

Ohio case law summaries from Aug. 1, 2024 – Nov. 30, 2024

The following are selected summaries of cases decided by Ohio courts between Aug. 1, 2024 – Nov. 30, 2024. To view all of the decisions issued in this time period or to read the selected cases in their entirety, please visit ohiobar.org/greenbook where you can search by case name or view by date.

Administrative and Regulatory

Appeal/Agency's disposition/ Jurisdiction. [Kyser v. Summit Cty. Children Servs. | 2024-Ohio-2898 | Supreme Court of Ohio | 08/07/2024](#)

After children services agency determined that an allegation that appellant had abused her foster child was substantiated, prompting appellant to appeal to common pleas court under R.C. 2506.01, the court lacked jurisdiction to rule on the appeal since a public children services agency's disposition on a child abuse allegation, R.C. 2151.421, is not appealable under R.C. 2506.01 because the agency's disposition does not determine a person's rights, duties, privileges, benefits, or legal relationships, R.C. 2506.01(C); appellant suffered no other consequences from the allegation-substantiation finding than that it was noted in the child welfare information system, so that finding did not determine any of the R.C. 2506.01 criteria for filing an appeal.

Appeal/Procedural issues/Quasi-judicial/Dissent. [Harmon v. Cincinnati | 2024-Ohio-2889 | Supreme Court of Ohio | 08/06/2024](#) In employees' administrative appeals to trial court from civil service commission's denial of their requests for a hearing on their appeals of city's temporary emergency leave program, implemented during the COVID-19 pandemic, trial court did not err in reversing commission's denial of hearing requests since employees' notices of appeal specifically stated that they were appealing the procedural aspects of the emergency leaves, and the parties' collective bargaining agreement specifically preserves an employee's right to appeal the procedural aspects of a layoff or displacement to the civil service commission, so employees' appeals should have been set for formal hearing, commission's decision was an adjudication from a quasi-

judicial proceeding, and appeal to trial court was proper under R.C. 2506.01; there is a dissenting opinion.

Banking and Commercial

Conversion/Security interest. [First Fin. Bank v. Tailored Fund Cap, L.L.C. | 2024-Ohio-4982 | 1st Appellate District | 10/16/2024](#) In bank's conversion action seeking to recover payments made to third-party merchant cash advance company from deposit account maintained at the bank by companies that had defaulted on loans, and evidence showed that person controlling the companies was charged with a check-kiting scheme, trial court erred in granting summary judgment to bank since, under R.C. 1309.332(B), recovery for conversion was barred because the funds were stripped of bank's perfected security interest once the funds were transferred from the deposit account to non-colluding third party-cash advance company, and where bank did not allege collusion, it could not prevail on its conversion claim.

Civil conspiracy/Fraud/Pleading/ Jurisdiction. [S&T Bank, Inc. v. Advance Merchant Servs. | 2024-Ohio-4757 | 1st Appellate District | 10/01/2024](#) In plaintiff-bank's civil conspiracy and fraud action against defendants-interrelated merchant cash advance entities, alleging that they knowingly accepted funds fraudulently obtained through a client's check-kiting scheme and continued to provide financing, the trial court erred in granting the first group of defendants' motions to dismiss for failure to state a claim under Civ.R. 12(B)(6) since the complaint sufficiently alleged that the first group of defendants had full access to the client's financial operations and transactions and related information and continued to offer financing despite their knowledge; however, as to a second

group of defendants, dismissal is affirmed due to the failure to allege sufficient facts specific to those defendants, and dismissal of a third group of defendants is affirmed for lack of personal jurisdiction under Civ.R. 12(B)(2) for insufficient contacts between those specific defendants and the forum state.

Cognovit note/Relief from judgment/ Amount owed. [Bruner Holdings, L.L.C. v. Sleeper | 2024-Ohio-2925 | 10th Appellate District | 08/01/2024](#) In plaintiff-bank's non-consumer cognovit action alleging that it was holder of loan documents executed by defendants-borrowers involved in construction project, resulting in judgment for plaintiff, trial court erred in granting defendants' Civ.R. 60(B) motions for relief from judgment where, even though defendants submitted sufficient evidence to demonstrate a meritorious defense regarding the amount owed, the court should have considered evidence regarding the amount defendants actually owed rather than finding that the loan documents were paid in full and vacating the entire judgment; as well, the trial court incorrectly determined that, based on its finding that defendants had paid off the loan documents, it lacked jurisdiction since the dispute involved the amount owed under the loan documents, so the court had subject matter jurisdiction to resolve that dispute.

Construction

Contract/Capacity to contract/ Arbitration. [KeyBank, N.A. v. David | 2024-Ohio-5333 | 7th Appellate District | 11/01/2024](#) In bank's foreclosure action against borrower, prompting borrower to file a third-party fraud and related claims complaint against contractor, alleging his lack of capacity to enter into the contract for home repairs, trial court erred in

Construction (Continued)

denying contractor's motion to compel arbitration on borrower's third-party claim where the claim for fraud against contractor did not preclude enforcement of the arbitration clause and required reference to and interpretation of the parties' contract, and borrower's claim challenging the existence of a contract based on lack of capacity is a threshold issue to be addressed prior to arbitration, so the case is remanded for trial court to decide this threshold issue before ordering arbitration.

Breach/Business purchase/Decision-making information. [MP Equip. Leasing, Inc. v. Pack | 2024-Ohio-5495 | 10th Appellate District | 11/21/2024](#) In plaintiff-equipment leasing company's breach of contract action against defendant-trucking company's new owner for failure to make payments on various lease and purchase obligations related to acquisition of trucking company, summary judgment in favor of plaintiff and dismissal of defendant's counterclaim for breach of agreement is reversed where defendant's affidavit showed that plaintiff had breached certain terms of the parties' agreement regarding information about a key employee whose resignation could cause significant harm to the trucking company's operations and business value, and although defendant's affidavit was based in part on plaintiff's admissions, the statements were not hearsay under Evid.R. 801(D)(2), Civ.R. 56(C).

Contracts

Attorney fees/Settlement/Quantum meruit. [Leeseberg & Valentine, L.P.A. v. Willman | 2024-Ohio-4879 | 10th Appellate District | 10/08/2024](#) In law firm's quantum meruit claim against former clients who had hired firm on a contingent fee basis to litigate a claim alleging damage to property where firm later withdrew from representation, citing just cause due to the clients' insistence on pursuing claims against their advice, and eventually the clients reached a settlement agreement in the underlying action, trial court's award to firm of one-third of the settlement amount is affirmed since the firm did substantial work leading to a

proposed settlement, the firm was entitled to compensation for that work, and the clients' conduct amounted to a constructive termination of the attorney-client relationship, justifying the firm's withdrawal.

Account/Summary judgment/Data breach. [Credit Corp. Solutions, Inc. v. Rivas | 2024-Ohio-4772 | 10th Appellate District | 10/01/2024](#) In action to collect on an account and for unjust enrichment by plaintiff-assignee of debit card account, alleging defendant-cardholder's nonpayment on account, summary judgment in favor of plaintiff was error where defendant provided evidence that she was the victim of a data breach and had reported identity theft and fraudulent activity on her debit card, and summary judgment was granted to plaintiff prior to the time allowed for defendant to respond, Civ.R. 6(C).

Breach/Court costs/Summary judgment. [O'Brien & Assocs. Co., LPA v. PLS Fin. Solutions of Ohio | 2024-Ohio-3170 | 10th Appellate District | 08/20/2024](#) In law firm's breach of contract action against client seeking unpaid court costs advanced by the firm under contingency fee agreement with client's predecessor, summary judgment in favor of client was error where supposed written agreement never surfaced and the client argued that the course of conduct was undisputed evidence that the law firm could not recover court costs, but there were genuine issues of material fact whether the contingent fee agreement required reimbursement of court costs, given conflicting inferences that could be drawn from the evidence; dismissal of law firm's separate tortious interference with a contract claim is affirmed as there was no evidence of malice or unjustified interference.

Breach/Recovery. [Plus Mgt. Servs., Inc. v. Liberty Healthcare Corp. | 2024-Ohio-3127 | 2nd Appellate District | 08/16/2024](#) In case in which defendant entered into agreement with plaintiff to purchase nursing home facility from defendant and entered into another agreement to operate the facility until the sale was finalized where the operating agreement limited defendant's investment in the facility, which defendant exceeded

and then sought to recoup from post-sale accounts receivable, prompting plaintiff to file this action for breach of contract and related claims, trial court did not err in awarding the recoupment amount of money in question to plaintiff as part of its award for breach of the parties' operating agreement, but the court did err in permitting multiple recoveries of the recouped amount of money through summary judgment and two jury verdicts, rather than making one award of the recoupment amount to plaintiff; also, plaintiff was not entitled to pre-judgment interest due to plaintiff's failure to file the motion within the required time frame, Civ.R. 59(B).

Breach/Restrictions/Corporate entity. [American Eagle Invests., Inc. v. Marco's Franchising, L.L.C. | 2024-Ohio-3038 | 6th Appellate District | 08/09/2024](#) In plaintiff-franchise developer's action for breach of an Area Representative Agreement (ARA) against defendant-franchisor of pizza restaurants in response to defendant's sending of notice of default to plaintiff and ending the ARA with plaintiff after defendant learned that plaintiff's representatives/owners had also entered into an ARA with a separate company, trial court erred in granting summary judgment to defendant on reasoning that the ARA required plaintiff to devote full time to defendant's business; the ARA provision requiring plaintiff to confine its activities to defendant's business applied only to plaintiff's corporate entity and not to its individual representatives/owners, so the representatives/owners' involvement in a separate business did not violate the ARA.

Breach/Judgment on pleadings/Analysis. [Brock v. Cobblestone Park Dev. Group, L.L.C. | 2024-Ohio-2949 | 9th Appellate District | 08/05/2024](#) In plaintiffs-homeowners' breach of contract and related claims action against defendants-developer and homeowners association (HOA) board members for wrongfully maintaining control of association and for financial improprieties, trial court erred in granting defendants' Civ.R. 12(C) motion for judgment on the pleadings where the judgment was premised on implications of the parties' settlement term sheet and went well beyond allegations in the pleadings, and the

court did not provide discernible analysis as to plaintiffs' failure to include the HOA as a party at the time the complaint was filed.

Corporate and Business

Shareholder agreement/Breach/Prejudgment interest. [Weckel v. Cole + Russell Architects, Inc. | 2024-Ohio-5111 | 1st Appellate District | 10/25/2024](#) In shareholder's breach of shareholder agreement action against former employer seeking a declaration as to whether he could redeem shares under terms of shareholder agreement, resulting in judgment for shareholder, the trial court erred in its award of prejudgment interest on the judgment where there was no evidence of the date that employer received the appraisal report which triggered its initial payment date and its obligation to pay, and the calculation of prejudgment interest based on rate-determination date was contrary to the plain language of the shareholder agreement and must be based on the initial payment date.

Criminal

Search/Federal warrants/Validity. [State v. Hana | 2024-Ohio-5548 | 12th Appellate District | 11/25/2024](#) In a conviction of trafficking in marijuana, R.C. 2925.03(A)(2), the trial court did not err by denying defendant's motion to suppress evidence obtained through federal search warrants, with the court of appeals rejecting defendant's argument that the federal warrants, issued under 28 U.S.C. 636(a)(1) and Fed.R.Crim.P. 41(b), and signed by a federal magistrate, were invalid because they did not comply with Ohio law, and the court of appeals holding that evidence obtained under valid federal warrants to be admissible in state court, even if the warrants would not have complied with state standards, with the court also finding that the warrants were supported by probable cause and sufficiently particular in targeting specific evidence related to defendant's criminal activities; also discussed, Fed.R.Crim.P. 41(a)(1) is inapplicable to the warrants issued in this case.

Plea/Crim.R. 11/Constitutional rights/Charges and penalties. [State v. Spivey | 2024-Ohio-5479 | 8th Appellate District | 11/21/2024](#) In a conviction in four cases by guilty plea to multiple felony offenses, including drug, weapon, felonious assault, kidnapping and domestic violence offenses, the trial court failed to comply with Crim.R. 11(C)(2)(a), (C)(2)(c), during the plea colloquy by not fully advising defendant of his constitutional rights and by failing to ensure he understood the charges and penalties involved since the trial court provided incorrect information about the charges and penalties, failed to explain and verify defendant's understanding of his constitutional rights, and mishandled the plea agreement process, thus rendering defendant's plea involuntary; convictions vacated, original indictments reinstated, and case remanded for new proceedings.

Evidence/Prior recorded statements/Evid.R. 803(4)/Confrontation. [State v. Mignano | 2024-Ohio-5463 | 9th Appellate District | 11/20/2024](#) In a conviction by a no contest plea to, inter alia, six counts of rape of a 12 year-old female, who died after defendant's indictment but before trial, but the minor had been interviewed at a children's care center, the trial court's admission of the interview did not violate the Confrontation Clause since the statements were non-testimonial under the Confrontation Clause because the primary purpose was for medical diagnosis and treatment, Evid.R. 803(4), the interview was conducted in a neutral, open-ended manner by a social worker, and at trial, defendant failed to challenge as hearsay any specific individual statements contained in the diagnostic interview, Arnold; dissenting opinion.

Sentencing/Reagan Tokes Law. [State v. Croley | 2024-Ohio-5448 | 7th Appellate District | 11/18/2024](#) In a conviction by guilty plea to, inter alia, felonious assault, R.C. 2903.11(A)(1), a second-degree felony, the trial court erred in calculating the sentence for felonious assault since, pursuant to the Reagan Tokes Law under R.C. 2929.144(B)(2), the maximum sentence should have been determined by adding 50% of the longest minimum term to the sum of all consecutive minimum terms that would have

resulted in a maximum sentence of 11 years, but the trial court incorrectly imposed a maximum prison term of 12 years; remanded for resentencing.

Sentencing/Restitution/Res judicata. [State v. Tyers | 2024-Ohio-5436 | 11th Appellate District | 11/18/2024](#) Following a conviction by plea of guilty to attempted vandalism, R.C. 2909.05 and 2923.02, the trial court erred by converting a criminal restitution amount to a civil judgment and awarding restitution of \$1,000 since the trial court lacked jurisdiction to do so because defendant had completed his community control with no probation violation having been filed, with the trial court losing the authority to make any orders on defendant in relation to the criminal offense for which he was sentenced, R.C. 2929.28 and Brasher.

Post-conviction relief/Plea/Speedy trial/Hearing. [State v. Harris | 2024-Ohio-5404 | 1st Appellate District | 11/15/2024](#) Following convictions by plea in consolidated cases of receiving stolen property in one case, of misuse of credit cards in a second case, and of identity fraud, forgery, and telecommunications fraud in a third case, with the trial court imposing the agreed four-year prison term, petitioner filed R.C. 2953.21 petitions for post-conviction relief, alleging ineffective assistance of counsel and due process violations relating to her guilty plea and trial proceedings, claiming counsel failed to investigate and assert speedy-trial claims under the Interstate Agreement on Detainers (IAD) Act, R.C. 2963.30, and the Sixth Amendment, and that the state suppressed evidence of her IAD demand, the court of appeals holds the trial court erred, in part, since although petitioner presented sufficient evidence to warrant an evidentiary hearing on her ineffective-assistance claims because her documentation demonstrated possible violations of her IAD and constitutional speedy-trial rights claims that defense counsel failed to raise, but the court of appeals held her due process claim lacked merit, finding no constitutional duty for the state to disclose IAD-related evidence under Brady; cause remanded for an evidentiary hearing on the ineffective-assistance claims.

Appeal/State/Leave to appeal/

Jurisdiction. [State v. Back | 2024-Ohio-5569 | 4th Appellate District | 11/15/2024](#) In consolidated appeals by the state of the sentencing of two defendants convicted by no contest pleas for menacing, with the state alleging violations of Marsy's Law (Ohio Const., Art. I, Sec.10a(A)), Crim.R. 32, and R.C. 2930, based on the trial court's not notifying the prosecution or victims of the sentencing hearing, the court of appeals dismissed the appeal for lack of jurisdiction because the state failed to request leave to appeal pursuant to R.C. 2945.67(A) for decisions outside the state's statutory right to appeal, including procedural matters involving misdemeanor sentencing, App.R. 5(C), Ndubueze.

Competency/Release/Least restrictive treatment.

[State v. Greer | 2024-Ohio-5396 | 10th Appellate District | 11/14/2024](#) In prosecution for felonious assault in which the trial court found defendant incompetent to stand trial and initially ordered defendant to undergo continuing evaluation and treatment at a behavioral healthcare facility and subsequently doctors at the facility disagreed about whether defendant's placement in the community was the least restrictive treatment setting available that was consistent with public safety and defendant's welfare, the trial court's order granting conditional release of defendant to a secure nursing home facility, rather than placement in the community, is reversed where, to the extent the trial court believed it was acting in a manner consistent with a single consensus recommendation, the court was mistaken, and the case is remanded for a rehearing to properly evaluate the evidence and clarify the conditions of release, R.C. 2945.39 and 2945.401.

Trial/Record/App.R. 9(A)(2).

[State v. Riddlebarger | 2024-Ohio-5356 | 9th Appellate District | 11/12/2024](#) In a bench conviction of domestic violence, the trial court erred by failing to provide an adequate trial record that impeded appellate review since critical portions of the trial were inaudible, preventing a transcript from being prepared since the court reporter confirmed that substantial

portions, including witness testimony, could not be accurately transcribed, and pursuant to App.R. 9(A)(2), the trial court is required to ensure a reliable recording of proceedings, Knapp, and since defendant was not at fault in preparing the record, a new trial was required, Jones.

Sentencing/Post-release control.

[State v. Henry | 2024-Ohio-5364 | 3rd Appellate District | 11/12/2024](#) In appeal of convictions by plea in two drug cases of four felony drug offenses, the trial court erred in the terms of post-release control that were imposed for defendant's felony drug offenses since under R.C. 1.58(B), he was entitled to the reduced post-release control periods established by amended R.C. 2967.28, effective before his 2024 sentencing, because R.C. 1.58(B) required imposing the amended, shorter post-release control terms since sentencing had not yet occurred when the amendment took effect, with the court of appeals rejecting the state's argument that defendant forfeited these benefits by absconding, finding no basis in law to deny them; remanded solely for resentencing on post-release control.

Plea/Motion to withdraw/Ineffective assistance.

[State v. Lockwood | 2024-Ohio-5370 | 11th Appellate District | 11/12/2024](#) In a conviction by plea of guilty to disseminating matter harmful to juveniles, the trial court's denial of a presentence Crim.R. 32.1 motion to withdraw plea was error since defendant's claim of ineffective assistance of counsel, citing limited consultation, lack of review of potential defenses, and then attorney's unwillingness to proceed to trial and encouraging defendant to hire new counsel if he desired to pursue a trial, presented substantial evidence that defendant did not want to plead guilty, including statements of innocence during the plea hearing, defense counsel at the time of plea defendant's hiring of new counsel soon after the plea, and lack of prejudice to the state, with the state also conceding error, Xie.

Discovery/Expert witness report/ Crim.R. 16(K)/Disclosure delay. [State v. Corrales-Baez | 2024-Ohio-5358 | 12th Appellate District | 11/12/2024](#) In a bench conviction of possessing a fentanyl-related compound, the court

of appeals reverses for failure of the state to comply with the 21-day period to disclose expert witness reports to defendant, and the state never made a showing of good cause for not inquiring about and requesting a drug analysis report until a month after the laboratory released it, and the state failed to timely disclose the report to defense counsel once it was obtained as required by Crim.R. 16(K), and since good cause was not shown, defendant was not required to show he was prejudiced; judgment reversed and cause remanded.

Trial/Judicial bias/Disqualification.

[State v. Elkins | 2024-Ohio-5351 | 6th Appellate District | 11/08/2024](#) In a conviction of felonious assault, the trial judge erred by not disqualifying himself when an officer, a family member of the trial court judge, testified for the state without the state obtaining a waiver of the conflict from the defendant, and the fact that defendant did not file a motion for disqualification is not dispositive since there was an "unconstitutional potential for bias," and there was no evidence defendant was aware of the relationship between the judge and the witness, the stepson of the judge, since defendant could not be expected to file an affidavit of disqualification of a relationship he was unaware of; remanded for a new trial.

Felony murder/Involuntary manslaughter/Failure to comply/ Sufficiency and weight of evidence.

[State v. Bissell | 2024-Ohio-5317 | 8th Appellate District | 11/07/2024](#) Bench conviction of, inter alia, felony murder for the death of a firefighter was not supported by sufficient evidence since the evidence did not support the mens rea of "knowingly" required for a felony murder conviction under R.C. 2903.02(B), with the court of appeals holding that defendant acted recklessly, not knowingly, by driving through a controlled accident scene and hitting and killing a firefighter, with the court of appeals modifying the verdict to involuntary manslaughter, R.C. 2903.04(A), with reckless assault as the predicate offense; conviction of failure to comply, R.C. 2921.331, was also reversed for insufficient evidence of a lawful order at an accident scene.

Sentencing/Restitution/Appeal by state/Leave to appeal. [State v. Allen | 2024-Ohio-5386 | 4th Appellate District | 11/07/2024](#) In a conviction of misdemeanor theft with defendant ordered to pay \$325 in restitution, the court of appeals denied the state's motion for leave to appeal the restitution order since the appellate court lacked jurisdiction because the state's argument that the trial court failed to order a restitution amount of the actual loss incurred by the victim and that the court failed to notify the victim and state of the sentencing hearing is without merit since the state's appeal involved a misdemeanor sentence and a restitution order, the order was not automatically appealable as of right and required the state to file a motion for leave that the state failed to make, R.C. 2945.67(A) and App.R. 5(C); also discussed, Marsy's Law.

Property maintenance violation/Speedy trial/Dissent. [Willowick Bldg. Dept. v. Getachew | 2024-Ohio-5259 | 11th Appellate District | 11/04/2024](#) Defendant's convictions for violating the city property maintenance code for failing to repair balcony guards and to remove accumulated rubbish are vacated where the trial court scheduled defendant's trial date beyond the statutory 90-day speedy trial limit, R.C. 2945.71(B)(2), and later refused to advance the trial date, citing jury unavailability, but trial court's setting of the trial date beyond the 90-day limit did not constitute a valid continuance under R.C. 2945.72(H); dissenting opinion argues that the trial court's later entry reaffirming the trial date functioned as a permissible continuance under the statute.

Ineffective assistance/Having weapons under disability based on fugitive status. [State v. Davis | 2024-Ohio-5275 | 5th Appellate District | 11/04/2024](#) In a conviction by plea of no contest for having weapons under disability based on fugitive status, R.C. 2903.13(A)(1), defense trial counsel was ineffective for failing to correctly advise defendant about the implications of a no-contest plea because the plea did not preserve his right to appeal the "fugitive from justice" designation under R.C. 2923.13(A)(1), and the court of appeals held that defendant did not meet the statutory criteria for "fugitive from justice" because he was not outside

the jurisdiction where his warrant was issued, and thus defendant's plea lacked informed consent, satisfying both prongs of Strickland for ineffective assistance; remanded to allow defendant to re-enter his plea.

Plea/Effect of Plea/ Crim.R. 11(E). [State v. Huffman | 2024-Ohio-5273 | 5th Appellate District | 11/04/2024](#) In a conviction by a plea of guilty to first degree misdemeanor criminal mischief, R.C. 2909.07, and a plea of no contest to second-degree misdemeanor attempted assault, R.C. 2903.13 and 2923.02, trial court failed to comply with Crim.R. 11(E) by not informing defendant of the effects of a guilty or no-contest plea for petty misdemeanors, Crim.R. 11(B)(1) and (B)(2), Jones, and trial court's complete failure to comply with Crim.R. 11(E) eliminated the need for defendant to show prejudice, Dangler, and defendant's silence did not constitute invited error; remanded to trial court for further proceedings.

