

CHAPTER ONE

OVERVIEW OF THE NEW JERSEY APPELLATE SYSTEM

1.1 INTRODUCTION

This chapter discusses the historical and structural background of the current system of New Jersey appellate courts.

1.2 HISTORICAL BACKGROUND

(a) Overview

New Jersey has had three constitutions: 1776, 1844, and 1947. All have provided for an appellate court structure. The Constitution of 1947 is in effect; it provides for both trial and appellate courts.

(b) Constitution of 1776

Under the Constitution of 1776, it was provided: “[t]hat the governor and [legislative] council (seven whereof shall be a quorum) be the court of appeals in the last resort in all causes of law as heretofore[.]” *N.J. Const.* (1776), § 9. A member of the council was elected from each county. *N.J. Const.* (1776), § 3. The governor was chosen by vote of the council and the general assembly. *N.J. Const.* (1776), § 7.

(c) Constitution of 1844

The Constitution of 1844 provided for three courts exercising appellate jurisdiction: the Court of Errors and Appeals, which was the court of last resort, *N.J. Const.* (1844), art. VI, § 1, ¶ 1; the Prerogative Court, which heard appeals from the Orphans’ Court, *N.J. Const.* (1844), art. VI, § 4, ¶ 3; and the Supreme Court, which reviewed final judgments of the circuit courts for each county, *N.J. Const.* (1844), art. VI, § 5, ¶ 3. The Supreme Court also exercised certain original jurisdiction. The judges of the Court of Errors and Appeals were the chancellor, the justices of the Supreme Court, and six judges, specially appointed, who did not serve on any other court. *N.J. Const.* (1844), art. VI, § 2, ¶ 1. The six judges so appointed were not required to be

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attorneys. Under the Constitution of 1844, the Supreme Court consisted of a chief justice and four associate justices. The Legislature, however, could increase or decrease the number of associate justices, except that at no time could their number be decreased to less than two. *N.J. Const* (1844), art. VI, § 5, ¶ 1. At the time that the Supreme Court under the 1844 Constitution was replaced by the Supreme Court created by the Constitution of 1947, there were eight associate justices. *R.S. 2:4-1*. The increases in the size of the Supreme Court automatically increased the size of the Court of Errors and Appeals.

Until the adoption of the Constitution of 1947, New Jersey had separate law and equity courts. On the equity side, the trial court was the Court of Chancery, which consisted of a chancellor. *N.J. Const.* (1844), art. VI, § 4, ¶ 1. The law courts were the Supreme Court and the circuit courts. *N.J. Const.* (1844), art. VI, § 5, ¶ 2.

The Court of Errors and Appeals had final jurisdiction in all cases whether in law or in equity. *N.J. Const.* (1844), art. VI, § 1. Appeals could be taken to that court from the Court of Chancery, the Supreme Court, and in some cases from other trial courts. *N.J. Const.* (1844), art. VI, § 2, ¶ 5, 6; § 5, ¶ 3. When the Court of Errors and Appeals heard an appeal from an order or decree of the Court of Chancery, the chancellor was not permitted to participate in the appeal. *N.J. Const.* (1844), art. VI, § 2, ¶ 5. Justices of the Supreme Court were authorized to sit in the lower trial courts. *R.S. 2:5-1; R.S. 2:11-3; R.S. 2:12- 1*. Thus, the justices of the Supreme Court had the unusual function of sitting in three different levels of the judiciary: the court of last resort, the intermediate appellate court, and the trial courts. No justice who had decided a case in the Supreme Court or in a circuit court could participate in hearing the case in the Court of Errors and Appeals. *N.J. Const.* (1844), art. VI, § 2, ¶ 6.

1.3 STRUCTURE OF THE APPELLATE COURTS OF NEW JERSEY UNDER THE CONSTITUTION OF 1947

(a) Overview

The court system in New Jersey is in large part provided for by article VI of the Constitution of 1947. It creates two constitutional courts, the Supreme Court and the Superior Court, *N.J. Const.* (1947), art. VI, § 1 (as amended 1978), and permits other courts of limited jurisdiction. *Id.* The courts of limited jurisdiction and their jurisdiction may be established, altered, or abolished by the legislature. *Id.* Until 1978 there was a third constitutional court in New Jersey, a county court in each county. By constitutional amendment adopted that year, however, the county courts were abolished and, in effect, merged into the Superior Court. The judges of the county courts became judges of the Superior Court, and cases pending in the county courts were transferred to the Superior Court. *N.J. Const.* (1947), art. XI, § 6.

(b) The Supreme Court of New Jersey: Appellate Jurisdiction

The New Jersey Supreme Court is the court of last resort in all cases. *N.J. Const.* (1947), art. VI § 2, ¶ 2. It consists of a Chief Justice and six Associate Justices, all nominated by the Governor with the advice and consent of the Senate. *N.J. Const.* (1947), art. VI, § 2, ¶ 1; § 6, ¶ 1. The Justices are appointed for initial terms of seven years; upon reappointment they may hold their office subject to good behavior until mandatory retirement at the age of 70 years. *N.J. Const.* (1947), art. VI, § 6, ¶ 3.

Five members of the court constitute a quorum. *N.J. Const.* (1947), art. VI § 2, ¶ 1; *R.* 2:13-2(a). When necessary, the Chief Justice (or in the absence of the Chief Justice, the Presiding Justice) may assign the senior judge or judges of the Superior Court, Appellate Division as well as retired Justices of the Supreme Court, to serve temporarily in the Supreme Court. *R.* 2:13-2(a). This provision may be used when necessary to obtain a quorum and has also been invoked during a period of a vacancy on the Court so that the Court has a full complement of seven Justices.