

## CHAPTER V THE JUDICIAL BRANCH

The phrase “passive yet powerful” best describes the judicial branch of government. This branch has the most power of any of the three branches. Under the proper circumstances a court can tell the General Assembly that a law it passed is unconstitutional and therefore is not valid. Also, under certain circumstances a court could tell the Governor or a Commissioner that a particular action violates a statute or the Constitution and therefore the action cannot be taken. The judicial branch of government serves as a check on the powers of the other two branches of government.

As powerful as it is, the Judicial Branch cannot institute actions on its own. The courts must wait for someone (a party to a lawsuit) to bring the question up in the proper manner. This is normally done by filing a lawsuit and proceeding through the judicial process. The Judicial Branch thus is the branch that *interprets* the law.

Basically, there are two types of cases tried in our courts. *Criminal* cases are those involving a crime or wrong against the people of the state. An example of this would be a theft, because a thief is a menace to society as a whole and should be punished for committing that crime. The other type of case is a *civil* case. These types of cases are usually between individuals or groups of persons. An example would be a failure to fulfill a contract for a service. Civil cases usually involve only the people immediately concerned.

A court's *jurisdiction* is its authority to hear and decide cases. The authority of the first court in which a case is tried is called original jurisdiction. A decision -- *judgment* in a civil court or *sentence* in a criminal court -- can be *appealed* to a higher court with hope that a different decision will be reached. A court which has jurisdiction to hear appealed cases is called an *appellate* court.

Basically, the court system in Tennessee can be broken down into the categories of Supreme Court, intermediate appellate courts, trial courts, and non-jury courts. Although circuit courts are often thought of as the place where the judicial process “begins”, let us start at the highest court in Tennessee, the Supreme Court.

### Supreme Court

In Tennessee, the Supreme Court is the court of last resort. There is no higher court in Tennessee to which an appeal can be taken. What this court says is “the law”. A limited number of issues can be appealed from this state court to the federal court system. An example of this is where a federal constitutional issue is appealed to the United States Supreme Court. In such a case, the U. S. Supreme Court's decision prevails over the Tennessee Supreme Court's decision.

Tennessee's Constitution says in Section 1, Article VI:

“The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish...”

Section 2 of that same Article states:

“The Supreme Court shall consist of five Judges, of whom not more than two shall reside in any one of the grand divisions of the State. The Judges shall designate one of their own number who shall preside as Chief Justice. The concurrence of three of the Judges shall in every case be necessary to a decision.”

By express language the Constitution says the Supreme Court’s jurisdiction is appellate only. The Supreme Court cannot try cases de novo, nor can it render advisory opinions. It has been held the Legislature cannot confer original jurisdiction on it. As part of its inherent power the Supreme Court has prescribed its own rules of practice.

In most instances the Supreme Court decides which appealed cases it will hear and which it will not hear. However, in capital punishment cases that are affirmed by the Court of Criminal Appeals, the Supreme Court must hear the appeal.

A 1992 law gave the Supreme Court the right to reach down and assume jurisdiction over certain undecided cases in the intermediate appellate courts. This jurisdiction only applies to cases of unusual public importance in which there is a special need for an early decision and which involves:

1. state taxes,
2. the right to hold or retain public office, or
3. issues of constitutional law.

Both the Supreme Court and the intermediate appellate courts are known as appellate courts. Proceedings before these courts are different than those in trial courts because there are no witnesses and no juries. Prior to appearing before the court to make oral arguments, the attorneys for each side submit written arguments, called briefs. The decision of the appellate court is handed down in writing and is called an opinion.

The Supreme Court holds sessions in Knoxville, Nashville and Jackson. Qualifications for a judge of this court include being at least thirty-five (35) years of age, a resident of the state five years before election and authorized to practice law in the courts of Tennessee.

In 1994, the General Assembly enacted a new method for selecting justices for the Supreme Court and judges for the intermediate appellate courts. It is known as the "Tennessee Plan." Under this law, the Judicial Selection Commission nominates judges and the governor appoints one of the three nominees.

