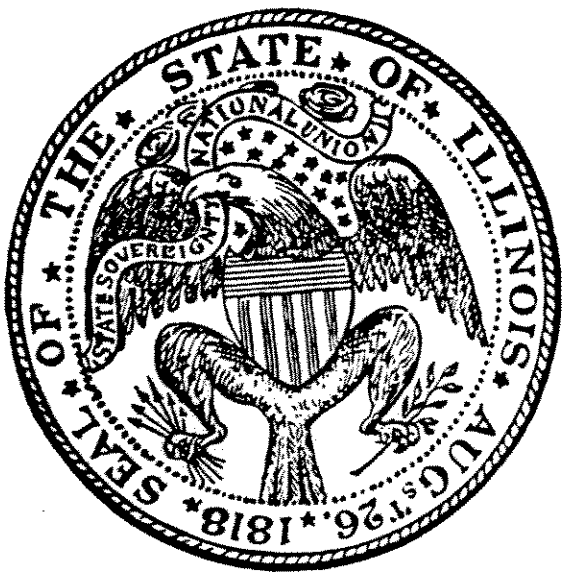
a short history of the illinois judicial systems

BY DAVID F. ROLEWICK

OFFICIAL TERRITORIAL AND STATE SEALS OF ILLINOIS*

Seal of Illinois Territory.

Facsimile of seal attached to commission issued to Andrew Bankston, Lieutenant Second Regiment of Militia, by Territorial Governor Ninian Edwards, dated at Kaskaskia, Oct. 29, 1810.

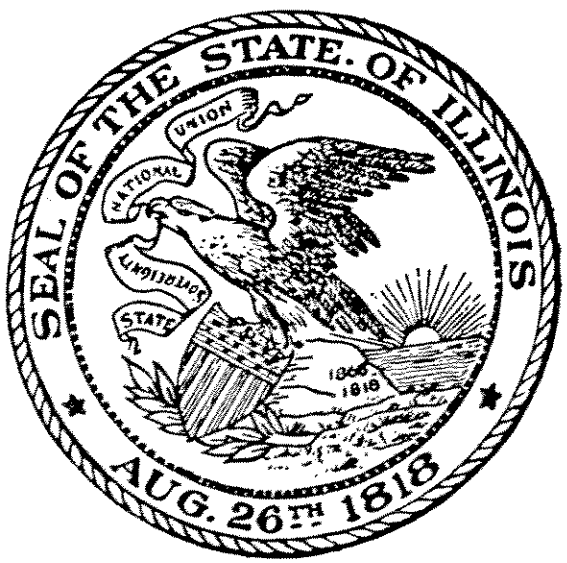


First Seal of the State of Illinois.

Facsimile of seal attached to a proclamation issued by Governor Shadrach Bond, dividing the State into three districts for Presidential electors, dated at Kaskaskia, Sept. 4, 1820.

Second Seal of the State of Illinois.

Facsimile of seal attached to a commission issued by Governor Thomas Ford to Albert Green Leary of St. Louis, Mo., as commissioner of deeds, dated Oct. 10, 1846.



Third Seal of State of Illinois.

Facsimile of present Great Seal of State in use since Oct. 26, 1868.

* From the Blue Book of the State of Illinois, 1907, pages 527-531. The Third Seal is still the Great Seal.

The Judicial branch of the government of the state of Illinois received a major overhaul in 1962 when the voters approved by referendum the amendment of Article V of the Illinois Constitution — the Judicial Article. The new Judicial Article went into effect January 1, 1964.

Several of Illinois' leading constitutional lawyers, working under the aegis of the Illinois State Bar Association and the Chicago Bar Association, drafted the amendment which the Illinois General Assembly adopted in 1961 for the vote of the people.

As a result of the adoption of the new Judicial Article, the Illinois State Bar Association, the Administrative Office of Illinois Courts and other court-oriented groups received numerous requests from educators and the public for information about the Judicial Article and Illinois courts in general. At the suggestion of staff officers of the Illinois State Bar Association, the ISBA's Judicial Administration Section approved a proposal to prepare a booklet on the history of the Illinois judicial systems. The Administrative Office of Illinois Courts subsequently joined the Section in the project. A SHORT HISTORY OF THE ILLINOIS JUDICIAL SYSTEMS is the fruit of that project.

David F. Rolewick, a law student and a brother of Carl H. Rolewick, Assistant Director of the Administrative Office of Illinois Courts, is the author of this booklet.

A SHORT HISTORY OF THE ILLINOIS JUDICIAL SYSTEMS takes the reader on a tour of the court systems from the times the Indians were the sole occupants of the Illinois country, to pre-territorial and territorial times, to early statehood and mature statehood, and to the equally historic years of 1962 when the present Judicial Article was adopted and 1964 when it became effective.

The publication of A SHORT HISTORY OF THE ILLINOIS JUDICIAL SYSTEMS is a fitting climax to the activities of the Illinois State Bar Association and the Administrative Office of Illinois Courts during the Sesquicentennial year of 1968. The booklet is respectfully dedicated as a Sesquicentennial publication.

Copies of this booklet may be obtained by writing to any one of the three following offices:

Administrative Office of Illinois Courts, Supreme Court Building, Springfield, Ill. 62706;

Administrative Office of Illinois Courts, 30 N. Michigan Ave., Room 2010, Chicago, Ill. 60602;

Illinois Bar Foundation, Illinois Bar Center, Springfield, Ill. 62701.

ACKNOWLEDGEMENT

The Judicial Administration Section of the Illinois State Bar Association and the Administrative Office of Illinois Courts acknowledge with deep gratitude the generous donation of funds by Allstate Foundation, Allstate Insurance Company, Skokie, Ill., to the Illinois Bar Foundation to make possible the publication of this booklet.

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BY DAVID F. ROLEWICK

ILLINOIS BAR FOUNDATION
ILLINOIS BAR CENTER
SPRINGFIELD, ILLINOIS 62701

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FOREWORD

Human society needs enforceable rules of conduct to insure the existence of the community and the security of its members. There must be rules for interaction. There must be a system to decide when misconduct occurs, when rights are violated, and when duties are ignored. Without such a system, human relations become chaotic and society disintegrates. It is especially important that the members of a free society understand the development of their laws and judicial system. Through such understanding they learn to respect and appreciate these institutions. Only then can they properly defend their rights and demand redress for injustices.

The judicial system in Illinois has a long and colorful history. It has evolved with the state from its primitive past to its vibrant present. It now contains the largest trial court in the world (the Circuit Court of Cook County), and has developed an ever increasing responsibility for the improvement of the legal system as well as for the administration of justice.

It appears that very few citizens have had the opportunity to study the background of our judiciary or clearly understand its organization. The purpose of this work is to present a short history of the Illinois courts and to explain how the courts are structured to better serve the citizens of Illinois. By tracing the maturation of Illinois judicial systems, we hope to demonstrate its outstanding achievement and its social importance.

ILLINOIS PRIOR TO UNITED STATES JURISDICTION

Prior to the first European expeditions into Illinois in 1673, and for about a hundred years after that time, the dominant Indian nation in this area was the Illini confederation or the "real men." The confederation was composed of five tribes: the Tamaroas, Michigamies, Kaskaskias, Cahokias, and Peorias. Once the rulers of a vast part of the mid-continent, they were continually pressed into an ever smaller area by other tribes and nations (including the Fox, Sauk, Iroquois, Miami, Kickapoo, Ottawa, Chippewa, Winnebago and Pottowatamie).

All the tribes that dwelled in the Illinois region were basically similar in cultural development. These tribes were both hunters and agriculturists. They had permanent villages where they raised corn and other vegetables, but they spent much of their time roaming in search of game.

Because of their primitive weapons, hunting was a communal activity. Due to the severe environment and hostile neighbors, the community was necessary for protection. This necessary communal life made a clear code of conduct and a simply structured judicial system vital. There was no true system of writing, and the code of conduct varied from tribe to tribe and even from clan to clan. But the governmental organization, including the judicial system, was similar among many of the tribes in the Mid-West. A study of the Illini's judicial system discloses the basic characteristics of all tribes in the area.

The basic unit was a primary family. Primary families lived together in an extended family. Extended families joined together in a clan. Each clan claimed a common ancestor, and the clans were united into tribes. In some cases, such as the Illini, the tribes were united by common custom and language into confederations or nations. Every family, extended family, tribe, and clan had a chief or leader. The position of clan or tribal chief was hereditary.

These leaders performed the legislative and judicial activities for the tribes. When misconduct involved only one clan, the extended family heads of that clan would meet with the clan chief presiding and make a

decision. When a violation affected only the extended family, the family heads sat in council with the extended family head presiding. The same system was used at the tribal and national levels, with the tribal or the national chief presiding. All decisions had to be unanimous. Once a decision was made at one level there was no appeal to a higher level. There being no executive branch of government, general consent was necessary for execution of all decisions. However, because the leaders were highly respected men, decisions were generally carried out without force.

The great wealth in furs in the Illinois region attracted settlers rapidly. Although Spain claimed the Illinois territory, the first nation to settle Illinois was France. The French Crown granted charters to companies through a system similar to the one used by England on the eastern coast of America. As the number of inhabitants increased, the need for governmental control became apparent. Therefore, in 1699 the French government established the Commandery of Illinois and placed the area under the control of the Governor of Louisiana. The Commandant of Illinois appointed town commanders, or judges, for each settlement. These officials executed the orders of the commandant and tried the minor cases in the town. However, the Commandant of Illinois had original jurisdiction over major criminal and civil cases. In 1722 a Provincial Council was established in the Illinois country to exercise primary jurisdiction in matters civil as well as criminal. This was the first court of which there is any record in Illinois. This council alleviated the judicial burden of the commandant and eliminated a number of appeals which previously went to the Council of Louisiana at New Orleans.

In 1731 the French Crown assumed direct control of the Illinois territory. The subsequent reorganization established the commandant as the executive officer and the *Ecrivain-Princepal* as main judge for the Illinois territory. The village judges continued to try small cases. Appeals from the *Ecrivain-Princepal* were made to the Council of Louisiana. All cases were conducted under the "Custom of Paris," which was current French law based on Roman law.

Illinois became English when France ceded all the land east of the Mississippi River and south of the Great Lakes to Great Britain in the Treaty of Paris, 1763. However, most of the European inhabitants of the region were French. After a brief and unsuccessful attempt to impose English common law on the inhabitants, the "Custom of Paris" was resumed. Generally, judicial institutions were the same as they had been prior to 1731. Each town had a commandant or judge. A board of arbitrators was appointed to try civil cases in each settlement. The judge had jurisdiction over all other cases. In general, hostility between the French and their English commander resulted in inferior administration of justice after 1763.

