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

By Presiding/Administrative Judge Donald R. Ford

Edited & revised by Presiding Judge Eugene A. Lucci

ASHTABULA

GEAUGA

LAKE

PORTAGE

TRUMBULL

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."

- Judge Donald R. Ford

This compilation of court history has been edited and revised as of 11/26/2024. I will note that Patricia A. Sontag is now Patricia A. Berger, and serves as my judicial secretary, and I want to thank her for her assistance in this edit and revision.

- Judge Eugene A. Lucci

The Common Pleas Courthouses of the Eleventh District

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

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.[1] Hammurabi's code called for appellate rights as early as 1750 B.C.[2] 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."[3]

The adoption of the appellate process in our common law heritage resulted in part as society became more complex and lawsuits more numerous. Another principal 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 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.[4]

Thus, the foregoing predicate created the impetus for the acceptance in the English legal community that an appeal was the

---

[1] John C. Klotter, Criminal Evidence, 7th ed. (2000), p. 9.
[2] Wayne R. Barnes, Contemplating a Civil Law Paradigm for a Future International Commercial Code (2005), 65 La.L.Rev. 677, 700.
[3] John H. Wigmore, A Panorama of the World's Legal Systems (1936), p. 34.
[4] Pamphlet: Your Court of Appeals, 7th District (1968).

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.[5] 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.[6] 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 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."[7]

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 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.[8]

---

[5] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 196.
[6] Ibid. at 199.
[7] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 196.
[8] Ibid. at 200-201.

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."[9]

"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 hold court."[10] 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.[11]

"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."[12]

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 judges were required to be present at the hearing, to

---

[9] Ibid. at 201.
[10] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 202.
[11] Lee E. Skeel, Constitutional History of Ohio Appellate Courts, 6 Cleve.Mar.L.Rev. (1957), 323, 324.
[12] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 202-203.

hear and determine cases reserved by the Supreme Court held in the district" to be heard in Columbus.[13]

"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."[14]

"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 unable for that reason to decide a motion for a new trial. This law was repealed on February 16, 1810."[15]

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

---

[13] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 205.
[14] A History of the Courts and Lawyers of Ohio (Carrington T. Marshall ed. 1934), Vol. I, 224.
[15] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 205.

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."[16]

The supreme court was now mandated to meet in Columbus once a year after the 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."[17]

"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 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."[18]

"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."[19]

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.[20] It also created common pleas courts. The state was divided into three circuits with a president-judge in each of these

---

[16] Ibid. at 205.
[17] Melanie Putnam, Ohio Legal Research Guide (1997), p. 121.
[18] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society, 195, 207.
[19] Reports of Cases Argued and Determined in the Supreme Court of Ohio (George W. McCook, 1853), Vol. I, preface p. 10.
[20] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 207-208.

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.[21] Judges at all levels were selected by the legislature.[22]

1831

In 1831 a new act of the legislature again changed the procedures of the Ohio Supreme Court. Not only were the judges on the 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.[23] "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."[24]

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, 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

---

[21] Ibid. at 203.
[22] Ibid. at 207-208.
[23] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 206.
[24] 29 Laws of Ohio, p. 3.

increased in like ratio."[25] "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."[26]

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.[27]

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 capital. The prior system of "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.[28] The supreme court judges continued to travel the circuits until 1865 when the legislature relieved them of that duty.[29]

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

---

[25] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 212.
[26] The History of Ohio Law, (Michael Les Benedict & John F. Winkler eds. 2004), p. 49.
[27] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 215.
[28] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 215.
[29] A History of the Courts and Lawyers of Ohio (Carrington T. Marshall ed. 1934) Vol. I, 222.

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. Regarding 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.[30]

"The new constitution required the creation of nine common pleas districts, each district containing three or more counties, with the exception of Hamilton 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."[31] 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.[32]

"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."[33]

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

---

[30] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 216.
[31] The History of Ohio Law p. 59 (Michael Les Benedict & John F. Winkler eds. 2004), p. 59.
[32] Section 5, Article IV, of the Ohio Constitution of 1851.
[33] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 218.

actions where the parties did not have a right to trial by jury." This legislation also provided that a common pleas judge who decided a case in the common pleas court should not be competent to review his or her own case on error, in the district court, when there was a quorum without such judge.[34]

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.[35]

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 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.[36]

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

---

[34] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 218.
[35] Ibid. at 219.
[36] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 219.

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."[37]

FORMATION OF THE CIRCUIT COURT

The next significant modification of the appellate process in Ohio emanated because 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 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

[37] 41 Ohio Jurisprudence 3d (2005), Equity, Section 4.

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."[38]

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 Ohio 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.[39]

In July 1880, the Ohio 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 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.[40]

---

[38] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 220-221.
[39] Ibid. at 221.
[40] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 212-222.

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 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."[41]

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.[42] 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;
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;

[41] Lee E. Skeel, Constitutional History of Ohio Appellate Courts (1957), 6 Cleve.Mar.L.Rev. 323, 327.
[42] See R.C. 2501.03.

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 now 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 OF THE SEVENTH CIRCUIT COURT OF APPEALS

Judge Peter A. Laubie	Salem (Columbiana)	1885 - 1911
Judge William H. Frazier	Caldwell (Noble)	1885 - 1901
Judge H. B. Woodbury	Jefferson (Ashtabula)	1885 - 1895
Judge Jerome B. Burrows	Painesville (Lake)	1895 - 1909
Judge John M. Cook	Steubenville (Jefferson)	1901 - 1910

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.”[43]

[43] 89 Laws of Ohio (1892), 317.

1906

The number of judges of the Ohio Supreme Court was increased to seven.[44]

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.[45]

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 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.[46] This had a 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 cases might be carried directly from

---

[44] Gen. Code, Section 1466.
[45] 98 Laws of Ohio (1906), 269.
[46] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 228.

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."[47]

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. The effect of this provision was to eliminate the justice of peace office as a constitutional officer."[48]

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.

---

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

[48] F.R. Aumann, The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195, 231.

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;
8th District	Cuyahoga, Lorain, Medina, and Summit.

1921

Effective July 25, 1921, the Ninth District Court of Appeals was created.[49] 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;

[49] 109 Laws of Ohio (1921), 88.

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.[50]

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

[50] 116 Laws of Ohio (1935) 131, Gen. Code, Section 14227.

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 as 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.[51]

1957

Effective February 9, 1957, the Tenth District Court of Appeals was created by Sub. House Bill 43.[52] The district courts each had three appellate judges, except for the Second (which

[51] 4 Ohio Jurisprudence 3d (2005), Appellate Review, Section 6.
[52] 126 Laws of Ohio (1956), 420.

added one) and the Tenth (which added two). 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	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.

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.[53]

[53] 1961 Ohio Atty.Gen.Ops. No. 2168.

1968

The Eleventh District Court of Appeals was created by Am. House Bill 105.[54] 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.

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

[54] 132 Laws of Ohio (1968), 2507.

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."[55]

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 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 can 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."[56]

---

[55] 41 Ohio Jurisprudence 3d (2005), Equity, Section 4.
[56] Pamphlet: Your Court of Appeals, 7th District (1968).

JUDGES OF THE SEVENTH DISTRICT COURT OF APPEALS
(1912 - 1969)

Judge Willis S. Metcalfe	Chardon (Geauga)	1912 - 1921
Judge Myron A. Norris	Youngstown (Mahoning)	1912 - 1914
Judge John Pollock	St. Clairsville (Belmont)	1912 - 1934
Judge William H. Spence	Lisbon (Columbiana)	1914 - 1917
Judge Louis T. Farr	Lisbon (Columbiana)	1917 - 1934
Judge James W. Roberts	Jefferson (Ashtabula)	1921 - 1937
Judge Charles J. Lynch	Bellaire (Belmont)	Unk. - 1934
Judge William M. Carter	Warren (Trumbull)	1934 - 1949
Judge Charles F. Smith	Youngstown (Mahoning)	1934 - Unk.
Judge Elmer T. Phillips	Youngstown (Mahoning)	1934 - 1935 1939 - 1960
Judge John C. Nichols	St. Clairsville (Belmont)	1935 - 1959
Judge James E. Bennett	Youngstown (Mahoning)	1938 - 1939
Judge John Jos. Buckley	Youngstown (Mahoning)	1949 - 1950
Judge Lynn B. Griffith, Sr.	Warren (Trumbull)	1950 - 1962
Judge John L. Donahue	Youngstown (Mahoning)	1959 - 1963
Judge William T. Allmon	Carrollton (Carroll)	1960 - Unk.
Judge Paul W. Brown	Youngstown (Mahoning)	1960 - Unk.
Judge James G. France	Kent (Portage)	1962 - 1965
Judge George M. Jones	Liberty Twp. (Trumbull)	1963 - 1969
Judge Nils P. Johnson	Canfield (Mahoning)	1965 - 1967
Judge Donald J. Morrisroe	Youngstown (Mahoning)	1965 - Unk.
Judge John J. Lynch	Youngstown (Mahoning)	1965 - 1982
Judge Joseph E. O'Neill	Youngstown (Mahoning)	1967 - 1997
Judge Joseph Donofrio	Youngstown (Mahoning)	1967 - 1993

"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."[57]

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.