Once the judge is in office, a separate Judicial Evaluation Commission evaluates and reports on the judge's judicial performance. Results of the evaluations are published in newspapers across the state to help voters decide whether the judges should be retained. At election time, the voters only vote "yes" or "no" on whether the judge should be retained in office.

## **Intermediate Appellate Courts**

Any decision of a lower court is subject to appeal to a higher court. The Intermediate Appellate Courts' job is to correct mistakes that may have been made in the lower court. The higher court may reverse the lower court's decision, uphold the action, or throw the case entirely out of court.

During the first years of Tennessee history, one Supreme Court was set up to hear appeals. Although there is still only one Supreme Court, the General Assembly has established intermediate appellate courts to assist with the enormous burden of appealed cases. The two intermediate courts of appeal are the Court of Appeals and the Court of Criminal Appeals.

*Court of Appeals.* The Court of Appeals, along with the Court of Criminal Appeals ranks just below the Supreme Court and above all other courts. It is composed of twelve (12) judges who serve for terms of eight (8) years. Judges of this court are selected and retained under the provisions of the "Tennessee Plan" which is discussed earlier in this chapter.

This court rotates between the three grand divisions of the State holding court in Knoxville, Nashville and Jackson. The twelve judges also rotate in panels of three (3) for each session of court.

This court has the authority to review all *civil* cases, but no *criminal* cases. In all civil cases it has the right to fully review except certain cases which can be reviewed only by the Supreme Court. These types of cases are listed earlier in this chapter. As in the Supreme Court, no witnesses or juries are present, and attorneys present oral and written arguments.

*Court of Criminal Appeals.* In 1967, the General Assembly created a State Court of Criminal Appeals to handle the heavy case load of appealed criminal cases. This court reviews criminal appeals in much the same manner as the Court of Appeals reviews civil cases.

Twelve (12) judges serve on the Court of Criminal Appeals. They are selected and retained under the provisions of the "Tennessee Plan", which was explained earlier in this chapter. They serve eight (8) year terms.

The Court has rotating panels of three (3), five (5), or seven (7) judges meeting in the State's three grand divisions. Court is held in Knoxville, Nashville and Jackson. This court hears appeals from trial courts in felony and misdemeanor cases, as well as post-conviction petitions. As with all of the intermediate appellate courts, a majority of the judges must agree before an opinion is rendered.

## **State Trial Courts**

Both in England and the United States the judicial system has traditionally been divided into the two areas of civil law called "equity" and "law." The Chancery Courts are the equity courts and Circuit Courts are the law courts. Through the years, the distinction between these two types of courts has become blurred. Tennessee is one of a very few states which has both chancery and circuit courts. Most states have only one trial level court.

*Circuit Court.* This court is one of general jurisdiction and administers justice

according to law in its cases. This is the court where the majority of jury trials are held.

Circuit Court has exclusive jurisdiction to decide the validity of wills. This court is also the criminal court, unless a separate criminal court is set up by law in its geographic area of responsibility. It has jurisdiction along with Chancery Court to grant divorces, and authorize the adoption of children. There is no upper limit on the amount of money damages it has the power to award. It cannot hear questions concerning less than \$50 on debts or contracts.

This court, whether sitting as a civil or criminal court, has appellate jurisdiction over suits started in any inferior court such as General Sessions Court. A case appealed from a lower court to this court is heard *de novo*. That means brand new, as if the first trial had not taken place.

Civil cases heard in Circuit Court are appealed to the Court of Appeals. Criminal cases heard in Circuit Court are appealed to the Court of Criminal Appeals. In certain instances an appeal can be taken directly to the Supreme Court.

In 1984, the state trial courts were divided into thirty-one districts. Statutory law allows any circuit judge, chancellor or criminal court judge to hear the cases of another judge.

The judges in each judicial district select a presiding judge who is responsible for reducing delays and dividing up the workload on a fair basis. Judges are authorized to publish uniform rules of practice in their district.

Circuit and criminal court judges must be thirty (30) years of age, a resident of the state for five (5) years and of the circuit one (1) year, and must be licensed to practice law in Tennessee. They are elected to a term of eight (8) years.

