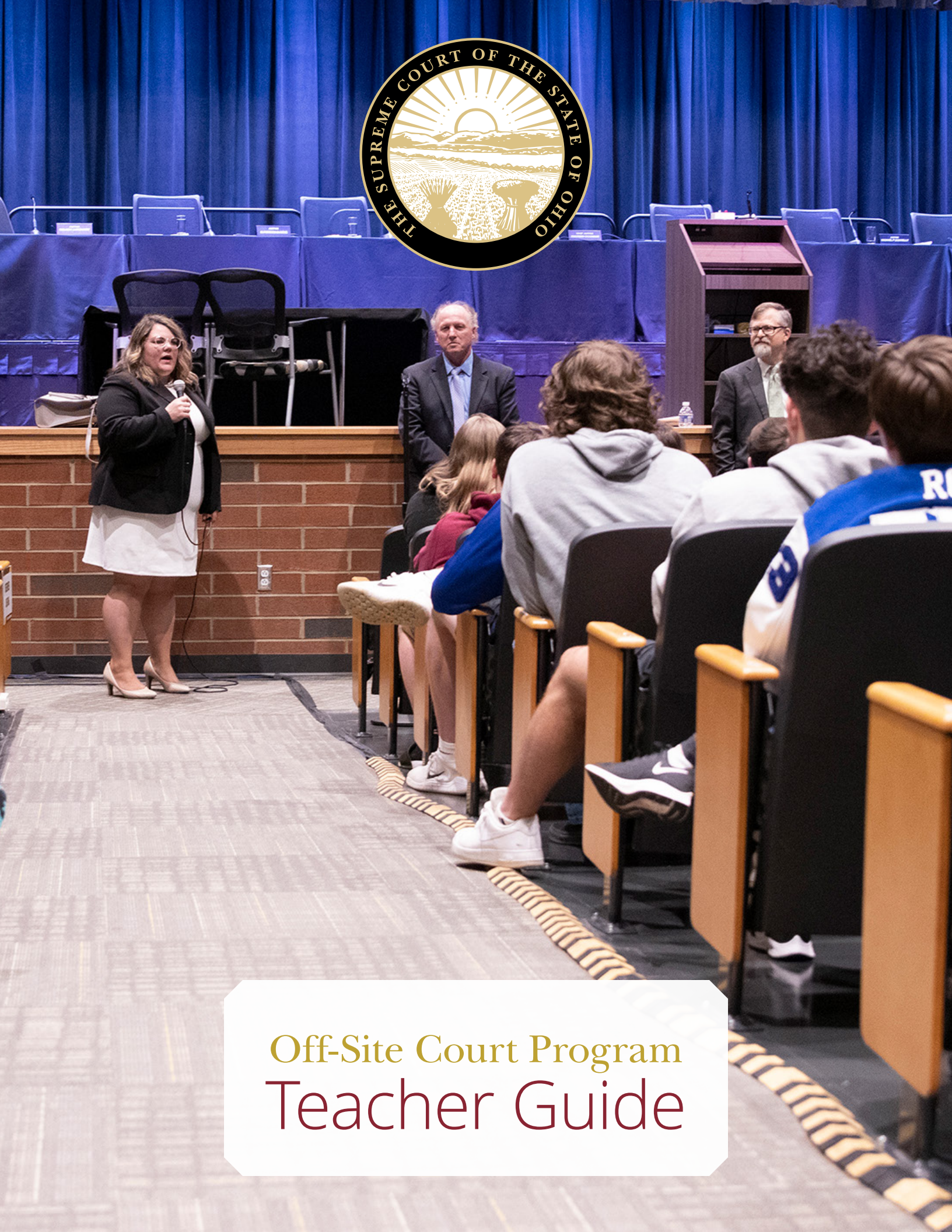

THE SUPREME COURT OF THE STATE OF OHIO

Off-Site Court Program
Teacher Guide

Off-Site Court Program

Teacher Guide

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The Supreme Court *of* Ohio

This panel in the Supreme Court of Ohio's Rule of Law Gallery presents Hammurabi (1795-1750 B.C.), the Babylonian king to whom the first written Code of Law is attributed. The scene on the right depicts the Reign of Ramses II, the Egyptian pharaoh credited with the earliest-known peace treaty.

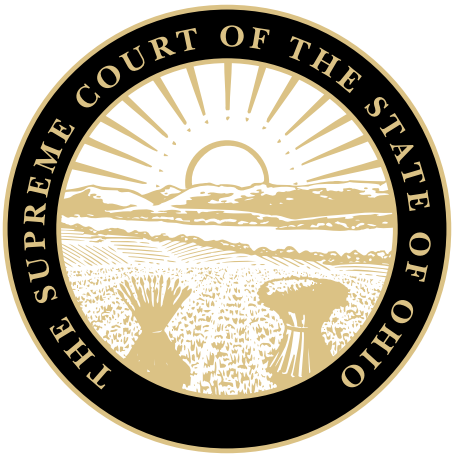
The story of this court begins with the founding of Ohio. When early settlers arrived in Marietta on April 7, 1788, one of their first actions was to lay out a code of simple laws for governing their new home. They understood that laws and the courts that interpret and apply them are the very foundation of a civilized society.