Sentencing/Consecutive firearm specifications/Double jeopardy. [State v. Fleckenstein | 2024-Ohio-5247 | 9th Appellate District | 11/04/2024](#) In convictions of involuntary manslaughter and two counts of felony murder and imposition of sentence of 21 years to life in prison, including two consecutive three-year terms for firearm specifications related to the felony murder and involuntary manslaughter convictions, defendant's claim the trial court's imposition of a second consecutive, three-year prison term for a firearm specification violates the Double Jeopardy Clause is without merit since R.C. 2929.14(B)(1)(g) mandates separate prison terms for the two most serious firearm specifications in cases involving multiple felonies, requiring consecutive firearm specification terms even when underlying offenses merge for sentencing, and double jeopardy protections are not violated when the legislature specifically authorizes cumulative punishment, Bollar.

Sentencing/Community control violation/Term. [State v. Barry | 2024-Ohio-5267 | 11th Appellate District | 11/04/2024](#) Imposition of sentence for defendant's community control violation is reversed since the trial court lacked authority to impose a sentence after defendant's probation term expired where a probation

violation was alleged in early 2023, but a hearing was not held until 2024, after the probation term's expiration, and issuing a warrant did not extend the term under R.C. 2951.07, which mandates that community control sanctions end when the term expires unless extended for specified reasons, such as absconding.

Sentencing/Jail-time credit/Appeal/Mootness. [State v. Neal | 2024-Ohio-5305 | 6th Appellate District | 11/01/2024](#) In a conviction by plea of guilty following a negotiated plea agreement to weapon and OVI offenses and appellant was sentenced to community control, with a six-month commitment to a correctional treatment facility (CTF), and after release, he violated community control twice, and he was again committed to a five-year term at a CTF, but following another violation, community control was terminated and a 180-day term of imprisonment imposed, and appellant subsequently filed a pro se motion disputing the amount of jail-time credit awarded, that was denied, court of appeals dismisses appeal as moot since defendant had served the sentence imposed and he was released, and thus he has not suffered any collateral disability or loss of rights that could be addressed on appeal.

Sentencing/Community control violation/Allocution. [State v. Hargrove | 2024-Ohio-5236 | 2nd Appellate District | 11/01/2024](#) In a conviction by plea to receiving stolen property, imposition and subsequent violations of community control, and imposition of a prison sentence of 18 months and defendant was ordered to pay restitution and court costs, trial court erred by failing to provide him allocution since a community control revocation hearing is a sentencing hearing, R.C. 2929.19(A) and Crim.R. 32(A)(1), Jackson, and the error was not harmless, even if defendant gave his reasoning for non-compliance during the hearing since he focused on his decision to leave the program rather than on potential sentencing mitigation, Champeau.

Sentencing/Consecutive/Review. [State v. Glover | 2024-Ohio-5195 | Supreme Court of Ohio | 11/01/2024](#) In defendant's convictions of armed robberies and kidnappings in which

Criminal (Continued)

the trial court imposed consecutive sentences with an aggregate term of 60 years, based on findings under R.C. 2929.14(C)(4), the court of appeals' judgment reducing the consecutive sentences to 25 years, finding the sentence disproportionate and unsupported by the record by focusing on the aggregate sentence length rather than each sentencing factor individually, is reversed since appellate review of consecutive sentences under R.C. 2953.08(G)(2) is limited to determining whether the record clearly and convincingly does not support the trial court's findings or the sentence is contrary to law, and the original sentence is reinstated; the proportionality of consecutive sentences is to be evaluated based on statutory criteria without substituting the appellate court's view of an appropriate sentence length.

Sentencing/Community control/Termination. [State v. Guadagno | 2024-Ohio-5235 | 2nd Appellate District | 11/01/2024](#) Termination of defendant's community control sanctions for improperly discharging a firearm and related charges less than a month after sentencing, citing R.C. 2929.15(C), on reasoning that further supervision would not benefit defendant, despite his not fulfilling all conditions, is reversed because R.C. 2929.15(C) allows a court to reduce or terminate community control only when the offender has completed conditions for a "significant period of time" in an "exemplary manner;" defendant's short time under supervision did not satisfy these statutory requirements, and the trial court lacked authority to terminate community control prematurely.

Sentencing/Community control/Violation. [State v. Griffon | 2024-Ohio-5212 | 8th Appellate District | 10/31/2024](#) In a conviction by plea of guilty to breaking and entering and criminal damaging, imposition of two-year community control, and trial court's subsequent finding that defendant violated community control by obscuring a condominium's video camera and testing positive for amphetamines, trial court erred by finding a violation of community control on the basis of alleged

violations of a protection order that had been granted in another proceeding, revoking community control, and sentencing defendant to one year in prison where court of appeals found due process violations and insufficient evidence of a violation since state failed to prove that the alleged obstruction of the camera was a community control violation, nor was the positive drug test alone, without the trial court making the required findings on the record pursuant to R.C. 2929.13(E)(2) on the record; sentence vacated and cause remanded for further proceedings.

Verdict form/Elevated offense/Sufficiency/Plain error. [State v. Sims | 2024-Ohio-5175 | Supreme Court of Ohio | 10/31/2024](#) The judgment of the First District Court of Appeals is reversed, and the cause is remanded to that court for application of State v. Mays, 2024-Ohio-4616; the dissent in Mays is noted; Mays involves the following issues: Defendant's conviction for violating a protection order under R.C. 2919.27(A)(1) and (B)(3), which elevated the offense to a fifth-degree felony due to a prior conviction, is affirmed where the verdict form's reference to the relevant statutory section, R.C. 2919.27(B)(3), which mandates a higher-level offense, was sufficient to satisfy R.C. 2945.75(A)(2), which sets forth verdict form requirements, even though the verdict form did not explicitly state the degree of the offense or the aggravating factors; as well, plain-error review applies when a defendant fails to object to an allegedly insufficient verdict form at trial.

Verdict form/Elevated offense/Sufficiency/Plain error. [State v. Shockey | 2024-Ohio-5176 | Supreme Court of Ohio | 10/31/2024](#) The judgment of the Third District Court of Appeals is reversed, and the cause is remanded to that court for application of State v. Mays, 2024-Ohio-4616; the dissent in Mays is noted.

Verdict form/Elevated offense/Sufficiency/Plain error. [State v. Thomas | 2024-Ohio-5177 | Supreme Court of Ohio | 10/31/2024](#) The judgment of the Third District Court of Appeals is reversed, and the cause is remanded to that court for application of State v. Mays, 2024-Ohio-4616; the dissent in Mays is noted.

Building code violations/Sentencing/Community control. [Cleveland v. City Redevelopment, L.L.C. | 2024-Ohio-5213 | 8th Appellate District | 10/31/2024](#) In case in which redevelopment company was cited by city for building code violations on property where the violations had been corrected and the city conceded that the company was in full compliance, trial court erred in imposing a community control sentence prohibiting sale of the subject property and other properties not cited for sanction where the prohibition on selling property is not reasonably related to the goals of community control, the lawful sale of the property is not related to the risk of future criminality, and the prohibition of sale serves no rehabilitative purpose.

Discharging a firearm into a habitation/Self-defense/Transferred intent. [State v. Bradley | 2024-Ohio-5225 | 7th Appellate District | 10/30/2024](#) Conviction of two counts of discharging a firearm into two homes neighboring defendant's home was error, in part, where although one count of improperly discharging a firearm into a habitation was supported by one neighbor's testimony that she did not approve of defendant's shooting at a person that resulted in her house being hit by bullets, the other neighbor did not testify and thus the evidence was insufficient on that count; however, trial court committed plain error by not instructing the jury on the doctrine of transferred self-defense because the jury was not properly instructed that self-defense could apply to the accidental shooting of the house of the neighbor who did testify that could have impacted the jury's view of defendant's privilege of self-defense by his firing at a person who represented a threat to him that accidentally struck the neighbor's home, R.C. 2923.161(A)(1), and trial court committed plain error by failing to instruct the jury about the doctrine of transferred self-defense.

Involuntary manslaughter/Multiple drugs/Sufficiency of evidence. [State v. Seymour | 2024-Ohio-5179 | 10th Appellate District | 10/29/2024](#) In bench convictions of involuntary manslaughter, R.C. 2903.04, corrupting another with drugs, R.C. 2925.02(A)(3), and trafficking in

heroin, R.C. 2925.03, court of appeals reverses and vacates the involuntary manslaughter and corrupting another with drugs convictions, holding that there was insufficient evidence presented that the heroin alone caused the victim's death since the medical testimony could not attribute the overdose solely to heroin provided by defendant without the kratom, Ritalin, and Benadryl that were also in the victim's system, with the court of appeals applying the "but for" test to determine actual causation; dissenting opinion filed, and court of appeals certifies a conflict with the decision of the Third District Court of Appeals in Carpenter.

Evidence/Brady violation. [State v. Smith | 2024-Ohio-5168 | 4th Appellate District | 10/28/2024](#) In a conviction of theft, R.C. 2913.02(A)(2)/(B)(1) (2), arising out of defendant roofing contractor's not returning a down payment to plaintiffs-home owners on a contract that defendant entered into with plaintiffs but failed to complete, defendant did not demonstrate that the state committed a Brady violation by withholding his electronic devices seized by a search warrant since defendant had possession of his devices subsequent to his indictment and prior to execution of the search warrant two years later, and he should have reviewed his devices for material exculpatory information during the two years he had the devices prior to the issuance of the search warrant; moreover, defendant was provided an opportunity to work with the state to retrieve the information from his devices but failed to do so, nor did he establish that the evidence claimed to be on his devices was materially exculpatory; also discussed, speedy trial, prosecutorial misconduct, juror misconduct, and sufficiency and weight of evidence.

Evidence/Witness intimidation/ Evid.R. 404(B). [State v. Echols | 2024-Ohio-5088 | Supreme Court of Ohio | 10/25/2024](#) In a conviction of, inter alia, aggravated murder, the trial court did not contravene Evid.R. 404(B) in permitting evidence of witness intimidation by admitting into evidence the defendant's attempts to intimidate a witness by writing a message on a jail wall where defendant and the

witness were being held, indicating that the witness was a cooperating witness, by making a gun gesture to the witness, and by writing a letter while incarcerated threatening the witness's wife since the threats were relevant evidence of other crimes admitted for a non-propensity purpose of defendant's efforts to intimidate witnesses, reflecting a consciousness of guilt, Evid.R. 404(B)(2), and the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury, Evid.R. 401 and 403(A).

Sentencing/Reagan Tokes Law advisements. [State v. Black | 2024-Ohio-5134 | 6th Appellate District | 10/25/2024](#) In a conviction by guilty plea to three counts of second-degree felony burglary, R.C. 2911.12(A)(1), trial court erred by failing to notify defendant of the mandatory Reagan Tokes Law sentencing provisions under R.C. 2929.19(B)(2)(c) in imposing a non-life indefinite prison sentence since the trial court did not inform defendant about key elements of the indefinite sentencing provisions of the Law, and cause is remanded to provide proper notification advisements; also discussed, trial court's failure to provide defendant of notification required by R.C. 2929.19(B)(4) when it sentenced him to community control that he could not leave Ohio without permission from the trial court or his probation officer was harmless error since his community control violation was not for leaving the state.

Prosecutorial misconduct/Vouching for state witness/No plain error. [State v. Williams | 2024-Ohio-5076 | 1st Appellate District | 10/23/2024](#) In a conviction of felonious assault, R.C. 2903.11(A)(1), although prosecutor improperly vouched for the credibility of state's witness-alleged victim and two other witnesses during closing argument, it was not plain error since there was no reasonable probability that the outcome of the trial would have been different but for the prosecutor's comments vouching for the credibility of the state's witnesses since, although defendant and the alleged victim presented contrary testimony on their exchange, the record contained testimony from an independent witness who personally

saw defendant order his dog to attack the victim, and defendant's version of events was contradicted by the independent witness' testimony and the responding officer's body-worn camera.

Animal cruelty/Kept animal. [State v. Kyles | 2024-Ohio-5038 | Supreme Court of Ohio | 10/23/2024](#) In prosecution of defendant for animal cruelty, R.C. 959.131, arising from defendant's act of pouring bleach on apartment building floor to make the cat stay away from him, the court of appeals erred in reversing defendant's conviction where the court reasoned that the state failed to provide sufficient evidence that the cat was "kept" under the statute; however, the statute defines a "companion animal" as "any dog or cat regardless of where it is kept," the statute's use of the word "any" means that all dogs and cats are protected, regardless of ownership or care, and the case is remanded for further proceedings on defendant's remaining arguments.

Venue/Proof/Circumstantial evidence. [State v. Smith | 2024-Ohio-5030 | Supreme Court of Ohio | 10/22/2024](#) In defendant's conviction of, inter alia, using weapons while intoxicated and OVI, court of appeals' judgment that the state failed to present necessary direct evidence to demonstrate venue is reversed, S.Ct.Prac.R. 7.08(B)(3), where, even though venue must be proven beyond a reasonable doubt, venue does not need to be established in express terms, but instead, it can be inferred from all the facts and circumstances, the state had presented sufficient circumstantial evidence to support venue in the county in which the court is located, and the court of appeals improperly reweighed the evidence in finding otherwise.

Sentencing/Marsy's Law/Sealing/ Standing/Mootness. [State v. Bielfelt | 2024-Ohio-5055 | 11th Appellate District | 10/21/2024](#) In defendant's conviction of domestic violence, R.C. 2919.25(A), in which the victim-wife, pursuant to Marsy's Law, Ohio Const., Art. I, Sec. 10a, appealed trial court's placing defendant in a diversion program, vacating its finding of guilt, and sealing the record, court of appeals grants in part and denies in

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part defendant's motion to dismiss, with the appellate court sua sponte dismissing the remaining appeal and granting defendant's motion to seal the victim's appellate brief since, while the victim had standing under Marsy's Law to object to the diversion, the issue was moot because defendant had completed the diversion program, and double jeopardy prevented further prosecution; also, victim lacked standing to appeal the record sealing since no statutory or constitutional right supported her claim under R.C. 2953.33.

Sentencing/Entry/Restitution. [State v. Langston | 2024-Ohio-5069 | 5th Appellate District | 10/21/2024](#) In a conviction of, inter alia, receiving stolen property, trial court erred in its post-sentencing order directing defendant to pay restitution where, although restitution was discussed during the sentencing hearing and defendant conceded that he owed restitution to victims, there was no mention of restitution in the sentencing entry, and because the state did not appeal the sentencing order that contained no restitution for victims of thefts, the order became final and appealable, and the trial court lost jurisdiction to enter a subsequent restitution order.

Drug offenses/Verdict form/Missing signature. [State v. Crumpton | 2024-Ohio-5064 | 4th Appellate District | 10/18/2024](#) In prosecution for drug offenses, defendant's conviction of drug trafficking is reversed and remanded where there was plain error under Crim.R. 31(A) and R.C. 2945.171, which require a unanimous, signed verdict by all jurors, since one juror's signature was missing from the trafficking count verdict form, rendering it non-unanimous.

Drug abuse instruments/Possession/Use. [State v. Rupert | 2024-Ohio-5027 | 2nd Appellate District | 10/18/2024](#) Defendant's conviction for possession of drug abuse instruments under R.C. 2925.12(A) is reversed where two hypodermic syringes were found in a vehicle in which defendant was a passenger, and the state provided sufficient evidence to establish defendant's constructive

possession of the syringes, as they were found within his reach; however, defendant's conviction required more than possession since, under the statute, the state needed to prove that defendant had used the syringes to unlawfully administer or prepare a dangerous drug, and there was no evidence to establish that defendant had used the syringes for drug use.

Abduction/Restraint/Sufficiency and weight of evidence. [State v. Miller | 2024-Ohio-5032 | 6th Appellate District | 10/18/2024](#) Conviction of abduction, R.C. 2905.02(A)(2), was not supported by sufficient evidence since no rational trier of fact could have found the restraint element of R.C. 2905.02(A)(2) proven beyond a reasonable doubt since defendant was convicted of abduction after a physical altercation with his ex-girlfriend, during which she claimed defendant grabbed her, causing her to fall twice, but that evidence did not support the required element of "restraint" under the abduction statute since the record showed that the ex-girlfriend was able to leave her apartment without any physical or verbal prevention by defendant, nor was there any indication that he had impeded her intention to exit.

Plea/Withdrawal/Crim.R. 32.1/Maximum possible sentence/Ineffective assistance. [State v. Turner | 2024-Ohio-4845 | 7th Appellate District | 10/16/2024](#) In a conviction by plea to drug offenses, trial court did not err in granting defendant's Crim.R. 32.1 motion to withdraw his guilty plea after he had entered a plea agreement aimed at ensuring his plea would not affect his parole in Pennsylvania, but the written plea incorrectly reflected a guilty plea instead of a no-contest plea, and the trial court misinformed defendant about the maximum possible sentence, including the effect of the Reagan Tokes Act, and defendant was not required to prove prejudice since the motion was filed under Crim.R. 32.1, not as a result of Crim.R. 11 errors, as the state argued, and trial court's decision to permit defendant to withdraw his plea was also supported by ineffective assistance of counsel, procedural errors during the plea hearing, and no clear evidence of prejudice to the state.

Plea/Withdrawal/Failure to consider all factors. [State v. Conley | 2024-Ohio-4985 | 1st Appellate District | 10/16/2024](#) In conviction by plea to having weapons under a disability, with an agreed sentence of nine months' incarceration, trial court erred in denying defendant's pro se presentence motion to withdraw his plea, Crim.R. 32.1, since the hearing was inadequate because defendant was not given an adequate opportunity to present his reasons for wanting to withdraw the plea where he claimed that he was innocent of the charges but the trial court failed to consider all the factors in evaluating defendant's motion; the case is remanded for consideration of all the relevant factors.

Plea/Validity/Sentencing correction/Plain error. [State v. Vera-Lopez | 2024-Ohio-4971.pdf | 11th Appellate District | 10/15/2024](#) In a conviction by guilty plea to possession of heroin and aggravated possession of drugs, although defendant's plea was validly entered since the trial court did not err in advising defendant of his constitutional and non-constitutional rights pursuant to Crim.R. 11, including the maximum penalty that could be imposed, the trial court did err by using a nunc pro tunc order post-sentencing order to modify the sentence to reflect a reduction of the imposed eight-month jail sentence to the correct six-month sentence because the entry represented a substantive modification of the sentence in the original judgment, constituting plain error; case remanded for resentencing to reflect the correct six-month term.

Sentencing/Repeat violent offender specifications/Res judicata. [State v. Williamson | 2024-Ohio-4980 | 5th Appellate District | 10/15/2024](#) In a conviction by negotiated guilty plea to, inter alia, two second-degree felonies with repeat violent offender specifications, and on appeal, court of appeals remanded for a resentencing hearing on the issue of serious physical harm on the specifications, with trial court on remand finding sufficient facts to support the finding of guilt on the specifications and reimposed the same sentence, once the resentencing hearing was conducted to address the serious physical harm issue

pursuant to R.C. 2929.14(B)(2)(a), and defendant did not appeal the prior court of appeals decision to remand, res judicata applied since defendant cannot demonstrate prejudice to his substantive rights.

Prosecutorial misconduct/Jury instructions. [State v. Lopez | 2024-Ohio-4967 | 3rd Appellate District | 10/15/2024](#) In bench convictions for OVI, driving under suspension, failure to yield, and failure to disclose personal information, although the convictions for driving under suspension and failure to yield convictions were supported by sufficient evidence and not against the weight of evidence based on the testimony of the police officers involved in the arrest, court of appeals reversed the convictions for OVI and failure to disclose that were tried to the jury because there was plain error by prosecutorial misconduct in closing argument since the prosecutor's statements implied that defendant had "to prove" he was not under the influence, and also the trial court failed to provide the definition of reasonable doubt to the jury as required by R.C. 2901.05(C); remanded for a new trial on the OVI and failure to disclose convictions.

Indictment/Dismissal/Crim.R. 41/ Lack of constitutional impact. [State v. Nevels | 2024-Ohio-4964 | 3rd Appellate District | 10/15/2024](#) In appeal by state of trial court's dismissal of a count in an indictment charging defendant with, inter alia, OVI, R.C. 4511.19(A)(1)(f) and (G)(1)(d), based on the allegation that defendant had operated a vehicle when he had a specified concentration of alcohol in his blood, with state also appealing the exclusion of blood-alcohol evidence after defendant had moved to suppress evidence obtained from the traffic stop and subsequent blood draw, arguing that procedural violations occurred under Crim.R. 41 regarding a nighttime search and delayed return of the warrant, court of appeals holds that the procedural issues did not warrant suppression because there was no constitutional violation or intentional non-compliance by law enforcement; case remanded for further proceedings.

Jury instructions/Reasonable doubt. [State v. Fader | 2024-Ohio-4921 | 2nd Appellate District | 10/11/2024](#) Defendant's conviction of voyeurism, R.C. 2907.08(B), is reversed on reasoning that the trial court failed to provide the jury with a statutory definition of "reasonable doubt" as required by R.C. 2901.05(C), and although the trial court mentioned the concept of reasonable doubt during instructions, it did not explain what it actually meant, constituting reversible error under both structural error and plain error analyses; defendant's conviction is vacated, and the case is remanded for further proceedings, including a new trial if the state chooses to retry the case.

Sentencing/Post-release control. [State v. Adams | 2024-Ohio-4920 | 2nd Appellate District | 10/11/2024](#) In defendant's conviction by plea to two counts of theft, arising from theft of nursing home resident's bank account, the trial court erred in failing to properly notify defendant of the consequences of violating post-release control, as required under R.C. 2929.19(B)(2)(f), so the case is remanded for resentencing on post-release control, while the remainder of the judgment is affirmed.

Miranda/Waiver/Harmless error. [State v. Harper | 2024-Ohio-4981 | 5th Appellate District | 10/11/2024](#) In appeal of conviction for, inter alia, murder, R.C. 2903.02, trial court did not err by admitting statements defendant made to police at a hospital after his arrest since defendant's waiver of his Miranda rights was knowing, intelligent, and voluntary, notwithstanding his difficulty reading the waiver form and pain from his injuries, since officers correctly advised him of his rights; moreover, even if there was error in the admission of his statements or evidence, any error was harmless due to the overwhelming evidence of his guilt, including video surveillance, gunshot residue on his hands, and matching ballistics evidence to the weapon found in his bag at his father's residence where he was found after the murder with his girlfriend and his child.

Search and seizure/Traffic stop/ Dissent. [State v. Hale | 2024-Ohio-4866 | Supreme Court of Ohio | 10/10/2024](#) In prosecution for drug offenses where the trial court granted the defendant's motion to suppress evidence obtained pursuant to a traffic stop, the court of appeals' reversal of the judgment granting suppression is affirmed since defendant's detention was lawful because detective had reasonable articulable suspicion of criminal activity after observing a known suspected drug trafficker driving the vehicle, despite having a suspended license, defendant's activities in parking lot and store reflected her connection to the vehicle, she admitted to knowing that the driver did not have a valid license, linking her to the offense of wrongful entrustment, and detective learned that the defendant had an active arrest warrant, so detective's seizure of defendant was not an unconstitutional investigatory stop; there is a dissenting opinion.