As with other state trial courts, vacancies which occur after September 1, 1994, are filled according to the provisions of the "Tennessee Plan" previously discussed in this chapter. Under this plan the Judicial Selection Commission holds a public meeting to discuss the candidates in the district where the trial court vacancy is to be filled. The Judicial Selection Commission nominates three candidates and the governor appoints one of them to the vacant position.

The term of a trial judge selected by this method ends on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy. Consequently, a selected judge who wants to remain in office must run for that office in the regular August election.

*Chancery Court.* The Circuit court is somewhat like a general store – nearly everything can be found on its shelves. But the Chancery Court is like a small store, specializing in only a few items. There is a reason for this. Sometimes the enforcement of a particular law may be unfair to an innocent person. Such a case may be taken to a Court of Chancery.

The history of courts of chancery dates back to early times in England. In those days there was little written law, and might was right. To protect the people, the king's chancellor was given the responsibility for seeing that unscrupulous nobles and other powerful persons were held in check, and that justice was administered. By degrees this administration of justice – or *equity* – was handled through courts of chancery.

The principles of these English courts were incorporated into the early judiciary system of North Carolina, and accordingly into the system of Tennessee. That is why we now have courts of chancery. In most states the circuit courts try both law and equity cases. The court of chancery is often referred to as the "Court of Equity."

The powers of a chancery court are broad, but there are many cases that it does not handle. It does not try cases involving injuries to persons, property or character. Neither does it try cases involving robbery, murder, or other crimes. It does try to equalize contracts, obligations and other business dealings between citizens when they are unable to settle their differences by themselves.

Chancery Courts have similar jurisdiction with circuit courts in all civil cases except where there may be unliquidated damages to a person or property. Unliquidated damages are those which are open to question and must be determined by a jury. An example would be the amount of money to be paid a person for injuries received in an automobile accident. Liquidated damages, on the other hand, are those which are set out in advance, such as a clause in a contract that sets out a certain amount of money to be paid as damages in the event of a default.

Chancery Court cases can be appealed to the Court of Appeals and in some cases, directly to the Supreme Court.

The judge in a chancery court is called a chancellor. Chancellors must be thirty (30) years of age, a resident of the state for five (5) years, and a resident of the district for one year prior to election. Chancellors must have a license to practice law in Tennessee. They are elected to a term of eight (8) years. Vacancies in office are filled according to the "Tennessee Plan" discussed earlier in this chapter.

*Probate Court.* Proceedings which prove or disprove the validity of a will or dispose of the property of a deceased person are filed in probate court. The jurisdiction of this court is often combined with that of the general sessions court of a particular county.

### **Non-Jury Courts**

The next level of courts usually have a limited area of responsibility and are limited in terms of the size and type of case over which they have jurisdiction.

*General Sessions Court.* The jurisdiction of Tennessee's general sessions courts varies from county to county based on statutes and private acts enacted by the state legislature. Every one of Tennessee's ninety-five (95) counties has at least one general sessions court which hears civil and criminal cases.

The civil jurisdiction of this court is limited in the amount of money it can award and the types of cases it can hear. With the exception of a few of Tennessee's larger counties, general sessions courts jurisdiction does not exceed \$25,000. However, a party in general sessions court can recover personal property no matter how great its value.

In criminal cases, jurisdiction is limited to preliminary hearings in felony cases and trials of misdemeanor cases in which the defendant waives the right to a preliminary hearing, a grand jury investigation and a trial by jury in criminal or circuit court. Misdemeanor cases are those crimes for which the penalty is not greater than eleven months and twenty-nine days in

jail.

Other areas of responsibility such as juvenile cases, probate and divorce cases have been assigned to general sessions courts through private acts passed by the state legislature.

Judges of general sessions courts must be thirty (30) years of age, a resident of the state for five (5) years and of the county or geographic area for one (1) year prior to election. General sessions judges are elected to an eight (8) year term.

General sessions judges must be attorneys, although non-attorney incumbent judges may continue in office until they retire or are defeated. A non-lawyer general sessions judge cannot commit a juvenile to the state penal system. In these situations, a licensed attorney is appointed to make the decision.