The story of the law goes back more than 3,700 years to the Hammurabi Code. Etched into clay and stone tablets were the guiding principles of justice that have been recognized by almost all societies since the time of Hammurabi, the great Babylonian king:

- Legal protection for the poor and lower classes
- Social justice guaranteed to all citizens
- Presumption of innocence until proven guilty
- Laws publicly enacted and known to all
- Punishment should fit the crime

These ideas and principles were a landmark in the human struggle to build an orderly and peaceful society. Law is where a society organizes its shared experience and forms its common values. The constitutions, statutes, and court cases serve as a civic diary for our struggles over such issues as education, civil rights, and political expression.

Portions of the Off-Site Court program guide are taken from The Law and You, with permission from the Ohio State Bar Association. For additional law-related public resources offered by the OSBA, visit ohiobar.org/public-resources.


THE SUPREME COURT OF THE STATE OF OHIO

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Sources of Law

Law can be thought of as a collection of broad principles and specific rules concerning freedom, conduct, and property that establishes rights and duties designed to help people live together in communities, states, and nations. The law didn't appear overnight, but evolved over centuries from the human desire for order. As people began living closer together, this desire led to customs that became accepted by the larger group and eventually became law. The law is really not as mysterious as some people perceive, and it can be broken down into four classifications:

- *Constitutional law*
- *Statutory law*
- *Administrative law*
- *Common law*

Constitutional Law

The U.S. Constitution outlines the federal government's structure and powers and establishes basic law in the United States. Similarly, the Ohio Constitution establishes basic law for the people of Ohio. Should a conflict arise between the state and federal constitutions, the U.S. Constitution takes precedence. Constitutional law deals with the interpretation and application of the U.S. and Ohio Constitutions in everyday life.

Statutory Law

Laws written by federal and state legislative authorities are known as statutes. The U.S. Congress enacts statutes affecting the entire nation, while the Ohio General Assembly enacts *statutes* that apply to Ohio. City or village councils enact local laws called *ordinances*. Federal laws are compiled in the United States Code and deal with subjects such as the armed forces, bankruptcy, patent law, and interstate commerce. State statutes are compiled in the *Ohio Revised Code*, and individual cities and villages maintain a code of municipal ordinances.

Under the Ohio Constitution, municipalities (incorporated cities and villages) may adopt laws for their own self-government. These local ordinances are adopted by the village or city council, which is the legislative branch of municipal government. Municipal ordinances are effective only within the municipality enacting them and are valid only if they do not conflict with state law.

Administrative Law

Many activities governed by statutes or ordinances are so technical, or change so often or so fast, that they cannot effectively be regulated by statute or ordinance alone. This is where administrative law offers rules and guidance. The adoption of administrative rules in Ohio involves a detailed set of procedures developed after multiple public hearings. Once adopted, administrative rules carry the same force of law as statutes and can be enforced by the courts. Violating an administrative regulation may be a crime if the corresponding statute or ordinance says it is a crime and creates a penalty.

Ohio's administrative rules, which cover activities such as hunting, fishing, wildlife management, public recreation, pollution control, sanitation, liquor control, housing, building construction, land use, and industrial safety, are found in the *Ohio Administrative Code*. Many of these activities also are covered by federal administrative rules, most of which can be found in the *Code of Federal Regulations*.

Common Law

The common law is a large body of law that has grown out of society's customs and usage, and out of previous court decisions, rather than resulting from specific legislation (statutory law). Because it is (and was) created by the courts, common law is a product of judicial rather than legislative power. It helps unify constitutional, statutory, and administrative law, and it is, therefore, vital to an effective system of justice.

Based on generations of the natural development of human experience, common law gives continuity and consistency to the law. It also allows the law to respond to the changing needs of society. When a court decides a case and records its decision in a written opinion, that opinion becomes a *precedent*, and the principles on which the case was decided may be used to decide future cases with similar factual situations.

Many major divisions of Ohio law are governed almost entirely, or in significant respects, by common law. One important subject governed almost entirely by common law is *torts*. Torts is the division of the law dealing with civil remedies for injuries or damages caused by negligence, or other wrongful acts or omissions. For example, most of the law governing the question of liability for injuries suffered in automobile accidents is based on the common law of torts. Contract law is covered partly by the common law and partly by statutes. Some areas of law are based entirely on statute, such as conduct that is considered a crime, and benefits available under workers' compensation.

Types of Law

Criminal Law

Criminal law is one of the oldest of the major branches of law. It spells out rules of conduct for society to follow and provides for penalties when those rules are broken. The law also protects by shielding citizens from wrongful prosecutions and mistakes made by law enforcement officials, affording certain constitutional rights if an individual is accused of committing a crime.

There are two major classifications of crimes: felonies and misdemeanors. The word *felony* comes from the Latin word *felonia*, meaning treason or treachery. *Misdemeanor* combines "mis" for "wrong" or "bad," and "demeanor" from the Middle English "demenure," meaning to govern oneself or behave. Both felonies and misdemeanors are further classified according to the comparative seriousness of the offense, with crimes of *first degree* generally representing the most serious. Some crimes are simply defined as felonies or misdemeanors without being classified by degree.

Felonies are the most serious crime and, in Ohio, they carry a potential penalty of six months or more in a state prison to a penalty of death for aggravated murder. Punishment for felons (persons committing felonies) may include imprisonment, community sanctions, and various financial penalties. Under certain circumstances, felony offenders can serve time in local jails or community-based correctional facilities; however, most violent or repeat offenders are housed in state prisons.

Misdemeanors are less serious than felonies. They range from speeding and littering to drunken driving and simple assault (with minimal harm). In Ohio, the penalty for a misdemeanor can range from payment of court costs to no more than six months in jail and/or a fine of $1,000 per offense. The penalty also may include community-control-sanctions, such as probation or community service.