---

[57] Painter & Dennis, Ohio Appellate Practice (2006), Section 1.14.

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.

1990s

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).

Significant Change in Judicial Selection

The 2022 general election was accompanied by a significant change in the way judicial elections are held. Senate Bill 80[58] was signed into law by Governor Mike DeWine and required all appellate level candidates seeking office to appear on the ballot with a party designation. Further, the legislation moved the position on the ballot forward from the non-partisan candidates; in the case of supreme court candidates, to a position behind state treasurer but in front of U.S. senator, and in the case of court of appeals candidates to a position behind state representative but in front of county officers. The election of all trial level court judges remained nonpartisan in the general election.

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, except for 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 functioned 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.

[58] S.B. 80 and H.B. 149 were identical bills introduced in the 135th General Assembly, and amended Revised Code Sections 3501.01, 3505.03, 3505.04, and 3513.257.

Populations of the counties of the Eleventh District over time: 1880[59], 1960 - 2020:

County	1880	1960	1970	1980	1990	2000	2010	2020
Ashtabula	37,139	93,067	98,237	104,215	99,821	102,728	101,497	97,574
Geauga	14,251	47,573	62,977	74,474	81,129	90,895	93,389	95,397
Lake	16,326	148,700	197,200	212,801	215,499	227,511	230,041	232,603
Portage	27,500	91,798	125,868	135,856	142,585	152,061	161,419	161,791
Trumbull	44,880	208,526	232,579	241,863	227,813	225,116	210,312	201,977
Total	140,096	589,664	716,861	769,209	766,847	798,311	796,658	789,342

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 constitution of Ohio provides that all judges in the state shall serve a term by election of not less than six years (the legislature has the authority to increase the terms of constitutional judges, but has not yet exercised it) and shall not assume elective office as judge if he or she has reached age 70 years.[60] That provision of the constitution was adopted on May 7, 1968, at a time when the U.S. life expectancy was 70.22 years.[61] As of the end of 2023, the U.S. life expectancy rose to 79.11 years.[62] The Ohio constitution has no provision for increases in the mandatory judicial retirement age tied to life expectancy.

The Judiciary of the Court

The 1968 election resulted in Judge Edwin T. Hofstetter being elected to the two-year term; Judge Robert E. Cook, a former

---

[59] The decennial census used (1880) when the amendment to the Ohio constitution was adopted establishing circuit court territories in 1883.

[60] Ohio Const. Article IV, Section 6, provides: (A)(2) The judges of the courts of appeals shall be elected by the electors of their respective appellate districts, for terms of not less than six years. ... (C) No person shall be elected or appointed to any judicial office if on or before the day when he shall assume the office and enter upon the discharge of its duties he shall have attained the age of seventy years.

[61] See https://siepr.stanford.edu/publications/policy-brief/life-expectancy-and-inequality-life-expectancy-united-states (last accessed 1/14/2024).

[62] https://www.macrotrends.net/countries/USA/united-states/life-expectancy#:~:text=The%20life%20expectancy%20for%20U.S.%20in%202023,was%2079.11%20years%2C%20a%200.08%25%20increase%20from%202022 (last accessed 1/14/2024).

congressman, 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 the general election of 1982, Judge Donald R. Ford, a Trumbull County common pleas judge, was successful in his efforts to be elected to the court for the seat then held by Judge Hofstetter. Judge Hoffstetter had been defeated in the Republican primary election that year by Portage County municipal court Judge Jerry Hayes.

In 1986, Judge Dahling was defeated in the primary election by Judge David McLain of the Trumbull County Common Pleas Court. 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 several years as an Ashtabula County Common Pleas Judge, 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, defeating his challenger, Judge

Jerry Hayes of the Portage County municipal bench, and Judge Robert A. Nader, who had served as a common pleas judge in Trumbull County, filling the other position.

Since Judge Mahoney reached mandatory retirement age prior to the 1996 election, Judge William M. O'Neill was elected to that 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, a former Ohio legislator, was successful in winning that seat in the 2000 November general election.

Judge Nader reached mandatory retirement age prior to the 2002 general election. Judge Cynthia Westcott Rice, a former assistant U.S. attorney in Youngstown and Trumbull County assistant prosecutor, 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 mandatory retirement, effective February 8, 2007, led to Judge Mary Jane Trapp's election in November 2006 to this seat on the court. Judge Trapp previously served as president of the Ohio State Bar Association. With the arrival of Judge Rice in 2003, it was the first time in the history of our court that we had a majority of women on our court.

Judge O'Neill retired in 2007, prior to his term ending, to be a candidate for congress, 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, who early in his legal career was a law clerk for Judge Donald Ford on our court, 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, a former state representative. He was then successful in his efforts to be elected to our court in the general election in 2018. Judge Lynch, then two years into his term of office, challenged and defeated Judge Cannon in the 2020 general election, thus commencing his final (because of the mandatory retirement age) full term on our court.

Judge John J. Eklund, a former state senator, was appointed by Governor Mike DeWine to fill the vacancy created by Judge Lynch's defeat of Judge Cannon and took office on July 1, 2021. Judge Eklund ran in 2022 and was elected to complete Judge Lynch's term. Judge Eklund sought election in 2024 to serve one full term on our court which would end because of the mandatory retirement age.

Judge Grendell reached mandatory 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.

Judge Rice retired from our court on December 12, 2022, two years into her fourth term, to assume a seat on the Trumbull County Common Pleas Court, to which she was elected in 2022. Judge Robert J. Patton, a former assistant U.S. attorney in Cleveland and Lake County assistant prosecutor, was appointed by Governor DeWine to fill the vacancy created by Judge Rice, on June 5, 2023. Judge Patton was elected in 2024 to serve the remaining two years of Judge Rice's term.

Judge Eugene A. Lucci, a judge of the Lake County Common Pleas Court since 2001, and a former police officer, defeated Judge Thomas R. Wright of our court in the 2022 general election, to serve one term on our court which would end because of the mandatory retirement age.

Judge Trapp retired from our court at the conclusion of her term which began in 2019, to pursue a seat on the Geauga County Common Pleas Court, leaving an open seat. Judge Scott Lynch, an attorney with an office in Chardon, won the 2024 primary election, opposed by Ashtabula County Prosecuting Attorney Colleen O'Toole, and was unopposed in 2024 general election, to serve the full term commencing in 2025. Judge Scott Lynch is the nephew of Judge Matt Lynch.

A chart is attached to this brief history to graphically depict the judicial offices on our court and the succession of judges who held those positions.

The Principal Seat of the Court

In December 1982, pursuant to entry by the court, Trumbull County was designated as the official seat of the district.[63] 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.

The 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 addressed by opinion, the Supreme Court authorized the addition of a law clerk for each judge which then increased the personnel level to a total of seven people. In 1983, the additional position of court assistant was created by the court and was filled by Polly Richter, who had previously served as Judge Hofstetter's secretary. In 1989, Carol M. Sericola became the assistant court administrator, which increased the number of employees at that point.

As a result of increased docketing throughout the twelve appellate districts, the supreme court, in 1988, authorized the appointment of a second law clerk for each sitting judge. In the decade of the 1990's, the increased docketing and requirements placed on the appellate courts in Ohio caused the addition of several other staff employees required to accomplish the work of the district, as well as the efforts in several of the appellate districts to initiate mediation programs as part of the service offered to the practicing bar and litigants. This program was adopted and implemented in our district in 2005. Security concerns also increased during the 1990's leading to a few policies that were required to be addressed, including the retaining of security officers. With the addition of personnel and programs, the job description of

[63] Ohio Rev. Code Ann. § 2501.181(A) provides: "A court of appeals may select one of the counties in its district as its principal seat." Although, as a matter of practicality and tradition, a court of appeals usually selects the most populous county in its district as its principal seat, there is nothing in the statute that requires it to do so.

the court administrator expanded, such that our current court administrator, Shibani Sheth-Massacci, also functions as a magistrate and case mediator. Keitsa Miles is our deputy administrator. Consequently, our court now employs twenty-nine people, including five judges.