*Juvenile Court.* Court actions against minors (persons under eighteen (18) years of age) are heard in Juvenile Court. This court has exclusive jurisdiction in proceedings involving minors alleged to be delinquent, unruly, dependent and neglected. In some areas, juvenile court judges also have concurrent jurisdiction with circuit, chancery and probate courts.

*Municipal Court.* Approximately 300 cities and towns have their own court in which the judge interprets and applies the ordinances of the municipality. Although jurisdiction varies widely, most city judges have the authority to assess fines up to \$50 and jail sentences up to thirty (30) days in jail.

The following chart shows additional information concerning civil, criminal, and ordinance violations cases.

**Chart A: Civil, Criminal, and Ordinance Violation Cases**

	<u>CIVIL</u>	<u>CRIMINAL</u>	<u>ORDINANCE VIOLATIONS</u>
Who starts court action?	Any individual or group	Government	Local government
Reason for court action	To decide the rights and duties of parties in a dispute To get compensation for a wrong	To punish or rehabilitate a criminal To deter others from committing crimes To protect society	To punish violators To deter others from committing crimes
Types of cases	Contract disputes Negligence Divorce/child custody Discrimination Small claims	Robbery Murder Vandalism Assault Embezzlement	Traffic Disorderly conduct Building code
Standard of proof	Preponderance of the evidence	Beyond a reasonable doubt	Varies depending on nature of the violation and consequences
	<b><u>Steps in the civil process*</u></b>	<b><u>Steps in the criminal process*</u></b>	<b><u>Steps in the ordinance violation process*</u></b>
	<ol style="list-style-type: none"> <li>1. complaint filed by plaintiff</li> <li>2. complaint served on defendant</li> <li>3. response filed by defendant</li> <li>4. discovery</li> <li>5. pretrial conference</li> <li>6. jury selection (if it is a jury trial)</li> <li>7. trial</li> <li>8. judgment/verdict</li> <li>9. appeal</li> </ol>	<ol style="list-style-type: none"> <li>1. arrest</li> <li>2. initial appearance</li> <li>3. preliminary hearing and/or grand jury</li> <li>4. arraignment</li> <li>5. discovery</li> <li>6. jury selection (if it is a jury trial)</li> <li>7. trial</li> <li>8. judgment/verdict</li> <li>9. sentencing</li> <li>10. appeal</li> </ol>	<ol style="list-style-type: none"> <li>1. citation</li> <li>2. initial appearance</li> <li>3. discovery</li> <li>4. pretrial conference</li> <li>5. trial</li> <li>6. judgment</li> <li>7. sentencing</li> <li>8. appeal</li> </ol>

\*These are general outlines of the civil, criminal, and ordinance violation processes. The precise steps followed and the order in which they occur vary from state to state and may also differ depending on the seriousness of the case.

## **Attorney General and Reporter**

Article 6, Section 5 of the Tennessee Constitution states in part: “An Attorney General and Reporter for the State, shall be appointed by the Judges of the Supreme Court and shall hold office for a term of eight years.” Tennessee is the only state in the Union to select its State Attorney General in this manner.

*Duties and Powers.* The duties and powers of the State Attorney General and Reporter include:

1. prosecuting all criminal cases in the appellate courts;
2. representing the State of Tennessee in civil actions;
3. instituting civil lawsuits against those who commit antitrust violations;
4. issuing legal opinions on questions submitted by appropriate governmental officials;
5. reviewing all regulations, leases and contracts of state government; and
6. reporting the opinions of the state’s appellate courts.

The Attorney General has a staff and several attorneys to assist in carrying out these duties.

## **District Attorneys General**

Tennessee’s thirty-one District Attorneys General are charged with the responsibility of representing the State of Tennessee by prosecuting those who commit crimes. Each represents a district composed of one or more counties. There is a District Attorney General for every circuit or district in which a criminal court judge is provided by the law.

*Qualifications and Terms.* These “attorneys for the state” are elected by the people of their district for a term of eight (8) years. A District Attorney General must have been a resident of the State for five (5) years and of the district for one (1) year.

