



# Ohio Judicial Conference

The Voice of Ohio Judges

Ohio Senate Judiciary Committee  
House Bill 305 – Interested Party testimony

Chair Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and Members of the Committee:

I am Judge Eugene A. Lucci, and I am the current Presiding Judge of the Eleventh District Court of Appeals of Ohio. Prior to being elected to the appellate court in 2022, I served as a judge of the Lake County Common Pleas Court, General Division, since 2001, and was its administrative or presiding judge for eight years. I am here today to provide Interested Party testimony on behalf of the Ohio Judicial Conference, and to share two serious concerns we have with House Bill 305.

The court of common pleas was created by the Ohio Constitution and vested with the judicial power of the state. Ohio Constitution, Article IV, Section 1. The courts are charged with providing the fair, impartial, speedy, and sure administration of justice. Ohio Constitution, Article IV, Section 4. In performing its duty, the common pleas court maintains several departments, including its clerk of courts. This department is operated by a county clerk of the court of common pleas, who is elected pursuant to R.C. 2303.01. Many courts in this state have appointed clerks. Whether elected or appointed, the duties of all clerks are similar, as is their relationship with the court they serve.

The predominant duties of the clerk of courts includes endorsing, filing, and entering all orders, decrees, judgments, and proceedings of the courts of which s/he is the clerk; collecting all court costs, fees, and fines; and ensuring the distribution of these funds are properly divided and distributed for their specific purpose. R.C. 2303.08. Further, R.C. 2303.26 states that: “[t]he clerk of the court of common pleas shall exercise the powers conferred and perform the duties enjoined upon the clerk by statute and by the common law; and *in the performance of official duties the clerk shall be under the direction of the court.*” (Emphasis added).

The Ohio Supreme Court has held that the legal division duties of the clerk are “ministerial and nonjudicial.” It has emphasized that the clerk serves “only [as] an arm of the court for...performing...duties which the court itself might perform. [Her] services are employed only for the more convenient performance of the functions of the court [that] are clerical in nature,” and that the clerk “is vested with no discretion in any respect.” *Glass v. Chapman*, 67 Ohio St. 1, 65 N.E. 154 (1902); *McKean v. Graves*, 91 Ohio St. 23, 24, 109 N.E. 528 (1914).

“The clerk makes and has custody of the court’s records....” *State v. Wilson*, 102 Ohio App.3d 467, 471, 657 N.E.2d 518 (2<sup>nd</sup> Dist. 1995). However, in doing so, the clerk is an arm of the court, doing what the court would otherwise do, and has no discretion in the performance of these duties. *Id.* The Ohio Supreme Court has held that the court has general custody of and authority over its own records and files. *Ex parte Thayer*, 114 Ohio St. 194, 150 N.E. 735 (1926), syllabus. Further, this

authority “extends to the files of all cases which have ever been instituted therein, whether dismissed, disposed of, or pending. This power of the court is inherent and takes precedence even of [sic] the statutory power of a clerk over court records and files.” *Id* at 201.

Accordingly, although the clerk’s office maintains and keeps the court’s records, the court inherently has authority over its records, and the court’s authority takes precedence over the authority of the clerk. The clerk must maintain the court’s records in the manner in which the court decides is best in the execution of the court’s constitutional responsibilities.

H.B. 305 fundamentally changes the long-existing, constitutional, and statutory dynamic between the court and its clerk and sets up points of friction between those who are elected to administer justice and those who are elected to keep the records of those who are elected to administer justice.

Additionally, there is a major difference between filing on an electronic filing platform and filing a document by conventional email. Statutorily mandating a clerk to open every document attached to every email seems to me to create a vulnerability for the introduction of viruses, malware, ransomware, and other deleterious attacks upon the court’s and county’s records.

I thank you for the opportunity to provide this written testimony.