The court continued to remain in a cooperative situation in the Law Library building, along with the staff from the Juvenile Detention Center. Hence, the physical facilities there were inadequate for an appellate court such as ours. We agreed with the Trumbull County commissioners to move to the third and fourth floors of the Stone Building on the corner of North Park and High Street near Courthouse Square in March 1993. Our court in Trumbull County remained there until January 2000 when the Trumbull County 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 proselytizing to bring us into the twenty-first century.

JUDGES OF THE ELEVENTH DISTRICT COURT OF APPEALS (1969 - 2025)

Judge George M. Jones (Original 6-year term)	Liberty Twp. (Trumbull)	1969 – 1975
Judge Robert E. Cook (Original 4-year term)	Ravenna (Portage)	1969 – 1988
Judge Edwin T. Hoffstetter (Original 2-year term)	Chardon (Geauga)	1969 – 1983
Judge Alfred E. Dahling	Mentor (Lake)	1975 - 1987
Judge Donald R. Ford	Warren (Trumbull)	1983 - 2007
Judge Judith A. Christley	Hiram (Portage)	1987 - 2005
Judge Joseph E. Mahoney	Ashtabula (Ashtabula)	1989 - 1997
Judge Robert E. Nader	Warren (Trumbull)	1991 - 2003
Judge William M. O'Neill	Chagrin Falls (Geauga)	1997 - 2007
Judge Diane V. Grendell	Chester Twp. (Geauga)	2001 - 2019
Judge Cynthia Westcott Rice	Brookfield (Trumbull)	2003 - 2022
Judge Colleen Mary O'Toole	Concord Twp. (Lake)	2005 - 2011 2013 - 2019
Judge Mary Jane Trapp	Russell Twp. (Geauga)	2007 - 2013 2019 - 2025
Judge Timothy P. Cannon	Painesville Twp. (Lake)	2007 - 2021
Judge Thomas R. Wright	Howland (Trumbull)	2011 - 2023
Judge Matt Lynch	Chagrin Falls (Geauga)	2019 -
Judge John J. Eklund	Chardon Twp. (Geauga)	2021 -
Judge Eugene A. Lucci	Concord Twp. (Lake)	2023 -
Judge Robert J. Patton	Willowick (Lake)	2023 -
Judge Scott Lynch	Huntsburg Twp. (Geauga)	2025 -

BIBLIOGRAPHY

Aumann, F.R., The Development of the Judicial System of Ohio (1998), 41 Journal of the Ohio Historical Society 195.

Barnes, Wayne R., Contemplating a Civil Law Paradigm for a Future International Commercial Code (2005), 65 La.L.Rev. 677.

Benedict, Michael Les, and John F. Winkler eds. (2004), The History of Ohio Law. Klotter, John C., Criminal Evidence 7th ed. (2000).

Marshall, Carrington T. ed., A History of the Courts and Lawyers of Ohio (1934).

McCook, George W., Reports of Cases Argued and Determined in the Supreme Court of Ohio (1853).

Ohio Jurisprudence 3d (2005).

Painter, Mark P. and Douglas R. Dennis, Ohio Appellate Practice (2006). Pamphlet: Your Court of Appeals, 7th District (1968).

Putnam, Melanie, Ohio Legal Research Guide (1997).

Skeel, Lee E., Constitutional History of Ohio Appellate Courts (1957), 6 Cleve.Mar.L.Rev. 323.

Wigmore, John H., A Panorama of the World's Legal Systems (1936).

ADDENDA

The following maps are reproduced from the Appellate District Study Committee report of its findings and recommendation, released 2001. The Appellate District Study Committee was established by the General Assembly in Section 3 of Amended Substitute Senate Bill 164 of the 123rd General Assembly. The Committee was charged with reviewing existing appellate district boundaries and recommending any necessary revisions to those boundaries.

The table of the judges, showing the “pedigree” of each judicial position on the Eleventh District Court of Appeals, and the judges who held those positions, follows the maps of the 2001 appellate district study. The table was created by Judge Eugene A. Lucci and is accurate and complete as of January 1, 2024.

ORIGINAL CIRCUIT COURTS
1884-1887
(7 Circuits)

Intermediate appellate courts, in their present form, first were established by an amendment to the Ohio Constitution that was adopted in 1883. The following year, the General Assembly divided the state into seven appellate circuits consisting of between five and sixteen counties.