*Duties and Powers.* In a criminal case, it is the duty of the District Attorney General to prosecute and prepare the case for trial. The "D.A." has a staff and several attorneys to assist in carrying out these duties.

The first action is to go before the *Grand Jury*, which is composed of twelve citizens as members, and a thirteenth citizen as foreman. The D.A. or the law enforcement officer presents to this jury all the available information on the crime. If the Grand Jury believes that a trial should be held on the basis of the evidence presented, an “indictment” is returned against the person charged with the crime. Then the case is placed on the docket of the court for trial at the proper time.

The trial is conducted before a Judge and a jury of twelve persons known as a *petit or trial jury*. Again the District Attorney General “speaks for the whole people” of the state, while

the accused person has the right to have a defense lawyer or lawyers.

In addition to his duty as “prosecutor” for the state in criminal cases, it is also the additional duty of the District Attorney General to:

1. dismiss all witnesses that are not needed in criminal cases;
2. superintend and advise the Clerks of the Circuit and Criminal Courts in the making out of a caption to be prefixed to the proceedings of the court, at each term;
3. give an opinion without charge, whenever called upon by any county officer in the district, upon any question of law relating to the officeholder's duty of office;
4. call upon the clerks of the county, circuit, criminal, and chancery courts the second day of each term for the execution docket and ascertain whether any execution placed in the hands of the sheriff has not been returned and if not, to move for judgment against the sheriff and sureties;
5. institute suits for the recovery of property that cannot be inherited because there is no one who is competent to inherit it;
6. move for judgment against a sheriff, for failure to pay into the county treasury monies collected under the small offense law;
7. call for the revenue bond from the clerk of the county commission and forward same to the comptroller, if same has not been forwarded; and notify the clerk, if the clerk's bond has not been executed and recorded, that a motion will be filed in court to force the execution of the bond;
8. prosecute all motions against delinquent collectors of public revenue;
9. make a detailed statement to the comptroller on the first day of August each year of all claims placed for collection;
10. call on every clerk in the district at the first court after November 1 each year for the receipts for the public monies collected and for the comptroller's receipt and the clerk's statement of monies collected;
11. prosecute any person reported by the clerk of the county commission for breach of the revenue laws in relation to certain licenses;
12. inquire into the use of money by the clerk for any court and, if money is found to have been improperly used, to prosecute without a prosecutor;
13. prosecute the agent of any foreign bank doing business in this state without a license;
14. attend to all suits brought by overseers of roads in the circuit or criminal courts;
15. report to the Comptroller and the Treasurer any uninherited property belonging to the state in the district;

16. prosecute all criminal cases removed from a state court to any inferior federal court; and
17. assist the Attorney General of the State in the bringing, prosecution, or defense of all cases in the circuit and chancery courts in which the Attorney General is required to appear for the protection of the state or the public interest.

### **District Public Defenders**

The United States Constitution requires each state to provide an attorney to persons charged with committing a crime who cannot afford an attorney. In 1989, the legislature established a statewide system of District Public Defenders. This system replaced the prior practice of appointing a private attorney for each indigent defendant.

It is the job of the District Public Defender to represent indigent defendants in state criminal court cases. An indigent person is one who does not have sufficient means to pay reasonable compensation for the services of a competent attorney.

*Qualifications and terms.* District public defenders are elected by the people of their district for a term of eight (8) years. A district public defender must have been a resident of the state for five (5) years and of the district for one (1) year immediately preceding election to office.

As with the district attorney, the public defender has a staff and several attorneys to aid in protecting the rights of clients.

### **Administrative Office of the Courts**

The Administrative Office of the Courts (AOC) provides support services to the Tennessee Supreme Court and the entire state court system. The director is appointed by the Supreme Court, oversees the AOC, and is the administrative officer for the courts.

Duties include: preparing the court system's annual budget; providing judicial education, law libraries, training and technical support for judges and personnel; administering court payroll accounts; education for new judges; compiling data; and disbursing funds to court-appointed attorneys who represent indigents.