Evidence/Other acts. [State v. Bender-Adams | 2024-Ohio-4897 | 8th Appellate District | 10/10/2024](#) In convictions of aggravated murder and having weapons while under disability, defendant's assignment of error challenging trial court's admission of other acts evidence, Evid.R. 404(B), that defendant had stolen a lawnmower and assaulted a person other than the victim at the victim's residence before the aggravated murder incident, is overruled where the state asserted that this evidence was relevant to demonstrate that defendant had knowledge of the victim's residence and a possible motive, and while the evidence may not have been directly relevant to proving motive or identity in the murder case, the trial court's error in admitting it was harmless since the remaining evidence was sufficient to support the jury's verdict beyond a reasonable doubt, and the admission of the other acts evidence did not materially affect the outcome of the trial.

Search and seizure/Driver's license inquiry. [State v. Dunlap | 2024-Ohio-4821 | Supreme Court of Ohio | 10/09/2024](#) In case in which defendants entered no contest pleas to improperly handling firearms in a motor vehicle, court of appeals'

judgment holding that denial of defendants' motions to suppress was error is reversed since police did not violate the Fourth Amendment by asking driver for his license after realizing that the driver was not the car's owner because once a lawful traffic stop is initiated, the officer who has properly executed a traffic stop may make ordinary inquiries necessary to complete the mission of the traffic stop—including confirming that the driver has a valid driver's license—and the request for the driver's license was part of ensuring that the vehicle was operated by a properly licensed driver, which led to the discovery that neither the driver nor the passenger had valid licenses and to further actions, so the trial court's denial of the motions to suppress is reinstated; there is a dissenting opinion.

Plea/Waiver of counsel/Advisement.

[State v. Wallace | 2024-Ohio-4886 | 1st Appellate District | 10/09/2024](#) Defendant's convictions by plea to failing to give notice of an address change and failing to register as a sex offender under R.C. 2950.05 and 2950.04 are reversed due to an invalid waiver of his right to counsel since the trial court did not comply with Crim.R. 44 by failing to conduct a sufficient colloquy to ensure that the defendant's waiver of counsel was made knowingly, intelligently, and voluntarily; specifically the trial court did not adequately explain the nature of the charges, potential penalties, or the risks of self-representation.

Rape/Substantial impairment/Medication.

[State v. Gasper | 2024-Ohio-4782 | Supreme Court of Ohio | 10/08/2024](#) Defendant's conviction of rape of a woman with cerebral palsy and intellectual disabilities, who routinely took medication, under R.C. 2907.02(A)(1)(c), which prohibits sexual conduct with a person whose ability to resist or consent is substantially impaired because of a mental or physical condition, is affirmed on reasoning that the jury instruction, Ohio Jury Instructions, CR § 507, correctly applied the definition of substantial impairment, which includes permanent mental conditions; as well, where the jury asked whether it could consider medication's effects

when evaluating the victim's mental condition, and the court directed the jury to rely on the existing instructions, the medication issue did not affect the validity of the jury instruction defining "substantial impairment" since the instruction was appropriate for both temporary and permanent conditions, and defendant failed to demonstrate any plain error or prejudice resulting from the jury's consideration of the medication's effects.

Plea/Advisements/Ambiguity/Written plea agreement.

[State v. Snyder | 2024-Ohio-4860 | 3rd Appellate District | 10/07/2024](#) Defendant's plea to robbery, in violation of R.C. 2911.02(A)(3), and intimidation, R.C. 2921.03, is reversed due to noncompliance with Crim.R. 11(C)(2)(c) where the trial court failed to properly advise him of his constitutional rights against self-incrimination and to compulsory process, and the court's advisement was ambiguous, rendering the plea invalid; because Crim.R. 11(C)(2)(c) requires strict compliance with constitutional rights advisements, the omission could not be remedied by referencing the written plea agreement.

Sentencing/Community control violations.

[State v. Dod | 2024-Ohio-4807 | 1st Appellate District | 10/04/2024](#) In convictions by plea to violating a protection order and burglary, trial court erred by imposing a 48-month prison sentence on defendant for repeated community control violations because of his refusal to complete required rehabilitation programs where trial court failed to properly establish that defendant had violated his community control terms before modifying the sentence, and court also failed to give defendant the mandatory warnings required under R.C. 2929.19(B)(4) regarding the consequences of future violations, nor did defendant enter any plea to the violation, Beyersdoerfer; sentence vacated and case remanded for further proceedings.

Appeal/Reopen/Good cause/

Dissent. [State v. Wogenstahl | 2024-Ohio-4714 | Supreme Court of Ohio | 10/01/2024](#) Denial of defendant's delayed application to reopen his direct appeal under App.R. 26(B) concerning his 1993 capital-murder

conviction is affirmed where defendant did not show good cause for his nearly 30-year delay in filing the application, and his jurisdictional claim is barred by res judicata because the issue was previously addressed in his earlier appeal; the existence of good cause is a threshold issue that must be established before an appellate court may reach the merits of a claim of ineffective assistance of appellate counsel; there is a dissenting opinion.

Sealing records/Weighing interests.

[State v. N.C. | 2024-Ohio-4739 | 9th Appellate District | 09/30/2024](#) Order granting defendant's applications to seal his records of convictions for pandering sexually oriented matter involving a minor after his convictions were vacated and dismissed following a Supreme Court of Ohio decision and for a separate retaliation conviction is affirmed where the trial court complied with R.C. 2953.52 and 2953.32 by weighing defendant's interests against the state's interests in maintaining the records and by considering the prosecutor's objections.

Sentencing/Indefinite terms/Severed charges.

[State v. Payne | 2024-Ohio-4698 | 10th Appellate District | 09/26/2024](#) Defendant's convictions for murder, attempted murder, and other related offenses arising from a fatal drive-by shooting are affirmed, but trial court's imposition of definite sentences for attempted murder counts on reasoning that the Reagan Tokes Law was unconstitutional is reversed since the Reagan Tokes Law's indefinite sentencing provisions were constitutional under recent Ohio Supreme Court precedent, so the case is remanded for resentencing; as well, defendant did not demonstrate that his attorney was ineffective for failing to file a pretrial motion to sever the counts stemming from the drive-by shooting from the firearms-related offenses charged when defendant was stopped in a car and arrested later in the year since the evidence of each offense presented was simple and direct and not confusing or difficult to separate by the jury, Crim.R. 8(A).

Verdict form/Elevated offense/Sufficiency/Plain error. [State v. Mays | 2024-Ohio-4616 | Supreme Court of Ohio | 09/25/2024](#) Defendant's conviction for violating a protection

order under R.C. 2919.27(A)(1) and (B)(3), which elevated the offense to a fifth-degree felony due to a prior conviction, is affirmed where the verdict form's reference to the relevant statutory section, R.C. 2919.27(B)(3), which mandates a higher-level offense, was sufficient to satisfy R.C. 2945.75(A)(2), which sets forth verdict form requirements, even though the verdict form did not explicitly state the degree of the offense or the aggravating factors; as well, plain-error review applies when a defendant fails to object to an allegedly insufficient verdict form at trial.

Ineffective assistance/Juror challenge. [State v. Glass | 2024-Ohio-4535 | 3rd Appellate District | 09/16/2024](#) Convictions of multiple drug and weapons charges is reversed and remanded for further proceedings due to ineffective assistance of counsel where defendant's attorney failed to challenge a juror who was the mother of the prosecution's key witness, an investigator in the case, and the failure to challenge was objectively unreasonable under the standard set in Strickland; the lack of questioning about the mother-son relationship raised concerns about actual or implied bias, which deprived defendant of a fair trial.

Speedy Trial. [State v. Davison | 2024-Ohio-4529 | 9th Appellate District | 09/16/2024](#) Dismissal of defendant's indictment based on an alleged speedy trial violation is reversed on reasoning that the trial court dismissed the case without making the necessary findings of fact or providing reasons for its decision, Crim.R. 48(B); the state's argument that defendant's speedy trial rights were not violated because the time was tolled due to pretrial motions and that newly enacted R.C. 2945.73(C)(2) that provided an additional 14 days to bring him to trial are moot in light of the procedural error under Crim.R. 48(B).

Dog registration/Dangerous dog/Reconsideration. [State v. Rivera | 2024-Ohio-4530 | 9th Appellate District | 09/16/2024](#) In defendant's convictions by no contest plea to failure to annually register his dog and failure to comply with the rabies immunization requirements, arising from an altercation between

dogs, where owners of other dogs in the altercation filed a motion for reconsideration, which sought to have defendant's dog designated as a dangerous dog, resulting in trial court's denial of the motion, trial court's denial is vacated and the appeal is dismissed since the motion for reconsideration was improper because it was filed after the criminal case was closed, making the proceedings a nullity, R.C. 955.222 outlines the proper civil procedure for designating a dog as dangerous, which involves notice and a hearing initiated by an authorized official, such as a dog warden, and that procedure was not followed, so the trial court's proceedings were outside the legal framework.

Miranda/Polygraph/Stipulation/Quash records. [State v. Stacy | 2024-Ohio-4539 | 11th Appellate District | 09/16/2024](#) Defendant's convictions for rape and gross sexual imposition are reversed where defendant's waiver of his Miranda rights prior to polygraph examination was invalid with respect to subsequent post-test interrogation that was not part of the stipulated polygraph procedure that the parties had entered into, making defendant's admissions inadmissible; as well, the trial court erred by granting a motion to quash records from children services board, which could have been material to defendant's defense, R.C. 5153.17.

Plea/Petty misdemeanor/Advisement. [State v. Farone | 2024-Ohio-4859 | 7th Appellate District | 09/13/2024](#) Defendant's plea to one count of resisting arrest, a misdemeanor of the second-degree in violation of R.C. 2921.33, is reversed due to noncompliance with Crim.R. 11(E) where the trial court failed to inform defendant that a guilty plea constituted a complete admission of guilt, as required for petty misdemeanor offenses under Crim.R. 11(B), and the record did not show that defendant reviewed or signed the written plea agreement before entering the plea; because this advisement is the sole requirement for petty offenses, the trial court's failure to comply completely with Crim.R. 11(E) created a presumption of prejudice.

Plea/Vacated. [State v. Lucas | 2024-Ohio-4496 | 8th Appellate District | 09/12/2024](#) Defendant's conviction by plea and sentence for felonious assault is reversed and vacated, and the case is remanded for further proceedings, where defendant's plea was not knowingly, intelligently, and voluntarily made because the trial court failed to inform him of the maximum potential penalty, including the mandatory consecutive sentence for the repeat violent offender specification; as well, the state conceded the error.

Juvenile bindover/Competency/Procedural issues. [State v. D.T. | 2024-Ohio-4482 | 8th Appellate District | 09/12/2024](#) Convictions by plea to armed robberies and attempted armed are reversed, vacated and remanded to juvenile court where juvenile was initially bound over from juvenile court to common pleas court general division, but the juvenile court failed to conduct a competency hearing and issue a written determination regarding juvenile's competency, as required under R.C. 2152.58; as well, the record lacks sufficient reasoning to justify the juvenile court's decision that juvenile was not amenable to rehabilitation within the juvenile justice system under R.C. 2152.12.

Mistrial/Formal verdicts/Double jeopardy. [State v. Spivey | 2024-Ohio-4492 | 8th Appellate District | 09/12/2024](#) In prosecution for aggravated murder and related charges in which a mistrial was declared after the jury indicated they could not reach formal verdicts on any of the counts, the trial court did not err in denying defendant's motion to dismiss where defendant's argument that the jury had reached unanimous verdicts of acquittal on some counts and that retrial would violate double jeopardy is without merit since the jury had not signed any verdict forms and had only conducted a preliminary vote, no formal verdicts were reached, and double jeopardy did not bar a retrial.

Sentencing/Reimposition/Judicial release/New offenses. [State v. Kolvek | 2024-Ohio-4473 | 9th Appellate District | 09/11/2024](#) Reimposition by trial court of defendant's original sentence on reasoning that new convictions of drug offenses violated the terms of defendant's

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community control, which was part of his judicial release, is reversed because defendant had completed serving his original sentence where defendant was placed in jail awaiting trial on the new drug charges for a period exceeding the number of days remaining on his original sentence; once a sentence is fully served, the trial court no longer has the authority to modify or reimpose that sentence, making the trial court's reimposition void.

Discovery/Software. [State v. Carr | 2024-Ohio-4471 | 9th Appellate District | 09/11/2024](#) In prosecution of two defendants for aggravated murder and related charges where the state sought to introduce evidence about the location of the defendants at a specific time generated by a software law enforcement tool and the defense requested detailed information about the proprietary software and data, which the state was not able to provide, the trial court order excluding the evidence for noncompliance with discovery requests under Crim.R. 16 is reversed where the state had provided all information in its possession, the defense did not subpoena the software company directly, and the trial court also failed to impose the least severe sanction, such as a continuance, so the case is remanded for further proceedings.

Sentencing. [State v. Brown | 2024-Ohio-4450 | 12th Appellate District | 09/09/2024](#) In convictions by plea to falsification, cruelty to companion animals, and menacing by stalking, the trial court erred in imposing some of the sentences to run consecutively where the court failed to make the necessary findings under R.C. 2929.14(C)(4) for imposing consecutive sentences, so the case is remanded for re-sentencing, during which the trial court must properly consider whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and make the requisite findings.

Habeas corpus/Life-tail portion/Definite. [Stallworth v. Mackey | 2024-Ohio-4540 | 11th Appellate District | 09/09/2024](#) Defendant's petition for a writ of habeas corpus, arguing that he had completed his 33-year prison

sentence for aggravated murder and aggravated robbery, including firearm specifications, and that he was being unlawfully detained under R.C. 2725.01, is granted where the court noted that the sentencing entry failed to include the necessary "life-tail" portion, making it a definite sentence that could not be corrected after the time for appeal lapsed, and defendant is ordered to be released.

Sealing record/Weighing interests/Detrimental effect. [State v. Norvell | 2024-Ohio-4443 | 12th Appellate District | 09/09/2024](#) Denial of defendant's application to seal the record of his misdemeanor disorderly conduct conviction is reversed where the defendant had previously applied to seal his record, which the trial court denied due to his lack of remorse and, upon the defendant's renewed application, the trial court again denied his request on reasoning that the victim objected and that the defendant failed to prove that the conviction had a detrimental effect on his life; however, the trial court erred by failing to weigh the defendant's interests against the government's interests, as required by R.C. 2953.32(D), and improperly placed a burden on the defendant to demonstrate detriment, so the case is remanded for further proceedings.

Witnesses/Federal employee testimony. [State v. Sheekles | 2024-Ohio-3339 | Supreme Court of Ohio | 09/06/2024](#) In a prosecution for, inter alia, attempted murder, an appeal by the state of the court of appeals' affirmance of the trial court's grant of the defendant's motion in limine to quash a subpoena to a former U.S. Department of Justice employee, who lacked a "Touhy letter" that provides approval to testify and to produce documents while performing official duties, the Ohio Supreme Court holds that the court of appeals erred in affirming the trial court's grant of motion in limine to quash the subpoena since the Touhy regulations do not create rights for criminal defendants, and a violation of those regulations is not generally a basis for a defendant to request an exclusionary remedy because the regulations are not rules of procedural admissibility for a defendant to use to exclude testimony of a current or former

federal employee who is willing and authorized to testify.

Evidence/Other acts/Evid.R. 403(A) and 404(B). [State v. Diaz | 2024-Ohio-3427 | 6th Appellate District | 09/06/2024](#) In a conviction of rape, trial court erred by allowing the alleged victim to testify that she reported the rape only after she saw defendant's name on a sex offender website since the testimony violated Evid.R. 404(B)(1), where although the evidence was relevant to explain the alleged victim's motivation to report the incident, Evid.R. 401(B), the trial court erred in admitting the evidence because the danger of unfair prejudice substantially outweighed its probative value, Evid.R. 403(A), since defendant did not pursue any consideration of the alleged victim's delay in reporting in his opening statement to the jury, and the information presented in the rape trial that defendant was on a sex offender registry was so prejudicial that the trial court's limiting instruction was not sufficient to cure the error.

Plea/Child endangerment/Flashing Light Act. [State v. Zook | 2024-Ohio-4855 | 7th Appellate District | 09/06/2024](#) In a conviction by plea to child endangerment and violating Ohio's Flashing Light Act mandating lights on horse-drawn buggies, with defendant, an Amish man, arguing that the lighting requirement conflicted with his religious beliefs and during the proceedings the trial judge informed defendant that constitutional challenges could not be raised at trial but only raised in an appeal, and relying on this incorrect advice, defendant pled no contest, with the court of appeals holding the plea was not entered knowingly or voluntarily because of trial court's erroneous guidance; plea and sentence vacated and cause remanded for a proper hearing at which defendant may pursue his constitutional defense.

Sealing/Lack of rehabilitation. [State v. Moussa | 2024-Ohio-3429 | 6th Appellate District | 09/06/2024](#) Denial of an application to seal was not error where, although applicant was an eligible offender, trial court's determination that applicant was not rehabilitated to the court's satisfaction and that the government's interests in maintaining the record of his

conviction outweighed his interests in sealing the record was not error since trial court found applicant had not been rehabilitated to its satisfaction, including the length of time since the conviction, his criminal history, the violent nature of the offense, with trial court pointing out that applicant had been convicted of a similar violent offense in 2016, five years before the conviction at issue, and thus he had not been rehabilitated in the five years between his 2016 and 2021 convictions, and that only two years had passed since his 2021 conviction at the time of the hearing, the trial court reasoning that insufficient time had passed to establish rehabilitation.

Sentencing/Consecutive sentences. [State v. Nashe | 2024-Ohio-3400 | 8th Appellate District | 09/05/2024](#)

In a conviction of felonious assault and serious physical harm arising out of a shooting during a traffic rage encounter in which it was alleged that the victims in one vehicle were shot at by a person driving another vehicle, trial court erred by failing to make the requisite statutory findings on the record to support consecutive sentencing required by R.C. 2929.14(C) (4) since, although the court did find that defendant's "criminal conduct" demonstrated consecutive sentences were necessary to protect the public from future crime, it made no findings regarding defendant's history of criminal conduct as required by R.C. 2929.14(C)(4)(c), at the sentencing hearing or in the sentencing judgment entry, and thus the imposition of consecutive sentences was contrary to law.

Plea/Alford plea/Self-incrimination/Validity of plea. [State v. Davis | 2024-Ohio-3393 | 9th Appellate District | 09/04/2024](#) In a conviction by plea in three cases, trial court erred by incorrectly advising defendant in one of the cases that by entering an Alford plea he preserved his right to appeal a suppression ruling, and thus his plea was not knowing, voluntary, and intelligent; trial court also erred in the other two cases since the court did not adequately inform defendant of his right to avoid self-incrimination, and thus his guilty pleas in those cases were not made knowingly, voluntarily, and intelligently.

Mandamus/Parole. [State ex rel. West v. Dept. of Rehab. & Corr. | 2024-Ohio-3324 | Supreme Court of Ohio | 09/04/2024](#) In inmate's pro se petition for a writ of mandamus to compel respondents to reinstate his parole and release him from custody, asserting that when his prior parole was revoked in 1996 and in 2015, he was entitled to revocation hearings under the consent decree entered in Kellogg v. Shoemaker, 927 F.Supp. 244 (S.D. Ohio 1996), but he never received the hearings, the Supreme Court of Ohio denies the petition because a release from prison is not available in a mandamus action since habeas corpus is the only proper action for persons claiming entitlement to immediate release from prison, State ex rel. Adkins.

New trial/Delayed motion/Crim.R. 33(B). [State v. Parsons | 2024-Ohio-3367 | 3rd Appellate District | 09/03/2024](#) Following a 2016 bench conviction of attempted murder, felonious assault, and improper handling of a firearm in a motor vehicle, trial court erred by denying a "Motion for Leave to File Delayed Motion for A New Trial Based Upon Newly Discovered Evidence Pursuant to Ohio Criminal Rule 33," since when a defendant seeks leave to file a motion for a new trial under Crim.R. 33(B), the trial court may not consider the merits of the proposed motion for a new trial until after it grants the motion for leave, Hatton, and since the trial court applied the wrong standard, court of appeals remands matter with instruction to make its analysis under the correct legal standard.

Sentencing/Enforceable civil judgment. [State v. Walker | 2024-Ohio-4469 | 4th Appellate District | 09/02/2024](#) In defendant's convictions for drug and related offenses, the trial court's order of an enforceable civil judgment for supervision and confinement costs is reversed on reasoning that, while supervision and confinement costs are permissible, the judgment needed further consideration, particularly in light of precedent from State v. Taylor, which emphasized that certain costs should be handled as separate civil matters rather than being part of a criminal sentence, R.C. 2929.18(A); also discussed, a distinction exists

between the present ability to pay and the future ability to pay as well as between a defendant's indigency and a defendant's inability to pay.

Plea/Validity/Sex offender designation. [State v. Fields | 2024-Ohio-3328 | 2nd Appellate District | 08/30/2024](#) In convictions by plea of guilty to illegal use of a minor in nudity-oriented material or performance and to three counts of sexual battery, although the trial court failed to correctly inform the defendant of the correct Tier level of his sex offender designation, the defendant was not prejudiced since the penalties of the Tier I designation imposed were of shorter duration and less onerous than those of a Tier III designation, and the defendant does not claim that his plea was not entered knowingly, intelligently and voluntarily.

Jury/Batson challenge. [State v. Washington | 2024-Ohio-3333 | 2nd Appellate District | 08/30/2024](#) In a conviction after a jury trial of, inter alia, aggravated burglary, that was affirmed but reopened to allow defendant to raise an issue that the trial court had erred by dismissing the sole African American in the jury pool for cause, and neither defense counsel nor the state objected, and the supplemented record demonstrates that the trial court cited co-defense counsel's objection at the beginning of voir dire to there being "no people of minority in the jury pool," that included the juror in question, and moreover, the trial court held that, even assuming that juror is an African-American, the juror was removed due to COVID concerns without objection.

Right to counsel/Waiver/Petty offense. [State v. Dingman | 2024-Ohio-3327 | 2nd Appellate District | 08/30/2024](#) In a bench conviction of theft, R.C. 2913.02(A), a petty offense, the trial court erred by failing to obtain the defendant's waiver of counsel, Crim.R. 44(B) and (C), by the court's failure to explain the nature of the charges, the statutory offenses included within them, the range of allowable punishments, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter; the trial court's sentence of 180 days

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in jail and all of the conditions upon which 150 days of that sentence were suspended are vacated.

Sentencing/Final appealable

order. [Cleveland v. Congeni | 2024-Ohio-3304 | 8th Appellate District | 08/29/2024](#) In a conviction by no contest plea to driving under the influence of alcohol or drugs in violation of city code, the trial court's judgment entry denying the defendant's request to use medical marijuana for pain control is not a final, appealable order under R.C. 2505.02 since the judgment entry does not indicate any ruling on the defendant's motion to modify probation nor does it contain any ruling on any probation violation, but rather the entry contains a note that the probation department's treatment coordinator was to work to find other pain management options for the defendant but, since the record reflects only that the trial court will presumably find that the defendant violated the terms of her community control if she continues to test positive, there is no final appealable order.

