

## Procedures for appeals

Where to appeal Ohio administrative agency cases.

by J. Todd Kennard

If you lose a case in front of a state administrative agency in Ohio, where do you appeal? Can you appeal to the court of common pleas in your client's county? Or do you have to go to Franklin County? The answer is, not surprisingly, "It depends."

### Chapter 119.12: Ohio's administrative appeals framework

Chapter 119 of the Ohio Revised Code outlines procedures for appeals from administrative agencies. Revised Code 119.12 and the agency's underlying statute determine to which court of common pleas a party can appeal.

Revised Code 119.12 provides that certain types of appeals can be made to a party's "home" county, while other types of appeals have to be made in Franklin County:

Any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an *examination*, or denying the issuance or renewal of a *license* or registration of a licensee, or revoking or suspending a license, or allowing the payment of a forfeiture under section 4301.25[.]2 of the Revised Code, *may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located* or the county in which the licensee is a resident, *except that appeals from decisions of the liquor control commission, the state medical board, state chiropractic board, and board of nursing shall be to the court of common pleas of Franklin county.* If any such party is not a resident of and has no place of business in this state, the party may appeal to the court of common pleas of Franklin County.

*Any party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin county, except that appeals from orders of the fire marshal issued under Chapter 3737 of the Revised Code may be to the court of common*

*pleas of the county in which the building of the aggrieved person is located.*<sup>1</sup>

In addition to R.C. 119.12, an aggrieved party must also look to the agency's underlying statutory scheme, which may provide guidance for the appropriate forum for an appeal. The statute may simply provide that an appeal must be made in conformity with R.C. Chapter 119. For example, the Ohio Automobile Dealers Act provides that any appeal may be made in the manner provided by R.C. Chapter 119.<sup>2</sup> In those kinds of cases, or where there is no reference to appellate procedure, the default provisions of R.C. 119.12 should apply.

Alternatively, a statute may expressly provide that an appeal can be made to some forum other than the Franklin County Court of Common Pleas and thereby trump R.C. 119.12. For example, R.C. 124.34 provides that certain State Employment Relations Board determinations may be appealed to the employee's home county. Likewise, under R.C. 4112.06, final orders of the Civil Rights Commission may be appealed to any county where the unlawful discriminatory practice was committed or where any respondent required to cease and desist from an unlawful discriminatory practice resides or transacts business. Finally, other matters, including Board of Tax Appeals cases and Public Utility Commission determinations, can be appealed directly to the Supreme Court of Ohio.<sup>3</sup>

### An overview of case law

Case law is relatively clear on the issue of where to appeal an administrative decision. Ohio courts of appeals have repeatedly held that common pleas courts in counties other than Franklin County do not have jurisdiction to consider appeals under R.C. 119.12 unless the appeal is specifically covered by one of the exceptions listed in R.C. 119.12. Parties that do not follow the framework run the risk of having their appeals dismissed simply because they appeal to the wrong court.

In *McVay v. Warren County Board of Commissioners*, for example, the court of appeals considered whether the Warren County Court of Common Pleas had jurisdiction over an appeal from the State Personnel Board of Review in an employment termination case.<sup>4</sup> The court noted that appeals from the State Personnel Board of Review are governed by R.C. 119.12 and 124.34, the latter of which is the underlying agency statute.<sup>5</sup> Ohio Revised Code 124.34, in turn, provides that in cases

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of removal or reduction in pay for disciplinary reasons, the employee may appeal the decision of the State Personnel Board of Review to the court of common pleas of the county in which the employee resides.<sup>6</sup> In *McVay*, the court held that the employee “appealed the Board’s decision to the wrong court” because the removal was for nondisciplinary reasons.<sup>7</sup> As a result, the court found that the Warren County Court of Common Pleas had no jurisdiction over the employee’s appeal and that an appeal could have been made only to the Franklin County Court of Common Pleas. As the court held: “Inasmuch as appellant’s appeal was for non-disciplinary reasons, the Warren County Court of Common Pleas was the improper forum for appealing the Board’s decision. The case should have been appealed in Franklin County.”<sup>8</sup>