Criminal Law & Constitutional Rights

The U.S. and Ohio Constitutions provide people accused of crimes with basic rights that are designed to protect the individual from unreasonable government intrusion and to ensure fundamental fairness. These rights are so important that violating them may result in the suppression of evidence or dismissal of criminal charges and/or charges against those responsible for violating those rights. The Supreme Court of Ohio often hears cases involving questions arising under the U.S. or Ohio Constitution.

The following are some basic constitutional rights guaranteed under the law:

Equal Protection Under the Law

The Fourteenth Amendment to the U.S. Constitution entitles everyone to equal protection under the law. That means the law must be the same for everyone, regardless of race, creed, or economic standing.

Due Process of Law
The U.S. and Ohio Constitutions guarantee that a defendant will receive a fair and impartial trial.

Double Jeopardy
Both the U.S. and Ohio Constitutions provide that no one can be placed in jeopardy, or tried, more than once for the same crime.

Search and Seizure
The U.S. and Ohio Constitutions prohibit unreasonable searches and seizures. Generally, law enforcement officers need to obtain a search warrant from a judge to search a person or property.

Self-Incrimination
Individuals cannot be compelled, tortured, frightened, coerced, or tricked into self-incrimination.

Right to Counsel
Everyone is constitutionally entitled to the services of an attorney when accused of a crime. If a prison sentence is a possible punishment for the crime and the accused cannot afford an attorney, then the state must provide one.

Indictment by a Grand Jury
Indictment by a grand jury helps ensure that no one is subjected to trial on false or spiteful accusations.

Notice of Charge
An accused person is entitled to fair notice of the specific charges against him or her.

Speedy Trial
The U.S. and Ohio Constitutions state that a person charged with a crime is entitled to a speedy trial so that the matter will not be hanging over the accused person's head indefinitely.

Public Trial in a Locality
Both the U.S. and Ohio Constitutions give an accused the right to a public trial, thus ensuring that trials are not held in secret, but are conducted openly, fairly, and properly.

Confronting Accusers and Securing Witnesses
Defendants in criminal cases are entitled to meet the accusers and the witnesses against them.

Trial by Jury
Under the U.S. Constitution, a defendant is entitled to trial by jury if it is possible for the defendant to receive a punishment of more than six months in prison. Ohio's Constitution entitles an accused to a jury trial if the potential penalty is greater than a $100 fine. All decisions in a criminal case must be unanimous.

Informing the Accused of Rights

Accused persons must be informed of their rights in any case if they ask, or when police have them in custody and wish to interrogate them. The accused also must be given an explanation of his or her rights when appearing before a judge and entering a plea of guilty to any charge.

Waiver of Rights

An accused individual can waive or forego a constitutional right as long as the waiver is voluntary and is made with full knowledge of the right being waived and of the consequences of waiving that right.

Enforcement of Rights

Under Ohio law, certain violations of civil rights constitute crimes.

Review on Appeal

In Ohio, a defendant who has a trial and is found guilty of a crime has the right of appeal.

Review of Sentence on Appeal

When the Ohio Criminal Code was revised in July 1996, it afforded new rights to appeal certain felony sentences to the court of appeals that serves the district in which the case was heard.

Post-Conviction Relief

A defendant may file a petition for post-conviction relief in the trial court in which he or she was convicted. A defendant may seek post-conviction relief if the sentencing pattern of an individual judge shows an impermissible bias based on the race, ethnicity, gender, or religion of the defendant.

Civil Law

Civil laws regulate relations between individuals or groups of individuals. Infractions of these laws result in civil action in which one party (the plaintiff) brings suit, usually in the form of a complaint, against another (the defendant). Civil laws regulate marriage, divorce, business contracts, wills, adoptions, consumer protection, insurance, workers' compensation, negligence, and so on.

Like criminal matters, the burden of proof is on the party that initiated the proceedings – in this case, the plaintiff. However, unlike a criminal case, proof is based on a preponderance of the evidence. This means that more than 50 percent of the evidence must be on the winning side.

Three primary differences between civil and criminal actions are:

- The parties who may bring the actions
- The societal purposes for the actions
- The procedural rules and requirements for prosecuting criminal and civil actions

Both private citizens and the state and federal government can bring civil actions. When the state or federal government brings a civil action, it is acting on behalf of the citizens of the state or the United States. When private citizens file civil actions, they are acting on their own behalf.

Activity #1

Criminal and Civil Laws

Examine the list of laws below. In the space before each, write "criminal" if it is an example of criminal law or "civil" if it is an example of civil law.

1. _____ Traffic violation

2. _____ Drug trafficking

3. _____ Divorce

4. _____ Contesting a will

5. _____ Burglary

6. _____ Dispute over insurance coverage

7. _____ Paternity suit

8. _____ Warranty or contract dispute

9. _____ Forgery

10. _____ Shoplifting

Match the sentence on the right with the correct constitutional right on the left.

1. _____ Due Process	A. I cannot be coerced to incriminate myself.
2. _____ Double Jeopardy	B. I am allowed to have an attorney.
3. _____ Notice of Charge	C. The police did not have a search warrant.
4. _____ Speedy Trial	D. My punishment may be more than $100.
5. _____ Right to Counsel	E. I cannot be tried again for the same crime.
6. _____ Trial by Jury	F. I will not wait indefinitely for my trial.
7. _____ Search and Seizure	G. I want a notice of the charges against me.
8. _____ Self-Incrimination	H. Laws require fundamental fairness.

The Courts

The courts oversee and administer the law. They resolve disputes under the law and strive to apply the law in a fair and impartial manner. Like other states, Ohio is served by separate state and federal court systems organized into trial courts, intermediate courts of appeals, and a Supreme Court in each system. State courts deal primarily with cases arising under state law and federal courts deal primarily with cases arising under federal law.

State Courts

Ohio Trial Courts

In Ohio, most cases begin and are resolved in trial courts, which are the workhorses of the state's judicial system. Ohio has several kinds of trial courts and each has venue and jurisdiction over cases. Simply stated, venue is the geographical location where a case is heard. Jurisdiction is the power and authority to hear and decide certain kinds of cases. Ohio's trial courts include common pleas courts, municipal and county courts, and mayor's courts.

- Common pleas courts have countywide venue and jurisdiction to decide all levels of civil and criminal cases. The common pleas court is Ohio's court of general jurisdiction, which means that it has the authority to hear almost any civil or criminal matter. Most serious civil or criminal cases must be heard in common pleas court. Each of Ohio's 88 counties has a common pleas court.
- Municipal and county courts have more limited jurisdiction than common pleas courts, and authority to decide only less-serious civil and criminal cases.
- Mayor's courts do not have civil jurisdiction and only have limited authority to hear minor criminal matters that occur within a city or village. Note that mayor's courts are not courts of record.

Ohio Court of Appeals

The goal of every judicial system is to achieve complete and equal justice with every trial, but trial courts sometimes make mistakes or parties may disagree about the outcome of a particular case. This is why the court of appeals was established. Ohio's court of appeals has 12 district courts. The appellate judges of each district court review questions brought from the common pleas courts, municipal courts, and county courts.

Only a final judgment or order can be appealed, and appeals generally must be on questions of law and not the facts of a case. Court of appeals judges generally do not hear new testimony. They review transcripts from the lower court's hearings to determine if the law was interpreted and applied correctly. The party appealing the lower court's decision is the appellant, and files a written argument explaining how the trial court erred. The party that won the case in the trial court is the appellee, and also may file a written brief, but is not required to do so. The court then may hold oral arguments, at which time the judge can ask questions about the case before making a decision.

The number of judges in each district varies based on population, but each district has a minimum of four appellate judges. Cases challenging decisions made by a lower trial court located within its district are heard by a panel of three of the district's judges. Although many cases end with a decision by a district court of appeals, such courts are not the last resort; rather they are an intermediate step from the trial courts to the Supreme Court of Ohio.

The Supreme Court of Ohio

The Supreme Court of Ohio is the highest and most powerful court in the state. Its primary purpose is to serve as a court of appeals and Ohio's court of last resort. It has original (trial) jurisdiction in the same types of extraordinary cases as the courts of appeals. The Supreme Court of Ohio is empowered to review final judgments and orders of lower courts; to affirm, reverse, remand (send back to a lower court), or modify judgments. Appeals to the Supreme Court generally are from the district appeals courts, rather than from the trial courts. The Supreme Court is required to hear some types of cases (cases involving the death penalty, some appeals from state agencies, cases involving state constitutional issues, and others), but most of its jurisdiction is discretionary and it selects cases of great importance or public interest to resolve.

The Supreme Court of Ohio also has other important duties. These duties include prescribing rules of procedure for and providing general oversight of all lower courts, and overseeing the practice of law by attorneys.

The Supreme Court of Ohio consists of a chief justice and six justices. To qualify for election, candidates must be licensed attorneys with at least six years' experience. Once elected, they serve six-year terms. The Supreme Court of Ohio is located in Columbus.

Justices & Judges in Ohio

All justices and judges in Ohio are elected by the state's voters. To qualify for election, judicial candidates must be licensed attorneys with at least six years of experience. Once elected, all judges and justices serve six-year terms.

Ohio has a unique system of electing judges/justices, in that candidates running for most of the state's judicial offices may run in the state's primary election on a partisan ballot, signifying their affiliation with a particular political party. Common pleas, municipal, and county court races on the general election ballot are considered non-partisan, meaning that no party affiliation is noted by candidates' names; however, party affiliation is listed for Supreme Court and Court of Appeals races on the general election ballot.

Ohio elects justices for the Supreme Court and judges for common pleas and county courts and the Ohio Court of Appeals in even-numbered years. Municipal court judges are elected in odd-numbered years.

Additionally, the Ohio Constitution sets an age limit of 70 years old for all of the state's judges and justices. No judge or justice can start a new term in office after turning 70.

Structure of the Ohio Court System

SUPREME COURT
CHIEF JUSTICE AND SIX JUSTICES

Court of last resort on state constitutional questions of public or great general interest; appeals from the Public Utilities Commission, all death sentences; original jurisdiction in select cases.

COURT OF APPEALS
TWELVE DISTRICTS, THREE-JUDGE PANELS

Appellate review of judgments of common pleas, municipal and county courts; appeals from Board of Tax Appeals; original jurisdiction in select cases.

MUNICIPAL AND COUNTY COURTS

Misdemeanor offenses; traffic cases; civil actions up to $15,000.

MAYOR'S COURTS

Not courts of record. Violations of local ordinances and state traffic laws. Matters can be reheard in municipal or county courts.

COURTS OF COMMON PLEAS
IN EACH OF 88 COUNTIES

GENERAL DIVISION
Civil and criminal cases; appeals from most administrative agencies.

DOMESTIC RELATIONS DIVISION
Divorces and dissolutions; support and custody of children.

JUVENILE DIVISION
Offenses involving minors; most paternity actions.