Rape/Gross sexual imposition/

Weight of evidence. [State v. Reillo | 2024-Ohio-3307 | 8th Appellate District | 08/29/2024](#) In convictions of rape and gross sexual imposition, the court of appeals holds that the convictions are against the weight of evidence since the alleged victim's testimony was conclusory and "made little sense," especially considering the 12-year delay in disclosing the alleged abuse since the alleged victim's testimony was presented that the offenses occurred, but no context or surrounding details were produced by the state and, although that evidence is sufficient, the overall credibility of that evidence is not since "[a] witness can be perceived as being truthful, but that alone does not establish credibility in the legal sense, especially as it pertains to the state's burden to overcome the presumption of innocence."

Evidence/Evid.R. 404(B)/Sex

offender/Jury trial. [State v. Kohler | 2024-Ohio-3302 | 8th Appellate District | 08/29/2024](#) In a conviction of eight counts of sexual conduct with two victims that occurred during

the defendant's employment as a corrections officer and the victims were inmates at the facility that the defendant was employed at, R.C. 2907.03(A)(11), admission of the defendant's flirting, touching and kissing two inmates did not violate Evid.R. 404(B) since the prior bad-acts testimony was not introduced as propensity evidence, but to demonstrate a continuing course of action, Bogan, or admissible as common scheme or plan evidence, Vason, and the probative value of the evidence, to provide background and to explain the circumstances, was not substantially outweighed by the danger of unfair prejudice; also discussed, designation of the defendant as a Tier III sex offender did not violate the defendant's right to a jury trial.

Evidence/Impeachment/Brady

violation. [State v. Green | 2024-Ohio-3260 | 1st Appellate District | 08/28/2024](#) In a conviction of assault, R.C. 2903.13(A), arising out of the defendant's slapping a disabled client at a care facility where the defendant was employed, the court of appeals reverses and remands for a new trial since the state suppressed material evidence, a recorded statement of a co-worker interviewed by an officer, and could have impeached the key witness that was not disclosed to the defendant, constituting a Brady violation; remanded for a new trial.

DNA testing. [State v. Marshall | 2024-Ohio-3262 | 1st Appellate District | 08/28/2024](#)

In a conviction of, inter alia, murder for the shooting death of the victim that was affirmed, the trial court erred in denying a successive application for post-conviction DNA testing since the shell casing found at the crime scene had not been previously tested, and without the trial court providing a more detailed, definitive explanation of its reasoning for denying the application as required by R.C. 2953.73(D), Smith; remanded with instructions to the trial court to provide an explanation for its denial.

Sentencing/Judicial release/

Mandatory sentence. [State v. Snowden | 2024-Ohio-3255 | 10th Appellate District | 08/27/2024](#) Following a 2021 conviction by plea of guilty to aggravated trafficking in

drugs, R.C.2925.03, and imposition of an indeterminate prison term of two to three years, with a "mandatory consecutive" 12 months in prison for the firearm specification, the trial court's grant of the defendant's 2023 request for judicial release after the expiration of the mandatory 12-month prison term for the firearm specification was error since the defendant was not eligible for judicial release because, pursuant to R.C. 2925.03(C)(1)(c) and (d), a prison term is mandatory for a second-degree felony aggravated trafficking in drugs offense, Ware.

Evidence/Confrontation Clause/

Ongoing emergency. [State v. Costilla | 2024-Ohio-3221 | 6th Appellate District | 08/23/2024](#)

In a conviction of domestic violence, R.C. 2919.25(A), and of assault, R.C. 2903.13, recorded statements made by the victim and her daughter to the 9-1-1 operator and to the responding officer were not testimonial since the primary purpose of the statements were made during an ongoing emergency prior to securing the assailant and to assess what was happening, rather than what had already happened, and thus the statements were non-testimonial and admission of those recorded statements did not implicate the Confrontation Clause, Schnabel; also discussed, sufficiency and weight of evidence.

Child endangering/Sufficiency and

weight of evidence. [State v. Gurung | 2024-Ohio-3202 | 1st Appellate District | 08/23/2024](#)

Bench conviction of child endangerment, R.C. 2919.22, did not meet the sufficiency and weight of evidence standards since the state failed to demonstrate that the defendant father acted with the requisite heedless indifference to his 10 year-old son, considering the child's age, the fact that the child was unattended for 45 minutes, but there was a family teenager at home at the time and the child ventured only to an adjoining neighbor's property, who was aware of the child's propensity to come onto her property.

Miranda/Motion to suppress/

Investigation. [State v. Alvarez | 2024-Ohio-3208 | 2nd Appellate District | 08/23/2024](#) Grant of motion to suppress in a domestic violence and assault case was error since the

defendant was present during the police questioning of the victim, who was the defendant's wife, and he was with family members and others he knew, moving freely about and interacting with his child, and the investigating officer testified that the defendant was free to leave after his identification was obtained and, although the officer retained the defendant's identification, he did not leave the defendant's presence with it, nor suggest that a records check would occur or that it was obtained for any purpose beyond confirming the defendant's identity, nor did the officer block egress from the bedroom, and thus the encounter as a whole did not reflect a measure of constraint characteristic of custody, and thus Miranda warnings were not required during that time.

Search/Suppression. [State v. Cantu | 2024-Ohio-3211 | 2nd Appellate District | 08/23/2024](#) In a conviction of aggravated possession of drugs, the trial court's grant of motion to suppress drugs seized during a traffic stop from vehicle that the defendant was driving was error since the officer had probable cause to believe a crime had been committed because of passenger-informant's text to officer that the defendant had purchased drugs and, during the time the officer was completing the traffic infraction offense, a canine drug dog alerted that drugs were present in the vehicle and the duration of the stop was not extended beyond what was reasonably necessary to complete the traffic-related tasks.

Sentencing/Consecutive sentences/Findings. [State v. Haynes | 2024-Ohio-3190 | 8th Appellate District | 08/22/2024](#) In a conviction by plea to felonious assault, improper discharge of a firearm into a habitation and having weapons while under disability, and imposition of a prison sentence totaling seven years, ordering the counts to run concurrent to each other, and the court also sentencing the defendant to a mandatory minimum of 18 months to a maximum of three years of post-release control, with the sentences to run concurrent to each other, and consecutively to a criminal case in each of two other counties, the trial court erred by failing to make the required R.C. 2929.14(C) (4) consecutive sentence findings at

the sentencing hearing or in its journal entries; sentence is vacated and the matter is remanded for the limited purpose of considering whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and to make the necessary findings, if warranted.

Sentencing/Allied offenses/Merger. [State v. Holloway | 2024-Ohio-3189 | 8th Appellate District | 08/22/2024](#) In a conviction of the defendant and others for multiple counts, including engaging in a pattern of corrupt activity, conspiracy, grand theft and several counts of theft related to large-scale liquor thefts from a grocery store chain, in which the state presented evidence, including surveillance videos, witness testimony and social media photographs, showing the defendant and his co-defendants stealing liquor from various stores of a grocery store chain, although the trial court correctly merged certain counts for sentencing purposes, it committed plain error by not merging three counts of theft, R.C. 2913.02(A) (1), with grand theft, R.C. 2913.02(A) (1), since the conviction for grand theft was an aggregate of all the individual theft offenses; also discussed, sufficiency and weight of evidence, venue, indictment, enterprise, ineffective assistance; remanded for re-sentencing.

Sealing. [State v. U.T. | 2024-Ohio-3197 | 8th Appellate District | 08/22/2024](#) In an appeal by the state of the trial court's grant of an application to seal the records of three drug trafficking convictions, the trial court erred in expunging the three felonies of the third degree since the version of R.C. 2953.32(A) that was in effect when the application was filed does not permit expungement or sealing of criminal records when an applicant has "more than two felonies of the third degree," former R.C. 2953.32(A)(5), *State v. K.O.*

Drug offenses/Crime laboratory report/Waiver. [State v. Saleem | 2024-Ohio-3162 | 1st Appellate District | 08/21/2024](#) In convictions of, inter alia, three drug possession offenses, the defendant's claim that admission of a crime laboratory report to prove the identity of the substances was error because of the state's noncompliance with R.C. 2925.51 to inform the defendant of the seven-day deadline rendering it inadmissible

was waived since his attorney's litigation conduct of not objecting to the admission waived any challenge to the admissibility of the report and, moreover, his attorney stipulated to the report's admission.

Post-release control. [State v. Dubose | 2024-Ohio-3167 | 1st Appellate District | 08/21/2024](#) Following a 2020 conviction of trafficking in a fentanyl-related compound and of having weapons while under a disability that was reversed for the trial court's failure to notify the defendant of his potential post-release-control obligations, the defendant subsequently filed a pro se motion to dismiss the indictment, that the trial court treated as a petition for post-conviction relief, Schlee, and the court of appeals holds that the trial court erred by failing to issue findings of fact and conclusions of law pursuant to R.C. 2953.21(H); remanded to comply with the statute.

Aggravated menacing/Obstructing official business/Sufficiency and weight. [State v. Thompson | 2024-Ohio-3165 | 1st Appellate District | 08/21/2024](#) Convictions for aggravated menacing and obstructing official business met the sufficiency and weight of evidence standards where the defendant shouted at officers that he had a gun and to shoot him, that trial court reasonably found to be an implied threat he would use the gun against the officers in an apparent attempt to induce officers to shoot him and, after he exited a building, he ignored officer's lawful order to stop and re-entered the building; however, the trial court sentenced the defendant beyond the authorized range on the obstructing official business conviction and cause is remanded for re-sentencing.

Evidence/Hearsay/Medical diagnosis and treatment of minor. [State v. Nkoyi | 2024-Ohio-3144 | 12th Appellate District | 08/19/2024](#) In a conviction of kidnapping and rape of a minor, the trial court did not err by admitting alleged hearsay evidence pursuant to Evid.R. 803(2) and (4) since the video recorded excerpts of the minor's statements made to a licensed independent social worker and forensic interviewer at a children's hospital did not violate the Rule because the defense counsel

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had stipulated to the admission, and thus any error was invited and, also, the forensic interviewer specifically describing what the minor told her that the defendant had done to her sexually was primarily for the purpose of providing the minor with the proper medical diagnosis and treatment, Evid.R. 803(4) and Arnold and, moreover, the victim testified similarly and was subject to cross-examination; also discussed, sufficiency and weight of evidence and ineffective assistance.

Weapons offenses/Relief from Weapons Disability. [In re Crozier | 2024-Ohio-3150 | 11th Appellate District | 08/19/2024](#) In a 2023 application for relief from weapons disability imposed following the applicant's conviction in 2007, the trial court erred by denying the application without a hearing, R.C. 2923.14(D) and In re Parks; an applicant is required to provide compelling evidence of rehabilitation and demonstrate that he or she no longer poses a threat to public safety.

Sentencing/Merger/Repeat violent offender specifications. [State v. Maloney | 2024-Ohio-3143 | 12th Appellate District | 08/19/2024](#) On remand for re-sentencing for the trial court's failure to merge allied offenses of similar import in a conviction of aggravated burglary and two counts of felonious assault with three repeat violent offender (RVO) specifications, with the state electing to proceed on the felonious assault offenses, the trial court did not err on remand in imposing a greater sentence since the trial court considered the statutory criteria in R.C. 2929.11 and 2929.12, made the required R.C. 2929.14 consecutive sentencing findings, as well as the findings for the RVO specifications, and R.C. 2929.14(B)(2) (c) restricts its application to mandatory RVO sentencing under R.C. 2929.14(B)(2)(b) and does not apply to a trial court's discretionary imposition of RVO prison terms under R.C. 2929.14(B)(2)(a); also discussed, increased sentence on remand was not the result of the trial court's vindictiveness.

Evidence/Hearsay/Present sense impressions. [State v. Leach | 2024-Ohio-3145 | 12th Appellate District | 08/19/2024](#) In a conviction of two counts of rape, R.C. 2907.02(A)(1)(b), of a child under ten years-old, the trial court did not err by admitting, as present sense impressions, the victim's grandmother's recording of, and testimony about, statements made to her by the victim of the defendant's sexual contact with her did not violate the Confrontation Clause since the child's statements were excited utterances, notwithstanding that the statements were made after the child's grandmother was taking her to the police station shortly after the alleged rape when the child was still under a "nervous state of excitement," Baker and, moreover, the defendant's DNA was present on the victim's underwear and the child's DNA was found on the defendant's penis.

Confrontation Clause/Testimonial statements. [State v. George | 2024-Ohio-3123 | 2nd Appellate District | 08/16/2024](#) In a bench conviction of assault, arising out of injuries sustained by the victim who was an inmate at the same jail as the defendant, the defendant's right to confront witnesses was not violated by the use of a surveillance video since the video of the assault contained no audio and the primary purpose of the surveillance system at the jail is to maintain security and safety of the staff and inmates at the facility, not to gather evidence in furtherance of future prosecutions, and therefore there were no testimonial statements involved to trigger an analysis pursuant to the Confrontation Clause.

Counterfeiting/Receiving stolen property/Criminal tools/Sufficiency of evidence/Venue. [State v. Alexander-Keels | 2024-Ohio-3138 | 6th Appellate District | 08/16/2024](#) In a bench trial finding the defendant guilty of possessing criminal tools and two counts of counterfeiting, the state concedes that counterfeiting convictions were not supported by sufficient evidence since fictitious debit cards with no monetary value were not an "obligation or other security" under R.C. 2913.30(A)(2), but the conviction for criminal tools was supported by sufficient proof of venue and possession since the defendant admits that he possessed

his cell phone in the county he was tried in, the phone was alleged to have been used in furtherance of the counterfeiting charges and the admission is sufficient to establish venue and the possession element of the criminal tools charge.

Jury instructions/Mistaken instruction/Harmless error. [State v. Frank | 2024-Ohio-3098 | 5th Appellate District | 08/15/2024](#) In convictions of two counts of murder, felonious assault, tampering with evidence and three, three-year firearm specifications, the trial court's erroneous jury instruction to disregard the last paragraph of the jury instructions not to consider the defendant's decision not to testify was erroneous since the defendant did testify, but the court of appeals found that the error did not constitute structural error, that the trial court's mistaken instruction was harmless error and that the jury did not lose its way; also discussed, self-defense and ineffective assistance.

Sealing/Dismissed charge/Acquittal. [State v. Yu | 2024-Ohio-3083 | 1st Appellate District | 08/14/2024](#) Denial of applications to seal records of a dismissed misdemeanor charge, an acquittal of a misdemeanor charge and a misdemeanor conviction and to expunge the conviction was error since the trial court denied the record sealing of the dismissal without explanation and in the acquittal and conviction cases solely because the appellant was arrested for a similar charge in another jurisdiction where the record does not reflect that the court conducted the analysis required by R.C. 2953.33(B)(2), nor does the record indicate that the court considered the required factors in R.C. 2953.32(D)(1); dissenting opinion.

Sentencing/Allied offenses. [State v. Lugo | 2024-Ohio-3071 | 5th Appellate District | 08/12/2024](#) In a conviction by plea to receiving stolen property, possession of a fentanyl-related compound and two counts of aggravated possession of drugs, the defendant's claim on appeal that the trial court failed to merge the drug offenses as allied offenses of similar import, R.C. 2941.25(B), has merit since when the plea agreement is silent on the issue of allied offenses of similar

import, the trial court is obligated under R.C. 2941.25 to determine whether the offenses are allied and, if they are, to convict the defendant of only one offense; if a trial court fails to merge allied offenses of similar import, the defendant has the right to appeal the sentence, *Cisco*; remanded for a limited re-sentencing hearing on merger of offenses for sentencing.

Plea/Crim.R. 11(C)(2)(a). [State v. Hutsenpiller | 2024-Ohio-3069 | 11th Appellate District | 08/12/2024](#) In a conviction by a plea of guilty to, inter alia, aggravated vehicular assault, the plea was not validly made since the trial court failed to comply with Crim.R. 11(C)(2)(a), pertaining to the colloquy required concerning the nature of the charges, the maximum penalty involved and ineligibility for the imposition of community control since the extent and nature of the deficiencies in the plea colloquy amounted to a "complete failure," excusing the defendant from demonstrating prejudice because there was a lack of any dialogue between the trial court and the defendant during the plea colloquy, including the trial court making conflicting statements and omissions with respect to the maximum penalty and mandatory nature of the sentence; dissenting opinion.

Evidence/Sexual assault nurse examiner/Children services investigator. [State v. Brook | 2024-Ohio-3074 | 5th Appellate District | 08/09/2024](#) In a conviction of the defendant of, inter alia, multiple counts of rape of his minor daughter and the daughter's minor friend, even if the trial court erred by allowing the state to present the testimony of a sexual assault nurse examiner of the out-of-court statements made by each victim in the absence of the state providing a report or curriculum vitae of the witness as required by Crim.R. 16, the remaining evidence presented at trial, including the victims' testimony, overwhelmingly established the defendant's guilt beyond any reasonable doubt; also, since each victim testified at trial and was subject to cross-examination, the trial court did not commit plain error by allowing the state to present the victims' out-of-court statements made to a children services investigator at the children's school and at the police station.

Rape/Forcible/Sentencing/Merger. [State v. Simmons | 2024-Ohio-3036 | 2nd Appellate District | 08/09/2024](#) In a conviction of forcible rape, aggravated burglary and sexual battery that were merged at sentencing into a single conviction for forcible rape, the forcible rape conviction was not supported by sufficient evidence since the force used by the defendant to manipulate the female's underwear did not compel her to submit to the sexual conduct because she was asleep and was unaware of the defendant's manipulation of her underwear to facilitate the sexual conduct and, because she was unaware of that force, her submission to the sexual conduct could not have been compelled by it; the conviction is vacated and the matter is remanded for consideration as to whether the vacation of the forcible rape conviction affects the merged aggravated burglary conviction and, if necessary, whether the guilty verdict for sexual battery supports a lesser-included offense of aggravated burglary and to sentence the defendant for the remaining merged offenses.

Plea/Validity/Inconsistent verdicts/ Different facts. [State v. Price | 2024-Ohio-3016 | 8th Appellate District | 08/08/2024](#) In a conviction of aggravated robbery and felonious assault in one case and a conviction by plea to aggravated vehicular assault and failure to stop after an accident in another case, the trial court erred in the second case by failing to inform the defendant of his right against self-incrimination during his plea colloquy, Crim.R. 11(C)(2)(c), the state concedes the error, and the matter is remanded for further proceedings; in the other case, the defendant's claim that the verdict was inconsistent with the verdict finding his co-defendant not guilty of aggravated robbery and felonious assault is without merit since the facts under which each defendant was found guilty of the specific charges as to each involved different facts.

Sentencing/Appellate review. [State v. Jones | 2024-Ohio-3013 | 8th Appellate District | 08/08/2024](#) On remand for re-sentencing on convictions of aggravated arson, felonious assault, arson and domestic violence, in which the court of appeals

ordered the trial court to merge the aggravated arson and felonious assault convictions and to elect the offense to which the defendant would be sentenced, and on remand and re-sentencing, the trial court did not err in imposing a prison sentence of 11 years on the aggravated arson count, ten years on a repeat violent offender specification and ordering them to be served consecutively with an 18-month term on the arson count, for a total minimum sentence of 22.5 years and a maximum sentence of 31 years where the trial court considered the statutory criteria in R.C. 2929.11 and 2929.12 and made the required findings.

Indictment/Waiver of amended indictment. [State v. Smith | 2024-Ohio-3012 | 8th Appellate District | 08/08/2024](#) In a plea of guilty to gross sexual imposition, the defendant's waiver of the amended indictment was not invalid since a defendant may consent to a negotiated plea to an offense that was neither indicted, nor a lesser included offense of the indicted offense, without a waiver of indictment pursuant to Crim.R. 7(A) and Section 10, Article I of the Ohio Constitution, *Rohrbaugh*, and Crim.R. 11 does not require the court to inform the accused of the actual elements of the charged offense, but to "look to the circumstances of the case to determine whether the accused understood the charge," *Carpenter*, and the defendant failed to demonstrate prejudice.

Sentencing/Jurisdiction/Mootness. [State v. Baker | 2024-Ohio-3015 | 8th Appellate District | 08/08/2024](#) Following a 2014 conviction by plea to, inter alia, aggravated murder and imposition of concurrent and consecutive sentences totaling 37 years to life that was affirmed, denial of a 2015 petition for post-conviction relief and a 2019 re-sentencing, the trial court's denial of 2023 pro se "motion for one document (journal entry) final appealable order" is dismissed as moot since the trial court lacked jurisdiction to hold the re-sentencing hearing because the defendant's post-conviction relief sentence does not fall under any of the three categories set forth in R.C. 2929.191, and thus the 2019 re-sentencing journal entry is void as are all subsequent rulings.

Criminal (Continued)

Rape/Domestic violence/Sufficiency and weight. [State v. McQuisition | 2024-Ohio-3011 | 8th Appellate District | 08/08/2024](#) In a bench conviction of rape, R.C. 2907.02(A)(2), and domestic violence, R.C. 2919.25, although the trial court may have erred in admitting the defendant's testimony that he had a prior domestic violence conviction and had hit the victim in the face, the defendant was not prejudiced since in a bench trial, "the judge is presumed to disregard any prejudicial testimony when making a decision," Dyer, and other testimony, including the victim's testimony and the testimony of a sexual assault nurse examiner of her forensic examination of the victim and observing injuries to victim's face and bruising on her arms and her inner thighs, supported the conviction.

Sentencing/Allied offenses. [State v. Cook | 2024-Ohio-2966 | 5th Appellate District | 08/05/2024](#) In a conviction of, inter alia, robbery, two counts of grand theft and three counts of failure to comply, arising out of thefts of a firearm and motor vehicles and pursuit by law enforcement, the trial court erred by failing to merge the grand theft offenses as allied offenses of similar import for sentencing, R.C. 2941.25, since the convictions stem from the defendant's theft of the officer's truck/cruiser containing two firearms in a locked gun rack behind the driver's seat, grand thefts were motivated by the defendant's attempt to flee law enforcement, and no evidence was presented that the defendant specifically stole the truck because there were firearms inside, Skapik; the trial court also failed to merge the offenses of robbery of the firearms with the offenses of grand theft of the vehicle.

Plea/Withdrawal/Post-sentence. [State v. Vasquez | 2024-Ohio-2947 | 6th Appellate District | 08/02/2024](#) Following a 1994 conviction by guilty plea to murder, R.C. 2903.02, that was not appealed, the defendant filed a Crim.R. 32.1 motion to withdraw his plea, the trial court erred in denying the motion on the basis that it had no jurisdiction to hear a Crim.R. 32.1 motion to withdraw a guilty plea after the time for an appeal from the

conviction had expired since the state had recently revealed suppression of numerous exculpatory materials in violation of its duties under Brady and Crim.R. 16, resulting in a plea that was not made knowingly, intelligently and voluntarily and, since no appeal was taken from the conviction, no time limit exists for filing a Crim.R. 32.1 post-sentence motion to withdraw a guilty plea, and the trial court retained jurisdiction to consider the motion.

Weapons offense/Dismissal. [State v. Merriweather | 2024-Ohio-2945 | 6th Appellate District | 08/02/2024](#) In state's appeal of the trial court's dismissal of charges against the defendant for (1) carrying a concealed weapon, R.C. 2923.12(A)(2) and (F) (1) and R.C. 2923.111(A); and (2) violating a protection order during the commission of a felony, R.C. 2919.27(A)(1) and (B)(4), the court of appeals reverses since the trial court relied on the federal court of appeals decision in Rahimi that was reversed by the U.S. Supreme Court holding that "[w]hen a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may—consistent with the Second Amendment—be banned from possessing firearms while the order is in effect," Rahimi II; remanded for a re-hearing.

