



# *for the* **RECORD**

**NEWS FOR THE OHIO COURTS**

## Back to School - Remote Instruction - How Well Are You Learning

Remote teaching has become ubiquitous thanks to COVID challenges. It is generally less expensive and far more convenient – but at what cost to retained quality learning? Much will be written about the educational damage suffered by a generation of children and college students who were temporarily deprived in-person classroom instruction. Many universities now continue to offer degrees primarily achieved by remote instruction – a sub-par college education not reflected by the diploma granted.

As judges you now have remote access to a wide range of judicial and legal training without leaving the comfort of your home or office. Take advantage of the remote offerings by the Supreme Court’s Judicial College and others, but do not forgo the in-person education the Judicial College provides at your association’s summer and winter meetings and of course at the Judicial Conference Annual Meeting – this year on September 19 & 20. As it is with youngsters, the social interactions with judicial colleagues are as valuable as the presentations from the podiums.

Paul  
419-563-4966  
[paul.pfeifer@sc.ohio.gov](mailto:paul.pfeifer@sc.ohio.gov)

## DECISION PROCESS IN THE ELEVENTH DISTRICT “How the Sausage Gets Made”

Judge Eugene A. Lucci  
Court of Appeals of Ohio, Eleventh District

After 22-plus years on the common pleas bench, I am adjusting to the differences in my new position as judge of the court of appeals. In addition to our jurisdiction to review cases on appeal from the lower courts, we also determine cases filed in our court in the first instance, seeking remedies in quo warranto, mandamus, habeas corpus, prohibition, and procedendo. The big change for me is the “group” decision. As a trial judge, I had to argue only with myself over the proper ruling. Now, as a member of a three-judge panel, the dynamics of debating each issue, writing and re-writing, reviewing and re-reviewing, and attempting to convince another judge or two, all done with the ultimate goal of each member of the panel to reach the correct outcome, represent significant differences in case resolution than I experienced as a trial judge.

Before joining the appellate court, I would read opinions on cases but not realize the internal processes by which those decisions were rendered. Although each appellate court arrives at a released opinion in each case, they go about that process in significantly different ways. My column will give you an idea of how the “sausage is made” in the Eleventh District.

There are five sitting judges on the court, each served by two judicial attorneys and one judicial secretary. Each fall, after blocking out scheduling conflicts for the upcoming year, such as conferences, vacations, etcetera, the court’s case coordinator randomly assigns three-judge panels to sit during the entire next year. The composition of the panel and the dates assigned are random but end up equaling out for each judge each year. Each judge sits for hearings about 30 to 32 days a year. As cases are appealed or filed in the court, the cases are first vetted for any conflicts of interest, and they would not be assigned to a judge who has a conflict. After briefing, the cases are then randomly assigned to dates on which panels are assigned. On each day of court, the judges on the panel will usually consider six cases, with a mixture of oral argument and submissions on briefs without argument. Accordingly, each year, the judges will hear and decide about 300 cases at current levels.

When an appeal or case is randomly assigned to a panel, the administrative staff also randomly assigns a writing judge. That judge and one of his/her judicial attorneys will examine the record and generate a written review of the record, a case summary, and a bench brief. The bench brief is written in a format that mimics an appellate opinion. It includes that judge’s opinion as to the merit of each assignment of error and recommends an ultimate disposition, whether to affirm or reverse, entirely or in part, modify, and/or remand, or some further disposition on the case. The bench briefs are circulated to the other two judges on the panel about ten days before the date set for oral argument or

hearing. In addition to the review by the authoring judge, the panel judges have an electronic copy of the complaint or indictment, notice of appeal, judgment appealed, transcript of proceedings, and the parties’ briefs. If they would like to view exhibits, they have access to them.