PROBATE DIVISION
Decedents' estates; mental illness; adoptions; marriage licenses.

COURT OF CLAIMS
JUDGES ASSIGNED BY THE CHIEF JUSTICE

All suits against the state for personal injury, property damage, contract and wrongful death; compensation for victims of crime. Three-judge panels upon request.

Federal Courts

The federal court structure is similar to Ohio's court structure, with trial courts, courts of appeals, and a Supreme Court. The federal courts primarily are concerned with administering federal law and they function independently of state courts.

U.S. District Courts

The trial courts in the federal system are the U.S. District Courts. The district courts are courts of general jurisdiction and correspond to Ohio's common pleas courts, meaning they handle all types of criminal cases (felonies and misdemeanors) that arise under federal statutes, as well as many kinds of civil cases. For example, district courts handle:

- Cases governed solely by federal law (bankruptcies, patents and copyrights, and admiralty – the branch of law that governs shipping and navigation on the oceans, seas, and navigable inland waterways)
- Cases under the U.S. Constitution or federal statutes (cases involving interstate commerce, claims by one state against another, civil rights, or antitrust claims)
- Diversity cases (claims by a citizen of one state against a citizen of another state where the amount of the claim is $75,000 or more). For example, a diversity case might be a claim by an Ohio resident against a Kentucky resident for injuries sustained in an auto accident that occurred in Ohio. If the amount involved was $75,000 or more, the case could be heard in a federal district court located in Ohio. Because the federal system does not have a common law of its own, the law of Ohio would be applied in such a case.
- Bankruptcy cases require an additional explanation. District courts have the power to handle bankruptcy cases, but have referred them in the past to bankruptcy courts. Technically, the bankruptcy court is part of the district court, although it operates as an independent court and handles almost all aspects of bankruptcy cases.

Ohio has two federal district courts: the U.S. District Court for the Northern District of Ohio and the U.S. District Court for the Southern District of Ohio. The Northern District has a western division, based in Toledo, and an eastern division, based in Cleveland, with separate courts in Akron and Youngstown. The Southern District has a western division, based in Cincinnati, with a separate court in Dayton, and an eastern division, based in Columbus. There is a bankruptcy court for the Northern District, as well as for the Southern District.

There are bankruptcy court offices and courtrooms in Akron, Canton, Cleveland, Toledo, Youngstown, Cincinnati, Columbus, and Dayton. Judges of the U.S. District Court are appointed for a life term by the president of the United States, with confirmation by the U.S. Senate. Judges of the bankruptcy court are appointed for 14-year terms by the judges of the U.S. Court of Appeals for the circuit where the district court is located.

U.S. Courts of Appeals

The United States and its territories are divided into 13 "circuits," with a court of appeals in each circuit. Ohio is in the Sixth Circuit, along with Michigan, Kentucky, and Tennessee. The U.S. Court of Appeals for the Sixth Circuit is based in Cincinnati.

The U.S. courts of appeals are intermediate appeals courts that hear appeals from the district courts and their decisions may be appealed to the U.S. Supreme Court. The U.S. courts of appeals correspond to Ohio's district courts of appeals and function in much the same manner. The president of the United States, with confirmation by the U.S. Senate, appoints all judges on the U.S. courts of appeals to life terms.

The U.S. Supreme Court

Just as the Supreme Court of Ohio is the highest court in the state, the U.S. Supreme Court is the highest court in the nation and the court of last resort. It consists of the chief justice and eight associate justices, who are appointed to life terms by the president of the United States, with confirmation by the U.S. Senate.

The U.S. Supreme Court is the ultimate authority on many of the nation's most important issues. Over the years, those decisions have desegregated our nation's public schools, compelled a president to produce evidence in a pending criminal case, extended the rights of persons accused of a crime, established equal voting rights, and resolved a disputed presidential election.

Activity #2

State/Local vs. Federal

Examine each statement below and decide which level of government would assume responsibility. In the space write FEDERAL for national government or STATE/LOCAL for state or local government.

_____ 1. Driving a vehicle without insurance

_____ 2. Declaring war on Canada

_____ 3. Not wearing orange clothing while hunting with a gun

_____ 4. Enforcing zoning codes for housing

_____ 5. Establishing marriage and divorce laws

_____ 6. Passing a school levy

_____ 7. Circulating a petition to repeal a law

_____ 8. Regulating parking laws

_____ 9. Enacting law to extend the school year

_____ 10. Banning sale of alcoholic beverages in a city

_____ 11. Closing a restaurant for health-code violations

_____ 12. Establishing new pollution-control standards for automobiles

_____ 13. Counterfeiting credit cards

_____ 14. Instating a new form of currency

_____ 15. Determining food-stamp eligibility

Understanding an Appellate Argument: Fact & Law

The purpose of a trial court first is to determine the facts surrounding a legal matter and then determine how the law should be applied to the set of facts. Either a judge or jury can serve as the "finder of fact" in a trial. Prosecutors and defense attorneys use witness testimony and evidence to help tell a story in court, with each side hoping the finder of fact will agree with their version of events. Therefore, a defendant can be found "guilty" or "not guilty" based on information presented in a trial court. A judge determines the sentence based upon the facts selected.

But what happens if the losing side disputes the outcome?

When a party chooses to appeal the trial court outcome, it generally is over a question of law or procedure. As stated previously, the goal of every judicial system is to achieve complete and equal justice with every trial, but it is possible for an error to occur. The Ohio Court of Appeals and the Supreme Court of Ohio are concerned with matters of law – not issues of fact. If the facts of a legal matter need further review, the case will be remanded back to the trial court where a new trial can be held.

Cases that involve importantly held constitutional rights (see pages 5 -7) often illustrate the difference between fact and law. These cases also can have a significant public impact and are strong candidates to be heard by a state's court of last resort.

The following is a summary of a case that went before the Supreme Court of Ohio involving the Fourth Amendment of the U.S. Constitution and Article 1, Section 14 of the Ohio Constitution, which protects the public from unreasonable searches and seizures.

Overview: *State of Ohio v. Antwaun Smith*

In January 2007, Antwaun Smith was arrested on drug-related charges in Beavercreek, Ohio, after responding to a call to his cell phone placed by a crack-cocaine user acting as a police informant. During the arrest, police searched Smith and found a cell phone on his person. The arresting officer put the cell phone in his pocket, placed Smith in a cruiser, and then searched the scene for evidence. Police later recovered bags containing crack cocaine at the scene. Officers subsequently searched the contents of Smith's phone without a search warrant or his consent. They discovered call records and stored numbers that confirmed prior calls between Smith's phone and the informant's phone number. Smith was charged with possession of cocaine, trafficking in cocaine, tampering with evidence, and two counts of possession of criminal tools.

During pretrial proceedings, Smith moved to suppress all evidence police obtained through the search of his cell phone, arguing that in conducting that search without first obtaining a warrant, the officers violated his constitutional right against unreasonable search and seizure.

The judge in the trial court, the Greene County Court of Common Pleas, ruled that he would not allow the state to use photographs taken from Smith's cell phone, but denied the motion to suppress as it related to call records and stored numbers discovered on Smith's phone, citing a 2007 federal court decision. That case, *United States v. Finley*, held that a cell phone is similar to a closed container found on an arrestee's person and, therefore, is subject to search by an arresting officer without a warrant. Smith was convicted on all counts and sentenced to 12 years in prison.

He appealed his convictions and sentence, asserting, among other claims, that the trial court erred in denying his motion to suppress evidence obtained through the warrantless-phone search. In a 2-1 decision, the Second District Court of Appeals affirmed the action of the trial court. The dissenting member of the three-judge panel cited a different federal court's decision, *United States v. Park*, which held that a cell phone is not a "container" as that term was used in prior Fourth Amendment cases, and that a warrantless-police search of data stored in a defendant's cell phone is unconstitutional.

Smith appealed to the Supreme Court of Ohio, which agreed to review the Second District's ruling with regard to the constitutionality of the phone search. The case was argued before the Supreme Court on Sept. 15, 2009.

The following link will take you to the archived oral argument video for *State v. Smith* for optional viewing:

ohiochannel.org/video/case-no-2008-1781-state-of-ohio-v-antwaun-smith

The Supreme Court of Ohio issued an opinion on Dec. 15, 2009. The Court held that the trial court improperly admitted the call record and phone numbers from the appellant's (Smith) phone. The case was remanded (sent back) to the trial court in order for a new trial to be held without evidence of the cell-phone-call records found on Antwaun Smith's cell phone.

The Court's 4-3 majority decision, which reversed the ruling of the Second District Court of Appeals, was authored by former Justice Judith Ann Lanzinger.

In her opinion, Justice Lanzinger wrote:

> "We hold that the warrantless search of data within a cell phone seized incident to a lawful arrest is prohibited by the Fourth Amendment when the search is unnecessary for the safety of law-enforcement officers and there are no exigent circumstances. Because the state failed to show that either of these exceptions to the warrant requirement applied, the search of Smith's cell phone was improper and the trial court was required to exclude from evidence the call records and phone numbers taken from the cell phone. We accordingly reverse the judgment of the court of appeals and remand to the trial court for proceedings consistent with this opinion."

In May 2010, the State of Ohio filed a petition to have this case argued before the United States Supreme Court. The U.S. Supreme Court denied that petition in October 2010, thus letting the Supreme Court of Ohio decision stand.

Activity #3

Understanding an Appellate Argument: Fact & Law

1. What are the crimes Antwaun Smith was accused of committing?

2. How was Antwaun Smith's cell phone used during the trial to present factual information showing he was guilty of these crimes?

3. Antwaun Smith was found guilty on all charges. What is one legal question Antwaun Smith raised before the Court of Appeals?

4. In what way, if any, does the legal question raised by Antwaun Smith conflict with factual information presented during the trial?

5. Give an example of how the concept of "precedence" is used in the State v. Smith case.

6. The Supreme Court of Ohio issued a 4-3 split decision in this case. What does that tell you about this legal question?

Off-Site Court

In 1987, Chief Justice Thomas J. Moyer of the Supreme Court of Ohio wanted to honor the year of the bicentennial of the United States Constitution and initiated the educational Off-Site Court program. This program has taken the judiciary live and in person to local communities across Ohio for more than 30 years.

The Off-Site Court program is designed to educate high school students and other Ohioans throughout the state about Ohio's judicial system.

Twice each year, once in the spring and once in the fall, the Supreme Court of Ohio relocates from the capital city and holds sessions in another community, typically selecting a different county each time.

When the Supreme Court holds court off-site, public, private, and home-schooled high school students from throughout the host county are invited to participate. The students and their teachers are provided with curriculum material to study before the session, including summaries of the specific cases to be argued. Local attorneys team with educators at each participating school to explain Ohio's judicial system and review case materials.

On the morning of the court session, students from each participating school attend one of the three oral arguments. After their assigned case is argued, each group of students meets with the case attorneys to debrief what they witnessed during the oral argument.