In another case to address the same jurisdictional issue, the Court of Appeals for Clermont County applied the same statutory interpretation and reached the same conclusions regarding the forum of appeals where there is no specific exception to R.C. 119.12’s Franklin County forum provision.<sup>9</sup> The employee in *Turner-Brannock* appealed her removal order to the Clermont County Court of Common Pleas.<sup>10</sup> That court dismissed the appeal for lack of subject matter jurisdiction.<sup>11</sup> After determining that the employee’s dismissal was not one covered by R.C. 124.34’s special forum exceptions, the court of appeals explained:

Appeals of this nature do not provide an individual with a dual forum for appeal. If the appeal is one covered by R.C. 124.34, the appeal must be taken in the county where the employee resides. As this was a removal for non-disciplinary reasons, the appeal does not fall within the provisions of R.C. 124.34. Thus, the proper forum for perfecting appellant’s appeal would be in Franklin County pursuant to R.C. 119.12.<sup>12</sup>

As a result, the court of appeals affirmed the trial court’s dismissal of the appeal based on lack of subject matter jurisdiction. Other Ohio courts have repeatedly reached similar results in analogous circumstances.<sup>13</sup>

It is important to note that Ohio courts have narrowly construed the exceptions in R.C. 119.12. In *Brown v. Ohio State Dental Board*, a dentist appealed the Ohio State Dental Board’s decision to place him on probation.<sup>14</sup> The court of appeals explained that, “[W]here a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred.”<sup>15</sup> The court held that because there was no suspension or revocation of his license, as is required to meet the exception in R.C. 119.12, the dentist’s attempted appeal to the Common Pleas Court of Trumbull County (the dentist’s county

of residence and the location of his practice) “was not an adherence to the conditions imposed by R.C. 119.12.”<sup>16</sup> Since none of the exceptions in R.C. 119.12 applied, the default provision of R.C. 119.12 applied, and the appeal should have been brought in Franklin County.<sup>17</sup>

When, however, the appeal is specifically covered by one of the exceptions listed in R.C. 119.12, Ohio courts have held that the appeal can be made to the adversely affected party’s “home” county, rather than to Franklin County. For example, R.C. 119.12 provides that when a license is suspended or revoked, the party adversely affected may appeal to the court of common pleas of the county in which the licensee resides. Thus, in *Jackson v. State Bureau of Motor Vehicles*, the court held that an appeal from an order of suspension of driving privileges should have been brought in the county in which the appellee resided and not in the county where the appellee had been convicted for driving under the influence of alcohol (which ultimately led to the sus-

pension of his license).<sup>18</sup> The court held that because one of the exceptions in R.C. 119.12 applied, “[F]ailure to file in the court of common pleas in whose jurisdiction appellee resided is a jurisdictional defect requiring dismissal of the appeal.”<sup>19</sup>

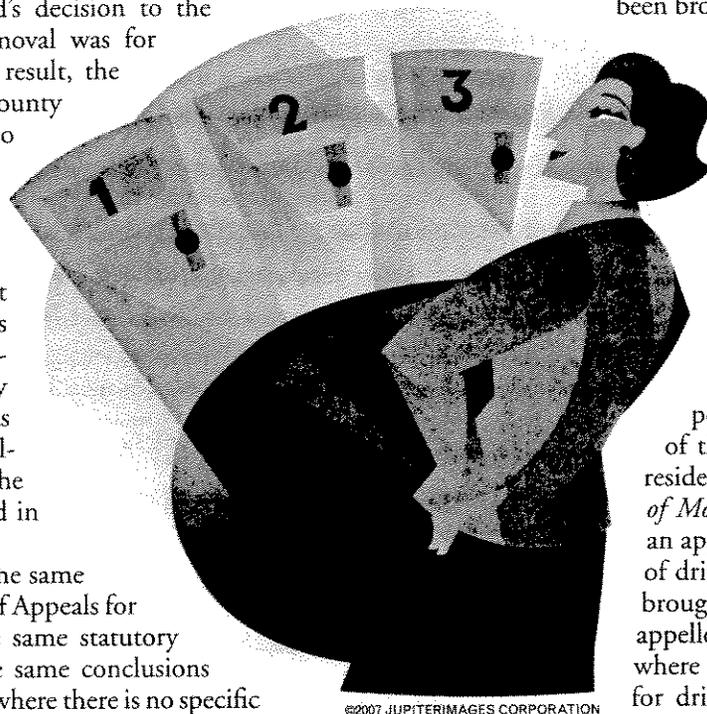
Likewise, in *In re Termination of Employment of Pratt*, the underlying agency statute provided that, in the case of removal for disciplinary reasons, a decision by the State Personnel Board of Review could be appealed to the county in which the employee resided.<sup>20</sup> As the Supreme Court of Ohio found:

On its face, R.C. 124.34 [the underlying agency statute] permits an appeal of an order by the board to be brought in the county in which the employee resides. . . .

... We find no basis in statutory language for any claim that R.C. 124.34 means something other than its plain and specific provisions, *i.e.*, that an appeal from a decision of the board may be taken to the court of common pleas of the county in which the employee resides.<sup>21</sup>

Because there was a statute that expressly authorized an appeal to the employee’s county of residence, that statute trumped R.C. 119.12’s default provision, and the appeal could be brought in the home county.<sup>22</sup>

In another case, *Richardson v. Ohio Department of Human Services*, the underlying agency statute (R.C. 5101.35) provided that an appeal could be taken to the court of common pleas of the county in which the individual affected by the agency’s decision resided.<sup>23</sup> The appellant had filed its appeal in the Franklin County Court of Common Pleas, which



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dismissed the appeal for lack of subject matter jurisdiction.<sup>24</sup> The court of appeals first determined that the appellant was a resident of Cuyahoga County.<sup>25</sup> The court then upheld the trial court's dismissal of the appeal, as the underlying statute trumped R.C. 119.12, and the appeal should have been brought in Cuyahoga County.<sup>26</sup>

The reasoning and holdings of Ohio case law dictate that if there is no statutory provision (like R.C. 124.34) authorizing an appeal of the administrative agency's decision to any court other than the Franklin County Court of Common Pleas, then the reasoning of *Pratt* and similar cases does not apply, and R.C. 119.12's default provisions control instead. In fact, the Supreme Court of Ohio has specifically distinguished *Pratt's* reasoning on that basis. In *Davis v. State Personnel Board of Review*, the Court considered the question of whether R.C. 119.12 allows two possible forums for an appeal.<sup>27</sup> The Court specifically considered whether a party can "choose" where to appeal under R.C. 119.12:

Appellee contends additionally that use of the phrase 'may appeal' in R.C. 124.34 demonstrates the General Assembly's intention to make the forum provisions of the two sections cumulative. We disagree. We observe that the phrase 'may appeal' also appears in both of the first two paragraphs of R.C. 119.12. The General Assembly was referring to the option of the aggrieved party to initiate an appeal, rather than implementing an option as to the proper forum for the appeal. ...

... If a dual right of appeal were allowed, there would be nothing preventing an appellant from filing more than one appeal from a determination of the State Personnel Board of Review. *This would be inappropriate forum-shopping, and would inevitably result in needless increase in the cases brought before this court. It is inconceivable that the General Assembly would have intended this result.*<sup>28</sup>

## Conclusion

The bottom line is this: To appeal an administrative decision to a court other than the Franklin County Court of Common Pleas, you must be able to point to a specific statutory provision that authorizes the filing of an appeal to a different forum. That exception can be found in either R.C. 119.12 itself (as is the case

in licensing decisions) or in the agency's underlying statute (as in *Pratt*). Counsel should take care to recognize this important distinction to avoid losing the right to seek appellate review of an adverse decision from an administrative agency. ■

## Endnotes

<sup>1</sup>R.C. Ann. 119.12 (emphasis added); I am using "home county" loosely. The statutory language can be tricky; counsel should read it carefully to avoid pitfalls. For example, R.C. 119.12 provides that an adversely affected party may appeal a license suspension decision in the licensee's home county. Note also that who appeals may affect the proper forum. See *Stover v. Board of County Comm'rs* (June 29, 1984), Preble App. No. CA83-10-025, 1984 Ohio App. LEXIS 10218, at \*5-6 (holding that liquor licensee could have appealed to his home county (*contra G & D, Inc. v. State Liquor Control Commission*, Crawford App. No. 3-02-04, 2002 Ohio 4407), but that the township trustee and county commissioners' boards could appeal only to Franklin County).