Education

Student transportation/Practicality/ New determination. [Worthington City School Dist. Bd. of Edn. v. State Bd. of Edn. | 2024-Ohio-4703 | 10th Appellate District | 09/26/2024](#) In school district's administrative appeal of decision by state board of education disapproving local school district's determination that it was impractical to provide transportation and thus offered payment in lieu of student's transportation to and from school, trial court did not err in denying parents' motion to intervene where, although the state board's resolution disapproving the district's determination was final, that initial disapproval was subsequently superseded by new state education department's order approving the district's determination, and parents failed to identify legal authority that granted the trial court jurisdiction

to reopen the terminated R.C. 119.12 appeal after its determination was replaced.

Contract/Breach. [Gurary v. John Carroll Univ. | 2024-Ohio-3114 | 8th Appellate District | 08/15/2024](#) In nontenured employee's breach of contract action against university for failure to pay amount owed under the parties' contract, summary judgment in favor of university was error where employee was not subject to salary adjustments under the terms of the parties' contract because the contract addressed only reductions to tenured faculty pay, bonus payment made to employee expressly did not represent payment for hours worked, and employee suffered harm from university's delay in partial salary payment, so the case is remanded for further proceedings on employee's breach-of-contract claim, including his request for liquidated damages under R.C. 4113.15(B)

Religious doctrine/Ecclesiastical abstention. [Prey v. Franciscan Univ. of Steubenville | 2024-Ohio-3087 | 7th Appellate District | 08/13/2024](#) In plaintiff-instructor's action for defamation, breach of contract, and related claims against private university with a religious affiliation, trial court's order granting defendant's Civ.R. 12(B)(1) motion to dismiss for lack of subject matter jurisdiction is affirmed under the ecclesiastical abstention doctrine because plaintiff's claims, though secular in nature, required the court to interpret religious doctrine where the complaint contained numerous references to religious beliefs, teachings, and decrees.

Elections and Campaign Finance

Initiative/Form of government/ Procedure. [Smith v. Clement | 2024-Ohio-5220 | 4th Appellate District | 10/31/2024](#) In residents' action seeking to compel city council members to place petition initiative on ballot to abolish city charter and to return to a statutory form of government, trial court did not err in granting a writ of mandamus where city's charter governed initiatives to abolish the charter, so the charter's provisions governed the procedure for placing the issue on the ballot, rather than

the Ohio Constitution, and although the trial court erred in not applying the charter to the entire process, the error was harmless because residents obtained enough signatures and city council was legally required to pass an ordinance submitting the initiative for the ballot.

Constitutional amendment/Summary/Review. [State ex rel. Dudley v. Yost | 2024-Ohio-5166 | Supreme Court of Ohio | 10/30/2024](#) In case in which relators seek to have a proposed constitutional amendment titled “Ohio Voters Bill of Rights” placed on the ballot in upcoming election, relators submitted the text and a summary of their proposed amendment to the attorney general to obtain his certification, which he declined on reasoning that the title was not a fair and truthful statement of the proposed amendment, and relators filed a petition for a writ of mandamus to direct the attorney general to certify their summary, the court grants a limited writ of mandamus ordering the attorney general to examine the summary of relators’ proposed amendment, determine whether the summary is a fair and truthful statement of the proposed amendment and, if so, certify and forward relators’ petition to the Ohio Ballot Board; in this case, the attorney general had reviewed only the title of the relators’ proposed constitutional amendment, and he did not perform his duty under R.C. 3501.19(A) to “conduct an examination of the summary.”

Zoning ordinance/Referendum petition/Procedural requirements. [State ex rel. Brill v. Lorain County Bd. of Elections | 2024-Ohio-4990 | Supreme Court of Ohio | 10/16/2024](#) Relators’ petition for a writ of mandamus to compel the county board of elections to place a zoning-amendment referendum on upcoming election ballot, arising from city council’s passage of ordinance that changed the zoning classification of approximately 300 acres of land, is denied where, after the referendum was certified for the ballot and intervening respondents filed a protest, the board of elections sustained the protest on reasoning that R.C. 731.32 requires a certified copy of the full ordinance to be filed

before circulating a referendum petition, relator admitted that the copy submitted was incomplete, R.C. 731.32 requires strict compliance, rather than substantial compliance, and relators’ incomplete submission violated this statutory requirement; as a result, the board of elections did not abuse its discretion in sustaining the protest and removing the referendum from the ballot.

Directive 2024-21/Absentee ballots/Delivery/Laches. [State ex rel. Ohio Democratic Party v. LaRose | 2024-Ohio-4953 | Supreme Court of Ohio | 10/15/2024](#) Political party’s petition for a writ of mandamus to compel the secretary of state to rescind Directive 2024-21, which imposes additional requirements for delivering absentee ballots, such as requiring family members or designated assistants to deliver absentee ballots to election officials in person rather than using a drop box, is denied where the doctrine of laches applies since the party delayed unreasonably in filing their complaint, which prejudiced the ongoing election process, the Directive’s procedures have already been implemented, and absentee ballots are being mailed with instructions, so modifying the rules at this point would cause confusion.

Precinct election officials/Training/Photo identification. [State ex rel. Strbich v. Montgomery Cty. Bd. of Elections | 2024-Ohio-4933 | Supreme Court of Ohio | 10/11/2024](#) Relator’s petition for a writ of mandamus to compel the county board of elections to provide proper training to precinct election officials regarding unacceptable forms of photo identification, including IDs issued to non-citizens, as required by Secretary of State Directive 2024-09 and R.C. 3501.11(P), is partially granted since the board has a clear legal duty to comply with the directive; however, after the lawsuit was filed, the board began providing the required training, so the writ is denied as moot for officials trained after the updated materials were distributed, but for officials trained prior to that, the writ is granted, and the board is ordered to provide updated training materials via email; as well, relator’s request for mandatory in-person training is denied, as there is no legal requirement for that format.

Local liquor option/Certify for ballot/Statutory requirements. [State ex rel. Imposters, Ltd. v. Cuyahoga Cty. Bd. of Elections | 2024-Ohio-4588 | Supreme Court of Ohio | 09/19/2024](#) Relator-theater’s petition for a writ of mandamus to compel the board of elections to certify a local liquor option for the upcoming general-election ballot, seeking a vote on allowing the sale of wine and spirituous liquor at its location, where its current permits allowed only beer and mixed beverages, is denied on reasoning that relator’s local-liquor-option petition did not comply with statutory requirements under R.C. 4301.333 and 4301.355(B) (1), which mandated the inclusion of “wine and mixed beverages” together in such petitions, and strict compliance with election laws is required.

Finance report/Identity. [Henschen v. Ohio Elections Comm. | 2024-Ohio-4592 | 10th Appellate District | 09/19/2024](#) In city resident’s opposition to local school levy proposals where he reported campaign expenditures anonymously as an “Unnamed Individual,” resulting in elections commission’s decision finding him in violation of R.C. 3517.13(G)(1) for failing to properly disclose his identity on the campaign finance report, the trial court erred in not recognizing that, under R.C. 3517.11(B)(3)(a), the resident should have been given the opportunity to correct the incomplete filing before the case was referred to the elections commission.

Constitutional amendment/Redistricting. [State ex rel. Citizens Not Politicians v. Ohio Ballot Bd. | 2024-Ohio-4547 | Supreme Court of Ohio | 09/16/2024](#) In a petition for a writ of mandamus to compel the secretary of state to reconvene the ballot board to adopt new language and to direct the secretary to adopt a new title for a constitutional amendment that would repeal certain articles of the Ohio Constitution and add a new article that would change the standards and procedures applicable to the drawing of electoral districts for the General Assembly, a limited writ is granted on reasoning that the cumulative effect of defects in two sections of the ballot language—as it provides for a “proportionality standard” and as it fails to identify that the public has

Elections and Campaign Finance (Continued)

rights to participate in the redistricting process—violates the constitutional standard, and the ballot board and the secretary of state are ordered to reconvene forthwith and adopt ballot language that remedies these defects; however, the secretary did not err in crafting the ballot title since it is not misleading, and the writ of mandamus writ is denied in all other respects.

Zoning referendum/Protest/Accurate map. [State ex rel. Valentine v. Schoen | 2024-Ohio-3439 | Supreme Court of Ohio | 09/06/2024](#) Relator's petition for a writ of mandamus to compel board of elections to place a zoning referendum on upcoming general election ballot is denied where, although the part-petitions contained more than the required number of valid signatures, a notice of protest was filed with the board asserting that the referendum petition did not include an "appropriate map" of the area affected by the zoning proposal, as required by R.C. 519.12(H); the map submitted with the referendum petition was inaccurate and potentially misleading as it depicted the area originally requested for rezoning rather than the smaller area that was ultimately approved for rezoning, and the failure to include an accurate map justified the board of elections' decision to sustain the protest against the petition and exclude the referendum from the ballot.

Candidate petition/Signature requirement/Constitutionality. [State ex rel. Tjaden v. Geauga Cty. Bd. of Elections | 2024-Ohio-3396 | Supreme Court of Ohio | 09/04/2024](#) Relator's petition for a writ of mandamus to order respondents-county boards of elections to place his name on general-election ballot as an independent candidate is denied on the basis that relator's candidate petition did not have sufficient signatures, R.C. 3513.257(C), and relator's contention that the boards exceeded their statutory authority when they struck signatures as "not genuine" and that in doing so, they violated his constitutional right to procedural due process is without merit where board of elections can invalidate signatures and reject a petition on any one of the grounds

in R.C. 3501.39(A)(1) through (4), the law does not require the board to hold a hearing for a candidate whose petition has been invalidated for insufficient signatures, and relator has the opportunity to challenge the board's decision through his mandamus action; as well, even if all the signatures were accepted, relator would still have an insufficient number, so relator's argument that R.C. 3513.257(C) is unconstitutional for requiring independent candidates to obtain more signatures than major-party candidates is not considered, and relator points to no logical path that entitles him to relief in mandamus for this claim.

Environmental and Natural Resources

Mineral interests/Abandonment/Affidavit. [Moore v. SWN Prod. Co., L.L.C. | 2024-Ohio-5517 | 7th Appellate District | 11/21/2024](#) In plaintiffs-heirs' action seeking to quiet title to mineral interest in property and alleging trespass and conversion against defendants-energy company and surface owners, summary judgment for the defendants is affirmed where the trial court held that surface owners properly effectuated plaintiffs' abandonment of a dormant mineral interest under the Dormant Mineral Act (DMA), thus consolidating ownership of the mineral rights with their surface property, since the surface owners exercised reasonable diligence to identify and locate the holders of plaintiffs' interest before filing an affidavit of abandonment by searching public property records, sending certified mail to the last known address, and publishing notice when mail was undeliverable, complying with requirements of R.C. 5301.56(E).

Mineral interests/Pleading/Notice/Particularity. [Bethel Oil & Gas, L.L.C. v. Redbird Dev., L.L.C. | 2024-Ohio-5285 | 4th Appellate District | 10/23/2024](#) Dismissal, Civ.R. 12(B)(6), of plaintiff's complaint alleging that high-pressure waste fluid injections from the defendants' wells contaminated plaintiff's mineral estate, causing severe damage to oil and gas reservoirs, is reversed since the trial court erred by applying an improper heightened pleading standard where Ohio follows a notice-pleading standard under Civ.R. 8(A), which requires only a short, plain statement

of the claim, not requiring a plaintiff to plead operative facts with particularity or answers to who, what, when, where, and how questions, and plaintiff's complaint adequately stated claims for negligence, trespass, and nuisance, as well as proximate causation between the defendants' actions and plaintiff's injuries; the case is remanded for further proceedings.

Mineral interests/Contract. [Gateway Royalty II, L.L.C. v. Gulfport Energy Corp. | 2024-Ohio-4844 | 7th Appellate District | 09/09/2024](#) In action by plaintiffs-holders of oil and gas leases against defendant-energy company for breach of contract, alleging that defendant wrongfully deducted post-production costs such as compression, processing, gathering, and fractionation from the plaintiffs' overriding royalty interest (ORRI) payments, summary judgment for plaintiffs is affirmed, finding that the ORRI assignment language did not allow for such deductions and that defendant's arguments were unsupported by Ohio law; as well, award of prejudgment interest to the plaintiffs is affirmed.

Mineral interests/Res judicata. [Myers v. Vandermark | 2024-Ohio-3205 | 7th Appellate District | 08/20/2024](#) In a dispute over property rights under Ohio's Marketable Title Act (MTA), in which plaintiffs claim that their ownership of surface land automatically transferred the mineral rights underneath their property by operation of law under the MTA, arguing that the mineral rights had been extinguished due to a lack of any recorded claim within the statutory 40-year period where defendants counter that a previous court case involving the Dormant Mineral Act (DMA), which ruled in their favor, precludes plaintiffs from relitigating the issue under the MTA through the doctrine of res judicata, the trial court erred in granting defendants' Civ.R. 12(B)(6) motion to dismiss plaintiffs' complaint on reasoning that they lacked standing since the trial court's reasoning was more aligned with a res judicata defense rather than a true standing issue and since res judicata is an affirmative defense to be raised via summary judgment, not a Civ.R. 12(B)(6) motion to dismiss, because resolution of a res judicata defense typically requires resorting to materials

outside the pleadings, the trial court erred by dismissing the case on this basis.

Mineral interests/Abandonment/Notification. [Henderson v. Stalder | 2024-Ohio-3037 | 7th Appellate District | 08/09/2024](#) In plaintiffs-mineral interest holders' action against defendants-surface owners seeking to quiet title to oil and gas interest in property, summary judgment in favor of defendants was error where, although defendants' attempt to serve abandonment notice on identified mineral interest holder failed, defendants' attempted service by publication also failed under the Dormant Mineral Act because it was defective in that it failed to specifically name the mineral interest holder, and therefore the abandonment process was not completed under the Act, R.C. 5301.56.

Mineral interests/Deep rights. [Hogue v. PP&G Oil Co., L.L.C. | 2024-Ohio-2938 | 7th Appellate District | 08/01/2024](#) In plaintiffs-property owners' action against defendants-gas companies seeking a declaration as to ownership of a fractional leasehold interest in deep rights underlying drill site units, pursuant to the parties' assignment of working interest after the parties had entered into a participation agreement, summary judgment in favor of plaintiffs was error where the granting clause in the agreement specified the size of drill site units with depth limitations based on the existing version of Ohio Adm. Code 1501:9-1-04(C)(4), and even though the statutory definition of "drilling unit" allows for greater depths, the parties did not intend the assignment to convey deep rights to plaintiffs' working interest.

Estate Planning, Trust and Probate

Birth certificate/Gender identity/Change/Absence of majority. [In re Application for Correction of Birth Record of Adelaide | 2024-Ohio-5393 | Supreme Court of Ohio | 11/19/2024](#) In the absence of a majority, which is necessary to render a judgment, Ohio Const., Art. IV, Sec. 2(A), the judgment of the court of appeals is left undisturbed. The court of appeals affirmed the trial court's denial of plaintiff's application to change the sex marker on her birth certificate on reasoning that R.C. 3705.15 does

not allow for amendments to a birth certificate, even though it allows for corrections of errors, that the language of the statute does not specifically grant authority to the probate court to alter the sex marker unless it was originally made in error, and that even though evidence showed that plaintiff's sexual identity is now female, both psychologically and in lifestyle gender expression, the sex marker accurately recorded her male anatomy at the time of birth.

Guardianship/Surety/Payment. [In re Guardianship of Claflin | 2024-Ohio-5199 | 5th Appellate District | 10/29/2024](#) In sister's application for appointment as guardian of minor brother following death of mother, where attached to the application was a guardian's bond, and facts reflect that guardian expended funds without court approval, trial court erred in ordering the surety company to pay on bond upon closing of the guardianship since surety company was denied due process where judgment was made against sister and surety company, but surety company was not made a party to action, and surety company was not afforded a reasonable opportunity to be heard after reasonable notice of hearing.

Probate asset/Property transfer/Dower rights. [Pettitt v. Schaffner | 2024-Ohio-5180 | 10th Appellate District | 10/29/2024](#) In plaintiff-wife's action against defendant-deceased husband's paramour seeking a declaration that husband's property should be treated as a probate asset, trial court erred in granting defendant's motion for summary judgment on defendant's counterclaim to quiet title to property where decedent's transfer on death designation to paramour was not valid because plaintiff did not relinquish her dower rights to property pursuant to R.C. 5302.22(D)(3), and the agreement between spouses, who were still married, to transfer their interests in each other's property did not constitute a legal separation agreement, R.C. 3105.10(E).

Intervention/Denial/Appeal/Final order. [In re Miles | 2024-Ohio-5129 | 5th Appellate District | 10/24/2024](#) In case (related to Johnstown v. Smith, 2024-Ohio-5128) in which trustee filed an application with the trial court seeking permission to terminate charitable trust, appeal of denial, for

lack of standing, of plaintiffs' motion to intervene is dismissed as not from a final appealable order where appellants' purpose in seeking to intervene did not affect a substantial right under R.C. 2505.02(B)(1) because the matter could be litigated in another action—which it was in its related declaratory judgment action—so the judgment denying the motion to intervene was not a final appealable order.

Charitable trust/Termination/Intervention/Standing. [Johnstown v. Smith | 2024-Ohio-5128 | 5th Appellate District | 10/24/2024](#) After trustee filed an application with the trial court seeking permission to terminate charitable trust, in plaintiffs-potential beneficiaries' motion to intervene and complaint for the court to declare that the charitable trust must continue to operate according to its original purpose, trial court did not err in denying the motion to intervene and in dismissing the complaint since plaintiffs lacked standing, R.C. 109.24, because attorney general had exclusive authority to enforce the charitable trust, plaintiffs did not represent the entire community which would benefit from the trust, and plaintiffs were not referred to in the trust as actual beneficiaries and did not have special interest standing.

Trust/Easement/Jurisdiction. [Francati v. Fuentes | 2024-Ohio-5095 | 8th Appellate District | 10/24/2024](#) In property owners' action in probate court to declare that a trust was created through a series of deeds and other documents, granting owners the right to access lake via an easement, trial court did not err in dismissing the case for lack of subject-matter jurisdiction on reasoning that the dispute involved an easement, rather than a trust; under R.C. 2101.24 probate courts have jurisdiction over trusts, but not easements, and property owners failed to show any evidence of an intent to create a trust in the deeds, as required to establish the existence of a trust.

Concealed assets/Restored assets/Attorney fees. [Minshall v. Estate of Minshall | 2024-Ohio-3428 | 6th Appellate District | 09/06/2024](#) In brothers' action against executor of mother's estate regarding the

Estate Planning, Trust and Probate (Continued)

inventory, resulting in a judgment that executor had concealed assets from the estate, R.C. 2109.52, and under the plain language of the statute, the reduction in judgment for assets that are restored or returned to the estate is not applicable when the fiduciary of an estate is found guilty of concealing its assets, the trial court erred in awarding attorney fees to brothers since executor did not waive his right to a hearing on the issue of attorney fees, Sup.R. 71(C) required a hearing prior to an award of attorney fees to brothers, and the case is remanded for further proceedings regarding the attorney fees.

Trust/Real property/Life estate/ Authority to sell. [Curtis v. Edsell | 2024-Ohio-3420 | 2nd Appellate District | 09/06/2024](#) In dispute regarding mother/grandmother's trust where children of deceased daughter brought a declaratory judgment action seeking interpretation of the trust agreement with respect to the right of son-life estate holder to sell property, trial court erred in finding that son was authorized to sell only the life estate where the terms of the trust granted son the authority to sell the entire property in fee simple, but the sale could not be made under terms constituting a gift; as well, the grandchildren were contingent remainder beneficiaries of the property, R.C. 5808.19(B).

Family Law and Domestic Relations

Parenting time/Modification. [Giumenti v. Johns | 2024-Ohio-5562 | 5th Appellate District | 11/22/2024](#) In divorce action in which father sought modification of mother's parenting time, the trial court did not err in rejecting magistrate's restricted parenting time recommendations and reinstating mother's previous parenting time where, although mother refused to see one child and made little effort to be involved with other child, more restrictive orders would not improve her relationship with children, and even though restarting parenting time with mother would likely be difficult for children, it was found to be in their best interest, R.C. 3109.051.

Extracurricular expenses. [Romeo v. Romeo | 2024-Ohio-5516 | 7th Appellate District | 11/21/2024](#) In divorce action, the trial court did not err in ordering husband to reimburse wife for share of child's extracurricular expenses where, although the term "extracurricular" was found to be ambiguous as it relates to whether an activity is tied to school, under the terms of the agreed judgment entry, the parties intended extracurricular activities to include recreational sports not associated with school, and husband had previously paid his share of expenses for child's sports activities.

Spousal support/Future income. [Cusack v. Cusack | 2024-Ohio-5427 | 9th Appellate District | 11/18/2024](#) In divorce action, the trial court's spousal support order, which included monthly payments of half of future stock bonuses and equity grants awarded to husband, is affirmed where the trial court properly considered all statutory factors, including wife's inability to earn income due to a medical problem and her significant medical expenses, and the award aligns with precedents permitting spousal support awards under R.C. 3105.18(C)(1) tied to bonuses or stock grants as future income; husband's arguments that including future bonuses as support improperly distributed post-divorce separate property or constituted a distributive award without appropriate findings under R.C. 3105.171(E) is without merit.

Visitation/Grandparent/Paternity/ Standing. [In re M.L.-P. | 2024-Ohio-5346 | 2nd Appellate District | 11/08/2024](#) Trial court's order granting visitation rights to paternal grandmother is reversed on reasoning that grandmother lacked standing under R.C. 3109.12(A) to petition for nonparent visitation because there was no evidence establishing her son's paternity through the required legal processes, such as acknowledgment of paternity or a paternity determination under R.C. Ch. 3111; trial court's consideration of evidence from a separate child support proceeding was improper since the information was outside the record and not publicly accessible for judicial notice.

Divorce/Attorney/Contempt. [Price v. Price | 2024-Ohio-5253 | 3rd Appellate District | 11/04/2024](#) In divorce action in which husband's counsel was found in direct criminal contempt of court, trial court erred in denying counsel's motion to vacate the finding where it was based on counsel's alleged violations of the Rules of Professional Conduct, and although counsel's tone and his repeating of arguments already ruled upon may have aroused magistrate's personal sensibilities, there was no imminent threat to administration of justice warranting finding of criminal contempt.

Marital residence/Failure to vacate/ Estate claim. [Liu v. Tallarico | 2024-Ohio-4935 | 5th Appellate District | 10/11/2024](#) In divorce action in which husband had been ordered in the decree to vacate the marital residence, after which his now-deceased wife was required to pay him for his share of the mortgage reduction, and husband filed a claim against her estate for the payment, summary judgment for estate is affirmed since husband failed to fulfill the condition precedent requiring him to vacate the property, so husband was not entitled to the payment, and husband's continued residence on the property, rent-free, constituted a waiver of his claim.

Property division/Second divorce. [McGrady v. Camara | 2024-Ohio-4903 | 8th Appellate District | 10/10/2024](#) In the parties' second divorce action, trial court did not err in holding husband in contempt for failing to execute a division of property order (DOPO) related to his pension, as stipulated in the parties' original divorce decree, where the key issue was whether the couple's remarriage and subsequent second divorce nullified the DOPO requirement from the first divorce, and the court properly held that the pension division in the first divorce decree remained valid since the remarriage did not void executed provisions of the original divorce decree.