Teaching Guide for Local Attorney

Local attorneys are a valuable resource and can help explain Ohio's judicial system and review case materials. To enhance the learning experience, teachers should tell the visiting attorney ahead of time what information they already have covered. The following are some suggestions for attorneys to help guide their discussion with the students.

Legal Analysis of the Case (IRAC)

- Issue: What is the issue surrounding the case? What legal question(s) must be answered?
- Rule: What rule is being questioned? Discuss the applicable rule or law that is the focus of the case.
- Application: How does the rule or law apply to the facts of the case? Discuss why a particular rule does or does not apply to the case presented.
- Conclusion: What is each attorney asking the Court to do?

Definitions

- Explain any definitions that may be of significance to this case (i.e., summary judgment, certified conflict, due process). This will vary depending on the case in question.

Judicial Procedure

- How and why is a case appealed?
  - Potential Question: Why would a defendant plead guilty to a crime, then appeal that verdict? Explain the process of appealing.
- What do attorneys have to do when a verdict is appealed?
  - Explanation of the briefs
    - Talk about the extensive research and writing that attorneys must do to develop a brief. Why does it take months or years to appeal?
- How do attorneys prepare for oral arguments?

Oral Arguments

- Who are the attorneys? Describe what kind of attorneys appear before the Supreme Court. Will they share their time with anyone else?
  - Possible attorneys may include city or county prosecutors, private attorneys, public defenders, or appellate attorneys. Explain the differences between the attorneys who will argue the case and if they have been part of the case from its beginning.
- Discuss what questions the justices may ask. Provide insight into what the justices will be trying to figure out during the oral argument.

Activity #4

Evaluating an Oral Argument

Your class soon will have the unique opportunity of observing the Supreme Court of Ohio holding session in a community outside of the state capital. A practicing attorney from your community has been invited to visit your classroom to help better explain the Ohio court system and the case you will observe during the off-site session. This worksheet can be used in conjunction with the presentation given by the attorney to help organize your thoughts about the upcoming court session and specifically the issue(s) you will hear argued before the Court.

Case: _____

County of Origin: _____

Appellant's Arguments	Appellee's Arguments

1. How would you decide this case?

2. What factors did you consider to be the most important when making your decision?

3. What factors did you consider to be the least important when making your decision?

Considerations When Observing Oral Arguments

Appropriate Dress

The Supreme Court does not have a dress code for students; however participation in the program provides an opportunity to experience dressing for the professional world. The following are suggestions, but not requirements:

- Attendance at oral arguments is a formal occasion; students should be dressed appropriately. Suggestions include collared shirts, dress slacks, skirts, or dresses suitable for the workplace, and non-athletic shoes.

Security Screening:

- All students and adult visitors attending oral arguments are subject to security screening. This is a process similar to going through airport security.
- Students, teachers, and chaperones are encouraged to travel light – cell phones, tablets, and other metal objects can slow down the screening process.

Courtroom Etiquette:

- No talking
- No sleeping
- Papers must be held quietly
- No cell phones or electronic devices in the Courtroom
- No ballcaps

Addressing the Justices:

- Address the justices as "Chief Justice O'Connor" or "Justice" (insert any other member of the court) or "Your Honor."

After Oral Arguments

When the final argument ends in the last case on the day's docket, the Supreme Court's marshal asks those in the courtroom to rise and announces:

> *Hear Ye! Hear Ye! Hear Ye! This open session of the honorable Supreme Court of Ohio now stands adjourned.*

The justices file out and then gather in their deliberation room to discuss and decide the cases they just heard. The only person with them as they deliberate is the reporter of decisions, who records the justices' votes. The chief justice calls on each justice to present his or her view of the case. This is followed by a general discussion about the case that allows the justices to respond to each another's thoughts and opinions. The chief justice then calls for a vote. The justices vote in order from the most junior justice to the chief justice. Each vote carries the same weight, regardless of seniority, but the chief justice votes last to break any tie.

It takes at least four votes – a majority of the justices – to decide a case. After the vote is taken, the justices need to decide which justice from the majority will write the opinion for the Court. The majority opinion is the written explanation of the justices' decision in the case and becomes case law, and essentially the governing law for the state of Ohio.

The justices employ a unique process to assign the opinion writing responsibility. Small plastic marbles with numbers representing the justices who voted with the majority are put in a leather bottle. The senior associate justice shakes the bottle and pours out one marble into another justice's hand. That justice looks at the marble and announces who was selected to write the majority opinion in the case. A justice's marble is not put back in the bottle until each justice has been assigned a case. This process ensures that the opinion-writing responsibility is random and the workloads of the chief justice and justices are nearly equal.

The justice assigned to write the majority opinion will work with his or her staff attorneys to draft the opinion. The majority opinion will be circulated to all of the justices to review. Justices in the majority may choose to write a concurring opinion and justices in the minority may prepare a dissenting opinion. The opinion writing and review process can take several months.

Case opinions are announced and released to the public on Tuesdays, Wednesdays, and Thursdays – except for some special releases – and become the governing law for the state of Ohio.

You can sign up for case alerts to be emailed when the majority opinion in your assigned case is released. To sign up, visit sc.ohio.gov/CaseActivity.

