngstown	1982 - 2001
Hon. Gene Donofrio	Canfield	1993 -
Hon. Joseph J. Vukovich	Poland	1997 -
Hon. Cheryl L. Waite	Youngstown	1997 -
Hon. Mary DeGenaro	Poland	2001 -

“Law and fact appeals to courts of appeals from lower courts of record were retained until 1971, when they were abolished by the adoption of App.R. 2. Thus, with two exceptions, review by a court of appeals is restricted to questions of law only.

“The first exception applies to civil cases tried to a court without a jury, in which the court of appeals finds that the judgment was against the manifest weight of the evidence. In such cases, the appellate court may itself weigh the evidence and enter the judgment that should have been rendered by the court below. The second exception arises from the fact that the Appellate Rules apply only to appeals to the courts of appeals from courts of record. Thus, appeals from administrative agencies directly to the courts of appeals are not affected by the abolition of law and fact appeals in App.R. 2. The scope of review in such cases is determined by the controlling statute, which may provide for law and fact appeals, or at least provide for the admission and consideration of new or additional evidence.

“App.R. 2, by eliminating appeals on questions of law and fact, does away with the former practice of providing a trial de novo in the court of appeals on the appeal of an equity action. Former R.C. 2505.02(B), providing for appeals upon questions of law and fact to courts of appeals, was repealed in 1987, thus ending any uncertainty as to the effectiveness of App.R. 2 in abolishing such appeals depending upon whether it was construed as substantive or procedural.”<sup>56</sup>

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<sup>56</sup>Painter & Dennis, Ohio Appellate Practice (2006), Section 1.14.

## 1977

House Bill 468 (136 v. H 468) added three more judgeships to the Eighth District Court of Appeals and the First District Court of Appeals. The additions were effective in January and February of 1977, bringing the Eighth District up to nine judges and the First District to six judges.

## 1980

Effective July 25, 1980, Am. Sub. Senate Bill 13, amending R.C. 2501.01, created the Twelfth District Court of Appeals. Senate Bill 13 also increases the number of judges in the Second, Fifth, Sixth, and Ninth District courts. One judge is added to each of the districts effective February 10, 1981. The Fifth District adds another judge under Senate Bill 13 effective February 10, 1983.

As of February 10, 1983, the twelve district courts in Ohio are comprised of the counties as shown below. Those with more than three judges are listed in parentheses.

- 1st District - Hamilton (6)
- 2nd District - Champaign, Clarke, Darke, Greene, Miami and Montgomery (4)
- 3rd District - Allen, Auglaize, Crawford, Defiance, Hancock, Hardin, Henry, Logan, Marion, Mercer, Paulding, Putnam, Seneca, Shelby, Union, Van Wert, and Wyandot
- 4th District - Adams, Athens, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pickaway, Pike, Ross, Scioto, Vinton and Washington
- 5th District - Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark and Tuscarawas (5)
- 6th District - Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams and Wood (4)
- 7th District - Belmont, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Monroe and Noble
- 8th District - Cuyahoga (9)
- 9th District - Lorain, Medina, Summit and Wayne (4)

- 10th District - Franklin (6)
- 11th District - Ashtabula, Geauga, Lake, Portage and Trumbull
- 12th District - Brown, Butler, Clermont, Clinton, Fayette, Madison, Preble and Warren

### 1987

1987 saw the number of judges on the courts of appeals increase again.

In 1987, the number of judges per court was:

- 1st District - Hamilton (6)
- 2nd District - Champaign, Clarke, Darke, Greene, Miami and Montgomery (5)
- 3rd District - Allen, Auglaize, Crawford, Defiance, Hancock, Hardin, Henry, Logan, Marion, Mercer, Paulding, Putnam, Seneca, Shelby, Union, Van Wert, and Wyandot (4)
- 4th District - Adams, Athens, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pickaway, Pike, Ross, Scioto, Vinton and Washington (3)
- 5th District - Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark and Tuscarawas (5)
- 6th District - Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams and Wood (4)
- 7th District - Belmont, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Monroe and Noble (3)
- 8th District - Cuyahoga (9)
- 9th District - Lorain, Medina, Summit and Wayne (5)
- 10th District - Franklin (7)
- 11th District - Ashtabula, Geauga, Lake, Portage and Trumbull (3)
- 12th District - Brown, Butler, Clermont, Clinton, Fayette, Madison, Preble and Warren (4)

### 1989

In 1989, the Fourth District Court of Appeals was increased to four judges effective February 10, 1989.

### 1990's

Judges were added to the courts in 1991 and 1997. Below are the courts with the number of judges in parentheses and the counties of each court.