Contempt/Purge/Relief from judgment. [Sweet v. Sweet | 2024-Ohio-4824 | 6th Appellate District | 10/04/2024](#) In a divorce action where the trial court, at a purge hearing, dismissed three contempt orders against the husband related to his failure to comply with several court

orders—because the wife’s attorney failed to attend the hearing due to a scheduling conflict—the trial court erred in denying the wife’s Civ.R. 60(B) motion for relief from judgment where the appellate court found that the trial court improperly shifted the evidentiary burden to the wife, failed to follow procedural safeguards, and that wife’s attorney demonstrated excusable neglect, so the case is remanded to assess the husband’s compliance with the purge conditions.

Civil protection order/Filing location. [Hernandez v. Hamdy | 2024-Ohio-4754 | 11th Appellate District | 09/30/2024](#) In petitioner’s action seeking a domestic violence civil protection order against her ex-husband, the trial court erred in vacating prior ex parte orders of protection by ruling that it lacked subject matter jurisdiction because the petitioner did not reside in the county where the petitions were filed since R.C. 3113.31(A)(2) does not require a petition for a domestic violence protection order to be filed in the county where the petitioner resides when the respondent is not a juvenile; also, the court further found that R.C. 2903.214, which has stricter filing requirements, does not govern the filing of domestic violence protection orders under R.C. 3113.31.

Adoption/Denial/Best interest/Dissent. [In re the Adoption of Z.B. | 2024-Ohio-4644 | 10th Appellate District | 09/24/2024](#) Denial of paternal aunt’s and uncle’s petition for adoption of abused, neglected, and dependent child is reversed where the court based its decision on the recent bond formed between child and biological mother, and the court failed to cite any other factor reasonably weighing against granting the petition to aunt and uncle, and mother presented no plan for reunification with child, while it was in child’s best interest to be adopted by aunt and uncle, who were well-bonded with child and child was thriving in their home, and denial of adoption petition denied child permanency in a stable and loving household, R.C. 3107.161; there is a dissenting opinion.

Civil protection order/Prima facie case. [M.D. v. J.S. | 2024-Ohio-4590 | 10th Appellate District | 09/19/2024](#) In petitioner’s action seeking a domestic violence protection order

against respondent-partner, alleging that respondent threatened and committed a sexually-oriented offense against her, trial court erred in granting respondent’s Civ.R. 41(B) (2) motion for involuntary dismissal of petition since petitioner made a prima facie case, R.C. 3113.31(A)(1), where her testimony demonstrated a subjective fear of imminent physical harm arising from respondent’s threats and that respondent engaged in a pattern of controlling behavior which appropriated petitioner’s bodily autonomy.

Spousal support/Change in circumstances. [Donaldson v. Donaldson | 2024-Ohio-4597 | 5th Appellate District | 09/19/2024](#) In divorce action, denial of husband’s motion to modify spousal support, citing the involuntary loss of his job as a significant change of circumstances, is affirmed, as is the order finding husband in contempt of court for failure to pay spousal support, where, although the involuntary loss of husband’s job was not initially contemplated by the parties, husband voluntarily remained underemployed and failed to make good faith efforts to find employment; however, trial court’s reallocation of the tax dependency exemptions to wife is reversed since there was no change in circumstances to justify the modification, so the case is remanded for correction regarding the tax exemptions.

Pension/Separation agreement/QDRO. [Uecker v. Uecker | 2024-Ohio-4566 | 9th Appellate District | 09/18/2024](#) In divorce action in which the divorce decree included the parties’ separation agreement, trial court did not err in modifying the terms of the separation agreement and in finding that wife was not entitled to receive all benefits under husband’s new pension where the pension at issue did not exist and was not contemplated by the parties at the time of the divorce or issuance of qualified domestic relations order (QDRO), the original decree and separation agreement did not divide the new pension, and both parties acknowledged the necessity of an amended QDRO to address the new pension.

Civil protection order. [Beall v. B.A. | 2024-Ohio-4560 | 5th Appellate District | 09/17/2024](#) In plaintiff’s petition seeking juvenile civil protection order on behalf of his child, alleging that defendant-schoolmate verbally and physically attacked child, trial court erred in granting the order since the court failed to inquire as to defendant’s lack of counsel and whether defendant expressly waived the right to counsel, and due process protections applied because the defendant was a minor even though the action was civil rather than criminal.

Contempt/Purge conditions. [Cordes v. Cordes | 2024-Ohio-3435 | 5th Appellate District | 09/06/2024](#) In divorce action in which the decree required wife to refinance the marital home or list it for sale by a certain date and provided that if no one bought the home within 90 days it would be sold at auction, trial court’s order finding that wife was in contempt for failure to comply with the decree and that wife failed to satisfy the purge conditions related to the marital home and to making car payments, and then refusing to provide wife further opportunities to purge the contempt, is affirmed where wife failed to make timely payments to purge contempt and continued to fail to comply with court orders.

Contempt/Attorney fees. [Josefszczyk v. McCray | 2024-Ohio-3434 | 5th Appellate District | 09/04/2024](#) In divorce action, trial court’s award of attorney fees to husband on the basis of husband’s third and successful motion for contempt against wife is affirmed on reasoning that wife failed to comply with multiple court orders, including failure to make mortgage payments and to cooperate in the sale of the marital home, and that the extent of the contempt proceedings and wife’s continued non-compliance justified the award; there is a dissenting opinion in this case regarding the amount of the attorney fees awarded.

Spousal support. [Wenger v. Wenger | 2024-Ohio-3354 | 9th Appellate District | 09/03/2024](#) In divorce action, trial court erred ordering the amount and duration of spousal support to wife that magistrate recommended where

Family Law and Domestic Relations (Continued)

wife had limited earning potential and an award of indefinite duration would not be unreasonable, husband was earning far more than wife and would continue to earn more towards retirement due to disparity in incomes, wife was responsible for paying considerably more debt than husband, and wife would be responsible for paying her own health insurance, R.C. 3105.18(C)(1).

QDRO/Decree ambiguity/Equity/Laches. [Shaw v. Shaw | 2024-Ohio-3231 | 12th Appellate District | 08/26/2024](#) In divorce action, trial court erred in setting aside a Qualified Domestic Relations Order (QDRO) that had been in place for many years where the QDRO was not ambiguous and provided the necessary details to effectuate pension-benefits division, the pension provision in the divorce decree was ambiguous on all matters addressed in the order, and the QDRO permissibly clarified the decree, R.C. 3105.171(I), and even if the QDRO's provision was in conflict with the divorce decree, the principles of equity and laches would require denial of relief after such a protracted period.

Divorce/Residency requirement. [Botello v. Gonzalez | 2024-Ohio-3210 | 2nd Appellate District | 08/23/2024](#) In divorce action, trial court erred in dismissing wife's complaint for refusal to provide documentation of her immigration status by adding an "immigration status" requirement to the divorce residency statute, R.C. 3105.03; compliance with the residency statute focuses solely on whether the plaintiff has been a resident of Ohio for six months before filing the complaint, so the case is remanded for the trial court to proceed with the final divorce hearing.

Divorce/Magistrate's decision/Objections. [Duncan v. Duncan | 2024-Ohio-3086 | 7th Appellate District | 08/14/2024](#) In divorce action in which mother challenged the termination of the parties' shared parenting plan, trial court erred in dismissing mother's objections to magistrate's decision based on delay in requesting preparation of the transcript where mother's counsel inadvertently missed the deadline and filed the

motion several days late, there was no indication that the late request prejudiced either father or trial court in any way, and custody should be decided on the merits when possible; the case is remanded, with instructions to reinstate the mother's objections.

Custody/Change in circumstances. [Linn v. Utt | 2024-Ohio-3097 | 5th Appellate District | 08/14/2024](#) In custody dispute, trial court did not err in terminating the parties' shared parenting plan and in granting sole custody of children to mother where a finding of change in circumstances was not required because both parties were seeking to terminate the shared parenting plan rather than to modify it, under R.C. 3109.04(E)(2)(c), a court may terminate a shared parenting decree if it determines that shared parenting is no longer in the best interest of the children, and the best interest factors under R.C. 3109.04(F) were considered by the court; also, father did not move to exclude self-authenticating exhibits he later claimed were prejudicial.

Divorce complaint/Dissolution/Dismissal. [Mosco v. DiMichaelangelo | 2024-Ohio-3079 | 7th Appellate District | 08/12/2024](#) In divorce action, trial court did not err in granting wife's Civ.R. 12(B)(6) motion to dismiss husband's complaint for divorce where the parties had previously jointly participated in dissolution of marriage in a court of unincorporated territory of the U.S., final judgment decree of dissolution was properly given full faith and credit in Ohio domestic relations court pursuant to 28 U.S.C. Sec. 1738, as incorporated in R.C. 2329.022, and because husband voluntarily submitted to jurisdiction of the territory, he cannot complain of lack of jurisdiction.

Separation agreement/Contempt/Laches. [Dhillon v. Dhillon | 2024-Ohio-3022 | 8th Appellate District | 08/08/2024](#) In divorce action in which the parties entered into a separation agreement where husband filed a motion to hold wife in contempt for failing to make payments required by the parties' agreement, the trial court did not err in denying husband's motion on reasoning that it was barred by the defense of laches where, inter alia, husband waited nearly 20 years to file the motion for contempt, without

an excuse, despite being aware that the payment was not made, and husband had stayed with his former wife for extended periods without contributing financially.

Relocation of children/Best interest. [Qaga v. Cintron | 2024-Ohio-2970 | 12th Appellate District | 08/05/2024](#) In divorce action in which mother unilaterally moved children out-of-state, trial court did not err in ordering children to be returned to Ohio, as in their best interest, R.C. 3109.04(F)(1), since mother acted improperly by relocating the children without the father's consent or a court order where the children had lived most of their lives and had extended family in Ohio, so the children's schooling was designated in Ohio, and the court ordered financial support from the father if the mother chose to relocate to Ohio.

Spousal support/Disability compensation. [Thiery v. Thiery | 2024-Ohio-2936 | 2nd Appellate District | 08/02/2024](#) In divorce action in which husband, whose income included VA disability compensation, was found in contempt for failing to pay his temporary spousal support arrearage and monthly obligation, the judgment is affirmed where the issue of husband's disability compensation was previously litigated and it was held to constitute income for purposes of spousal support, the doctrine of res judicata bars relitigation of this issue, and the use of disability income in calculation of spousal support did not render the decree of divorce unlawful.

Health Care

Health plans/Premiums/Class action/Civ.R. 23 analysis. [Desai v. CareSource, Inc. | 2024-Ohio-3028 | 2nd Appellate District | 08/09/2024](#) In class action suit in which plaintiffs alleged that defendant caused class members to pay inflated premiums for providers listed as "in-network" but were actually out-of-network, leading class members to retain their original health plans until the next enrollment period and abandon longstanding relationships with preferred providers in order to maintain affordable insurance, trial court erred in ruling that the class definition was "ambiguous and overbroad," despite

plaintiff's uniform theory of class-wide damages and a voluntary stipulation limiting those damages, since the trial court's decision failed to consider the evidence or conduct a rigorous analysis of the class definition, which was the only Civ.R. 23 factor it discussed.

Insurance

Motor vehicle/Bad faith/Uninsured motorist/Undervaluing claim.

[Crawford v. Am. Family Ins. Co. | 2024-Ohio-5345 | 2nd Appellate District | 11/08/2024](#) In insured's claim against insurer, alleging bad faith by undervaluing her uninsured motorist claim, specifically by using the lowest valuation for medical expenses and by applying an offset that reduced insured's payout, trial court erred in granting summary judgment to insurer where insured raised genuine issues of material fact regarding whether insurer acted in bad faith in its valuation methodology and in its failure to reassess after insured presented additional information from which a reasonable jury could infer bad faith in insurer's handling of claim; as well, factual issues regarding punitive damages remained, and the case is remanded for further proceedings under the standard for bad faith in *Zoppo v. Homestead Ins. Co.*

Negligence/Fact questions/Summary judgment.

[Trent v. DeMange | 2024-Ohio-5234 | 2nd Appellate District | 11/01/2024](#) In plaintiff-business owner's action against defendants-insurance company and agent, asserting negligence in procuring insurance for business and negligent misrepresentation, which resulted in uninsured loss from fire, summary judgment in favor of defendants is reversed where questions remain, inter alia, as to whether agent's statement to plaintiff about insurance could reasonably be interpreted as a commitment to provide coverage since there was conflicting testimony, whether agent had the authority to bind coverage, and whether plaintiff was supplied false information and was justified in relying on agent's statement.

License revocation/Reporting requirement.

[Tarjanyi v. Ohio Dept. of Ins. | 2024-Ohio-5239 | 2nd Appellate District | 11/01/2024](#) In insurance agent's administrative appeal of decision of department of insurance revoking his resident insurance agent license, trial court did not err in affirming department's decision where evidence showed that a client had lodged a complaint against agent, resulting in agent's termination from employment, agent was aware that his employer had terminated his employment for cause, he then entered into Financial Industry Regulatory Authority (FINRA) Letter of Acceptance, Waiver, and Consent (AWC), but evidence shows that he subsequently applied for positions with other insurance companies without informing them of the FINRA AWC and that he failed to timely report the FINRA AWC to state insurance department, in violation of R.C. 3905.22(A).

Underinsured motorist/Settlement/Set-off/Bad faith .

[Sliva v. Muhammad | 2024-Ohio-4462 | 10th Appellate District | 09/10/2024](#) In estate executor's wrongful death action against defendants-truck driver and his employer, arising from death of decedent, driving his employer's vehicle, in a motor vehicle accident, where executor and defendant-trucking company settled for an amount that exceeded the underinsured motorist (UIM) coverage provided by insurer of decedent's employer, the trial court did not err in ruling that employer's insurer was entitled to set off the amount of the settlement received from the trucking company based on the policy language and R.C. 3937.18(C), and since that amount exceeded the UIM coverage limit, the UIM coverage was not triggered; the term "legally responsible" in the UIM endorsement could include settlements as well as judgments, and the trucking company-defendant's settlement payment was deemed as satisfying the requirement for legal responsibility, triggering the set-off provision, and insurer did not act in bad faith.

Uninsured motorist/Policy provisions/Subrogation.

[Barnett v. Johnson | 2024-Ohio-3254 | 10th Appellate District | 08/27/2024](#) In insured's negligence action, alleging that multiple defendants-drivers had caused separate vehicle accidents, where insured sought uninsured motorist coverage, trial court erred in granting summary judgment in favor of insurer on insured's claims where insured's policy did not require her to bring suit against defendants to recover uninsured motorist benefits related to the collisions, insurer was aware of potential subrogation rights against defendants but failed to preserve them, and insured did not breach the subrogation provisions in the policy.

Motor vehicle/Uninsured/Physical exam.

[Johnson v. State Farm Mut. Auto. Ins. Co. | 2024-Ohio-3187 | 8th Appellate District | 08/22/2024](#) In action by insured driver for uninsured/underinsured motorist coverage after being involved in a car accident in which his vehicle was struck by another driver who fled the scene where insured alleged that insurer undervalued his claims without reasonable justification, the trial court's order for an independent medical examination (IME), on reasoning that insured's injuries were "in controversy" under Civ.R. 35(A) is vacated because it failed to define the scope and conditions of the examination, which is a requirement under Civ.R. 35(A) to prevent unnecessary invasion of privacy, and the case is remanded for the limited purpose of defining the scope and conditions of the IME.

Juvenile

Custody/Indian Child Welfare Act.

[In re L.M. | 2024-Ohio-5549 | 12th Appellate District | 11/25/2024](#) Award of permanent custody of dependent special needs child to agency was plain error where, although mother failed to raise issues regarding the Indian Child Welfare Act at the time of the trial, there was no indication the court made any attempt to comply with inquiry requirements of the Act pursuant to 25 U.S.C. 1901 and 25 C.F.R. 23.107, and mother was not put on notice of the potential for the Act to apply, which affected a substantial right; the Act requires state courts

Juvenile (Continued)

to inquire of each participant in an emergency or voluntary or involuntary child-custody proceeding whether there is any reason to believe the children involved are a member of, or eligible for membership in, an Indian tribe.

Custody/Complaint/Voluntary

dismissal. [In re J.H. | 2024-Ohio-5489 | 8th Appellate District | 11/21/2024](#) In agency's action seeking temporary custody of child on the basis of neglect for mother's failure to ensure that child attended school consistently where the agency filed a Civ.R. 41(A) notice of dismissal of the complaint, the trial court erred in denying agency's voluntary dismissal since the court was without jurisdiction to hold a hearing and was without authority to deny the agency's notice of dismissal where the notice was filed before commencement of the trial, was self-executing, and did not require an order of the court.

Bindover/Constitutionality/Sentence/Parole.

[State v. Garner | 2024-Ohio-5248 | 3rd Appellate District | 11/04/2024](#) Conviction and imposition of mandatory sentence of 15 years to life after 17 year-old defendant entered a no contest plea to murder, R.C. 2903.02(B), is affirmed where defendant was transferred to adult court per Ohio's mandatory bindover law, R.C. 2152.10(A)(1), and defendant's argument that the bindover law is unconstitutional under the Eighth Amendment and Ohio's equivalent provision, Ohio Const. Art. I, Sec. 9, claiming it failed to consider youth as a mitigating factor, is without merit since bindover does not constitute "punishment," thus not implicating the Eighth Amendment; as well, defendant's challenge to R.C. 2929.02(B)(1) is meritless since his sentence offered a meaningful chance for parole and was proportional to the offense.

Custody/Calculation/Continuance.

[In re R.R. | 2024-Ohio-5300 | 4th Appellate District | 10/29/2024](#) Award of permanent custody of abused child to agency is reversed since there were procedural errors where the court ordered the permanent custody

award after advising the parties that the permanent custody hearing would be continued before a decision was issued, questions remained as to whether the agency established that permanent custody was in child's best interest, and the length of time the child had been in agency's temporary custody was incorrectly calculated, pursuant to R.C. 2151.414(B)(1).

Bindover. [State v. Taylor | 2024-Ohio-5094 | 8th Appellate District | 10/24/2024](#) Juvenile court did not err in bindover of juvenile to adult court pursuant to R.C. 2152.10(B) following filing by the state of two delinquency complaints for alleged felony and misdemeanor offenses since the juvenile court properly weighed the statutory factors for and against transfer pursuant to R.C. 2152.12(D) and (E), finding the juvenile's extensive criminal history, involvement in violent firearm offenses, the failure of prior juvenile interventions, his completed gun intervention program, and his ongoing community-control sanctions did not deter his involvement in subsequent firearm offenses.

Delinquency/Sealing records/Constitutionality/Dissent. [State ex rel. Cincinnati Enquirer v. Bloom | 2024-Ohio-5029 | Supreme Court of Ohio | 10/22/2024](#) In case in which juvenile court judge ruled that juvenile was not delinquent, sealed the record under R.C. 2151.356(B)(1) (d), and denied, without a hearing, newspaper's request for the transcript of the delinquency trial, newspaper's petition for writs of mandamus and prohibition, arguing that the sealing statute violated Ohio Const. Art. 1, Sec. 16, the open courts provision, is granted, and the judge is ordered to provide access to the records and is precluded from enforcing the sealing order since the statute imposes a blanket requirement that does not allow for judicial discretion to make an individualized determination in balancing the juvenile's interest in keeping the proceedings secret against the public's interest in access to the proceedings, which infringes on the constitutional requirement that courts remain open unless specific findings justify closure; there is a dissenting opinion.

Custody/Legal/Shared/Reunification.

[J.U. v. A.F. | 2024-Ohio-4944 | 6th Appellate District | 10/11/2024](#) Award of legal shared custody of child to appellee, former partner of appellant-mother, and order of reunification counseling between appellee and appellant's minor child is affirmed where, although appellant and appellee did not have a formal written agreement to share custody of child, they had effectively shared custody for years and appellee had acted as mother figure to child for a significant period, and although child was reluctant to maintain a relationship with appellee, reunification with appellee was found to be in child's best interest, and counseling was ordered to facilitate reunification.

Transfer/Amenability to

rehabilitation. [State v. T.S. | 2024-Ohio-4898 | 8th Appellate District | 10/10/2024](#) Juvenile's convictions by plea in the general division of common pleas court to attempted murder and tampering with evidence following an incident in which juvenile shot a 13 year-old victim are reversed where the juvenile court had transferred the case to adult court after finding that the juvenile was not amenable to care or rehabilitation within the juvenile system, as required under R.C. 2152.12(B); however, the record reflects that the juvenile court failed to make required findings regarding juvenile's amenability to be rehabilitated within the juvenile system, so the case is remanded for further proceedings, requiring that juvenile's case be reconsidered within the juvenile justice system; it is important for the juvenile court to fully evaluate and explain findings about a juvenile's capacity for rehabilitation, R.C. 2152.12.

Custody/Magistrate's decision/Objections.

[Katsigianis v. Burdick | 2024-Ohio-5002 | 7th Appellate District | 10/10/2024](#) In action in which mother filed a motion for shared parenting after successfully recovering from issues and regularly attending visitation where magistrate recommended that transitioning mother to a standard order of visitation was in the child's best interest, trial court erred in denying father's timely objections to magistrate's findings since the hearing on father's objections to the magistrate's decision

was held and the decision was issued before father had the opportunity to file a transcript within the required time, Juv.R. 40(D)(3).

Custody/Dismissal/Jurisdiction.

[In re E.R. | 2024-Ohio-4840 | 3rd Appellate District | 10/07/2024](#) Award of permanent custody of children to agency is reversed since the trial court lacked jurisdiction where the agency filed a motion to dismiss because of time restrictions, which the court granted, but then reversed the dismissal to hear father's motion to return the children; trial court's dismissal terminated its jurisdiction, making any subsequent orders nullities since once the trial court granted the dismissal, it no longer had authority to reinstate the case or issue further rulings.

Custody/International travel. [Lee v. Capalungan | 2024-Ohio-4758 | 10th Appellate District | 09/30/2024](#)

In custody action, trial court erred in ordering father to pay for cost of travel associated with exercise of mother's parenting time in another country where mother refused to travel from her country of residence to visit child and had forgone years of visitation, parents have similar incomes, and because father is the residential parent and bears the entirety of child's living expenses, mother should be responsible for the cost of transporting child to and from her country of residence, R.C. 3109.04(F)(1) and 3109.051(D).

Custody/Home state jurisdiction/Change in circumstances. [Starr v. Statler-Houchin | 2024-Ohio-4628 | 3rd Appellate District | 09/23/2024](#)

In custody action in which father sought reallocation of parental rights and responsibilities, trial court did not err in designating father as residential parent and legal custodian of child where, although mother and child lived in another state, trial court had home state jurisdiction pursuant to R.C. 3127.15 because the child had lived in Ohio for more than six months immediately preceding the filing of the case, child's enrollment in school was a change in circumstances, and modification of shared parenting was in child's best interest, R.C. 3109.04, including the stability of child's living arrangements and the child's adjustment to school and community.

Custody/Family support/In camera interview. [Cornwell v. Eufracio | 2024-Ohio-4634 | 3rd Appellate District | 09/23/2024](#) In father's petitions seeking determination of parental rights and responsibilities, trial court did not err in designating father as residential parent and legal custodian of children where mother moved to another state without informing father and testified that she would return to Ohio to have better visitation schedule if father was the designated legal custodian, and parents had a substantial support system in this state and spent significant time with both sides of family; as well, mother's decision to withdraw request for in camera interview with child because the court would impose a fee did not prejudice her case, and guardian ad litem conveyed the children's wishes, R.C. 3109.04.

Delinquency/Obstructing official business. [In re K.J.C. | 2024-Ohio-4527 | 12th Appellate District | 09/16/2024](#)

Juvenile's adjudication as a delinquent child for conduct that would have constituted the adult offense of obstructing official business, R.C. 2921.31(A), is affirmed where the charges arose when juvenile attempted to interfere with a police officer's arrest of another juvenile since juvenile's act of approaching and touching the officer distracted him and momentarily impeded his ability to perform the arrest, and the interference did not need to be successful or prolonged, so the adjudication was supported by sufficient evidence and was not against the manifest weight of the evidence.

Custody/Objections/Change in circumstances. [In re S.N.A.-K. | 2024-Ohio-4494 | 8th Appellate District | 09/12/2024](#) In custody action in which father was granted legal custody of child, trial court did not err in denying mother's motion to modify custody where mother failed to object to magistrate's decision to allow review of factual findings, her claims that father was neglecting child's medical care were unsupported, based on other testimony, and the court agreed that there was no change in circumstances warranting change in custody, Juv.R. 40(D)(3), R.C. 3109.04.

Custody/Change in circumstances.

[In re G.T. | 2024-Ohio-4489 | 8th Appellate District | 09/12/2024](#) In custody dispute, juvenile court's order granting mother's motion to modify custody of the parties' minor child and the court's order denying father's motions for immediate return of the child and to show cause are affirmed where there was a change in circumstances when child refused to return to father's home following a weekend visitation with mother and her continuing care for child, and modification of the prior custody order was in child's best interest where evidence showed, inter alia, that child preferred to remain with mother, mother engaged in individual counseling, made efforts to address the parent-child conflict and supported child's mental health issues, and child participated in public school and extracurricular activities, R.C. 3109.04(E)(1)(a).

Custody modification/Contempt/Habeas corpus. [In re A.I.H. | 2024-Ohio-4483 | 8th Appellate District | 09/12/2024](#)

Order granting father's motion to modify custody, awarding father legal custody and final decision-making authority over the minor child after finding that a change in circumstances had occurred, is affirmed as being in the best interest of the child, 3109.04; however, the court erred in granting father's petition for a writ of habeas corpus on reasoning that mother had completely cut off all contact between father and child since father had filed a motion for contempt, and there was an adequate remedy available through the contempt proceedings, making habeas corpus relief improper.

Custody/Records/In-camera review. [In re S.P. | 2024-Ohio-3405 | 8th Appellate District | 09/05/2024](#)

In two child custody cases in which the trial court ordered the agency to disclose confidential records without the court first conducting an in-camera review, the orders are reversed and the cases are remanded to the trial court for further proceedings, including in-camera review, on reasoning that in-camera review is necessary to determine if the records are relevant, necessary, and if the need for disclosure outweighs the confidentiality protections.

Custody/In camera review/

Caseworker files. [In re S.P. | 2024-Ohio-3405 | 8th Appellate District | 09/05/2024](#) In two custody cases in which the agency filed a motion for in camera review of confidential records to determine the existence of exculpatory evidence material to defense, trial court erred in ordering the agency to disclose redacted agency records to opposing counsel without review, and caseworker files were deemed confidential, pursuant to R.C. 5153.17 and 2151.421, so the court was required to examine the documents in camera, Juv.R. 24(A), Civ.R. 26(B)(1).

Delinquency/Felonious assault/

Identity. [In re D.B. | 2024-Ohio-3391 | 1st Appellate District | 09/04/2024](#) Adjudication of juvenile as delinquent of two counts of adult felonious assault, R.C. 2903.11(A)(2), and one count of adult discharge of a firearm on or near a prohibited premises, R.C. 2923.162(A)(3), was error since the evidence presented was insufficient to support the conviction where the sole evidence of videos from a compilation of surveillance cameras is insufficient to establish the juvenile as the person in the video, and the time stamps show that the shooting occurred while the juvenile was on a bus, and no witness identified the juvenile as the shooter.

Delinquency/Confinement credit.

[In re L.A. | 2024-Ohio-3107 | 8th Appellate District | 08/15/2024](#) Following an adjudication by admission of delinquency for adult sexual battery and commitment to the department of youth services and the juvenile's subsequent violations which led to additional commitments, the juvenile was entitled to a hearing to determine whether the time he spent in a rehabilitation center was in connection with his delinquency complaints and whether that time met the requirements of confinement to entitle him to confinement credit.

Custody/Parenting time. [In re E.J.M. | 2024-Ohio-3082 | 1st Appellate District | 08/14/2024](#) In custody dispute in which mother filed a motion to modify father's parenting time, termination of father's parenting time is affirmed where evidence showed that child

suffered severe distress following visits with father, mother had a reasonable good faith belief that she needed to deny father's visitation to protect safety of the child, and exclusion of child from mother's civil protection order against father did not indicate that the child did not need protection, R.C. 3109.051; the court's decision regarding parenting time is not irrevocable, and father could later request the juvenile court to reinstate his parenting time if circumstances warrant it.

Custody/Tax credits. [Baker v. Deatrick | 2024-Ohio-3058 | 3rd Appellate District | 08/12/2024](#)

In custody dispute, trial court did not err in ordering mother and father to alternate claiming child on respective income tax returns for purposes of child tax credit where net tax savings was found to be the same for both parents, father testified that he would have more money available to do things with child during visits if he could claim the tax credit, and the parties agreed that mother would claim child every year for earned income credit because the child resided with mother more than half of the time and that mother would also claim the standard deduction for head of household every year, R.C. 3119.82.

Visitation/Grandmother. [In re B.B.W. | 2024-Ohio-3030 | 2nd Appellate District | 08/09/2024](#)

In grandmother's petition for rights of visitation with child, trial court did not err in denying petition where there was no evidence that mother was an unfit parent, her wishes that grandmother not be allowed visitation were afforded special weight, parties had been unable to resolve differences amicably due to a complete breakdown in their relationship, and evidence presented by grandmother that visitation was in child's best interest was insufficient to overcome mother's wish that visitation not be established, R.C. 3109.051.

Delinquency/Competency. [In re L.M. | 2024-Ohio-2974 | 1st Appellate District | 08/07/2024](#)

In an adjudication of juvenile as delinquent for adult receiving stolen property and possession of criminal tools, the juvenile court erred by denying the juvenile a competency evaluation by holding the juvenile did not rebut the presumption of competency by a

preponderance of the evidence since the presumption is inapplicable to the trial court's determination of whether a reasonable basis existed to order an evaluation, and the attorney's representations of the juvenile's change in condition after the alleged offenses and a medical cause for the change constituted a reasonable basis to order a competency evaluation; also, a juvenile does not have to rebut a presumption of competency to be eligible for an evaluation; remanded for further proceedings.

Custody/Permanent/Dismissal/

Timing. [In re N.A. | 2024-Ohio-2961 | 3rd Appellate District | 08/05/2024](#)

In custody action, trial court erred in dismissing agency's motion for permanent custody of child on reasoning that the case was overdue under the timing guidelines for trial courts to follow once an agency has filed a motion for permanent custody, R.C. 2151.414(A)(2), where the timing of the case did not require dismissal even though the case ran beyond suggested guidelines; as well, the child progressed significantly in a group home after he was removed from mother's care, evidence shows that mother was non-compliant with case plan, that she violated a court order not to have adults present in her residence, and that she was arrested for theft allegedly committed while child was with her.

Labor and Employment

Contract/Non-compete/Enforceability.

[Photon Interactive UK, Ltd. v. Robinson | 2024-Ohio-5465 | 5th Appellate District | 11/20/2024](#) In plaintiffs' action against defendant-former employee, claiming breach of contract, unjust enrichment, and seeking a preliminary injunction, alleging defendant's violation of the parties' non-compete agreement, the trial court's summary judgment for defendant is affirmed, holding that the non-compete clause in his employment agreement was unenforceable where it was overbroad, imposing an industry-wide restriction and prohibiting defendant from contributing knowledge in any capacity to competitors, even for clients or roles unrelated to his former employment; as well, reformation of the non-compete clause was futile, as it had already expired, and injunctive relief—the only remedy available for

reformed agreements under other state's law—was no longer possible.

Unfair labor practice/Bargaining. [State ex rel. Util. Supervisors Emps. Assn. v. Ohio State Emp. Relations Bd. | 2024-Ohio-5178 | 10th Appellate District | 10/29/2024](#) Union's petition for a writ of mandamus seeking to compel State Employment Relations Board (SERB) to order collective bargaining for a charge of unfair labor practice is denied since SERB possesses exclusive jurisdiction to determine unfair labor practices pursuant to R.C. 4117.12, there was no evidence that city refused to engage in negotiations with union, and there was no probable cause that city engaged in surface bargaining or an improper pattern of bargaining, in violation of R.C. 4117.11(A)(5).

FMLA/Pleading/Dismissal. [Mahoney-Offi v. Great Expressions Dental Ctrs. | 2024-Ohio-5160 | 11th Appellate District | 10/26/2024](#) In former employee's action against employer alleging violation of the Family and Medical Leave Act (FMLA) by terminating her employment when she took time off to care for her fiancé, trial court erred in granting employer's Civ.R. 12(B)(6) motion to dismiss where, although fiancé was not considered employee's spouse under terms of 29 U.S.C. 2612(a), employee was engaged in protected activity under the Act, regardless of whether she was ultimately entitled to the leave, and dismissal at the pleading stage was premature; there are two types of FMLA claims, an interference claim, arising when an employee is wrongfully denied a substantive entitlement, as when an employee is denied leave to which she is entitled, and the second type of claim, generally known as a retaliation or discrimination claim, arising when an employer takes an adverse employment action against the employee for exercising or attempting to exercise a right protected by the FMLA.

Discrimination/Arbitration. [McFadden v. Charter Communications, Inc. | 2024-Ohio-4564 | 9th Appellate District | 09/18/2024](#) In employee's race discrimination action against employer, trial court's decision to deny employer's motion to compel

arbitration is affirmed where employer's argument that employee was bound by an arbitration agreement because employee received an email which included a provision allowing employees to opt out of arbitration is without merit where the trial court found employee's testimony credible that she did not read the email or click on the necessary links to access the arbitration agreement, and without mutual assent or a meeting of the minds regarding the arbitration terms, no valid contract existed between employer and employee, rendering the arbitration provision unenforceable.

Discrimination/Discovery/Privacy. [Mayor v. Regina Health Ctr. | 2024-Ohio-4475 | 9th Appellate District | 09/11/2024](#) In a health center employee's age and disability discrimination action against the employer, the trial court did not err in granting the employee's motion to compel discovery where the information sought in the interrogatory and document request did not consist of personal or medical records protected under R.C. 3721.13(A)(10) because the requested information only included names, addresses, and contact information; as well, the employer did not argue in the trial court that disclosure violated patients' privacy rights under R.C. 3721.13(A)(11), and the instant court declines to address them in the first instance on appeal.

Discrimination/Sex/Government contract. [Horne v. GE Aviation Sys., L.L.C. | 2024-Ohio-3171 | 1st Appellate District | 08/21/2024](#) In employee's sex-based discrimination and retaliation action against employer, alleging that she was treated differently from similarly-situated peers, trial court erred in compelling arbitration where employer was subject to the Franken Amendment under 48 C.F.R. 222.7402 since it was a defense contractor with a government contract, Franken applied because employee's claim was for a tort related to sexual harassment, R.C. 4112.02(A), and claims under Franken were not subject to arbitration.

Furlough/Lost pay/Reimbursement. [Gillett v. Cuyahoga Cty. | 2024-Ohio-3014 | 8th Appellate District | 08/08/2024](#) In plaintiffs-former county employees' action seeking a declaration that defendant-county had violated equal protection by determining that plaintiffs were not eligible to receive bonus pay as reimbursement for pay lost pursuant to mandatory furlough program, while at the same time paying current employees the bonus, trial court erred in granting defendant's Civ.R. 12(C) motion for judgment on the pleadings where plaintiffs' pleadings alleged that both former and current employees were subjected to the mandatory furlough and had to forego pay for the same amount of hours, so on its face this set of facts is sufficient to show that both groups of employees were similarly situated, and trial court erred when it determined that the plaintiffs could prove no set of facts warranting relief.

Discrimination/Productivity standards. [Sims v. Univ. of Toledo | 2024-Ohio-4574 | Court of Claims | 08/01/2024](#) In billing specialist-employee's race discrimination, R.C. 4112.02, and retaliation action against former employer, alleging disparate treatment from supervisor, whose job entailed monitoring employees' productivity levels, employer's motion for summary judgment is granted where employee presented no direct evidence of discrimination and was unable to establish discriminatory intent through indirect method because she failed to identify any similarly situated non-protected employees who were treated more favorably, and employer demonstrated that termination was due to employee's failure to meet productivity standards, which was not shown to be a pretext for discrimination.

Procedure

License suspension/Subpoena/Crime victim's rights. [Doe v. State Medical Board of Ohio | 2024-Ohio-5615 | 10th Appellate District | 11/26/2024](#) In medical license suspension proceedings in which physician was alleged to have committed a criminal offense against patient and sought issuance of a subpoena for patient to testify at physician's hearing before

Procedure (Continued)

the medical board, which denied patient's motion to quash, prompting patient's appeal to the trial court, the court's dismissal of appeal on reasoning that it lacked jurisdiction under R.C. 119.12 is reversed since patient, as a crime victim, had standing under R.C. 2930.19(A)(1) to challenge the subpoena requiring him to testify at a hearing requested by physician; the case is remanded for further proceedings to address patient's rights.

Pleading/Companion cases. [Wilson Energy, LLC v. Redbird Development, LLC | 2024-Ohio-5609 | 4th Appellate District | 11/22/2024](#) Dismissal of the plaintiffs' complaint, which alleged that the defendants' large-volume, high-pressure waste-fluid injection operations caused flooding damage to their mineral estate, is reversed on reasoning that the plaintiffs credibly alleged a cognizable claim for damages, and the case is a companion to Bethel Oil and Gas, LLC v. Redbird Development, LLC, involving the same issues and underlying facts, so for efficiency, the cases are combined for oral argument, and the instant case is remanded for further proceedings consistent with the court's opinion in Bethel Oil and Gas.

Magistrate's decision/Default judgment/Discovery sanction. [Bland v. Bldg. for the Future Mgt., L.L.C. | 2024-Ohio-5391 | 8th Appellate District | 11/14/2024](#) In plaintiffs-tenants negligence and related claims action against defendants-property management company and related defendants, asserting injury to child from ingesting lead at the property and that defendants failed to properly inform them about the danger, the trial court's judgments in favor of plaintiffs are reversed, and the case is remanded for further proceedings consistent with Civ.R. 53 requirements where magistrate had granted default judgment as a discovery sanction and had dismissed the defendants' counterclaims via a "magistrate's order" rather than a "magistrate's decision;" under Civ.R. 53(D)(2)(a) (i) and 53(D)(4)(a), magistrates lack authority to issue dispositive orders without judicial approval, requiring a decision that must be adopted by the

court, and the trial court's denial of defendants' objections to magistrate's order constituted plain error, since the magistrate's order improperly resolved liability.

Frivolous conduct/Sanctions/Attorney fees/Dissent. [H.R. v. P.J.E. | 2024-Ohio-4549 | Supreme Court of Ohio | 09/19/2024](#) In case involving a dispute over attorney fees in which the court had found that plaintiff's attorneys had filed a frivolous appeal and were responsible for paying reasonable attorney fees to defendant where plaintiff's counsel initially made a payment as part of a settlement based on a fee statement from defendant's attorney, followed by a sanctions hearing and defendant's submission of an additional statement for fees incurred for preparing and participating in the hearing, the court holds that the additional fees were reasonable and related to the sanctions hearing, which was necessitated by plaintiff's counsel's actions; there is a dissenting opinion.

Political party governance/Political question doctrine. [Ohio House Republican Alliance v. Stephens | 2024-Ohio-3416 | 10th Appellate District | 09/05/2024](#) In plaintiffs-political party alliance and members' action seeking a declaration regarding control and administration of campaign funds, trial court erred in granting plaintiffs' motion for a preliminary injunction on reasoning that it could resolve the issue by applying a majority rule presumption in the absence of statutory guidance where R.C. 3517.10, which governs legislative campaign funds, does not explicitly establish a presumption of majority rule for internal party governance and resolving the dispute over the control and administration of the campaign funds would require the court to involve itself in internal party matters, which is barred under the political question doctrine, placing the matter outside the court's authority.

Magistrate/Conflict of interest. [Thomas v. Salahaldin | 2024-Ohio-3298 | 8th Appellate District | 08/29/2024](#) In plaintiff's small claims action against defendants, arising from motor vehicle accident, where magistrate recommended judgment for defendant, to which plaintiff

objected, but trial court adopted the magistrate's decision, the judgment is affirmed where plaintiff did not file a transcript of the municipal court proceedings or a statement of the evidence, so the regularity of proceedings below is presumed, and plaintiff's argument pursuant to Jud. Cond.Canon 2.11 that the magistrate and then current judicial candidate had a conflict of interest and erred by not recusing herself where one party in the case was a constituent and the other was not is without merit since the Canon does not mention "constituent," and there was no case law presented showing that there is a conflict of interest because one of the parties was a "constituent."

Frivolous conduct. [Pfeifer Farms, Inc. v. Hill | 2024-Ohio-3057 | 3rd Appellate District | 08/12/2024](#) In plaintiff-landlord's action against defendants-tenants seeking damages for unpaid rent and property damage, trial court did not err in finding that appellant-defendants' counsel had engaged in frivolous conduct and in imposing sanctions where evidence shows that appellant knowingly encouraged defendants to provide false answers to plaintiff's request for admissions, which led to delays, appellant filed counterclaims without knowledge or approval of defendants and without actual evidence to support the claims, and the ruling that appellant's conduct was sanctionable under Civ.R. 11 and R.C. 2323.51 is affirmed.

Attorney fees/Settlement/Quantum meruit. [Aetna Resources, L.L.C. v. Clark | 2024-Ohio-3003 | 10th Appellate District | 08/08/2024](#) In plaintiff's action against defendant-law firm, alleging that she was entitled to all proceeds from settlement of underlying case, summary judgment in favor of defendant was error where plaintiff terminated defendant's services without entering into a written agreement as to the settlement and therefore defendant was entitled to recover a contingency fees on the basis of quantum meruit rather than under the terms of a fee agreement, but the question remains as to the value of the services defendant performed prior to its termination and what portion of the disputed funds it was entitled to, so the case is remanded for further proceedings.

Magistrate/Conflict of interest. [In re Disqualification of Hejmanowski and Chamberlain | 2024-Ohio-4477 | Supreme Court of Ohio | 08/02/2024](#) Affidavit of disqualification of judges filed by defendant-trustee of trust in underlying action is denied since one judge is not presiding in the underlying case, and although the other judge was previously recused from a related guardianship case due to a potential conflict of interest, the reason for recusal no longer existed and the judge was allowed to resume hearing the underlying probate case, and affiant did not establish that the judge had a current conflict of interest or was biased or prejudiced against him, R.C. 2101.39 and 2701.03; when a particular motion creates a conflict of interest, a judge may recuse and obtain the assignment of a visiting judge to hear the motion, and once the motion has been decided and the disqualification has been removed, the sitting judge may resume hearing the case.

Professional Responsibility

Disbarment/Dissent. [Disciplinary Counsel v. Ranke | 2024-Ohio-5491 | Supreme Court of Ohio | 11/26/2024](#) Attorney is permanently disbarred from the practice of law and ordered to pay restitution to a former client; there is a dissenting opinion.

Suspension. [Disciplinary Counsel v. Byron | 2024-Ohio-5433 | Supreme Court of Ohio | 11/20/2024](#) Attorney is suspended from the practice of law for one year, with the suspension stayed on condition.

Reinstatement. [Cleveland Metro. Bar Assn. v. Lemieux | 2024-Ohio-5444 | Supreme Court of Ohio | 11/19/2024](#) Attorney is reinstated to the practice of law.

Reinstatement. [Disciplinary Counsel v. Washington | 2024-Ohio-5442 | Supreme Court of Ohio | 11/19/2024](#) Attorney is reinstated to the practice of law.

Reinstatement. [Disciplinary Counsel v. Washington | 2024-Ohio-5443 | Supreme Court of Ohio | 11/19/2024](#) Attorney is reinstated to the practice of law.

Suspension. [Disciplinary Counsel v. Haven | 2024-Ohio-5278 | Supreme Court of Ohio | 11/07/2024](#) Attorney is suspended from the practice of law for one year, with reinstatement on conditions.

Suspension. [Disciplinary Counsel v. Hartley | 2024-Ohio-5232 | Supreme Court of Ohio | 11/05/2024](#) Attorney is indefinitely suspended from the practice of law, with no credit for time served under interim remedial suspension, and with reinstatement on conditions.

Suspension. [Toledo Bar Assn. v. Westmeyer | 2024-Ohio-5196 | Supreme Court of Ohio | 11/01/2024](#) Attorney is suspended from the practice of law for 18 months, with the entire suspension stayed on conditions.

Suspension. [Disciplinary Counsel v. Moore | 2024-Ohio-5198 | Supreme Court of Ohio | 11/01/2024](#) Attorney is suspended from the practice of law for one year, with the entire suspension stayed on conditions.

Suspension. [Disciplinary Counsel v. McClain | 2024-Ohio-5197 | Supreme Court of Ohio | 11/01/2024](#) Attorney is suspended from the practice of law for two years, with credit for time served under interim felony suspension and with reinstatement on conditions.

Suspension/Stay. [Disciplinary Counsel v. Gernert | 2024-Ohio-5205 | Supreme Court of Ohio | 10/31/2024](#) Previously-imposed stay of attorney's suspension from the practice of law is revoked, and attorney is ordered to serve entire two-year suspension.

Suspension. [Columbus Bar Assn. v. Villarreal | 2024-Ohio-5165 | Supreme Court of Ohio | 10/30/2024](#) Attorney is suspended from the practice of law for 18 months, with the suspension stayed in its entirety on conditions.

Suspension. [Disciplinary Counsel v. Dugan | 2024-Ohio-5118 | Supreme Court of Ohio | 10/29/2024](#) Attorney is suspended from the practice of law for one year, with the entire suspension stayed on condition.

Suspension. [Mahoning Cty. Bar Assn. v. Rohrbaugh | 2024-Ohio-5127 | Supreme Court of Ohio | 10/29/2024](#) Attorney is indefinitely suspended from the practice of law, with credit for time served under an interim felony suspension.

Reinstatement. [Disciplinary Counsel v. Shaaban | 2024-Ohio-5035 | Supreme Court of Ohio | 10/21/2024](#) Attorney is reinstated to the practice of law.

Resignation. [In re Resignation of Recker | 2024-Ohio-5015 | Supreme Court of Ohio | 10/18/2024](#) Attorney resigned from the practice of law with disciplinary action pending.

Suspension. [Lorain Cty. Bar Assn. v. Walton | 2024-Ohio-4975 | Supreme Court of Ohio | 10/17/2024](#) Attorney is suspended from the practice of law for 18 months, with the entire suspension stayed on conditions.

Suspension. [Disciplinary Counsel v. Miller | 2024-Ohio-4939 | Supreme Court of Ohio | 10/16/2024](#) Attorney is suspended from the practice of law for one year, with the entire suspension stayed on conditions.

Suspension. [Toledo Bar Assn. v. Riley | 2024-Ohio-4941 | Supreme Court of Ohio | 10/16/2024](#) Attorney is issued an indefinite suspension from the practice of law, with no credit for time served under interim felony suspension.]

Suspension. [Columbus Bar Assn. v. McCarty | 2024-Ohio-4940 | Supreme Court of Ohio | 10/16/2024](#) Attorney is suspended from the practice of law for six months, with the entire suspension stayed on conditions.

Suspension. [In re Harvey | 2024-Ohio-4668 | Supreme Court of Ohio | 09/26/2024](#) Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Suspension. [Disciplinary Counsel v. Hoover | 2024-Ohio-4608 | Supreme Court of Ohio | 09/24/2024](#) Attorney is issued an 18-month suspension from the practice of law, with the final six months of the suspension stayed on condition, and attorney is also immediately suspended from judicial office without pay for the duration of his suspension.

Professional Responsibility (Continued)

Suspension. [Cleveland Metro. Bar Assn. v. Smith | 2024-Ohio-4502 | Supreme Court of Ohio | 09/17/2024](#)

Attorney is suspended from the practice of law for two years, with 18 months stayed on conditions, and with an 18-month period of monitored probation upon reinstatement to the profession.

Resignation. [In re Resignation of Brandt | 2024-Ohio-3438 | Supreme Court of Ohio | 09/09/2024](#) Attorney resigned from the practice of law with disciplinary action pending.

Suspension. [Disciplinary Counsel v. Daniell | 2024-Ohio-3437 | Supreme Court of Ohio | 09/09/2024](#) Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Suspension/Dissent. [Disciplinary Counsel v. Tregre | 2024-Ohio-3173 | Supreme Court of Ohio | 08/23/2024](#)

Attorney is suspended from the practice of law for two years, ordered to make restitution to two clients, and ordered to pay the costs of the proceedings, with reinstatement on conditions; there is a dissenting opinion.

Suspension. [Mahoning Cty. Bar Assn. v. Macala | 2024-Ohio-3158 | Supreme Court of Ohio | 08/22/2024](#) Attorney is suspended from the practice of law for six months, stayed on condition.

Public reprimand. [Ohio State Bar Assn. v. Winkler | 2024-Ohio-3141 | Supreme Court of Ohio | 08/21/2024](#) Attorney/Judge is issued a public reprimand.

Public and Public Finance

Public records/Frivolous conduct/Vexatious litigator. [State ex rel. Ware v. Vigluicci | 2024-Ohio-5492 | Supreme Court of Ohio | 11/26/2024](#) Relator-public records requester's petition for a writ of mandamus to compel respondent-county prosecutor to produce records is denied where the court ordered respondent to submit relevant documents under seal for in camera inspection, resulting in the determination that relator did not submit a handwritten public records

request in documents he sent to the prosecutor by certified mail, and the court also denies relator's request for statutory damages and court costs, but sanctions relator for frivolous conduct under S.Ct.Prac.R. 4.03(A), and declares relator a vexatious litigator under S.Ct.Prac.R. 4.03(B) on reasoning that evidence shows, inter alia, that relator filed a complaint alleging falsely that he had sent public records requests by certified mail, that relator fabricated evidence by attaching to his complaint letters of purported public records requests that were never sent, and that relator has engaged in habitual and persistent frivolous conduct, so relator is prohibited from initiating or continuing legal proceedings in the court without first obtaining leave and fulfilling financial sanctions.

Quo warranto/Mandamus/City council/Removal/Vacant seat. [State ex rel. Martin v. Shabazz | 2024-Ohio-5450 | Supreme Court of Ohio | 11/21/2024](#) In quo warranto and mandamus action by relators against respondents-council members where relators claimed that they were unlawfully removed from, or were entitled to, a position on city council, summary judgment in favor of respondents is affirmed since relators failed to demonstrate that one respondent was unqualified for office by holding incompatible public employment or that the appointment was invalid as the result of a nonpublic meetings of city council, and second relator's claim to office was invalid since respondent had been lawfully appointed prior to relator's purported appointment; as well, relators' failure to challenge laches as a bar to their claims effectively waived objections on that issue.

Public records/Address lists. [Hicks v. Union Twp. Clermont Cty. Bd. of Trustees | 2024-Ohio-5449 | Supreme Court of Ohio | 11/21/2024](#) In requester's R.C. 2743.75(D) action, asserting that township denied him access to public records, in violation of R.C. 149.43(B), and seeking to compel township to provide email and mail distribution lists for township newsletters, court of appeals' judgment affirming trial court's denial of the request is reversed where denial was based on reasoning that

the addresses were not public records, R.C. 149.011(G), as being used only for administrative convenience, which was incorrect, since the lists actually document a governmental function by facilitating communication with constituents, central to the purpose of the newsletters, and the Public Records Act should be construed liberally in favor of access; there is a dissenting opinion.

Open Meetings Act/Employment termination hearing. [Barga v. St. Paris Village Council | 2024-Ohio-5293 | Supreme Court of Ohio | 11/08/2024](#)

Termination of employment of police chief in which, after the presentation of evidence at an open council meeting, the village council adjourned to executive session to consider the charges against the chief and to reach its decision, is reversed as violating the Open Meetings Act since, under R.C. 121.22(G)(1), a public body may not hold an executive session to consider disciplinary actions if the public employee requests a public hearing, and police chief did request a public hearing and had the statutory right under R.C. 737.171 to a public hearing; this case is distinguished from prior cases involving quasi-judicial exceptions, and there are dissenting opinions.

Public records/Personnel file/Criminal matters. [State ex rel. Ware v. O'Malley | 2024-Ohio-5242 | Supreme Court of Ohio | 11/05/2024](#) In action to compel production of public records of the personnel file of an assistant county prosecutor, which respondent-prosecutor declined to produce on reasoning that the personnel files of all prosecuting attorneys necessarily concern a criminal prosecution or investigation, within the meaning of R.C. 149.43(B)(8), a limited writ of mandamus is granted to require prosecutor to produce the file where in camera inspection of the file reflects that it does not reference prosecutorial work, much less relate to the investigation or prosecution of crimes, and inspection also reflects that it contains information that either may be or is required to be redacted under exceptions set forth in R.C. 149.43(A)(1), so the limited writ ordering production of the personnel file is subject to proper redactions authorized by law; also, statutory damages are denied

since the prosecutor reasonably believed that withholding the personnel file served the public policy underlying the statute, costs are awarded to requester, and there is a dissenting opinion.

Quo warranto/Temporary appointment/Examinations. [State ex rel. Johnson v. Higgins | 2024-Ohio-5174 | Supreme Court of Ohio | 10/31/2024](#) Relator's petition for a writ of quo warranto seeking to oust respondent from the position of fire chief of city and install relator instead is denied where relator argues that he had been permanently appointed as fire chief, but relator's appointment was temporary since it occurred amid pending litigation regarding use of an assessment-center test and before the completion of competitive civil-service exams, as required by the city charter and Civil Service Rules, and relator's name was never on the eligible-candidate list for promotion, a prerequisite for a permanent position per the city charter and R.C. 124.48; as well, respondent lawfully holds the position, having scored highest on the civil-service exam and being the only eligible candidate.

Public records/Privilege. [State ex rel. Brinkman v. Toledo City School District Board of Education | 2024-Ohio-5063 | Supreme Court of Ohio | 10/24/2024](#) In case in which relator requested public records related to school district's legal representation in a lawsuit, relator's petition for a writ of mandamus is granted in part ordering school district to provide him with an unredacted copy of a portion of a legal engagement letter where the court found that the request was not overbroad and that the district improperly redacted a sentence in the foundation engagement letter that was not protected by attorney-client privilege, but the court upheld the district's redaction of other portions of the engagement letters that contained privileged legal advice; as well, the court awarded relator statutory damages, court costs, and attorney fees, R.C. 149.43(C)(2), concluding that the school district had delayed the records production beyond a reasonable time without justification.

Public records/Mootness/Damages. [State ex rel. Ware v. Fankhauser | 2024-Ohio-5037 | Supreme Court of Ohio | 10/23/2024](#) In public records request case in which requester filed a petition for a writ of mandamus to compel clerk of courts to produce records, court of appeals' denial of the writ on the basis that the request was moot and the court's order granting summary judgment to clerk are affirmed since evidence showed that the clerk had provided the requested records, there was no evidence that any documents were wrongfully withheld, and requester's letter from the clerk did not support his claim since it was shown to be an altered letter; as well, denial of statutory damages under R.C. 149.43(C)(2) is affirmed since requester failed to prove by clear and convincing evidence that his records request was sent via certified mail and that the clerk did not respond within a reasonable time.

Public records/Mootness/Statutory damages. [State ex rel. Mobley v. Viehweger | 2024-Ohio-4748 | Supreme Court of Ohio | 10/03/2024](#) Public records requester's petition for a writ of mandamus to compel state university to provide him records, R.C. 149.43(B), is denied since the university provided the requested records after the suit was filed, rendering the mandamus claim moot, and requester's request for statutory damages is denied, even though both parties submitted evidence showing that the university received something by certified mail from requester, since this is not clear and convincing evidence proving that the mailing contained a request for public records.

Public records/Existence/Statutory damages. [State ex rel. Culgan v. Jefferson Cty. Prosecutor | 2024-Ohio-4715 | Supreme Court of Ohio | 10/01/2024](#) Public records requester's petition for a writ of mandamus under R.C. 149.43 to order county prosecutor to produce records responsive to his public-records request, along with an award of statutory damages, is denied where the prosecutor searched for the requested records and has attested that her office has no documents responsive to requester's public-records requests, imposing on requester the burden of proving

by clear and convincing evidence that the requested records exist and are maintained by the public office, which requester has failed to do, and requester's belief that there are responsive documents is not sufficient evidence to establish that they exist; requester's claim for statutory damages on the basis of prosecutor's failure to cite relevant legal authority to deny records request is without merit as prosecutor's statement that no records exist complies with R.C. 149.43(B)(3).

Quo warranto/Appointed officeholder/Reinstatement/Dissent. [State ex rel. Reynolds v. Nix | 2024-Ohio-4669 | Supreme Court of Ohio | 09/25/2024](#) Relator's petition for a writ of quo warranto to oust appointed county auditor from office and to reinstate relator as auditor is denied where evidence shows that relator was elected to serve as county auditor but never took office because a jury found him guilty of a felony prior to the start of the term, a finding that disqualified relator from taking office, R.C. 2961.01(A)(1), but even though relator's conviction was later reversed and he is now competent to hold office, he is not entitled to hold office since, once a vacancy occurs, the statutorily designated authority makes an appointment to fill the vacancy, and that appointee shall hold office until a successor is elected and qualified, R.C. 305.02(A), and relator has not shown that the application of R.C. 2961.01(A)(1) to the facts of this case leads to an unconstitutional result; there is a dissent in this case.

Public records/Settlement/Attorney-client privilege. [State ex rel. Wells v. Lakota Local Schools Bd. of Edn. | 2024-Ohio-3316 | Supreme Court of Ohio | 09/03/2024](#) Public records requester's petition for a writ of mandamus to compel school board to comply with request for a "demand letter," which was a communication from school superintendent's attorney to school board, reportedly containing a settlement offer related to allegations against superintendent, is granted in part since a settlement agreement involving a public office is a public record subject to disclosure, R.C. 149.43, and the letter was not protected by the attorney-client privilege or exempt from disclosure

Public and Public Finance (Continued)

under federal law; as well, the writ is denied as moot regarding legal invoices, which had been appropriately redacted before release, and award of statutory damages is affirmed for the improper withholding of records and some attorney fees for the demand letter issue.

Real Property

Contract/Breach/Fraud/Disclosure form/Attorney fee calculation.

[Kerbler v. Biltwell Contracting, LLC | 2024-Ohio-5607 | 5th Appellate District | 11/26/2024](#) In home buyers' breach of contract and fraud action after purchase of home where buyers alleged that sellers made misrepresentations in the property disclosure form to conceal material defects in the property involving water intrusion and related problems, judgment for buyers, awarding compensatory and punitive damages and attorney fees, is affirmed on reasoning that sellers knowingly concealed the defects and acted in bad faith; however, the case is remanded to address specific issues with attorney fee calculations, requiring exclusion of block-billed time and a reduction for overbilling tied to post-trial hearing time.

Driveway permit/Conditions/Arbitrary ruling. [TS Tech USA Corp. v. Pataskala | 2024-Ohio-5534 | 5th Appellate District | 11/21/2024](#) Trial court's reversal of board of zoning appeals' denial of property owner's application for a driveway permit, which sought full use of driveway and removal of conditions on previously issued permit, is affirmed where the board's decision was arbitrary under R.C. 2506.04, as evidenced by biased testimony of city traffic engineer and lacked evidence to support city's concerns about safety of traffic on the driveway, while the record supported property owner's anticipated use of the driveway.

Easements/Public utility/Vegetation control. [Corder v. Ohio Edison Co. | 2024-Ohio-5432 | Supreme Court of Ohio | 11/20/2024](#) In property owners' action against power company seeking a declaration that easements granted to the company did not allow application of herbicide to control

vegetation, the court of appeals' ruling that the language of the easements was ambiguous and that the easements did not give the company the right to remove vegetation by any means it chose is reversed on reasoning that for the easements to have any coherent meaning, they must give the company a separate right to remove vegetation beyond the right to trim and to cut trees, limbs, underbrush, and other obstructions, and since the instant court's opinion conclusively resolves the scope of the company's rights under the easements, the case is remanded to the trial court for it to issue an entry awarding summary judgment to the company; there is a dissenting opinion.

Homeowner's association/Breach of contract/Negligence. [Bigham v. Deer Run Owners Assn. | 2024-Ohio-5233 | 2nd Appellate District | 11/01/2024](#) In plaintiff-homeowner's negligence, statutory breach of contract, and related claims action against defendant-homeowners association for failure to maintain common elements under both the governing declaration and R.C. 5311.14(A), trial court's summary judgment for defendant on the negligence claim is affirmed, as it is barred by the economic loss doctrine, but the summary judgment to defendant on the statutory breach claim is reversed since such claims can proceed independently of contractual obligations, and defendant was required to promptly repair and restore property pursuant to R.C. 5311.14(A); as well, the court remands the case for a determination regarding defendant's duty to repair drainage issues and to clarify whether plaintiff's crawl space was a "common element" under the declaration, necessitating defendant's maintenance.

Trespass/Pipeline/Map/Meeting of minds. [Cameron v. Mark W. Liberty Midstream & Resources, L.L.C. | 2024-Ohio-5279 | 7th Appellate District | 11/01/2024](#) In property owner's action alleging trespass and continuing trespass for constructing a pipeline outside agreed-upon easement path, requesting relocation of the pipeline and also alleging defendants' failure to construct a promised electric fence, the trial court erred by ruling that a preliminary map provided the final easement path for the pipeline on

owner's property where owner argued that the map was a preliminary plan subject to revision, not the final path, and the evidence showed that there was no "meeting of the minds" for a specific easement location, so the case is remanded for a full hearing on whether an agreement on the pipeline path was reached; as well, owner is entitled to damages regarding the defendants' unfulfilled promise to install protective fencing, based on an enforceable oral contract.

Adverse possession/Evidentiary standard. [Horn v. DeGennaro | 2024-Ohio-5217 | 8th Appellate District | 10/31/2024](#) In plaintiff-homeowner's adverse possession action seeking to quiet title to a portion of defendant's vacant lot, the trial court did not err in rejecting magistrate's decision and in entering judgment in favor of defendant where, although the court did not expressly rule on the objections to magistrate's decision, the court had authority under Civ.R. 53(D) (4) to reject magistrate's decision, even if no objections had been filed, the magistrate failed to apply the clear and convincing standard to the evidence, which included, inter alia, plaintiff's testimony as to minor landscaping and construction of a fence, vague testimony about the fence construction and whether it was done with permission, and plaintiff's conduct, which was not patent and hostile.

Zoning/Site plan/Access/Unnecessary hardship. [Always Stay Unlimited, L.L.C. v. Stark Cty. Access Mgt. Bd. | 2024-Ohio-5060 | 5th Appellate District | 10/21/2024](#) In plaintiff's submission of site plan to develop car wash, with a request for a variance for full traffic access, denied by access management board, trial court's reversal of the board's denial is affirmed since the board's decision was unsupported by the preponderance of evidence where restricting left-out access from the property would actually increase traffic dangers by diverting vehicles through residential areas, and denial of full access created an unnecessary hardship for the property owners, R.C. 5552.07, which provides the framework for appealing access management decisions and seeking variances due to special conditions.

Foreclosure/Default judgment/Hearing. [Deutsche Bank Natl. Trust Co. v. Brooks | 2024-Ohio-5054 | 11th Appellate District | 10/21/2024](#)

In plaintiff-bank's foreclosure action against defendants-deceased homeowner's heirs for failure to pay mortgage, resulting in a default judgment for plaintiff, trial court did not err in denying defendant-appellant heir's Civ.R. 60(B) motion for relief from judgment, asserting that he was assured by plaintiff that foreclosure would not proceed, where he did not attach any documents to support that assertion, and he did not respond to the complaint and did not oppose default judgment; defendant-appellant could have prevented the circumstances that resulted in judgment against him if he had not ignored the legal proceedings, and because he did not demonstrate that he was entitled to relief from judgment, a hearing on his motion was not required.

Fair Housing Act/Federal pre-emption/Judicial restraint. [Epcon Communities Franchising, L.L.C. v. Wilcox Dev. Group, L.L.C. | 2024-Ohio-4989 | Supreme Court of Ohio | 10/18/2024](#) In action by plaintiff-franchisor of residential homes against developer-contractor, seeking contribution under R.C. 2307.25(A) after franchisor was assessed damages for violating Fair Housing Act (FHA) accessibility requirement where court of appeals affirmed trial court's dismissal of the action on the basis of FHA pre-emption of the state contribution action, the dismissal is reversed because neither party raised the constitutional issue of federal pre-emption, and under the principles of judicial restraint, including the rule against deciding constitutional issues unnecessarily, it was improper for the lower courts to base their decisions on pre-emption, so the case is remanded to the trial court to first consider whether the state-law contribution claim was valid under Ohio law before addressing any pre-emption question.

Landlord/Contracts/Option/Arbitration. [Bernat v. EK Real Estate Fund I, L.L.C. | 2024-Ohio-5043 | 7th Appellate District | 10/17/2024](#) In plaintiff-property owner's action against defendant-residential sale and leaseback business alleging

numerous violations of its obligations as landlord stemming from several contracts entered into between the parties regarding the sale and lease of a home, trial court's denial of defendant's motion to dismiss and to compel arbitration is affirmed since the sales and lease agreements did not contain an arbitration clause, plaintiff did not exercise the right under the option agreement to invoke its arbitration provision, and defendant waived the right to compel arbitration under the option agreement by acting inconsistently with any right to arbitration.

Zoning/Variance/Setback. [Bayliff v. Stokes Twp. Bd. of Zoning Appeals | 2024-Ohio-4839 | 3rd Appellate District | 10/07/2024](#) Trial court's judgment affirming the township board of zoning appeals' decision to grant three variances for setbacks for the construction of a new home on the applicants' property is reversed where the trial court erred in applying the zoning resolution provisions related to nonconforming structures, as the applicants intended to build an entirely new home rather than alter an existing nonconforming structure; as well, the evidence did not support a finding of "unnecessary hardship," required for granting the variances under the correct zoning provisions, since the applicants could build a home within the setback requirements, and preference for a larger home does not meet the legal standard for "unnecessary hardship."

Zoning/Digital billboard/Local ordinances/State law. [Senuta v. Boston Twp. | 2024-Ohio-4661 | 9th Appellate District | 09/25/2024](#) In the property owner's administrative appeal of the township board of zoning appeals' decision denying an application for a zoning certificate to allow placement of digital and static billboard advertising signs on the property, trial court erred in affirming the board's decision since the local zoning ordinances were in conflict with R.C. 519.20 because they effectively prohibited off-premises outdoor advertising—billboards—in a way that conflicted with R.C. 519.20, which classifies outdoor advertising as a business use and requires that it be permitted in business, industry, or trade zones, and also were in conflict

with Ohio Adm. Code 5501:2-2-02(B) (1), which allows for digital signs that display a fixed message for at least eight seconds.

Zoning/Rooming house. [Havel v. Kent Bd. of Zoning Appeals | 2024-Ohio-4544 | 11th Appellate District | 09/16/2024](#) In property owner's administrative appeal of decision of board of zoning appeals denying owner a nonconforming use certificate to allow using property as a rooming house, trial court erred in reversing the board's decision and in finding that a certificate was not required where city ordinance capped the number of unrelated individuals who could reside in single family dwelling, rooming houses were expressly excluded as an allowed household unit, and zoning ordinance was not unconstitutional because there was no infringement on fundamental right or intrusion into makeup of owner's family and was a reasonable restriction aimed at maintaining single-family residential development.

Regulatory taking/Appropriation. [State ex rel. AWMS Water Solutions, L.L.C. v. Mertz | 2024-Ohio-4451 | 11th Appellate District | 09/09/2024](#) In case in which the state suspended relators' operation of saltwater-injection oil well, prompting relators to file a petition for a writ of mandamus to compel respondents to initiate property appropriation proceedings, asserting a regulatory taking of relators' property, denied by the court of appeals, which the Supreme Court of Ohio reversed and remanded, the evidence does not support a categorical taking since relator did not lose all economically viable use of its property, but there was a partial regulatory taking based on the suspension's economic impact and interference with relator's investment-backed expectations; under the Penn Central analysis, the court considered the suspension's significant duration and respondents' inconsistent responses, so the court ordered respondent to initiate appropriation proceedings to determine just compensation for the partial regulatory taking under R.C. Ch. 1509.

Eviction/Mobile home park/Judgment entry. [Greenlawn Cos. v. Canty | 2024-Ohio-3412 | 10th Appellate District | 09/05/2024](#) In plaintiff-mobile home park manager's forcible entry and detainer action against defendant-tenant for default on lease of lot in mobile home park, judgment in favor of plaintiff is reversed where, in issuing the judgment entry, the judge did not comply with the requirement that the entry include the language in R.C. 1923.09(B) granting plaintiff the authority to pursue remedies provided under R.C. 1923.12, 1923.13(B) and 1923.14(B); the case is remanded.

Zoning/Appeal/Decision/Dissent. [729 W. 130th St., L.L.C. v. Hinckley Twp. Bd. of Zoning Appeals | 2024-Ohio-3349 | 9th Appellate District | 09/03/2024](#) In property owners' appeal of the decision of the board of zoning appeals finding that owners' appeal of its loss of nonconforming use status was untimely, the trial court erred in affirming the board's decision since the zoning inspector's email to owners did not constitute a decision for purposes of R.C. 519.15 where it was not an order, requirement, decision, or determination made by an administrative official in the enforcement of R.C. 519.02 to 519.25, and because a decision within the meaning of the statute was never issued, the filing deadline was never triggered, and there was never a decision for owners to appeal; there is a dissenting opinion.

Eminent domain/Public utility/Easement. [Ohio Power Co. v. Burns | 2024-Ohio-3364 | 4th Appellate District | 08/28/2024](#) In power company's eminent domain action seeking to appropriate easements from landowners where the case was previously appealed, resulting in a determination that the power company was not entitled to either a rebuttable or an irrebuttable presumption of the necessity of the appropriation under R.C. 163.09(B)(1)(a) or (c), the trial court erred on remand in its findings concerning certain easement terms where, although the company provided sufficient evidence of necessity for some easement terms, trial court's findings that the herbicide vegetation control term was necessary

was not supported by competent and credible evidence, and the anti-abandonment term and the distribution lines term findings were erroneous as a matter of law.

Fraud/Damages/Out-of-pocket. [Homestead Am., