



PAVAN V. PARIKH

Hamilton County Clerk of Courts

The History of the Hamilton County Clerk of Courts' Bailiff Division, Part Two

Written by Jason Alexander, Director of Central Services Division, Hamilton County Clerk of Courts

Of all of Ohio's 88 counties, Hamilton County is the only county in which a "Bailiff Division" is under the Clerk of Courts. In July of 2023, I was tasked with researching how and when our "Bailiff Division" came to be and namely, how it came to be under the jurisdiction of our office.

For a full description of the function and office of a "Bailiff," please read the previous paper: "The History of the Office of the Criminal Bailiff-Part One."

To give context to the origin of the Clerk of Courts Bailiff Division, it's important to explain Hamilton County Municipal Court's origins, when it was in fact not a county court at all, but a city court. The predecessor to our current "Hamilton County Municipal Court" was that of the "Municipal Court of Cincinnati." The creation of the "Municipal Court of Cincinnati" was the result of a special act passed by the Ohio Legislature on August 2, 1913, thereby abolishing the "Police Court of Cincinnati." Along with Cincinnati, this same act also established a Municipal Court in the municipalities of Columbus, Dayton, Hamilton, and Youngstown. Also included in this act was a provision providing for various court staff, including a "Bailiff" and "Deputy Bailiff," as well as "Deputy Clerks." Being that this new court had jurisdiction in both criminal and civil matters, concerning the bailiffs of the court, this led to the creation of a "Criminal Branch" and a "Civil Branch" of bailiffs. Today, these "Branches" are known as "Divisions."

After the creation of the new Municipal Court, there was to be a "Clerk" of this new court, which was to be an elected position. In December of 1913, it was reported that then, August Kirbert was the Clerk-elect of the new court when an article was published about Kirbert appointing a man named George W. Tibbles, a popular Magistrate, as the "Bailiff" of the Municipal Court of Cincinnati. In today's terms, Tibbles would have held the position of "Chief Bailiff." For our purposes, we will refer to the person in charge of the bailiff division as "chief bailiff" and his deputies as "deputy bailiffs."

The same article provided more detailed information regarding the function of the court, such as it would have a clerical staff of about 27, that the criminal branch would operate in what was now the former Police Court quarters, and that Judge Fricke, former Judge of the now defunct Police Court, would be the one presiding over the new Municipal Court. The civil court department were to occupy the rooms currently in the possession of the Board of Elections. The "chief bailiff" and his force would occupy the rooms which were used by John Calahan when he was Clerk of the Police Court. It also detailed that not only would the new Municipal Court of Cincinnati begin its first session on January 1, 1914, this new court entirely abolished and replaced the Justices of the

Peace within the City of Cincinnati, with the exception of Magistrate Michael Dempsey, who still had two years left of service.

On July 2, 1916, due to the resignation of a deputy bailiff named William Kohlhoff, it was reported that a man by the name of Julian Mund was appointed as a deputy bailiff in the “Civil Division.” This is the first known instance of the term “Civil Division” being used, rather than “Civil Branch.” This was interesting to us as these are the terms that we use for our bailiffs today. In the following years, both terms appear to have been used interchangeably. On November 3, 1919, an interesting, but macabre article was published in the Cincinnati *Commercial Gazette*, the title was “August Mougey is Victim of Ptomaine Poisoning.” It turns out that August Mougey was a Deputy Bailiff in the Civil Branch of the court, when at the age of 68, he succumbed to ptomaine, or “food” poisoning.

Nothing could be located or referenced about the bailiffs for about four years, until an article titled, “Court Removal Hangs Fire” is published in the *Cincinnati Enquirer* on July 19, 1923. It detailed a summit that was held between various city officials, including Judge Samuel Bell of the Municipal Court, together with the County Commissioners and other county officials. The purpose of this meeting was to propose the removal of the three civil division Municipal Courts from City Hall to the courthouse. Judge Bell was adamant, that to house the Clerk of that Court as well as the bailiffs, along with the actual courtrooms, not less than five rooms would be needed. The Commissioners were equally adamant in their position, declaring that it would be impossible to make available more than three rooms, citing the only rooms available would be one of the Superior Court courtrooms, the old Insolvency Court courtroom, and the extra Court of Common Pleas courtroom which had never been used. Adding further divisiveness to this was the city reportedly declaring that they were not in any position to provide any considerable sum of money for use of space in the courthouse. The point was also made that since the Municipal Court of Cincinnati Judges, along with others seek to move these courts from the confines of City Hall and into the courthouse, it was suggested that if this were to happen, the city should immediately dispense with the expense of having a Clerk of the Municipal Court and the City Sheriff’s Office, and conduct all of the court’s work directly through the County Clerk’s Office and the Office of the County Sheriff.