Justices of the Supreme Court of Ohio

Chief Justice Sharon L. Kennedy

Prior to her term on the Ohio Supreme Court, Chief Justice Sharon L. Kennedy served on the Butler County Court of Common Pleas, Domestic Relations Division beginning in 1999. From 2005 until December 2012, Chief Justice Kennedy served as the administrative judge of the Court of Common Pleas, Domestic Relations Division. Beginning her legal career as a solo practitioner, Chief Justice Kennedy ran a small business of her own. While in private practice, she served the legal needs of families, juveniles, and the less fortunate. She also served as special counsel for former Attorney General Betty D. Montgomery. Chief Justice Kennedy began her career in the justice system as a police officer in the city of Hamilton, in southwest Ohio. She was elected as chief justice in Nov. 2022.

Justice Patrick F. Fischer

Justice Patrick F. Fischer began his term on the Ohio Supreme Court on Jan. 1, 2017. He had served as a judge on the First District Court of Appeals since 2010. He previously worked for the law firm of Keating Muething & Klekamp. From 2012 to 2013, then-Judge Fischer served as president of the Ohio State Bar Association. He also served on the Ohio State Bar Association's Board of Governors and on numerous other Ohio State Bar Association committees. Justice Fischer served two terms on the board of the Ohio Lawyers Assistance Program and also was president of the Cincinnati Bar Association from 2006 to 2007. He is an honors graduate of Harvard Law School and Harvard College.

Justice R. Patrick DeWine

Justice Pat DeWine began his six-year term on the Ohio Supreme Court on Jan. 2, 2017. Prior to joining the Supreme Court, Justice DeWine served on the First District Court of Appeals for nearly four years. For the previous four years, he served on the Hamilton County Common Pleas Court. Before becoming a judge, Justice DeWine practiced law for 13 years at the firm Keating, Muething & Klekamp, PLL, where he specialized in mass tort bankruptcy, appellate advocacy, and complex litigation matters. Justice DeWine is a 1994 graduate of the University of Michigan Law School and a 1990 graduate of Miami University, where he received a Bachelor of Arts degree in history and a Bachelor of Science degree in diplomacy and foreign affairs. Justice DeWine also was a member of the Hamilton County Board of Commissioners and Cincinnati City Council.

Justice Michael P. Donnelly

Justice Michael P. Donnelly is the 160th justice of the Ohio Supreme Court and took office on Jan. 1, 2019. Prior to joining the Supreme Court, Justice Donnelly served as a judge on the Cuyahoga County Court of Common Pleas, General Division for 14 years, from 2005 to 2018. Before his election as judge, Justice Donnelly was an assistant Cuyahoga County Prosecutor from 1992 until 1997. He then went on to practice civil litigation for seven years. In recent years, Justice Donnelly served as chair of the Ohio Supreme Court's Commission on Professionalism and currently is a member of both the Ohio State Board of Bar Examiners and the Ohio Jury Instruction Committee. He was appointed by the chief justice to the Ohio Supreme Court Death Penalty Task Force in 2013. He is a graduate of John Carroll University in Cleveland and received his Juris Doctor degree from Cleveland State University's Cleveland-Marshall College of Law.

Justice Melody J. Stewart

Melody J. Stewart was elected in November 2018 as the 161st Justice to serve on the Ohio Supreme Court. She previously served on the Eighth District Court of Appeals from 2006 to 2018. Justice Stewart has served an administrator for a health care management company, a music teacher, a civil defense litigator, and a law school administrator and professor before being elected to the court of appeals. She earned a Bachelor of Music degree from the College-Conservatory of Music at the University of Cincinnati; her law degree as a Patricia Roberts Harris Fellow from the Cleveland-Marshall College of Law, Cleveland State University; and her Ph.D. as a Mandel Leadership Fellow at Case Western Reserve University's Mandel School of Applied Social Sciences. She also worked as a lecturer, an adjunct instructor, and an assistant dean at Cleveland-Marshall before joining the full-time faculty.

Of historical note: Justice Stewart is the first African-American woman elected to the Ohio Supreme Court.

Justice Jennifer Brunner

Justice Jennifer Brunner became the 162nd justice of the Supreme Court of Ohio on Jan. 2, 2021. Prior to joining the high Court, she served on the Tenth District Court of Appeals. Earlier in her career, she served on the Franklin County Court of Common Pleas and founded its adult felony drug court, the TIES Program (Treatment is Essential to Success), which is still in operation today. In 2006, Justice Brunner was elected Ohio's first female Secretary of State. In 2008, then-Secretary Brunner received the bipartisan John F. Kennedy Profile in Courage Award for her public service. The award recognizes public officials who demonstrate politically courageous leadership. She is the only Ohioan to receive the award. Following her service as Secretary of State, Justice Brunner assisted foreign governments with rule-of-law and self-governance matters as an expert for USAID of the U.S. State Department in matters of anti-corruption and judicial reform.

Justice Joseph T. Deters

Justice Joseph T. Deters is the 163rd justice of the Supreme Court of Ohio. He took office in January 2023, following appointment by Governor Mike DeWine. Prior to joining the Court, Justice Deters served as the longest-tenured prosecutor in Hamilton County. He held the position twice from 1992-1999 and 2005-2023. During his time as prosecutor, Justice Deters established the first drug court in Ohio, in partnership with Hamilton County Common Pleas Court. The Hamilton County Drug Treatment and Recovery Court handles more cases than any other specialized docket in the state. Justice Deters was elected statewide as Ohio Treasurer for two terms, in 1998 and 2002. As treasurer, he was responsible for collecting, managing, and investing more than $11 billion in assets for the state. Justice Deters received his undergraduate and law degrees from the University of Cincinnati, where he was recognized as a distinguished alumnus.

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