On the day of hearings, which are usually set in the mornings of a Tuesday, Wednesday, or Thursday, the judges conduct oral arguments consisting of 15 minutes for each side, and thereafter conference on all six cases under consideration that day. Once discussion is completed, the judges vote on each case. If a judge agrees with the opinion of the writing judge, that judge will concur. If a judge agrees with the ultimate disposition of the writing judge but does not fully join in the writing judge’s reasoning, that judge will concur in judgment only. If a judge disagrees with the ultimate disposition of the writing judge, that judge will dissent. In either scenario, a panel judge should, but is not required to, write a separate opinion. If two judges dissent to the ultimate disposition of the writing judge, those two now become the majority, and they will determine who will be writing for the majority, with the original writing judge now writing the dissenting opinion, unless the new majority convinces that judge to change his/her mind. Once a new majority opinion is written, it is circulated to all three judges on the panel for further discussion and voting. Concurring and dissenting opinions are also circulated to all the judges on that panel. Each iteration of an opinion, whether majority, concurring, or dissenting, is reviewed and, if needed, re-voted on by each judge of the panel. Some opinions may end up being circulated as many as half a dozen times or more before the judges are satisfied with their review of the record, the opinion, and the ultimate disposition of the case. The opinion, including any concurrences and dissent, is then proofread by judicial staff to eliminate all clerical errors. When the opinion is ready for release, the judge authoring the majority opinion will sign the judgment entry, and that opinion is released, along with other cases similarly situated, the following Monday.

After the release of an opinion, it is not uncommon in criminal and civil cases for a nonprevailing party to file an application for reconsideration or, if it is a criminal case, for a nonprevailing defendant-appellant to file an application for reopening. The former application asks the court to reconsider the case’s disposition based upon the party’s claim that the court committed an obvious error or an aspect of a case was not fully considered or perhaps was not considered at all. An application for reopening allows a criminal defendant-appellant to seek reopening of the appeal based upon a claim of ineffective assistance of appellate counsel. These post-dispositional applications are addressed via judgment entries. If reconsideration is granted, the court will re-issue a new opinion in light of the party’s application. If re-opening is granted, the appeal will proceed as an initial appeal in accordance with the appellate rules.

One final word for appellate practitioners. One may tend to think that oral argument is a *fait accompli* given that a review in the form of an appellate opinion is written and circulated ten days in advance of oral argument. That is not so. Argument serves several important purposes: it provides an opportunity to emphasize the parties’ strongest points;

it allows the judges to ask questions to elucidate murky areas of the record or law; and it affords the parties and the judges the potential to illustrate different positions and change opinions that may have already congealed.

That is the decision process in the Eleventh. I would appreciate learning from the process employed by the other appellate districts.

## Proposal to Change OJC By-Laws

Dear Ohio Judicial Conference Members,

Our Executive Committee has reviewed the following proposal to make changes to the by-laws. **The by-laws require that all members have an opportunity to review any such proposals and vote on them at the Annual Meeting (September 19, 2024). Questions and comments will also be accepted via email, until September 19, 2024.** The proposal is an effort to (1) make the by-laws easier to change in the future without eliminating the steps that involve voting by the full membership of the OJC; and (2) modernize the OJC's committees to reflect changes in practice. The proposal contains 5 elements:

1. An ad hoc Diversity Committee should be created to determine the necessity and parameters of a permanent Diversity Committee.
2. There should be a new Officers and Organization of the Judiciary Committee
  - a. The current Magistrates Committee should be subsumed by the new Officers and Organization of the Judiciary Committee.
  - b. The Officers and Organization of the Judiciary Committee reviews legislation, rules, and other matters pertaining to the organization of the various courts of Ohio and the judicial officers that support them. Organizational matters include court boundaries and geographical jurisdictions, as well as consolidation and creation of judgeships and court divisions. Matters pertaining to the officers of the judiciary include policies and statutes relating to visiting/acting judges, magistrates, clerks, and other court personnel, as well as the qualifications and campaign/candidacy requirements for judges, judicial candidates, and other judicial officers.
3. The Publications Committee should be eliminated, with publications tasks taken on by other committees or OJC staff.
4. The Public Confidence and Community Outreach Committee will absorb some of the responsibilities of the Publications Committee, including updates to the website and Citizens Guides brochures, but will otherwise remain unchanged.
5. The Specialized Docket Committee, which is already working under the name Innovative Specialty Courts Committee, should have its name formally changed in the by-laws.

Proposed Language Change in the By-Laws:

1. Meetings of the Ohio Judicial Conference Executive Committee do not need to be open to the public: **Section 4. Meetings. The annual meeting of the members shall be held at such time and at such place as shall be fixed by the Executive Committee for the transaction of any and all business properly submitted to such meeting. Special meetings of the members may be held at such time and place as the Executive Committee shall determine. ~~All~~ Any proceedings of the Ohio Judicial**

Conference ~~shall be~~ may be made open to the public to the extent facilities permit. Reports of the meetings shall be ~~published retained or otherwise and made available to the public upon request.~~ The Executive Committee may require a registration fee to cover the expenses of the meetings.

2. Article 5, Section 1, which lists the standing committees, will have to be altered to accommodate changes to the committee structure:
  1. Appellate Law and Procedure
  2. Civil Law & Procedure
  3. Community Corrections
  4. Court Administration
  5. Court Technology
  6. Criminal Law & Procedure
  7. Domestic Relations Law & Procedure
  8. Executive
  9. Innovative Specialty Courts
  10. Judicial Education
  11. Judicial Ethics & Professionalism
  12. Jury Instructions
  13. Jury Service
  14. Judicial Officers and Organization
  15. Juvenile Law & Procedure
  16. Legislative
  15. Magistrates
  17. Personnel & Office Administration
  18. Probate Law & Procedure
  19. Public Confidence & Community Outreach
  20. Publications
  21. Retired Judges
  21. Specialized Dockets
  22. Traffic Law and Procedure
3. In practice, the OJC Committees do not have liaisons in OSBA Committees. **B. Duties of Standing Committees.** Each committee shall meet at least once a year and shall conduct its work at such times and in such manner as arranged by its Co-Chairs. Committee Co-Chairs may appoint such sub-committees as they deem necessary and appoint or arrange for a secretary who need not be a member of the Conference. ~~A Committee Co-Chair or a designee shall also serve as a liaison member to the appropriate committee of the Ohio State Bar Association.~~
4. In practice, OJC Committees consist of any judges that have an interest in participating and this has worked to the benefit of the OJC. The by-laws require the judges be “from courts actively concerned” with the topic of the committee, and there is no need for this restriction. Further, committees frequently include professionals outside those named in

the by-laws – such as court administrators, jury commissioners, and staff of the Supreme Court: **B. Duties of Standing Committees.** The committee shall consist of any number considered appropriate by the Conference Chair and shall include ~~members from courts actively~~ concerned with the purpose of such committee ~~whenever possible.~~ The Committee Co-Chairs may also appoint individuals who are not judges as non-voting associate committee members if such persons’ experience or expertise would assist the committee.

5. Article VI, Section 1 requires reports from all the committees and associations by August 1 of each even-numbered year. This purpose of this requirement is the inclusion of these reports in the statutorily-required Biennial Report, prepared by the legislative staff. August 1 is not a convenient time for the legislative staff, and it is unclear that these reports are being submitted along this timeline. Plus, there’s a typo. **Section 1. Activities.** The work of the Ohio Judicial Conference shall be conducted by the active member judicial associations and by standing and ad hoc committees appointed by the Chair with the approval of the Executive Committee. Reports and recommendations of the active member judicial associations and of each committee shall be submitted, when requested, in writing to the Executive Director of the Conference ~~or before August 1 of in~~ each even-numbered year for inclusion in the biennial Judicial Conference Report to the Ohio Judiciary, Legislature, and Governor.
6. Amendments to make changing the by-laws easier, In Article VII Section 1: Any Conference member may propose to amend this Constitution by submitting the proposed amendment in writing to the Executive Committee prior to ~~the first~~ any meeting of the Committee in any year. ~~If~~ The proposed amendment ~~is~~ must be approved by a majority of the Committee ~~then present~~ at two meetings of the Executive Committee. ~~it~~ The proposed amendment shall be submitted in a form approved by the Committee to be voted on by the full membership of the Conference. Voting shall occur either at the Annual Meeting of the Ohio Judicial Conference, or electronically, if previously approved by a majority vote of the Executive Committee, on a date or dates established by the Executive Committee. The Executive Director shall publish the proposed amendment by sending it, either electronically or by mail, to each Conference member at least 30 days prior to the ~~Annual Meeting~~ planned vote of the membership and by publishing the proposed amendment in “For the Record”. If approved by a majority vote of the members ~~present at the Annual Meeting~~ voting, either in person or electronically, it shall be adopted.

Thank you to our Committee on Committee Reorganization, whose work resulted in the above proposal: Judge Paula Giulitto (Chair), Judge Eugene A. Lucci, Judge Matthew L. Reger, Judge John



J. Russo, Judge Brendan J. Sheehan, Judge Gene A. Zmuda, and OJC Legislative staff Marta Mudri, Shawn Welch, and Josh Williams.

## Tips and Tricks (a dynamic document)

- Feel free to submit any articles you would like to have added to the quarterly [For the Record](#)
- The [Judicial Advisory Group \(JAG\)](#) is available for judges who need a group to extend its ability to provide confidential assistance to judges
- There is a “[Who Do You Know](#)” document that is available for judges to fill out if any current legislators they may know could be of assistance to the OJC
- For help signing into the Ohio Judicial Conference’s website, [www.ohiojudges.org](http://www.ohiojudges.org), please see this [document](#)
- Annually, the OJC hosts a [Judicial-Legislative Exchange](#) program, which allows a day for judges to come to Columbus to shadow legislators, hopefully from their districts. The idea is for the legislators to then shadow the judges in their court for the day
- Did you know that if you log in to the Judicial Conference website and go to [associations](#), you can choose your judicial association and see the summer and winter meeting dates?
- The Judicial Conference Jury Instructions Committee posts [recently revised](#) jury instructions on the Judicial Conference website.
- The website was updated with a few notable changes. One of those changes was the addition of a [calendar](#) which is matched up with our list of events.
- Another addition is the updated “[Outreach that Works](#)” link, which allows judges to submit any recommendations that help them to reach out to the public, whether it be publications, websites, suggestions on events, etc.
- A notable connection to help all judges is the [National Center for State Courts](#), or the NCSC. This site helps to promote the rule of law and improves the administration of justice in state courts and courts around the world.

# Judicial College Offerings

The Judicial College CLE schedule is available online. To view the calendar and sign up for courses, please visit this [site](#)

VISIT THE OHIO JUDICIAL CONFERENCE WEBSITE!

[WWW.OHIOJUDGES.COM](http://WWW.OHIOJUDGES.COM)

CONTACT JUSTIN LONG AT THE OHIO JUDICIAL CONFERENCE FOR LOGIN ASSISTANCE

[justin.long@sc.ohio.gov](mailto:justin.long@sc.ohio.gov)

## OHIO JUDICIAL CONFERENCE

The screenshot shows the Ohio Judicial Conference website homepage. At the top, there is a navigation bar with links for HOME, ABOUT US, RESOURCES, LEGISLATIVE, COMMITTEES, and DIRECTORY. The main content area features a 'WELCOME' message, social media icons for Twitter and LinkedIn, and a 'WEEKLY FYI' section with news items under 'NATIONAL NEWS' and 'STATE NEWS'. A large graphic of the Ohio state flag is prominently displayed in the center, with the text 'Guardianship Guidebook' overlaid on it. To the right of the flag is a 'MEMBER LOGIN' form with fields for User, Name, and Password, and a 'Log In' button. Below the login form are several quick links: LEGISLATIVE ENACTMENTS, PUBLICATIONS, DIRECTORY, OTHER LINKS, CONTACT US, and FAQ's.



## Ohio Judicial Conference Staff

### **Executive Director**

Hon. Paul Pfeifer, Retired 614-387-9762  
[Paul.Pfeifer@sc.ohio.gov](mailto:Paul.Pfeifer@sc.ohio.gov)

### **Legislative Counsel**

Marta Mudri, Esq. 614-387-9764  
[Marta.Mudri@sc.ohio.gov](mailto:Marta.Mudri@sc.ohio.gov)

### **Deputy Legislative Counsel**

Joshua Williams, Esq. 614-387-9767  
[Joshua.Williams@sc.ohio.gov](mailto:Joshua.Williams@sc.ohio.gov)

### **Deputy Legislative Counsel**

Shawn Welch, Esq. 614-387-9765  
[Shawn.Welch@sc.ohio.gov](mailto:Shawn.Welch@sc.ohio.gov)

### **Fiscal/HR Officer**

Aleta Burns 614-387-9757  
[Aleta.Burns@sc.ohio.gov](mailto:Aleta.Burns@sc.ohio.gov)

### **Legislative Services Specialist**

Justin Long 614-387-9756  
[Justin.Long@sc.ohio.gov](mailto:Justin.Long@sc.ohio.gov)

### **Judicial Services Program Manager**

Trina Bennington 614-387-9761  
[Trina.Bennington@sc.ohio.gov](mailto:Trina.Bennington@sc.ohio.gov)

### **Judicial Services Program Manager**

Jennifer Whetstone 614-387-9766  
[Jennifer.Whetstone@sc.ohio.gov](mailto:Jennifer.Whetstone@sc.ohio.gov)