In November of the same year, an agreement was made and the details ironed out to make this move possible. Some of the details in how this was achieved mention that what would be the principal courtroom for the civil division of the court, was converting the office of County Coroner D. C. Handley, where he performed inquests. A portion of the adjoining room was converted into a Judges’ consultation room, which was used by County Auditor William F. Hess as a delinquent tax department.

On April 17, 1925, the Ohio General Assembly passed a law that was to take effect the following year. The law would make the Clerk of Court of the Hamilton County Court of Common Pleas, also the Clerk of the Municipal Court of Cincinnati. So, instead of just being the “Clerk” of one singular court, they would now be, as it says in the name, the “Clerk of Courts”, what we refer to as a “dual” Clerk. The dramatic and inherent change in this law is what would place the bailiffs currently under the authority, employ, and appointment of the Clerk of the Municipal Court, a city official, under the direct jurisdiction of the now County Clerk of Courts. When this act took effect on January 1, 1926, it immediately made then Clerk, Frank Lewis, already Clerk of the Court of Common Pleas, the Clerk of the Municipal Court of Cincinnati. It gave him the appointing authority over the Deputy Clerks of Municipal Court, as well as the Deputy Bailiffs of both the Civil and

Criminal Branches. This was the simple answer to the question that was posed to me months prior and that many have wondered throughout the years, “How did the Hamilton County Clerk of Courts end up with a Bailiff Division?”

Knowing that this law was due to go into effect in 1926, this change started to receive more press in December of 1925. A *Cincinnati Enquirer* article titled, “Efficiency is to Be Increased” reported on the fact that Louis Huwe, Clerk of Court for the Municipal Court of Cincinnati was soon to be out of a job, and now, Clerk of “Courts” Frank Lewis’ first official act, after the passage of this legislation was to appoint former Municipal Court Clerk, Louis J. Huwe as his Assistant Clerk, in charge of Municipal Court. Huwe, admitting that the County Clerk of Court Office had performed more admirably and efficiently in the past than his former office, promised to increase the efficiency of the office until it is “on a par with that of the office of the Clerk of the Court of Common Pleas.”

As in many times reflected in history, when there is change, there is controversy, and this time would be no different. Again, anticipating the change in the law, another article was published in December. The article, “Will Continue to Use Bailiffs for Summons” published on December 10, 1925, referred to the “Warrington-Upson report.” In this report, it advised that Municipal Court processes should be served by registered mail instead of by bailiffs, but that the incoming city administration would not abide by this advisement.

This consternation was apparently born out of inefficient results in using the bailiffs to serve the court summons. A meeting consisting of the Provisional Finance Committee of the new City Council along with the City Auditor, as well as Common Pleas Clerk Frank Lewis and Municipal Court Clerk Louis Huwe concluded that the bailiff’s service of these summons had improved, and that regular police could not be used to serve court papers. Both Clerks contended that for efficiency to increase, the proper action would be to hire no less than two additional deputy bailiffs. In another endorsement for the well-oiled machine of “Hamilton County” Clerk of Courts Frank Lewis’ office, Councilman-Elect Charles O. Rose testified to the good service given by Lewis in the county courts, stating “if this were extended to the Municipal Courts, there would be no occasion for complaint.”