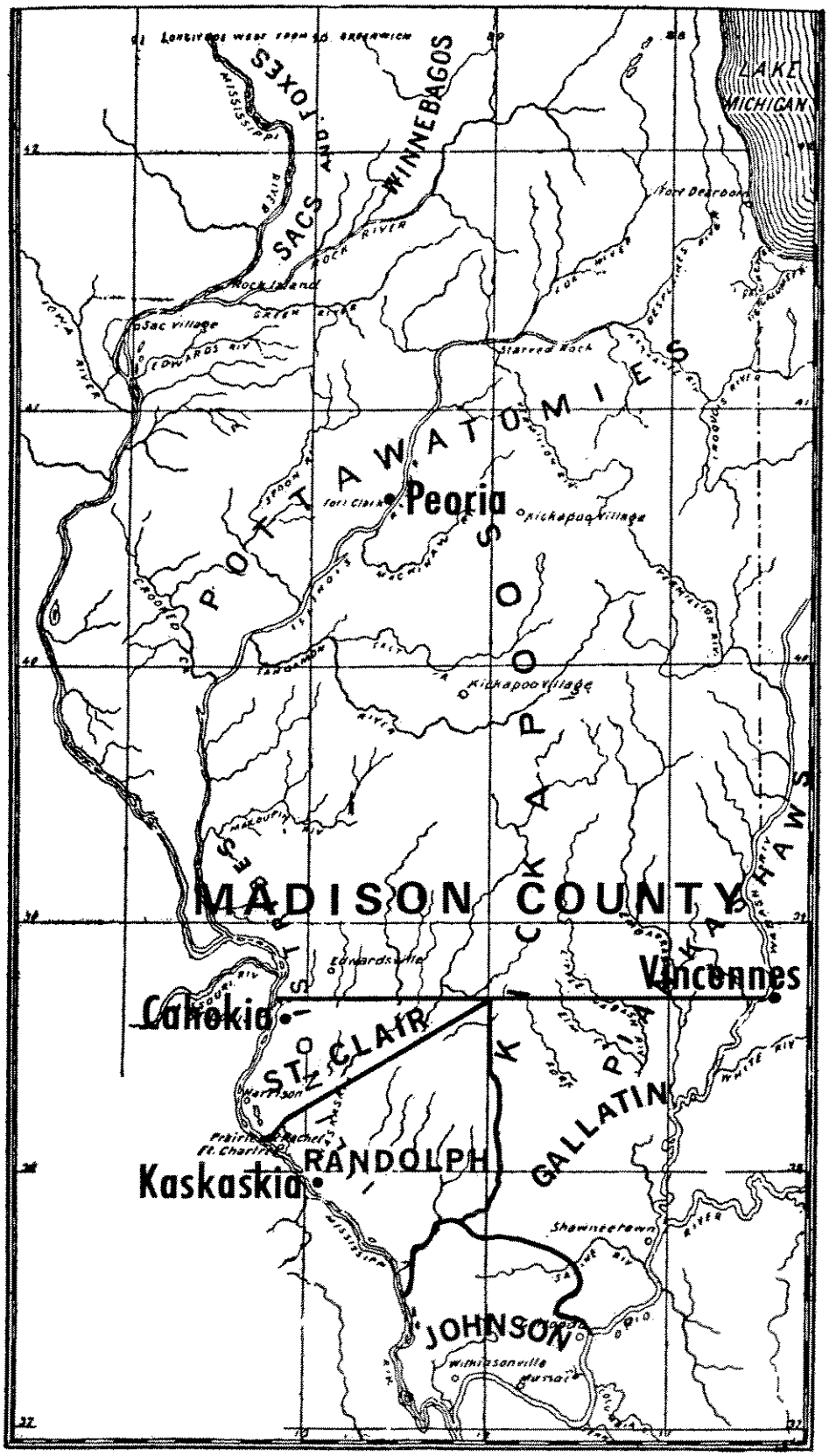
ILLINOIS UNDER AMERICAN JURISDICTION: 1778 TO 1818

George Rogers Clark in 1778 took possession of Illinois County for the Republic of Virginia which had declared its independence. The county ran from the Mississippi River east to the present State of Ohio. Illinois County was only a part of the territory of Virginia under its original charter. The primary settlements were in what is now central and southern Illinois: Kaskaskia, near the present town of Chester; Cahokia, just south of East St. Louis; Peoria, in the extreme north; and Vincennes, in present day Indiana on the Wabash River.

Clark intended to maintain the English court system in Illinois; however, it quickly became necessary to alter the judiciary. Seven men were elected as judges in each settlement. A majority of four was necessary for a decision. This first elected judiciary in Illinois met weekly. Clark, himself, was the court of appeal. Because of his precarious situation in Illinois, Clark found it necessary on occasion to resort to martial law even though a judicial system was theoretically in effect.

In 1779 John Todd was appointed County Lieutenant for Illinois County. He reorganized the courts into three districts with the seats of government at Kaskaskia, Cahokia, and Vincennes. Each district had six judges from the principal settlement and representatives from all other towns. All were elected officials. The courts met monthly, or for special sessions, when it was necessary. Individual judges had jurisdiction over cases of less than 25 shillings. A revised version of the French law was in effect, but the English common law was growing in influence. For example, jury trials and imprisonment for debt became common. The courts of Illinois County functioned with the same jurisdiction as the courts of any Virginia county.

In 1784 Virginia relinquished its possession of Illinois County to the newly formed United States of America. In the next two years other states with claims to this territory also relinquished them. However, no legal form of government was established until the Congress of the United States passed the Northwest Ordinance of 1787. The new governor, Arthur St. Clair, did not arrive in the Northwest



THE ILLINOIS COUNTRY IN 1812 SHOWING THE LOCATIONS OF THE FOUR MAJOR WHITE SETTLEMENTS AT CAHOKIA, KASKASKIA, PEORIA AND VINCENNES.

Territory until 1790. These six years were chaotic for Illinois because there was no regional government. Each settlement was virtually independent. The American and English settlers in some towns attempted to establish the common law system of justice. They were opposed by the French who contended that the French law should be maintained until a new governor established effective government for the area. The situation caused much hostility in Kaskaskia and other towns with both French and English populations. However, in towns like Cahokia, where the French population was dominant, there was less confusion.

The Northwest Territory was under the jurisdiction of a general court of three judges. This judiciary, along with the governor, acted as a legislature. As a judiciary it was the court of appeals and court of original jurisdiction in major criminal cases. The three judges could act individually and rode circuit in the districts. The vast territory was divided into large counties. Because of size and distance, each county functioned independently as far as its judiciary was concerned.

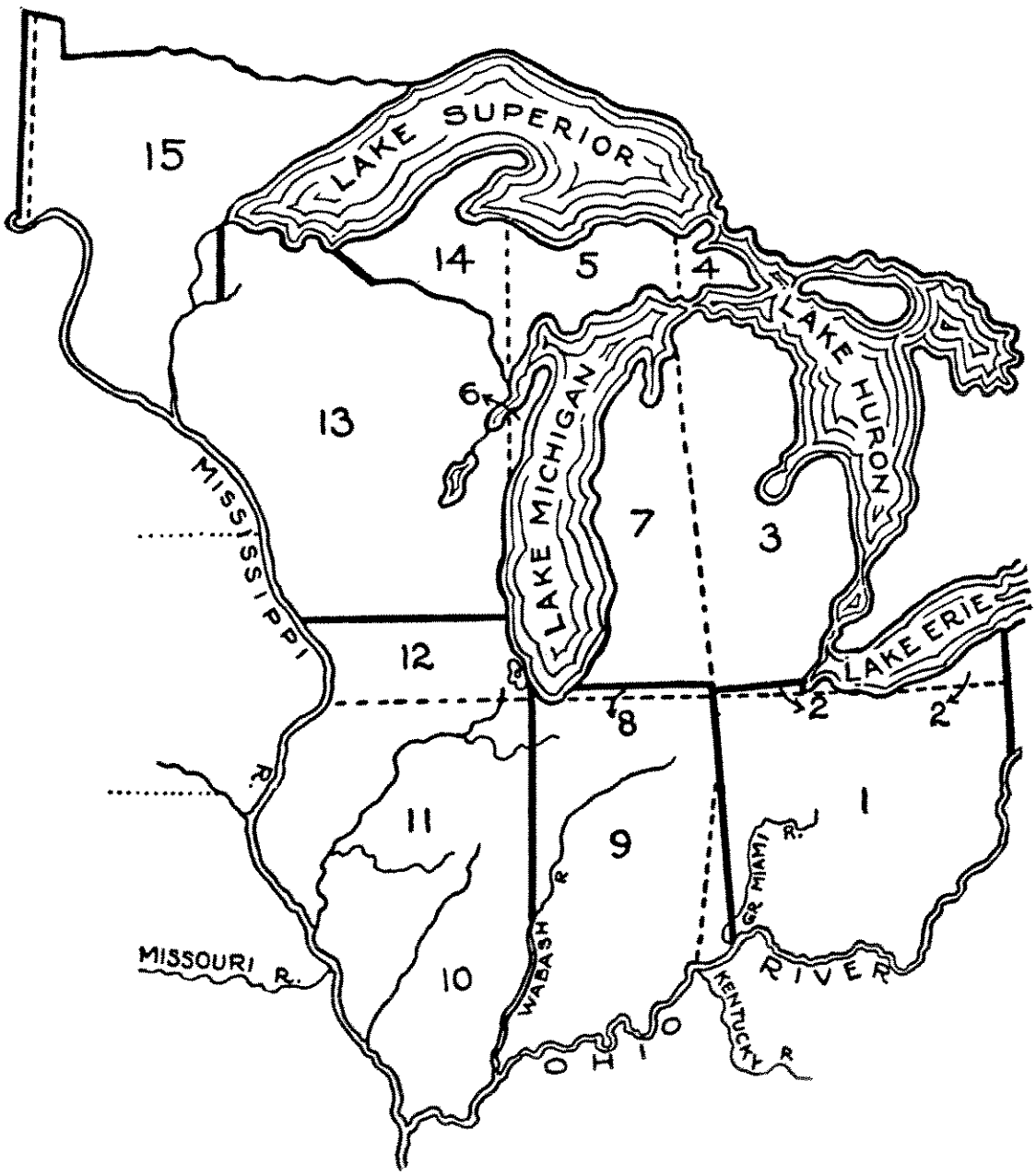
The courts included: 1) courts of common pleas (which met four times a year and exercised jurisdiction in all civil suits and was court of appeals to inferior territorial courts), 2) the court of general quarter sessions (which exercised criminal jurisdiction except in cases punishable by death, long imprisonment or forfeiture of property), 3) justices of the peace, 4) probate courts.

The court of general quarter sessions also exercised executive authority in its district, providing the area its only civil government. At this time English common law came into practice in Illinois. The exceptions were cases of "laws and customs previously used in regard to descent and conveyance of property" for French and Canadian inhabitants.

Inhabitants of the present states of Illinois, Wisconsin, Indiana and Michigan petitioned Congress to create the Indiana Territory, and Congress passed a territorial act in 1800. William Henry Harrison was appointed governor. Basically, the same three district system was used in the new territory.

Because of the high anti-slavery sentiment in the western part of the territory, it was divided into the Indiana and Illinois Territories in 1809. The Illinois Territory included the present states of Illinois and Wisconsin. Ninian Edwards was appointed governor of the Illinois Territory. He divided the territory into three districts and maintained judicial practices and systems similar to those under the Ordinance of 1787 and the Indiana Territory. The governor and three territorial judges assumed legislative powers until 1812 when a General Assembly was established.

The Supreme Court of the Illinois Territory was established in 1814. The General Court, predecessor of the Supreme Court, and the Court of Common Pleas were abolished. County courts were established but general civil and criminal jurisdiction was given to individual Supreme Court judges who were required to ride circuit. Disagreement between the General Assembly and the Supreme Court of the Territory of Illinois on the subject of whether or not the Supreme Court judges should ride circuit as circuit court judges caused various changes in this policy until 1818 when Illinois became a state.



NORTHWEST TERRITORY, 1787

CHAPTER III

EARLY COURTS IN THE STATE OF ILLINOIS: 1818 TO 1848

Early in 1818 the General Assembly of the Illinois Territory petitioned Congress for the admission of that territory into the Union as a state. During the summer of that year delegates to a constitutional convention met at Kaskaskia and on August 26, 1818 adopted a state constitution. On December 3, 1818, President James Monroe signed an act of Congress admitting Illinois as a state.

The judicial system for the new state was spelled out in Article IV of the Illinois constitution. A Supreme Court of four judges was established. It had appellate jurisdiction except in cases of revenue, mandamus, habeas corpus and impeachment in which it was the court of original jurisdiction. The judges of the Supreme Court were appointed by the General Assembly and any inferior courts were to be established by the General Assembly. With the exception of the first judges whose terms were to expire in 1824, all judicial tenure was based on good behavior. A judge could be removed by a two-thirds vote of the General Assembly. Three of the four Supreme Court judges constituted a quorum. The first Supreme Court judges were to ride circuit until 1824 when their term expired. A circuit court judge had original jurisdiction in his respective circuit over all matters and suits at common law or in chancery where the debt or demand was more than $20, and of all cases of treason, other felonies, crimes and misdemeanors. New judges were appointed with no fixed term. All members of the judiciary were totally dependent upon the legislature (to appoint them and not to remove them).

In 1824 the General Assembly appointed the new Supreme Court judges. Five circuit courts were created and five judges were appointed to hold court in the circuits. However, in 1827 they were legislated out of existence and the four Supreme Court judges were again required to hold circuit court in four circuits. In 1829 a fifth circuit was created north of the Illinois River and a circuit court judge was appointed by the General Assembly to hold court in that circuit. In 1835 the General Assembly appointed circuit court judges for all five circuits and the Supreme Court

POPULATION OF ILLINOIS PER SQUARE MILE IN 1820.

was again freed from circuit responsibility. Also a sixth circuit and judgeship was established.