- 1st District - Hamilton (6)
- 2nd District - Champaign, Clarke, Darke, Greene, Miami and Montgomery (5)
- 3rd District - Allen, Auglaize, Crawford, Defiance, Hancock, Hardin, Henry, Logan, Marion, Mercer, Paulding, Putnam, Seneca, Shelby, Union, Van Wert, and Wyandot (4)
- 4th District - Adams, Athens, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pickaway, Pike, Ross, Scioto, Vinton and Washington (4)
- 5th District - Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark and Tuscarawas (5)
- 6th District - Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams and Wood (5)
- 7th District - Belmont, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Monroe and Noble (4)
- 8th District - Cuyahoga (12)
- 9th District - Lorain, Medina, Summit and Wayne (5)
- 10th District - Franklin (8)
- 11th District - Ashtabula, Geauga, Lake, Portage and Trumbull (4)
- 12th District - Brown, Butler, Clermont, Clinton, Fayette, Madison, Preble and Warren (4)

### **2000 and Beyond**

In the new millennium, only two courts have added a judge. The Fifth and Eleventh District courts added one judge each effective February 2001, bringing their numbers to six and five judges, respectively.

- 1st District - Hamilton (6)
- 2nd District - Champaign, Clarke, Darke, Greene, Miami and Montgomery (5)
- 3rd District - Allen, Auglaize, Crawford, Defiance, Hancock, Hardin, Henry, Logan, Marion, Mercer, Paulding, Putnam, Seneca, Shelby, Union, Van Wert, and Wyandot (4)
- 4th District - Adams, Athens, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pickaway, Pike, Ross, Scioto, Vinton and Washington (4)
- 5th District - Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark and Tuscarawas (6)
- 6th District - Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams and Wood (5)
- 7th District - Belmont, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Monroe and Noble (4)

- 8th District - Cuyahoga (12)
- 9th District - Lorain, Medina, Summit and Wayne (5)
- 10th District - Franklin (8)
- 11th District - Ashtabula, Geauga, Lake, Portage and Trumbull (5)
- 12th District - Brown, Butler, Clermont, Clinton, Fayette, Madison, Preble and Warren (4)

## **THE ELEVENTH DISTRICT COURT OF APPEALS**

The Eleventh District Court of Appeals was created by legislation in 1968. At that time, the existing districts had three judges, with the exception of the Eighth, Sixth, and Tenth which had five.

The impetus for the creation of the Eleventh District Court of Appeals to include the counties of Ashtabula, Geauga, Lake, Portage, and Trumbull was precipitated by the then existing judges of the Seventh District, which included Judge George M. Jones, Judge Joseph E. O'Neill, and Judge John J. Lynch. Judge Lynch acted as the primary liaison with the General Assembly for the creation of our present district. The main reason for the request to the General Assembly to create the Eleventh District out of the old Seventh District was the increased population and the co-extensive increase in caseload.

As a result of the creation of the Eleventh District Court of Appeals, the enabling legislation called for the initial elected judicial positions to be implemented on a staggered basis. Thus, the elections held in 1968 to fill the three judicial posts from our court called for one seat with an initial term of two years; a second seat with a term of four years; and a third seat calling for a full term, all three of which were to commence on February 9, 1968.

The 1968 election resulted in Judge Robert E. Cook being elected to the two-year term; Judge Edwin T. Hofstetter to the four-year term; and Judge George M. Jones earning the six-year term. Judge Jones, who had served on the Seventh District Court of Appeals, ran for office in our district because he was a resident of Liberty Township in Trumbull County, Ohio, at the time. During its early years, following 1969, Judge Cook maintained an office in the Portage

County Courthouse in Ravenna, and Judge Hofstetter in the Geauga County Courthouse in Chardon. Judge Jones officed in Warren. All three judges were allocated minimum space. They retained Deirdre Becker as their Official Shorthand Reporter at that time. She also was provided minimum space with Judge Jones here in Trumbull County. In 1979, she became the Official Court Reporter/Court Administrator.

In 1974, Judge Jones was defeated in his effort for re-election by Judge Alfred E. Dahling, who was then serving as a municipal judge in Mentor Municipal Court in Lake County.

In 1982, Judge Donald R. Ford was successful in his efforts to be elected to the Court for the seat then held by Judge Hofstetter.

In 1986, Judge Dahling was defeated in the primary election by Judge David McLain of the Common Pleas Court from Trumbull County. Judge Judith A. Christley was successful in her efforts to be elected to our court in the general election in 1986 and served until her retirement in 2005. She was the first woman elected to the Eleventh District Court of Appeals; also, the first woman to serve as Administrative Judge of this Court, as well as the first of her gender to be elected Chief Justice of the Ohio Appellate Judges Association. In November of 1988, Judge Robert E. Cook passed away during his term. In March of 1989, Judge Joseph E. Mahoney, who had served for a number of years as a Common Pleas Judge in Ashtabula County, was appointed by Governor Celeste to fill Judge Cook's vacancy.