CIRCUIT COURTS
1887-1921
(8 Circuits)

Shortly after the original circuits were drawn, the four eastern counties of the original Sixth Circuit were placed in a new Eighth Circuit. Circuit boundaries remained unchanged for the next 34 years, except for the transfer of Monroe county in southeastern Ohio from the Fourth to the Seventh Circuit.

APPELLATE DISTRICTS
1921-1955
(9 Districts)

A series of constitutional amendments adopted in 1912 changed the name of the circuit courts to courts of appeal and required the General Assembly to divide the state into "appellate districts of compact territory bounded by county lines." In 1921, Lorain, Medina, and Summit counties were combined with Wayne county from the Fifth District to form a new Ninth District. Except for the transfer of Guernsey county from the Seventh to the Fifth District in 1935, the nine districts remained unchanged until 1955.

APPELLATE DISTRICTS
1955-1968
(10 Districts)

In 1955, the Tenth District was formed by moving Franklin county from the Second District.

APPELLATE DISTRICTS
1968-1980
(11 Districts)

The Eleventh District was established in 1968 by transferring the five northern counties (Lake, Ashtabula, Geauga, Portage, and Trumbull) of the original Seventh District into a new district.

APPELLATE DISTRICTS
1980-To Present
(12 Districts)

The current appellate district map was established in 1980 when the Twelfth District was created. Butler, Warren, Clermont, and Clinton were transferred from the First District, Preble, Madison, and Fayette counties were transferred from the Second District, and Brown county was transferred from the Fourth District. The First District remained as a single county (Hamilton) district. Shelby county was moved from the Second to Third District in the same legislation.

JUDGES OF THE COURT OF APPEALS OF OHIO, ELEVENTH DISTRICT

Yr Created:	1968	1968	1968	1990	2000	Office
Full Term:	FEB 9 (1971)	FEB 9 (1973)	FEB 9 (1969)	FEB 10 (1991)	FEB 10 (2001)	Year
1969	Edwin T. Hoffstetter	Robert E. Cook	George M. Jones			1969
1970	Init. 2 year term	Init. 4 year term	Init. 6 year term			1970
1971	Edwin T. Hoffstetter					1971
1972						1972
1973		Robert E. Cook				1973
1974						1974
1975			Alfred E. Dahling			1975
1976						1976
1977	Edwin T. Hoffstetter					1977
1978						1978
1979		Robert E. Cook				1979
1980						1980
1981			Alfred E. Dahling			1981
1982						1982
1983	Donald R. Ford					1983
1984						1984
1985		Robert E. Cook				1985
1986						1986
1987			Judith A. Christley			1987
1988		Died 11/1988				1988
1989	Donald R. Ford	Joseph E. Mahoney				1989
1990		Appt'd. 3/1989				1990
1991		Joseph E. Mahoney		Robert A. Nader		1991
1992		Elected				1992
1993			Judith A. Christley			1993
1994						1994
1995	Donald R. Ford					1995
1996						1996
1997		William M. O'Neill		Robert A. Nader		1997
1998						1998
1999			Judith A. Christley			1999
2000						2000
2001	Donald R. Ford				Diane V. Grendell	2001
2002						2002
2003		William M. O'Neill		Cynthia Westcott Rice		2003
2004						2004
2005			Colleen Mary O'Toole			2005
2006						2006
2007	Mary Jane Trapp	Ret'd.			Diane V. Grendell	2007
2008		Timothy P. Cannon Appt'd.				2008
2009		Timothy P. Cannon		Cynthia Westcott Rice		2009
2010		Elected				2010
2011			Thomas R. Wright			2011
2012						2012
2013	Colleen Mary O'Toole				Diane V. Grendell	2013
2014						2014
2015		Timothy P. Cannon		Cynthia Westcott Rice		2015
2016						2016
2017			Thomas R. Wright			2017
2018						2018
2019	Matt Lynch				Mary Jane Trapp	2019
2020	Elected					2020
2021	John J. Eklund	Matt Lynch		Cynthia Westcott Rice		2021
2022	Appt'd. 7/1/2021	Elected		Ret'd. 12/12/2022		2022
2023	John J. Eklund		Eugene A. Lucci	Robert J. Patton		2023
2024	Elected			Appt'd. 6/5/2023		2024
2025	John J. Eklund			Robert J. Patton	Scott Lynch	2025
2026				Elected		2026
2027		new term		new term		2027
2028						2028
2029			new term			2029
2030						2030
2031	new term				new term	2031
2032						2032
2033		new term		new term		2033