By 1838 there were nine circuit courts and nine circuit court judges in Illinois. This system continued until the judiciary of the state was reorganized in 1841. At that time all circuits and circuit judges were legislated out of existence. Five new Supreme Court judges were appointed to supplement the existing four judges. This enlarged Supreme Court was reassigned to circuit court duties. This system remained unchanged until 1848 when the second Illinois Constitution was adopted.

Justices of the peace courts were established by the General Assembly in 1819 and were reorganized in 1827. They had jurisdiction in their counties over all civil suits for debt and demand not in excess of $100, and forcible entry and detainer cases. In criminal cases, their primary jurisdiction was over all assaults, battery, affrays, and over larceny committed by Negroes (slave or free). The counties were divided into districts, between two and eight districts in each county. Two justices of the peace were authorized for each district except for the district of the county seat where three were authorized.

The Constitution of 1818 gave the General Assembly power to create courts of inferior jurisdiction. These courts were totally subject to the General Assembly. The effect of this section of the constitution is clearly demonstrated by the history of the circuit courts. They were legislated into and out of existence three times in twenty years. Partisan legislatures changed the judicial structure, in some way, almost biennially. No orderly judicial system was able to take root in Illinois. The power vested in the General Assembly to appoint and remove all judges, even Supreme Court judges, made the judiciary totally dependent on the General Assembly. It took little insight in 1848 to realize that if the judiciary were to be effective it must be independent of the General Assembly. This judicial inadequacy was a major cause for the drafting of a new constitution.

CHAPTER IV

ILLINOIS COURTS UNDER THE CONSTITUTION OF 1848

Article V of the Illinois Constitution of 1848 established a Supreme Court of three judges. Two of the three constituted a quorum. These judges were elected by popular vote. One was elected from each of the divisions of the state for a nine year term. This Supreme Court had original jurisdiction in cases of revenue, mandamus, habeas corpus, and impeachment, and appellate jurisdiction in all other cases. It was to convene once annually in each division.

The Constitution of 1848 established nine circuits. One judge was to be elected for a six year term in each circuit. The circuit court was required to hold two or more sessions annually in each county. It had jurisdiction in all cases at law and in equity and all cases on appeal from inferior courts. The General Assembly received the power to increase the number of circuits, and it exercised that power.

All supreme and circuit court judges were ineligible for any other state or federal position during their terms, or for one year thereafter. They could be impeached or removed by a two-thirds majority of each house of the General Assembly.

The constitution and subsequent legislation established a county court in each county with one county court judge who had a four year term. The court had jurisdiction in all probate cases, civil cases involving not more than $100, forcible entry and detainer, and criminal cases of assaults, battery, affrays, larceny in the cases of Negroes (free or slave), and jurisdiction concurrent with the circuit court for sale of real estate of deceased persons.

Two additional justices of the peace were elected in each county to sit with the county judge in all cases in the county courts. These justices had four year terms and were given the same jurisdiction as justices of the peace had received from the General Assembly prior to 1848.

The two decades following the enactment of the constitution saw a great population increase in Illinois, especially in the previously sparsely settled areas of the north. Article V, Section 1 provided "that inferior local courts of civil and criminal jurisdiction may be established by the General Assembly in the cities of this state, but such courts shall have uniform organization and jurisdiction in such cities." Con-

sequently in 1854 the General Assembly established the position of police magistrate to be elected in each town and city: one in towns and cities of less than 6,000 inhabitants; two in towns and cities of 6,000 to 12,000 inhabitants; and three in towns and cities of more than 12,000 inhabitants. They were to have four year terms. They had the same jurisdiction as justices of the peace in their counties but they also had jurisdiction in their own town or city in all ordinance cases of not more than $100. Changes of venue were possible in a city or town from one of the police magistrates to any other police magistrate or to the nearest justice of the peace. Rules of practice and procedure were the same as those of the justices of the peace except as modified by city charters. Police magistrate courts and justice of the peace courts were not courts of record. Therefore, an appeal to a court of record was a trial *de novo* (a new trial). To meet the needs of population increase in larger urban areas, records courts were established at Chicago, Aurora, Elgin and other growing cities. These courts were established as courts of common pleas and had jurisdiction concurrent with the circuit courts, except in cases of treason and murder. In 1859, the Cook County court of common pleas was redesignated as the Superior Court of Chicago with jurisdiction concurrent to the Circuit Court.

The Constitution of 1848 was the constitution of a rural state, and it established a rural judicial system. However, Illinois was growing not only in population but also in economy. It was developing large industrial areas and, of course, large urban areas. The constitution, and the judicial system under that constitution, quickly became inadequate; and in 1869 a convention, originally called to alter or amend the old constitution, wrote an entirely new one, for a part urban-part rural state. The Constitution of 1870 has remained in essence the law of the State of Illinois to this date.

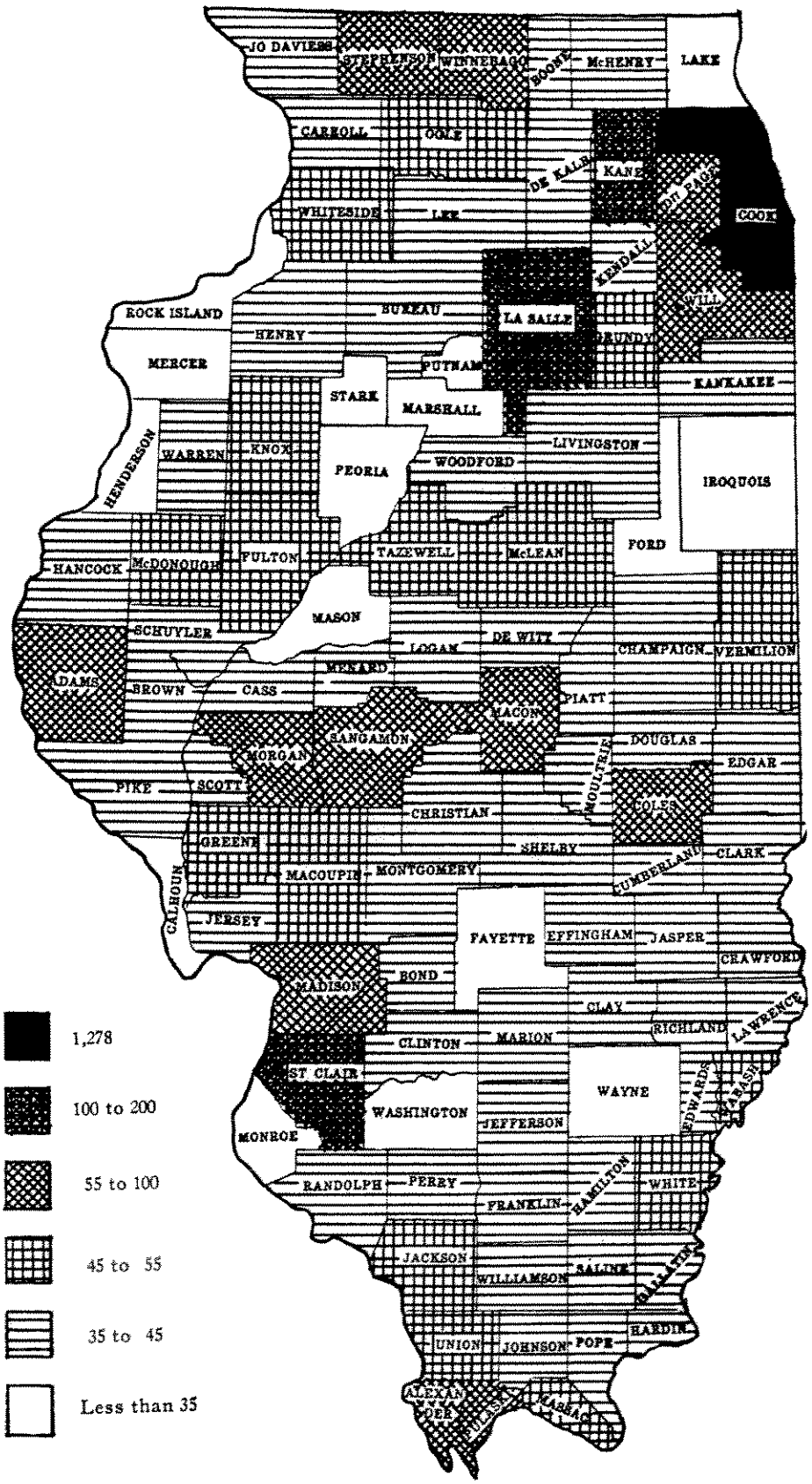
CHAPTER V

ILLINOIS COURTS UNDER THE CONSTITUTION OF 1870

The Constitution of 1870 spelled out the new judicial system in Article VI. The new arrangement was complex and exact compared to that established in previous constitutions. The Supreme Court consisted of seven judges. It had the same jurisdiction as it had under previous constitutions. It was to hold annual terms in each of the three grand divisions of the 1848 Constitution, and one or more terms at Chicago, if suitable quarters were provided. Four judges constituted a quorum and the concurrence of four was necessary for a decision. The state was divided into seven districts for election of the Supreme Court judges. These districts could be changed by law to maintain equality in population, but must be composed of contiguous counties. The judges' terms of office were nine years.

In 1879, legislation was enacted requiring that terms of the Supreme Court were to be held only in Springfield. Terms were to be held in October, December, February, April, and June. This act also provided for the appointment of private secretaries for each of the Supreme Court judges and authorized the appointment of a Supreme Court librarian. The Court was given authority to make rules regulating practice for the judiciary in Illinois. Section 31 of Article VI provided that written reports be submitted by judges to the Supreme Court annually. It also provided that the Supreme Court submit reports to the Governor on the deficiencies and problems of the laws in Illinois and suggest bills to the General Assembly designed to solve these problems. Combined with Article VI, Section 11, which provides for the establishment of an appellate court, we can discern the development of the Supreme Court as a body established for initiating, improving and interpreting the laws of Illinois. No longer was the Supreme Court to be a traveling appellate court.

The constitution provided for the establishment of an appellate court by the General Assembly after 1874. Four such courts were established in 1877. The first court was in Cook County, the second was in the rest of the Northern Division, the third was in the Central Division, and the fourth was in the Southern Division. Each court consisted of three judges appointed by the Supreme Court from the circuit court, or in the case of Cook County, from the Superior Court.



POPULATION OF ILLINOIS PER SQUARE MILE IN 1890.

They were appointed for three years and held two court terms annually. The members of each court chose a presiding judge. Two judges were a quorum, and the concurrence of two was necessary for a decision. The jurisdiction of the court was appellate only, in all appeals, or writs of error from final decisions of any circuit court, the Superior Court of Cook County, the county courts or city courts in any suit or proceedings at law, or in chancery, other than criminal cases and cases involving franchises, freeholds, or the validity of statutes. The order or decree of this Court was final in cases involving less than $1,000 or when inferior courts judged damages less than $1,000, unless the Appellate Court considered the case significant enough to be reviewed by the Supreme Court.

In 1897 an act was passed allowing the Supreme Court to appoint three circuit court judges to a branch of the Appellate Court in any district where pending cases exceeded 250. In 1911 an act allowed the appointment of additional branches where cases pending before the branch court exceeded 250. The branches had the same jurisdiction as the Appellate Court. The Supreme Court had the power to remove or transfer circuit or superior court judges appointed to the Appellate Court.

The constitution provided for the establishment of circuit courts with original jurisdiction in all cases in law and equity and appellate jurisdiction over inferior courts. The General Assembly subsequently divided the state into seventeen circuits, with the exception of Cook County, which was a separate circuit. The circuits were to be as equal as possible in population, economy and territory. They were also to consist of contiguous counties. The constitution provided for one judge in each circuit. But the General Assembly established three judges in each circuit. The circuit court judges were elected in their circuits for a six year term. Terms of the circuit court had to be held at least twice a year in each county.

The one exception was Cook County where experience showed that cases increased at a much greater rate than the population. The industry, trade and urban living caused new types of legal proceedings to develop in the state. Thus while the population of Cook County might equal that of the rest of the state, the number of cases filed was far greater than that of the rest of Illinois.

The Constitution of 1870 established Cook County as one circuit with five judges. The Superior Court of Chicago became the Superior Court of Cook County. Provisions were made to add to the number of judges in both of these courts. The old Records Court of the City of Chicago was changed into the Criminal Court of Cook County with the jurisdiction of the Circuit Court in criminal and quasi-criminal cases. The terms of the Criminal Court were held by the judges of the Circuit and Superior Courts. The General Assembly increased the number of judges in the Circuit Court of Cook County until that number reached 20 in 1915.

In 1905 the General Assembly passed an act allowing for branch circuit courts in any county, and in 1909 allowed for the reassignment of judges from one circuit to another for no longer than eight months.

The constitution also provided for the establishment of county courts in each county. One judge was to be elected to that position for a four year term; however, where it was expedient

to do so the General Assembly could create a district of two or more counties under the jurisdiction of one judge. This court was to be the county court of record. Subsequent legislation changed the county court jurisdiction so that it ultimately had jurisdiction, in general, of probate cases and concurrent civil jurisdiction with justices of the peace (where the amount in question did not exceed $1,000), in all minor criminal offenses and misdemeanors (where punishment was not imprisonment in the state penitentiary, or death), and in all cases of appeals from justices of the peace and police magistrates (except where the county judge was sitting as the justice of the peace, in which case the appeal was to the circuit court).

The Constitution of 1870 and subsequent legislation in 1877 and 1881 established probate courts in counties where the population was over 70,000. Judges of these courts had four year terms. In 1903 an act of the General Assembly provided that the probate judges and county judges may hold court for each other and perform each other's duties.

The constitution also provided for the continuation of police magistrates and justices of the peace in a system not dissimilar to that previously established. (See pages 10, 12 and 13.)

In 1901 an act was approved concerning courts of records in cities. It was amended in 1901, 1911 and 1913. It permitted from one to five judges in each city court. However, the number of judgeships could not exceed one for every 50,000 inhabitants. The court could be established only in cities of at least 3,000 inhabitants. The judges were given four-year terms. These courts had jurisdiction concurrent with the circuit court, except in cases of treason and murder.

Article V, section 31 of the constitution provided for the removal from office of any judge upon a three-fourths vote of all elected members of each house of the General Assembly.

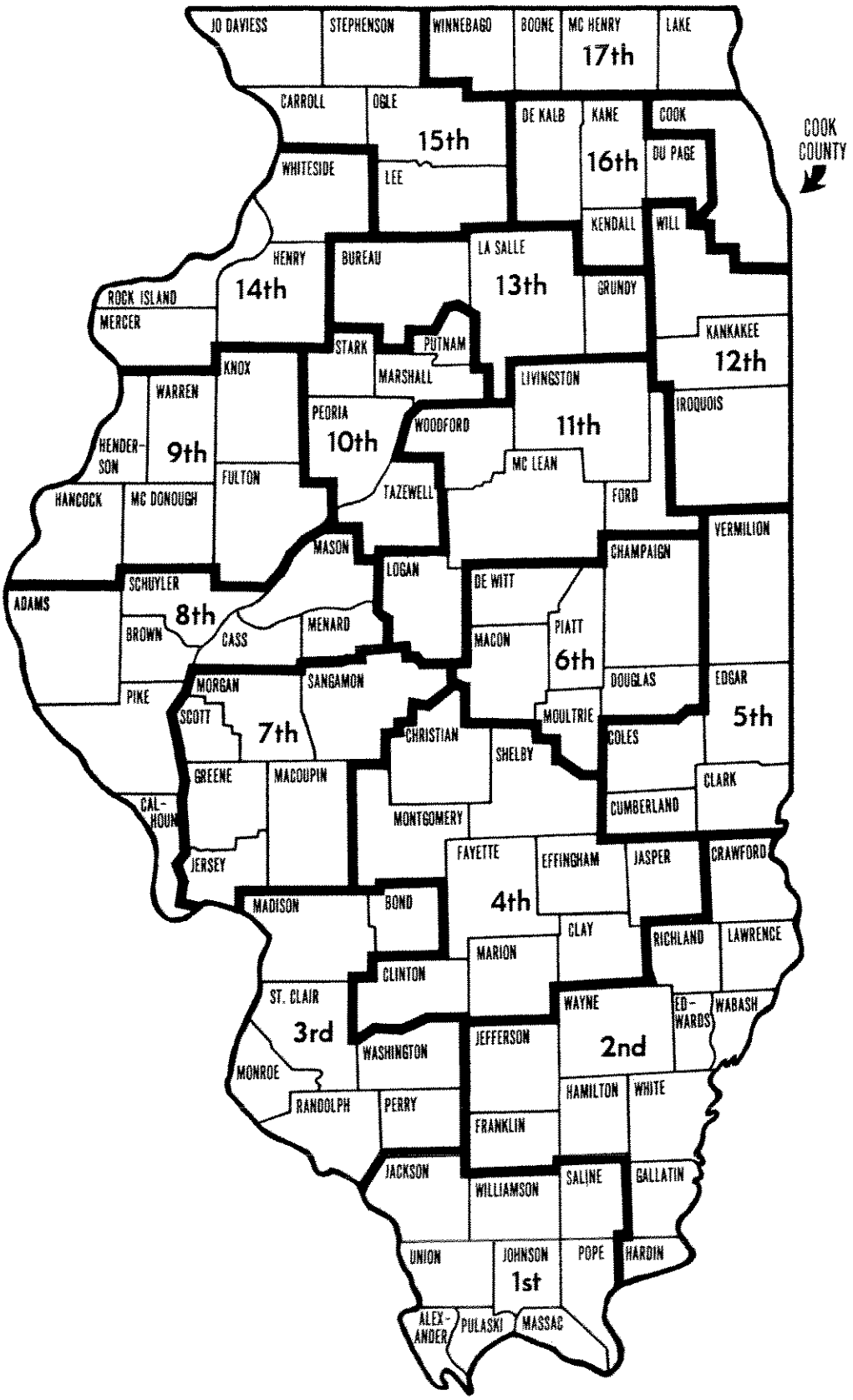
Article V, section 17 established the requirements for holding a judicial office. Any person who sought to be a judge of the circuit or any inferior court had to be 25 years old, a United States citizen, a resident of Illinois for at least 5 years prior to election, and a resident of the circuit, county, city, village or incorporated town in which he was elected.

Dissatisfaction with the justices of the peace and police magistrate system became so serious that a 1904 amendment to the constitution abolished justices of the peace, police magistrates and constables in the City of Chicago and limited the jurisdiction of all other justices of the peace, magistrates and constables in Cook County to the area outside the City of Chicago. It also permitted the establishment of a municipal court in Chicago.

Legislation in 1905, 1906, and 1907 established the Municipal Court of Chicago with jurisdiction in civil claims for money or property and in non-felony criminal cases. This court was created to meet the special needs of a rapidly growing urban area. It was rearranged and reorganized from time to time to meet the requirements of Chicago. Legislation approved in 1899 and amended in 1907 established a Juvenile Court (later called the Family Court) in Cook County. One judge of the Circuit Court was to hear all cases involving persons under the age of 21 termed by the act as dependent, neglected or delinquent. This act was the first of its kind in any state. In 1903 a Court of Claims was established in Illinois to hear all cases

of claims of any nature against the state. Three judges were appointed to the court by the governor.

These specialized courts demonstrated the needs of a growing population and the developing independence, importance, and responsibility of the courts in Illinois. They were very functional, but the problems caused by the creation of new courts for new needs soon outweighed the advantages.



THE JUDICIAL CIRCUITS AS FIXED BY THE GENERAL ASSEMBLY APRIL 23, 1897.

THE COOK COUNTY CIRCUIT WAS AN UNNUMBERED CIRCUIT.

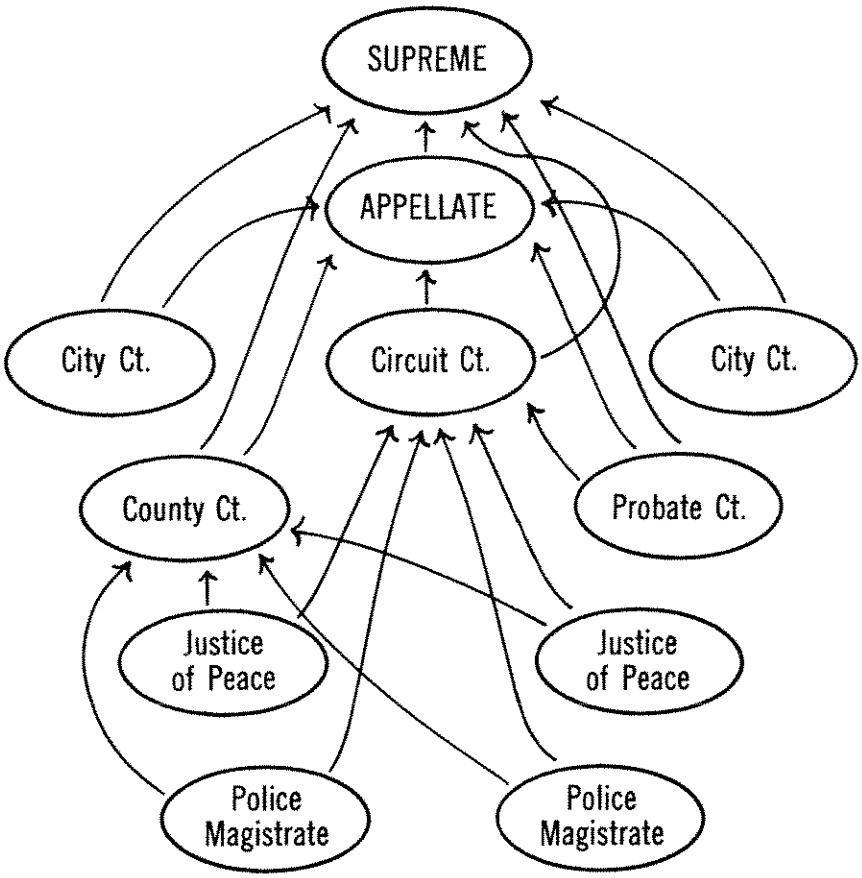
CHAPTER VI

THE JUDICIAL ARTICLE OF 1964

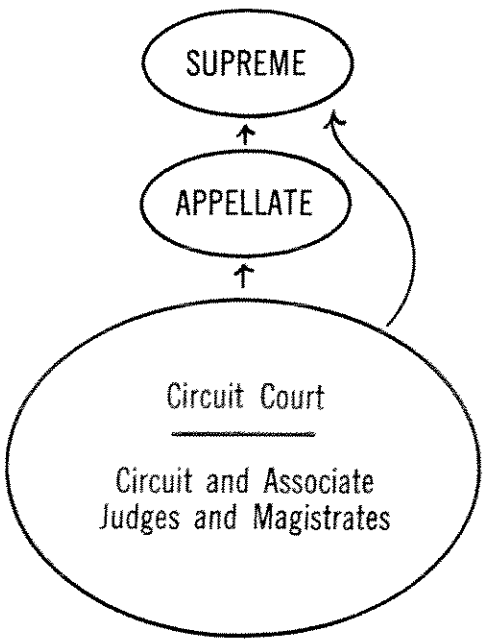
It is important at this point to stop and consider the effect of the growth of Chicago and other urban areas on the Illinois judiciary. As has been previously noted as early as 1859 special courts with jurisdiction concurrent to existing courts were being established for growing cities. This legislative creation of parallel courts was necessary because, even in 1870, the constitution was not flexible enough to cope with a growing population and the need for an expandable judiciary. The eventual confusion is best demonstrated by Cook County. In 1962, Cook County had 208 courts: The Circuit Court, the Superior Court, the Family Court, Criminal Court, Probate Court, County Court, Municipal Court of Chicago, 23 city, village, town and municipal courts, 75 justice of the peace courts, and 103 police magistrate courts. Many of these courts had overlapping jurisdiction which increased the already great organizational problems. Perhaps more serious was the fact that there was no administrative authority to unify, coordinate, and supervise them. The system was confused, to a lesser degree, in other urban areas. Primarily to remedy this confusion a unified court system was established by the judicial amendment which was approved by the voters in 1962 and which went into effect on January 1, 1964. This amendment was a completely new Article VI of the Constitution of 1870.

Under the new Judicial Article, "the judicial power of Illinois is vested in a Supreme Court, an Appellate Court and Circuit Courts." On the trial court level all courts other than the circuit courts were abolished and all their jurisdiction, judicial functions, powers and duties were transferred to the respective circuit courts.

The Supreme Court is composed of seven judges, elected from five judicial districts. Cook County is the First Judicial District. The remainder of the state is divided into four judicial districts. Three Supreme Court judges are elected in the First Judicial District. One is elected from each of the other judicial districts. Four judges constitute a quorum and concurrence of four is necessary for a decision. The Supreme Court judges are elected for ten-year terms. The Supreme Court may exercise original jurisdiction in cases relating to revenue, mandamus,



CHANNEL OF APPEALS PRIOR TO 1964



CHANNEL OF APPEALS AFTER JANUARY 1, 1964, THE DATE THE JUDICIAL ARTICLE BECAME EFFECTIVE.

prohibition and habeas corpus. It has appellate jurisdiction in all other matters. In cases involving revenue, a question arising under the federal or state constitutions, habeas corpus or appeal by the defendant from sentence in capital cases, the appeal is from the circuit court directly to the Supreme Court.

The Supreme Court has the authority to establish rules for trial procedure. In fact, general administrative authority over all courts is vested in the Supreme Court to be exercised by the chief justice who is selected for a three-year term by the members of that court. To assist the chief justice in this task, the Article provides for an administrative director and a staff. In this Article we see the increased attention of the Supreme Court to the development, interpretation and administration of law in Illinois. This Supreme Court is quite different from that of 1820.

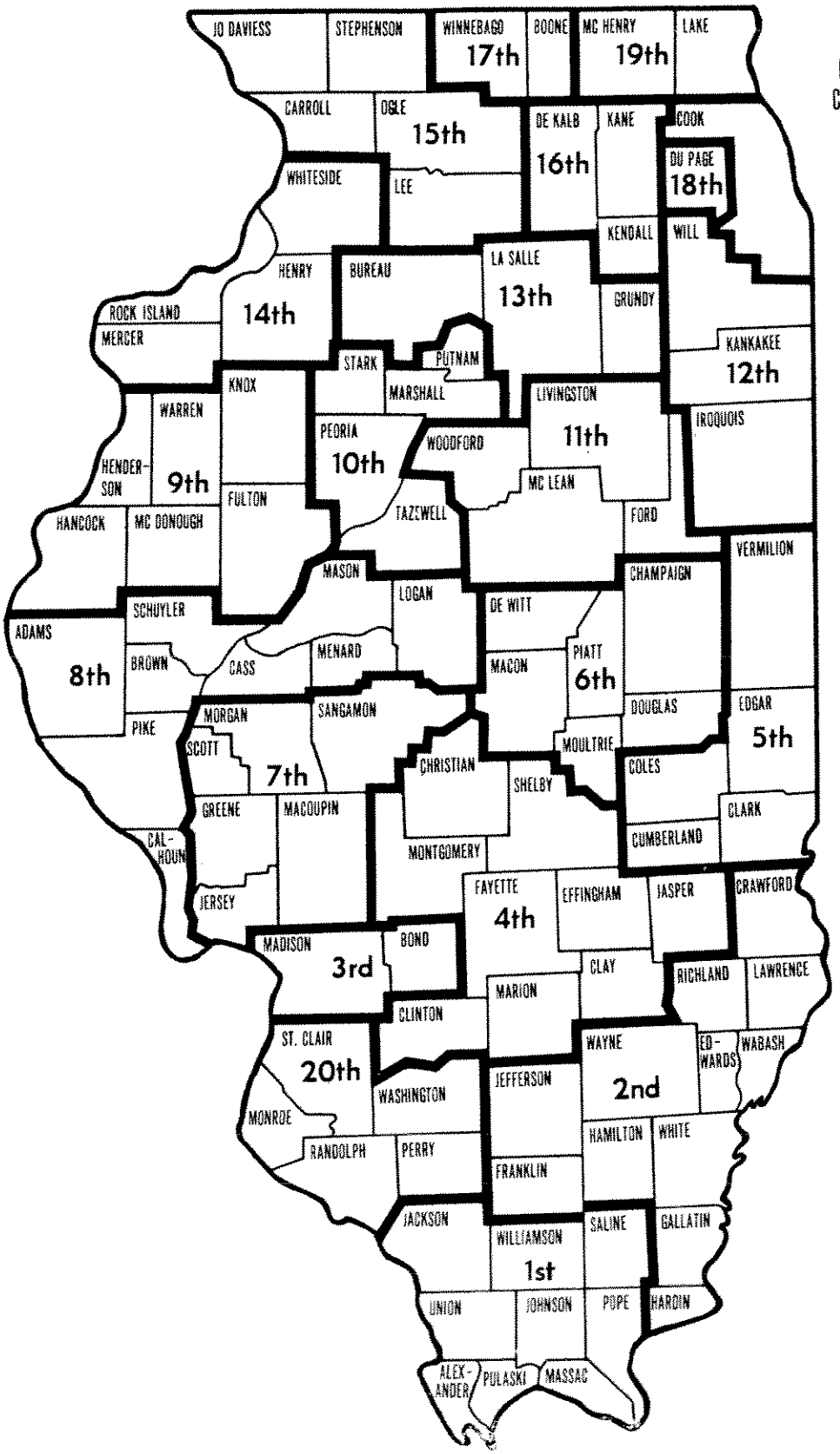
The Appellate Court is organized in the same five judicial districts as the Supreme Court. It consists of twenty-four judges. Twelve are in the First District (Cook County), and three in each of the other four districts. Appellate Court judges are elected for ten-year terms. In the First District, the Appellate Court is divided into four divisions with three judges in each division. Concurrence of two judges is necessary for a decision.

All final judgments of the circuit court except those directly appealable to the Supreme Court and acquittals in criminal cases are, as a matter of right, appealable to the Appellate Court in the district in which the circuit court is located. To assure a complete determination of any case being reviewed, the Appellate Court may exercise any necessary original jurisdiction. Appeals from the Appellate Court lie to the Supreme Court in cases where a question arises concerning the state or federal constitution for the first time, as a result of the action of the Appellate Court, or when a division of the Appellate Court certifies that the case is of such importance that it should be decided by the Supreme Court. In all other cases the Appellate Court is the last court of appeal unless the Supreme Court grants a leave to appeal.

In keeping with the general administrative authority over all courts, the Supreme Court can make and has made rules concerning appeals from the Appellate Court to the Supreme Court. The Supreme Court may assign additional judges to the Appellate Court and it may transfer divisions from one district to another when that is necessary. It has provided by rule for expeditious and inexpensive appeals.

The Article provides that the state shall be divided into judicial circuits of one or more contiguous counties. There are 21 such circuits. Cook and DuPage counties are one-county circuits. The Second Judicial Circuit consists of 12 counties. The remaining circuits are comprised of from two to nine counties.

Section 8 of the Article provides that judicial circuits shall be established from time to time by law. The Article specifies no maximum number of circuits; and therefore, is flexible for meeting further needs. There is only one circuit court in each circuit. This court has "unlimited original jurisdiction of all justiciable matters." By giving general jurisdiction to the circuit courts and establishing only one circuit court, the Article avoids and eliminates the problem of complex and often overlapping jurisdiction and all the legal problems that stem from such complexities.



THE JUDICIAL CIRCUITS AS APPROVED UNDER THE JUDICIAL ARTICLE OF 1964.

THE COOK COUNTY CIRCUIT IS UNNUMBERED.

The circuit courts have three categories of judges: circuit judges, associate judges, and magistrates. The circuit judges have the full jurisdiction of the circuit court, and the power to make the rules of the court. They are elected on a circuit-wide basis. One circuit judge is elected by the circuit and associate judges as chief judge of the circuit. He is the manager of the circuit with general administrative authority in his circuit subject only to the authority of the Supreme Court. He assigns cases, assigns duties to court personnel, and determines time and place of court sessions.

Associate judges have the full jurisdiction of the circuit court. They vote for the chief judge but they do not have rule making authority and cannot be selected as chief. There must be at least one associate circuit judge elected in each county of the state. Both circuit judges and associate judges have six year terms.

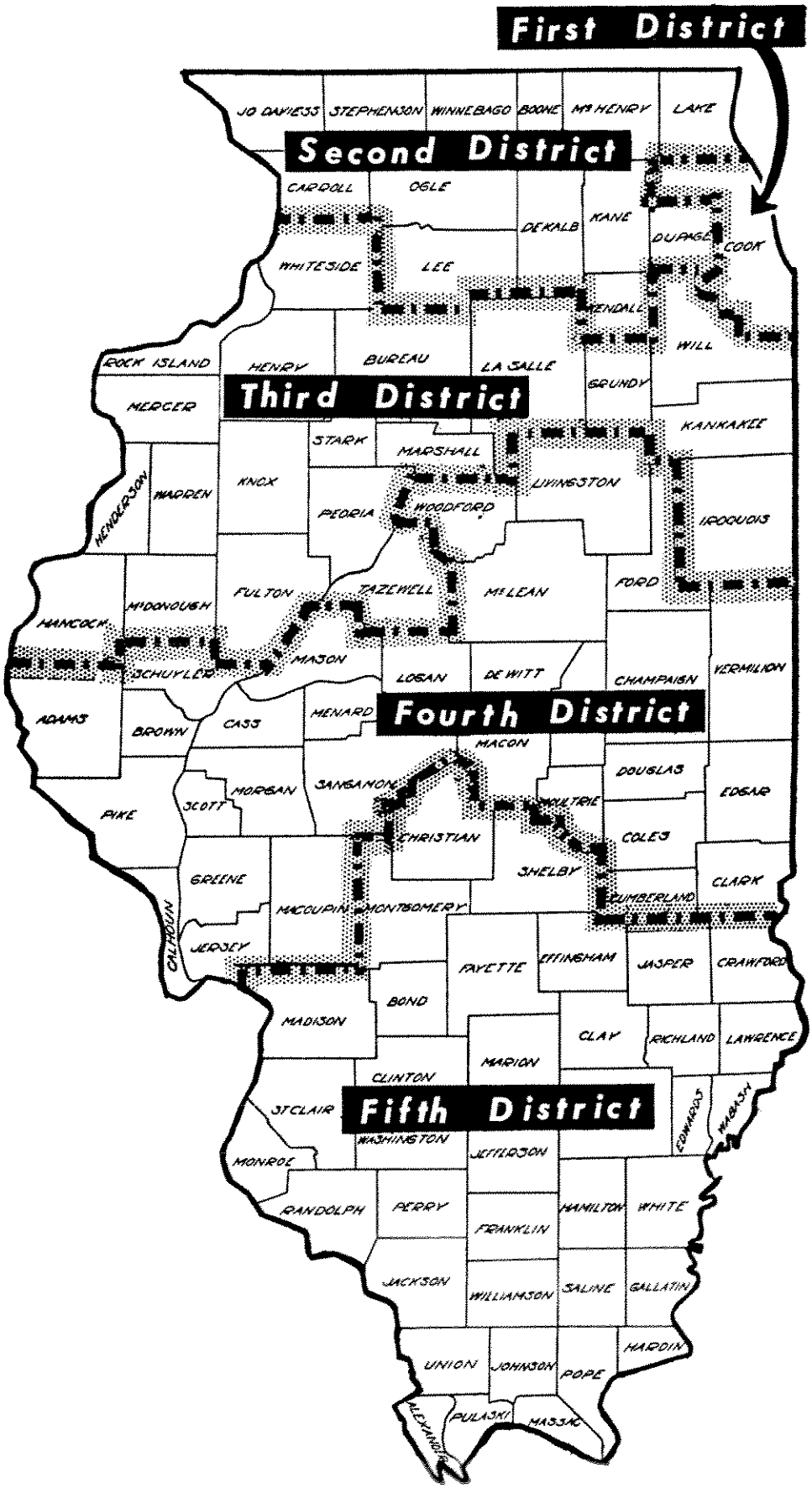
Magistrates are appointed by the circuit judges and serve at their pleasure, without terms. While they have the full jurisdiction of the circuit court only certain cases are assignable to them. This assignability is determined by law. The law enables the Supreme Court to expand the matters assignable to lawyer magistrates. The chief judge can further limit and determine which matters will be assigned to magistrates in his circuit. Presently, magistrates generally may be assigned civil cases when the amount of damages or the value of personal property claimed does not exceed $10,000; and quasi-criminal and criminal cases, generally, where the maximum punishment does not exceed a fine of $1,000 or imprisonment for one year or both. Magistrates may also be assigned internal administrative duties within the court. The authorized number of magistrates to be appointed is proportionate to the population. In addition to the number of magistrates authorized by statute, the General Assembly empowered the Supreme Court to allocate the appointment of 40 magistrates to the circuits upon a showing of need.

The Judicial Article introduced important innovations in the Illinois Judicial System. Under section 11 of the Article, judges, once elected, are permitted to run for re-election not as members of a political party or against a candidate but on their own record. The electorate vote *yes* or *no* on retention of the individual judge. Section 10, however, provides for the *initial* selection of judges by party ballot. Any candidate running for an elective judicial office for the first time is required to be "nominated by party convention or primary and elected at general elections . . ."

Section 16 provides that judges cannot "engage in the practice of law or hold any office or position of profit under the United States or this state or any other municipal corporation or political party." Section 15 also states "no person shall be eligible for the office of judge unless he shall be a citizen and licensed attorney at law of this state and a resident of judicial district, circuit, county, or unit from which elected." This is a clear attempt to establish a judiciary as a full time profession in Illinois, and to raise its efficiency, objectivity, and effectiveness.

Section 18 establishes a commission of judges composed of one Supreme Court judge selected by the Supreme Court, two Appellate Court judges selected by the Appellate Court, and two circuit judges selected by the Supreme Court with the power to retire for disability or to suspend or remove any judge from office for cause. Thus, the judiciary will render judgment on its own members rather than

having the General Assembly exercise that authority. The commission is convened by the Chief Justice of the Supreme Court, by order of the Supreme Court or at the request of the Senate. Section 19 provides that the Supreme Court will annually convene a judicial conference "to consider the business of the several courts and to suggest improvements in the administration of justice." The Supreme Court is further required to report annually to the General Assembly. Here again we see provision to make the judiciary an autonomous professional and independent arm of government cooperating with but not dominated by the General Assembly.



THE APPELLATE AND SUPREME COURT JUDICIAL DISTRICTS AS APPROVED UNDER THE JUDICIAL ARTICLE OF 1964.

CHAPTER VII

THE CIRCUIT COURT OF COOK COUNTY UNDER THE JUDICIAL ARTICLE OF 1964

The Circuit Court of Cook County today is not only the largest court in Illinois; it is the largest court in the world. A brief study of its organization will demonstrate the Judicial Article of 1964 in its most complete implementation.

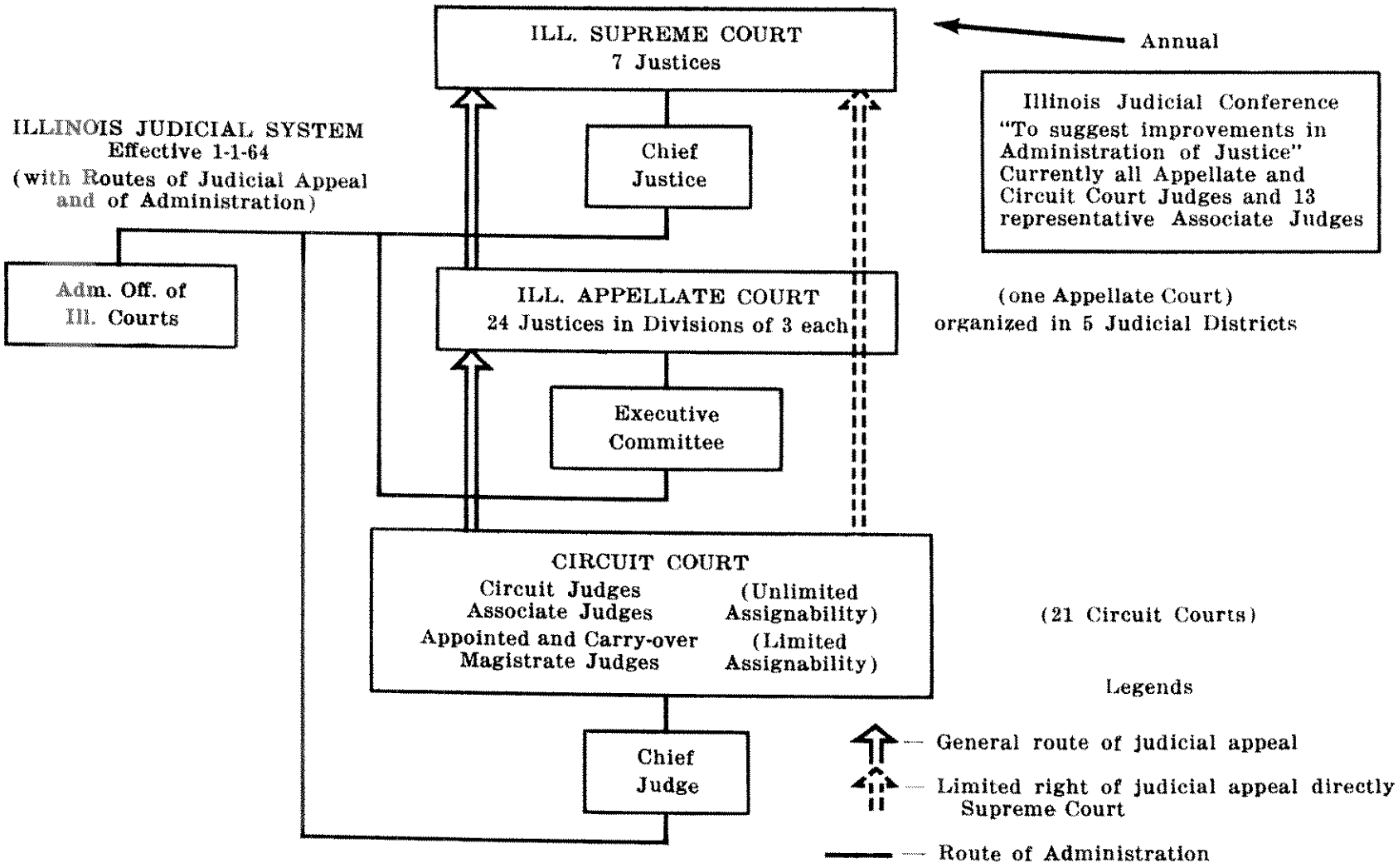
In order to handle its astronomical case load, the Circuit Court of Cook County is divided into two departments, County and Municipal. The Municipal Department handles the relatively smaller cases, generally the same cases as those assignable to magistrates (except for probate cases). The Municipal Department is staffed by magistrates and associate judges and one circuit judge. It is divided into six geographic districts. Each district in turn is subdivided into criminal and civil divisions. This system allows for geographic convenience and some specialization for the great bulk of cases filed in the Circuit Court of Cook County.

The County Department hears the relatively major cases in Cook County. It is divided into functional (as opposed to geographic) divisions. Each division is designed to hear a particular type of case. The Law Division is concerned with cases for the recovery of damages in excess of $10,000. The Probate Division hears matters concerning proof of wills and the administration of estates of decedents, minors and incompetents. The Family Division handles cases involving dependent, neglected and delinquent girls to the age of 18 and boys to the age of 17, and persons charged with contributing to the delinquency or dependency of children. The Divorce Division hears cases of divorce, separate maintenance and annulment. The Criminal Division hears felony cases. The County Division hears cases of adoption, inheritance tax, election contests, real estate taxes, municipal organizations and mental health proceedings. The Chancery Division hears suits for injunctions, construction of wills and trusts, and mortgage foreclosures.

Because all judicial officials of the Circuit Court, including magistrates, have the full jurisdiction of the Circuit

ILLINOIS JUDICIAL SYSTEM

AS OF 1964

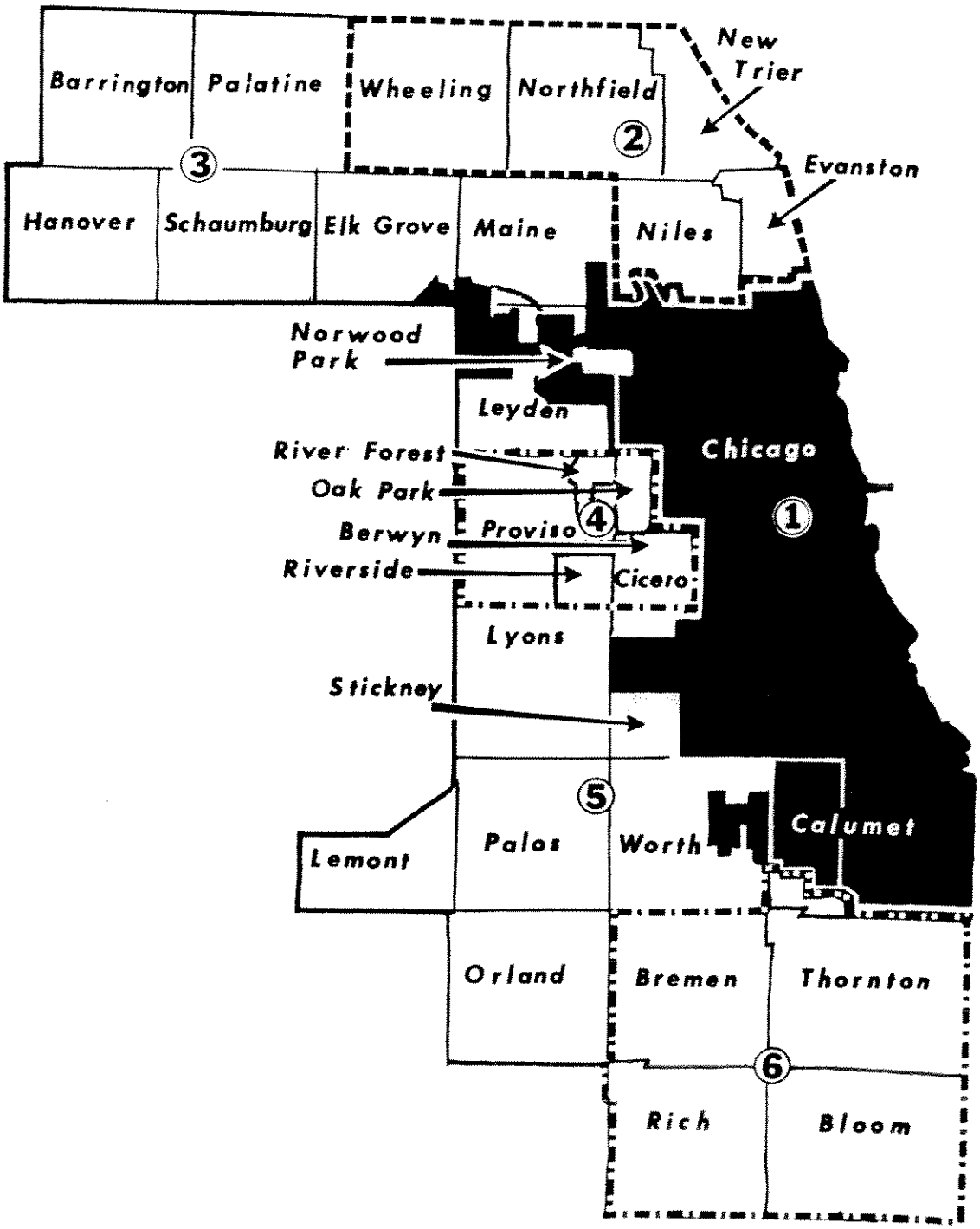


Appeals from final judgments of Circuit Courts lie directly to the Supreme Court only in cases involving revenue or a Constitutional question, in cases of habeas corpus, or by the defendant in capital cases—Article VI, Section 5, Illinois Constitution, and see Illinois Supreme Court Rule 23—1.

Court, a case heard once, regardless of the district or division or department, and whether heard by a circuit judge, associate judge, or magistrate, has been heard in the circuit court. All appeals, therefore, are to the Appellate Court or the Supreme Court. The divisions are established in order to handle the business of the court more efficiently through specialization.

In attempting to cope with the growing complexity and sophistication of social, industrial and commercial institutions, the Illinois courts, over the years, had become a complicated labyrinth of crossing and overlapping jurisdiction that was confusing even to the trained legal mind. The average citizen had little hope of understanding the "system." Yet, throughout the state's history, changes were made to improve the courts. Constitutional changes in 1848, 1870, and 1904 and subsequent legislation are only a few examples.

This effort reached a new measure of success in the unified court system established by the 1964 Judicial Article. Never before has Illinois had such an effectively structured and well organized court system. Never before has so simple and flexible a judicial organization served the people of Illinois.



MUNICIPAL DISTRICTS OF THE CIRCUIT COURT OF COOK COUNTY.

ARTICLE VI: (JUDICIAL AMENDMENT, 1964)

JUDICIAL DEPARTMENT

Section 1. Courts.

The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts.

Section 2. Administration.

General administrative authority over all courts in this State including the temporary assignment of any judge to a court other than that for which he was selected with the consent of the Chief Judge of the Circuit to which such assignment is made, is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules. The Supreme Court shall appoint an administrative director and staff, who shall serve at its pleasure, to assist the Chief Justice in his administrative duties.

Section 3. Judicial Districts.

The State is divided into five Judicial Districts for the selection of judges of the Supreme and Appellate Courts. The First Judicial District consists of the county of Cook. The remainder of the State shall be divided by law into four Judicial Districts of substantially equal population, each of which shall be compact and composed of contiguous counties.

SUPREME COURT

Section 4. Organization.

The Supreme Court shall consist of seven judges, three of whom shall be selected from the First Judicial District and one each from the Second, Third, Fourth and Fifth Judicial Districts. Four judges shall constitute a quorum and the concurrence of four shall be necessary to a decision. The judges of the Supreme Court shall select one of their number to serve as Chief Justice for a term of three years.

Section 5. Jurisdiction.

The Supreme Court may exercise original jurisdiction in cases relating to the revenue, mandamus, prohibition and habeas corpus, such original jurisdiction as may be necessary to the complete determination of any cause on review, and only appellate jurisdiction in all other cases.

Appeals from the final judgments of circuit courts shall lie directly to the Supreme Court as a matter of right only (a) in cases involving revenue, (b) in cases involving a question arising under the Constitution of the United States or of this State, (c) in cases of habeas corpus, and (d) by the defendant from sentence in capital cases. Subject to law hereafter enacted, the Supreme Court has authority to provide by rule for appeal in other cases from the Circuit Courts directly to the Supreme Court.

Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right only (a) in cases in which a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court, and (b) upon the certification by a division of the Appellate Court that a case decided by it involves a question of such importance that it should be decided by the Supreme Court. Subject to rules, appeals from the Appellate Court to the Supreme Court in all other cases shall be by leave of the Supreme Court.

APPELLATE COURT

Section 6. Organization.

The Appellate Court shall be organized in the five Judicial Districts. Until otherwise provided by law, the court shall consist of twenty-four judges, twelve of whom shall be selected from the First Judicial District and three each from the Second, Third, Fourth and Fifth Judicial Districts. The Supreme Court shall have authority to assign additional judges to service in the Appellate Court from time to time as the business of the Court requires. There shall be such number of divisions, of not less than three judges each, as the Supreme Court shall prescribe. Assignments to divisions shall be made by the Supreme Court and a judge may be assigned to a division in a district other than the district in which such judge resides with the consent of a majority of the judges of the district to which such assignment is made. The majority of a division shall constitute a quorum and the concurrence of a majority of the division shall be necessary to a decision of the Appellate Court. There shall be at least one division in each Appellate District and each division shall sit at times and places prescribed by rules of the Supreme Court.

Section 7. Jurisdiction.

In all cases, other than those appealable directly to the Supreme Court, appeals from final judgments of a Circuit Court lie as a matter of right to the Appellate Court in the district in which the Circuit Court is located, except that after a trial on the merits in a criminal case, no appeal shall lie from a judgment of acquittal. The Supreme Court shall provide by rule for expeditious and inexpensive appeals. The Appellate Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of the Circuit Court. The Appellate Court shall have such powers of direct review of administrative action as may be provided by law.

CIRCUIT COURTS

Section 8. Judicial Circuits.

The State shall be divided into judicial circuits each consisting of one or more counties. The county of Cook shall constitute a judicial circuit and the judicial circuits within the Second, Third, Fourth and Fifth Appellate Districts, respectively, shall be as established from time to time by law. Any judicial circuit composed of more than one county shall be compact and of contiguous counties.

There shall be one Circuit Court for each judicial circuit which shall have such number of circuit and associate judges and magistrates as may be prescribed by law; provided, that there shall be at least twelve associate judges elected from the area in Cook County outside the City of Chicago and at least thirty-six associate judges from the City of Chicago. In Cook County, the City of Chicago and the area outside the City of Chicago shall be separate units for the election or selection of associate judges. All associate judges from said area outside the City of Chicago shall run at large from said area, such area apportionment of associate judges shall continue until changed by law. There shall be at least one associate judge from each county. There shall be no masters in chancery or other fee officers in the judicial system.

The circuit judges and associate judges in each circuit shall select one of the circuit judges to serve at their pleasure as Chief Judge of such circuit. Subject to the authority of the Supreme Court, the Chief Judge shall have general administrative authority in the court, including authority to provide for divisions, general or specialized, and for appropriate times and places of holding court. The General Assembly shall limit or define the matters to be assigned to magistrates.

Section 9. Jurisdiction.

The Circuit Court shall have unlimited original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law.

SELECTION AND TENURE

Section 10. Election or Selection.

All of the judges provided for herein shall be nominated by party convention or primary and elected at general elections by the electors in the respective judicial districts, judicial circuits, counties, or units. Provided, however, the General Assembly may provide by law for the selection and tenure of all judges

provided herein as distinguished from nomination and election by the electors, but no law establishing a method of selecting judges and providing their tenure shall be adopted or amended except by a vote of two-thirds of the members elected to each House, nor shall any method of selecting judges and providing their tenure become law until the question of the method of selection be first submitted to the electors at the next general election. If a majority of those voting upon the question shall favor the method of selection or tenure as submitted it shall then become law.

The office of any judge shall be deemed vacant upon his death, resignation, rejection, removal or retirement. Whenever a vacancy occurs in the office of judge, the vacancy shall be filled for the unexpired portion of the term by the voters at an election as above provided in this Section, or in such other manner as the General Assembly may provide by law as set out in this Section and approved by the electors. Whenever an additional judge is authorized by law, the office shall be filled in the same manner as in the case of a vacancy.

Section 11. Retention in Office.

Not less than six months prior to the general election next preceding the expiration of his term of office, any judge previously elected may file in the office of the Secretary of State a declaration of candidacy to succeed himself, and the Secretary of State, not less than 61 days prior to the election, shall certify such candidacy to the proper election officials. At the election the name of each judge who has filed such a declaration shall be submitted to the voters, on a special judicial ballot without party designation, on the sole question whether he shall be retained in office for another term. The elections shall be conducted in the appropriate judicial districts, circuits, counties and units. The affirmative votes of a majority of the voters voting on the question shall elect him to the office for another term commencing the first Monday in December following the election. Any judge who does not file a declaration within the time herein specified, or, having filed, fails of reelection, shall vacate his office at the expiration of his term, whether or not his successor, who shall be selected for a full term pursuant to Section 10 of this Article, shall yet have qualified.

Any law reducing the number of judges of the Appellate Court in any District or the number of circuit or associate judges in any circuit shall be without prejudice to the right of judges in office at the time of its enactment to seek retention in office as hereinabove provided.

Section 12. Appointment of Magistrates.

Subject to law, the circuit judges in each circuit shall appoint magistrates to serve at their pleasure; Provided, that in Cook County, until and unless changed by law, at least one-fourth of the magistrates shall be appointed from and reside in the area outside the corporate limits of the City of Chicago.

Section 13. General Election.

As used in this Article, the term "general election" means the biennial election at which members of the General Assembly are elected.

Section 14. Terms of Office.

The term of office of judges of the Supreme Court and of the Appellate Court shall be ten years and of the circuit judges and associate judges of the Circuit Courts six years.

Section 15. Eligibility for Office.

No person shall be eligible for the office of judge unless he shall be a citizen and licensed attorney-at-law of this State, and a resident of the judicial district, circuit, county or unit from which selected. However, any change made in the area of a district or circuit or the reapportionment of districts or circuits shall not affect the tenure in office of any judge incumbent at the time such change or reapportionment is made.

GENERAL

Section 16. Prohibited Activities.

Judges shall devote full time to their judicial duties, shall not engage in the practice of law or hold any other office or position of profit under the United States or this State or any municipal corporation or political subdivision of this State, and shall not hold office in any political party. Compensation for service in the State Militia or the armed forces of the United States for such periods of time as may be determined by rule of the

Supreme Court shall not be deemed "profit."

Section 17. Judicial Salaries and Expenses.

Judges and magistrates shall receive for their services salaries provided by law. The salaries of judges shall not be diminished during their respective terms of office. Judicial officers may be paid such actual and necessary expenses as may be provided by law. All salaries and expenses shall be paid by the State, except that judges of the Appellate Court for the First District and circuit and associate judges and magistrates of the Circuit Court of Cook County shall receive such additional compensation from the county as may be provided by law.

Section 18. Retirement, Suspension and Removal.

Notwithstanding the provisions of this Article relating to terms of office, the General Assembly may provide by law for the retirement of judges automatically at a prescribed age; and, subject to rules of procedure to be established by the Supreme Court and after notice and hearing, any judge may be retired for disability or suspended without pay or removed for cause by a commission composed of one judge of the Supreme Court selected by that court, two judges of the Appellate Court selected by that court, and two circuit judges selected by the Supreme Court. Such commission shall be convened by the Chief Justice upon order of the Supreme Court or at the request of the Senate.

Any retired judge may, with his consent, be assigned by the Supreme Court to judicial service, and while so serving shall receive the compensation applicable to such service in lieu of retirement benefits, if any.

Section 19. Judicial Conference.

The Supreme Court shall provide by rule for and shall convene an annual judicial conference to consider the business of the several courts and to suggest improvements in the administration of justice, and shall report thereon in writing to the General Assembly not later than January thirty-first in each legislative year.

Section 20. Clerks of Courts.

The General Assembly shall provide by law for the selection by the judges or election, terms of office, removal for cause and salaries of clerks and other non-judicial officers of the various courts; provided that a clerk shall be selected or elected for each Appellate Court District.

STATE'S ATTORNEYS

Section 21. Selection—Salary.

There shall be a state's attorney elected in each county in the year 1964 and every fourth year thereafter for a term of four years. No person shall be eligible for such office unless a citizen and licensed attorney-at-law of this State. His salary shall be prescribed by law.

SCHEDULE

Paragraph 1. This Article and Schedule, with the exception of Schedule provisions expressly authorizing or directing earlier action, shall become effective on January 1, 1964, hereinafter called the "Effective Date." After the adoption of this Article the General Assembly shall enact such laws and make such appropriations and the Supreme Court shall make such rules as may be necessary or proper to give effect to its provisions.

Paragraph 2. Except to the extent inconsistent with the provisions of this Article, all provisions of law and rules of court in force on the Effective Date of this Article shall continue in effect until superseded in a manner authorized by the Constitution.

Paragraph 3. Until changed by law, (a) The Second Judicial District consists of the Counties of Jo Daviess, Stephenson, Carroll, Ogle, Lee, Winnebago, Boone, McHenry, Lake, DeKalb, Kane, Kendall, and DuPage; the Third Judicial District consists of the Counties of Mercer, Rock Island, Whiteside, Henry, Bureau, LaSalle, Grundy, Stark, Putnam, Marshall, Peoria, Tazewell, Will, Kankakee, Iroquois, Henderson, Warren, Knox, Fulton, McDonough and Hancock; the Fourth Judicial District consists of the Counties of Adams, Pike, Calhoun, Schuyler, Brown, Cass, Mason, Menard, Morgan, Scott, Greene, Jersey, Macoupin, Sangamon, Logan, McLean, Woodford, Livingston, Ford, DeWitt, Macon, Piatt, Moultrie, Champaign, Douglas, Vermilion, Edgar, Coles, Cumberland, and Clark; and the Fifth Judicial District consists of all the counties south of the Fourth District; and

(b) the existing judicial circuits shall be continued.

Paragraph 4. Each Supreme Court judge, circuit judge, superior court judge, county judge, probate judge, judge of any city, village or incorporated town court, chief justice and judge of any municipal court, justice of the peace and police magistrate, in office on the Effective Date of this Article, shall continue to hold office until the expiration of his term, as follows:

(a) Judges of the Supreme Court shall continue as judges of said court.

(b) Circuit judges shall continue as circuit judges of the several Circuit Courts.

(c) In Cook County, the judges of the Superior Court, the Probate Court, the County Court, and the Chief Justice of the Municipal Court of Chicago shall be circuit judges; the judges of the Municipal Court of Chicago, and the judges of the several municipal, city, village and incorporated town courts shall be associate judges of the Circuit Court.

(d) In counties other than the county of Cook, the county judges, probate judges, and the judges of municipal, city, village and incorporated town courts shall be associate judges of the Circuit Court.

(e) Police magistrates and justices of the peace shall be magistrates of the several circuit courts, and unless otherwise provided by law shall continue to perform their non-judicial functions for the remainder of their respective terms.

(f) The provisions of this Article governing eligibility for office shall not affect the right of any incumbent to continue in office for the remainder of his existing term pursuant to the provisions of this paragraph. For the remainder of such existing term, the provisions of this Article concerning prohibited activities shall not apply to a judge of a county, probate, city, village or incorporated town court, a justice of the peace or police magistrate.

Paragraph 5. On the Effective Date of this Article,

(a) All justice of the peace courts, police magistrate courts, city, village and incorporated town courts, municipal courts, county courts, probate courts, the Superior Court of Cook County, the Criminal Court of Cook County and the Municipal Court of Chicago are abolished and all their jurisdiction, judicial functions, powers and duties are transferred to the respective circuit courts, and until otherwise provided by law non-judicial functions vested by law in county courts or the judges thereof are transferred to the circuit courts;

(b) All the jurisdiction, functions, powers and duties of the several appellate courts shall be transferred to the Appellate Court provided for in this Article, in the appropriate district.

(c) Each court into which jurisdiction of other courts is transferred shall succeed to and assume jurisdiction of all causes, matters and proceedings then pending, with full power and authority to dispose of them and to carry into execution or otherwise to give effect to all orders, judgments and decrees theretofore entered by the predecessor courts.

(d) The files, books, papers, records, documents, moneys, securities, and other property in the possession, custody or under the control of the courts hereby abolished, or any officer thereof, are transferred to the Circuit Court; and thereafter all proceedings in all courts shall be matters of record.

Paragraph 6. Each clerk of court in office on the Effective Date of this Article shall continue to hold office, until the expiration of his existing term as follows:

(a) The clerk of the Supreme Court shall continue in such office.

(b) The clerks of the several appellate courts shall continue as clerks of the Appellate Court and shall perform such services as may be prescribed by order of the Supreme Court.

(c) In Cook County, the Circuit Court shall by rule designate one of the clerks as clerk and the others as associate clerks to perform such services as may be prescribed by rule of the Circuit Court.

(d) In judicial circuits outside Cook County, the clerks of the circuit courts in their respective counties shall continue in said offices, and the clerks of the other courts of record shall be associate clerks of the circuit court in their respective counties, shall perform such services as may be prescribed by rule of the Circuit Court and shall continue to perform other duties prescribed by law.

Paragraph 7. On the Effective Date of this Article, the bailiff of the Municipal Court of Chicago shall continue in

office for the remainder of his term, and he, his deputies and assistants shall perform such services as may be prescribed by rule of the Circuit Court.

Paragraph 8. Notwithstanding the provisions of Section 8 of this Article, masters in chancery and referees in office in any court on the Effective Date of this Article shall be continued as masters in chancery or referees, respectively, until the expiration of their terms, and may thereafter by order of court, wherever justice requires, conclude matters in which testimony has been received.

Paragraph 9. Until otherwise prescribed by the General Assembly, the cases assigned to magistrates shall be those within the jurisdiction of justices of the peace and police magistrates immediately prior to the Effective Date of this Article.

Paragraph 10. Notwithstanding the terms of office provided in this Schedule and unless otherwise provided by law, of the twelve judges of the Appellate Court initially elected from the First Appellate Court District pursuant to Section 10 of this Article, four shall be elected for a term of ten years, four for a term of eight years and four for a term of six years; and of the three judges of the Appellate Court so initially elected for the Second, Third, Fourth and Fifth Judicial Districts respectively one shall be elected for a term of ten years, one for a term of eight years and one for a term of six years.

Paragraph 11. The Supreme Court shall assign judges of the circuit courts and of the Superior Court of Cook County to serve on the Appellate Court, in the Appellate Court Districts in which they respectively reside, from the Effective Date of this Article until the commencement of the terms of judges of the Appellate Court selected pursuant to Section 10 of this Article.

Paragraph 12. (a) Those elected judges in office on January 1, 1963 shall be entitled to seek retention in office under Section 11 of this Article.

(b) The terms of all judges in office on January 1, 1963 expiring otherwise than on the first Monday in December in an even numbered year are extended to the first Monday in December after the general election following the date at which such terms would otherwise expire. For the purpose of application of any laws providing for an increase in judicial salaries, every judge whose term is thus extended shall be regarded as commencing a new term on the date prescribed by prior law for the election of his successor.

(c) Judges in office on the Effective Date shall not be subject to compulsory retirement at a prescribed age until after expiration of their then current terms.

Paragraph 13. (a) Notwithstanding the provisions of Section 4 of this Article, elections on declarations of candidacy of judges of the Supreme Court in office on the Effective Date shall be held in the Judicial Districts established under Section 3 as follows:

(i) For incumbents from the former First and Second Supreme Court Districts, in the Fifth Judicial District;

(ii) For incumbent from the former Third Supreme Court District, in the Fourth Judicial District;

(iii) For incumbents from the former Fourth and Fifth Supreme Court Districts, in the Third Judicial District;

(iv) For incumbent from the former Sixth Supreme Court District, in the Second Judicial District;

(v) For incumbent from the former Seventh Supreme Court District, in the First Judicial District.

(b) The first vacancy in the office of judge of the Supreme Court which occurs in the former First and Second Supreme Court Districts, and the first vacancy which occurs in the former Fourth and Fifth Supreme Court Districts, and the vacancy which occurs in the former Seventh Supreme Court District shall be filled by the selection of residents of the First Judicial District created under Section 3 of this Article.

(c) The office of any judge shall be deemed vacant upon his death, resignation, removal, retirement, or failure to be retained in office pursuant to Section 11 of this Article.

DEFINITIONS

COMMON LAW. As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.

EQUITY. In a restricted sense, the word denotes equal and impartial justice as between two persons whose rights or claims are in conflict; justice, that is, as ascertained by natural reason or ethical insight, but independent of the formulated body of law.

In a still more restricted sense, it is a system of jurisprudence, or branch of remedial justice, administered by certain tribunals, distinct from the common law courts and empowered to decree "equity" in the sense last above given. Here it becomes a complex of well-settled and well understood rules, principles, and precedents.

FELONY. A crime of a graver or more atrocious nature than those designated as misdemeanors. Generally an offense punishable by death or imprisonment in penitentiary.

FORCIBLE ENTRY AND DETAINER. A summary proceeding for restoring to possession of land one who is wrongfully kept out or has been wrongfully deprived of the possession.

HABEAS CORPUS. The name given to a variety of writs having for their object to bring a party before a court or judge.

IMPEACHMENT. A criminal proceeding against a public officer, before a **quasi** political court, instituted by a written accusation called "articles of impeachment;" for example, a written accusation by the house of representatives of the United States to the senate of the United States against an officer.

INFERIOR COURT. This term may denote any court subordinate to the chief appellate tribunal in the particular judicial system; but it is commonly used as the designation of a court of special, limited, or statutory jurisdiction, whose record must show the existence and attaching of jurisdiction in any given case, in order to give presumptive validity to its judgment.

MANDAMUS. This is the name of a writ which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived.

MISDEMEANOR. Offenses lower than felonies and generally those punishable by fine or imprisonment otherwise than in penitentiary.

ORIGINAL JURISDICTION. Jurisdiction in the first instance; jurisdiction to take cognizance of a cause at its inception, try it, and pass judgment upon the law and facts. Distinguished from **appellate** jurisdiction.

REVENUE. As applied to the income of a government, a broad and general term, including all public moneys which the state collects and receives, from whatever source and in whatever manner.

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A Short History of the Illinois Judicial Systems

Afterword

By David F. Rolewick
September, 2006

I was pleased, when asked by the Illinois State Bar Association, to pen some thoughts about the Short History of the Illinois Judicial Systems 38 years after its first publication. I have had the privilege of being a practicing lawyer in Illinois since the publication of the revised edition in 1971. The judicial system, first formulated in the progressive 1964 Judicial Amendment to the 1870 Constitution and refined in the 1970 Constitution, has provided, from this practitioner's perspective, a very workable matrix for resolution of criminal prosecutions and civil disputes.

No system is perfect. We struggle with the method of selecting judges, some commentators suggesting appointment is better than election. But, of the 859 constitutional judicial officers in Illinois in 2004, close to one half are either appointed by the Circuit Judges or the Supreme Court or specially are assigned or recalled by the Court. So, in effect, we have a blended process for selecting judicial officers. In one effort to make the judiciary more representative of the population, legislation effective in 1991 established subcircuits for purposes of judicial election in Cook County. In 2005 additional legislation expanded this subcircuit concept of electing Circuit Judges to Lake, McHenry, Will, Kane, Winnebago, Boone, DeKalb and Kendall counties. The first elections under this plan will occur in 2006. Practicing attorneys, judges and observers of our judicial system debate the overall value of the subcircuit judicial election process. My observation is that the voting public rarely knows enough about candidates for judicial office to make an informed decision; but subcircuit elections do result in a judiciary more reflective of the diversity of the community.

In addition, the Illinois Legislature has approved the division of the 19th Judicial Circuit, currently Lake and McHenry counties. On December 4, 2006, Lake County will remain the 19th Judicial Circuit, and McHenry County will become the newly created 22nd Judicial Circuit.

Of course, looking at the diagrams in this volume now, I confess, they are a bit oversimplified. There are many administrative law courts for statutory dispute resolution, or claims against the State or certain of its officers. Most of these administrative systems end in a right to appeal to our judicial system at some level. The vast majority of the dispensing of justice for Illinois citizens remains in the three courts of the 1970 Constitution.

Also, in the last twenty years, alternative dispute resolution has become a cause celebre. Starting in 1987, the Supreme Court adopted rules in specific counties to require mandatory arbitration before a panel of three lawyers in small civil cases. Either party, so long as it participated in good faith in the arbitration, can reject the arbitrators' award and ask for a trial de novo in the Circuit Court. Winnebago County served as the host of a pilot court-annexed mandatory arbitration program. As a result of the success of the pilot program, thirteen different counties were authorized by the Supreme Court over the next thirteen (13) years to implement such mandatory arbitration programs. Statistically, this system, with its simplified discovery rules has been successful. Only about ten percent (10%) of the arbitration cases are rejected and go to trial in the Circuit Court.

The Circuit Court of Cook County remains the largest court in the world with 268 Circuit Judges and 134 Associate Judges all under the

supervisory authority of the Chief Judge who is elected by the Circuit Judges.

There have been efforts to establish specialized courts throughout the country. The Circuit Court of Cook County has participated in this trend by expanding specialized divisions for complex commercial cases and other special social needs without modifying the unified jurisdiction and nature of the trial court.

The Supreme Court's administrative authority has resulted in the expansion of the Administrative Office of Illinois Courts to 114 employees in 2006. This office has effectively executed the expanded supervisory authority and responsiblities provided the Supreme Court in the 1964 and 1970 Judicial Articles of the State Constitution.

In 1973 the Supreme Court, in a significant exercise of its supervisory authority over the practice of law, established Rules for an Attorney Registration and Disciplinary Commission to handle the prosecution of claims of ethical violations against lawyers licensed in this State. Today, that Commission is nationally recognized for its effectiveness and efficiency and has become, like our judicial system, a model for others to study and emulate.

So, 38 years later, I would say we continue to be fortunate in Illinois because we continue to have an effective, fairly simple, manageable judicial system that allows our society to efficiently, and in most cases promptly, deal in a peaceful manner with criminal conduct and civil disputes.

David F. Rolewick