Because of the increased docketing in our Court at that time, which had the highest per capita caseload of any of the judges in our twelve districts, our Court persuaded the legislature to add a fourth judge position in 1989.

The election in 1990 resulted in Judge Mahoney being successful for a full six-year term and Judge Robert A. Nader, who had served as a Common Pleas Judge in Trumbull County, filling the other position.

Since Judge Mahoney reached retirement age prior to the 1996 election, Judge William M. O'Neill was elected to that particular position on our Court in the 1996 election.

The docket of our Court experienced a continuing period of significant increase which resulted in our docket approaching and exceeding the informal eight hundred case threshold, providing the basis for the addition of a fifth judge, which was accomplished with legislative approval in 1999. Judge Diane V. Grendell was successful in winning that seat in the 2000 November general election.

Judge Nader reached retirement age prior to the 2002 general election. Judge Cynthia Westcott Rice was elected in November 2002 to fill the seat held by Judge Nader, and, in 2004, Judge Colleen Mary O'Toole's victory in the November election that year resulted in her replacing the seat that was being vacated by Judge Christley's retirement. Judge Ford's retirement, effective February 8, 2007, led to Judge Mary Jane Trapp's election in November 2006 to this seat on the Court.

Judge O'Neill retired in 2007, prior to his term ending, and Judge Timothy P. Cannon was appointed by Governor Strickland to fill Judge O'Neill's vacancy. Judge Cannon was subsequently elected to his first full term in 2008.

In 2010, Judge O'Toole was defeated in the primary election by Judge Eugene A. Lucci of the Lake County Court of Common Pleas. Judge Thomas R. Wright was successful in his efforts to be elected to our court in the general election in 2010.

In 2012, Judge Trapp was defeated in her effort for re-election by Judge Colleen Mary O'Toole.

In 2018, Judge O'Toole was defeated in the primary election by Judge Matt Lynch. He was then successful in his efforts to be elected to our court in the general election in 2018.

Judge Grendell reached retirement age prior to the 2018 general election. Judge Mary Jane Trapp was elected in November 2018 to fill the seat held by Judge Grendell.

In December 1982, pursuant to entry by the Court, Trumbull County was designated as the official seat of the district. The Court adopted the statutory formula for the operating budget as set forth in R.C. 2501.181 for the proportionate participation of the counties of our district.

A Trumbull office of our Court was moved from the Trumbull County Courthouse to the old Carnegie Library on High Street in Warren in 1979. During the early years of the Court, the personnel design called for one secretary for each judge, with Deirdre Becker as the Administrator. Because of the adoption of the appellate rules of procedure in 1971 and the requirement that all cases be

## ***Prologue***

I wish to thank George Baker, Director of the Trumbull County Law Library and Coordinator of the Legal Assistance Technology Program, Kent State University, Trumbull Campus, and Ms. Patricia A. Sontag, Deputy Administrator of the Eleventh District Court of Appeals, for their significant assistance in contributing to this publication.

Commissioners finally provided the present building in which we are located at 111 High Street, N.E., Warren. The realization of our present facility was the result of seventeen years of proselytation to bring us into the twenty-first century.

By way of a postscript, Judge Robert Cook served as a Congressman from the Eleventh District, which included most of our appellate district. With the arrival of Judge Rice, it was the first time in the history of our Court that we had a majority of women on our Court.

Judge George M. Jones	-	6-year term	1969-1975
Judge Edwin T. Hofstetter	-	4-year term	1969-1983
Judge Robert E. Cook	-	2-year term	1969-1988
Judge Alfred E. Dahling	-		1975 - 1987
Judge Donald R. Ford	-		1983 – 2007
Judge Joseph E. Mahoney	-		1989 - 1997
Judge Judith A. Christley	-		1987 - 2005
Judge Robert E. Nader	-		1991 - 2003
Judge William M. O’Neill	-		1997 - 2007
Judge Diane V. Grendell	-		2001 - 2019
Judge Cynthia Westcott Rice	-		2003 -
Judge Colleen Mary O’Toole	-		2005 - 2011 2013 - 2019
Judge Mary Jane Trapp	-		2007 - 2013 2019 -
Judge Timothy P. Cannon	-		2007 -
Judge Thomas R. Wright	-		2011 -
Judge Matt Lynch	-		2019 -

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By  
Francis J. Amer  
Fellow, Western Reserve University Law School