<sup>2</sup>See R.C. Ann. 4517.58.

<sup>3</sup>See R.C. Ann. 5717.04 ("The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate[d] or in which the taxpayer resides."); R.C. Ann. 4903.12. ("No court other than the supreme court shall have power to review, suspend, or delay any order made by the public utilities commission. ...")

<sup>4</sup>See *McVay v. Warren Cty Bd. of Comm'rs* (May 26, 1987), Warren App. No. CA86-11-072, 1987 WL 11594, at \*1.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>*Id.* at \*4.

<sup>8</sup>*Id.*

<sup>9</sup>See *Turner-Brannock v. Ohio Bureau of Empl. Servs.* (1984), 15 Ohio App.3d 134, 472 N.E.2d 1131.

<sup>10</sup>*Id.* at 135, 472 N.E.2d at 1132.

<sup>11</sup>*Id.* at 135, 472 N.E.2d at 1132.

<sup>12</sup>*Id.* at 137, 472 N.E.2d at 1134 (internal citation omitted).

<sup>13</sup>See, e.g., *Groveport-Madison Local Educ. Ass'n v. State Employment Relations Bd.* (1992), 62 Ohio St.3d 501, 506, 584 N.E.2d 700, 704 ("[A] determination by the State Employment Relations Board that a strike is not authorized is a final adjudication order which may be appealed by a proper party to the Court of Common Pleas of Franklin County under R.C. 119.12."); *In re Removal of Zeigler* (1965), 1 Ohio App.2d 336, 339, 204 N.E.2d 692, 694 (stating that "an appeal from the board from a lay-off order is exclusively to the Court of Common Pleas of Franklin County").

<sup>14</sup>See *Brown v. Ohio State Dental Bd.* (July 29, 1988), Trumbull App. No. 3954, 1988 Ohio App. LEXIS 3059, at \*1-2.

<sup>15</sup>*Id.* at \*3 (quotation and citation omitted).

<sup>16</sup>*Id.*

<sup>17</sup>*Id.* at \*4.

<sup>18</sup>See *Jackson v. State Bureau of Motor Vehicles* (June 30, 1989), Butler App. No. CA88-10-148, 1989 Ohio App. LEXIS 2627, at \*1-2, \*4.

<sup>19</sup>*Id.* at \*4.

<sup>20</sup>*In re Termination of Employment of Pratt* (1974), 40 Ohio St.2d 107, 111, 321 N.E.2d 603, 606.

<sup>21</sup>*Id.* at 606-607, 40 Ohio St.2d at 111.

<sup>22</sup>*Id.*

<sup>23</sup>*Richardson v. Ohio Dep't of Human Servs.* (1991), Franklin App. No. 91AP-148, 1991 Ohio App. LEXIS 2439, at \*2.

<sup>24</sup>*Id.*

<sup>25</sup>*Id.* at \*3-4.

<sup>26</sup>*Id.*

<sup>27</sup>See *Davis v. State Personnel Bd. of Review* (1980), 64 Ohio St.2d 102, 413 N.E.2d 816.

<sup>28</sup>*Id.* at 818-19, 64 Ohio St.2d at 104, 106, 413 N.E.2d 816, at 818-19 (internal citation omitted) (emphasis added).

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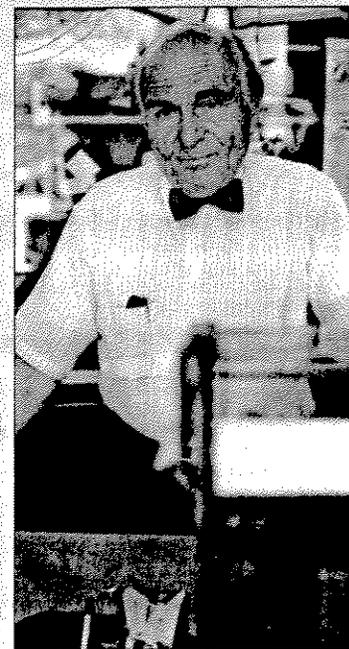
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