For about the next three years or so, all is relatively quiet concerning the Bailiffs Division. This changes on March 7, 1929, with a *Cincinnati Enquirer* article titled, “Power is Unlimited.” The focal point of this article was the fact that although these employees performed services for the City of Cincinnati and were paid out of the city treasury as well, they were appointed by a county official, specifically, Hamilton County Clerk of Courts Frank Lewis. Cincinnati Mayor, Murray Seasongood’s contention was the city had to find pay for these employees, but there was no limit in terms of how many of these employees the Clerk of Courts might appoint to serve in the “Municipal Court of Cincinnati.” This same article also raised the issue of civil service, stating that “the Civil Service Commission has recently placed these officials under civil service without any difficulty, and is fully prepared with eligible lists.” Apparently, councilmen Martin Daly and W.M. Yeatman voted against the civil service resolution citing that since the Clerk of Courts is elected by the people and responsible to the people, he should have the right to select his own subordinates without any civil service constraints.

This was just a prelude to the confusion and power struggles that would soon ensue. As if having employees that are now appointed by a county official performing services for a city court

and being paid out of the city treasury wasn't enough, now add into the mix that the city had just successfully classified these employees as civil service. This of course did not sit well with Clerk Lewis and created the catalyst for what was known as the "Schuessler Bill." This bill, through an act of the State Legislature, sought to cement into law, the removal of the Municipal Court of Cincinnati employees from classified service. On March 13, 1929, in a *Cincinnati Enquirer* article titled, "Call Schuessler Bill Vicious Politics," the Cincinnati Association urged the Governor to oppose the act, saying that they feared that if passed, it would increase the opportunity of using the Municipal Court for political purposes.

To the dissatisfaction of City of Cincinnati officials, this law did in fact pass. The law's passage added insult to injury as not only did these employees lose their civil service protection, the same recently passed law also now set a new minimum-mandatory wage, something city officials had to pay from their purse and not the county's. The City of Cincinnati's only recourse at this point was to litigate the matter, which it did initially in the Court of Common Pleas. Court of Common Pleas Judge Charles S. Bell held that the "Schuessler Bill" was constitutional. The city then moved onto the Court of Appeals and requested an injunction to prevent the payment of the increased salaries of both the deputy clerks and deputy bailiffs. The Court of Appeals never directly rendered an opinion regarding the constitutionality of the passed law, stating that the constitutionality of the law was never raised in the pleadings, they chose to simply deny the city's request for an injunction and dismiss the City of Cincinnati's petition.

Two times, once in 1935, and once in 1937, there would be talk about abolishing the "Municipal Court of Cincinnati" along with all of the Justice of the Peace and Mayors Courts and replacing it with one, unified, Hamilton County Municipal Court. Sponsored by Ohio Assemblyman Lawrence A. Kane from Hamilton County, his proposal called for this Municipal Court to be inferior only to that of the Court of Appeals and the Supreme Court. The new court would consist of eight judges, with their jurisdiction over misdemeanors or violations of all ordinances and in the conduct of preliminary hearings in felony proceedings. Their civil jurisdiction would be over cases below \$2,000.00. With Kane's 1935 proposal going nowhere, a state senator by the name of Edward N. Waldvogel would try something similar in 1937. The difference this time is that he had the backing of the Cincinnati Bar Association and the Lawyers Club. This piece of legislation abolishing the Municipal Court of Cincinnati would also fail.

In 1938, the "Public Employees Retirement System" (PERS) made a drastic change. Prior to 1938, the only employees that were allowed to pay into the PERS system were state employees, this changed in 1938 as membership was opened up to include all state, county, municipal, health department, and conservancy district employees. This fundamental change raised a very interesting question for the deputy clerks and deputy bailiffs who were performing functions for the Municipal Court of Cincinnati, but still paid from the city treasury, which retirement system do they now belong to?

On June 23, 1938 the *Cincinnati Enquirer* published an article titled, "Clerk Seeks Opinion." In the article, it is noted that in May of the same year, the Ohio Attorney General rendered an opinion on this very topic, holding that if a municipal employee is entitled to membership in the city's system, "he cannot come under the provisions of the state system, and is not entitled to membership in that system". The article details how Clerk of Courts, Elmer F. Hunsicker still sought a formal opinion from Hamilton County Prosecuting Attorney, Dudley Miller Outcalt.

On June 28th, Prosecutor Outcalt issued his formal opinion in this matter to Clerk Hunsicker. His opinion held that “Municipal Court Deputy Clerks must be included in the city retirement system.” In greater detail, he stated that if his opinion was correct in that the men were entitled to be under the city system, they could not be eligible to membership in the state system. In the same opinion, however, he also stated that on the other hand, if they were not eligible to be included in the city system, they must become members of the state system, unless specifically exempted. Interestingly though, the opinion also stated that both Deputy Clerks and Deputy Bailiffs were employees of the city although appointed by the Clerk of Courts of Hamilton County and additionally, that Cincinnati City Council had recently passed an ordinance authorizing Municipal Court employees membership into the city retirement system.

In 1953, the bailiffs being under Hamilton County Clerk of Courts was further codified by statute “1901.32 (1611). Bailiffs.”, which reads: “the bailiff and all deputy bailiffs of the Cincinnati municipal court shall be appointed by the clerk,” and that they were still to be paid out of the city treasury.

The year 1964 was very interesting and pivotal for our Bailiffs. On Thursday, January 2, 1964, an article titled, “Bailiffs To Be Armed To Ward Off Assaults” was printed. It detailed that a Municipal Court Deputy Bailiff, attempting to execute a writ of replevin to repossess furniture at 1961 Kinney Avenue was shot twice and also whipped with the same weapon. The individual who committed the assault also beat his estranged wife before fleeing the scene. On Friday, January 4, 1964, this act of violence resulted in Clerk of Courts Robert Jennings deciding to arm his 10 bailiffs. In preparation for this, Clerk Jennings worked with Cincinnati Chief of Police Stanley Schrotel and Captain Robert Roncker in setting up a special training course on carrying pistols, arrest procedures, and practice in search and seizure. It also made light of the fact that violence against Clerk Jennings’ bailiffs was nothing new as shortly after he took office in 1961, one of his bailiffs was beaten. This resulted in Jennings having his bailiffs commissioned as special police officers, but until 1964, they never carried firearms, although their commissions as special police officers in 1961 entitled them to be able to do so.

In November of 1967, the voters of Hamilton County voted to merge the Cincinnati Municipal and Hamilton County Court systems. On January 1, 1968, the new court that was to commence was styled as the “Hamilton County Municipal Court,” the name that still stands today and, like the name states, no longer a city court, but a court with county-wide jurisdiction.

With all of the changes due to the merger of the courts, in 1973, the Ohio General Assembly amended the portion of the Ohio Revised Code concerning the Chief Bailiff and Deputy Bailiffs. In it, the language states that “The bailiff and all deputy bailiffs of the Cincinnati Municipal Court and of the Hamilton County Municipal Court shall be appointed by the clerk” and that “The Bailiff and deputy Bailiffs shall perform for the court services similar to those performed by the sheriff for the Court of Common Pleas, and shall perform such other duties as requested by rule of the court.”

Further cementing the above, in 1985 and 1986, the bill was amended and still maintained the language of both bailiff and deputy bailiffs of the Hamilton County Municipal Court being appointed by the clerk. As recent as 2018, the same Ohio Revised Code Statute still singles Hamilton County out by name stating that, “Except for the Hamilton County Municipal Court,” stating

further that, “The bailiff and all deputy bailiffs of the Hamilton County Municipal Court shall be appointed by the clerk.”

Throughout the years when talking about how unique our office was in the fact that we had a Bailiff Division, there was always a commonly held theory that although it was rare and somewhat unique, it wasn’t totally unique as many of us thought that the Cuyahoga County Clerk of Courts also had a Bailiff Division. In trying to parse this out, in July of 2023, I contacted someone in Cuyahoga County. The person that I spoke with from the Cleveland Municipal Court Bailiff Department stated that they never recall a time in which their bailiffs were under the Cuyahoga County Clerk of Courts’ Office. They made it known that their equivalent of Criminal Bailiffs are under the Cleveland Municipal Court and that their equivalent of our Civil Bailiffs were taken from the Cleveland Municipal Court and placed under the Housing Court and Housing Division when that was created.

In summary, I believe that we can still maintain the long-held belief, our office having a “Bailiff’s Division” is indeed, truly unique.

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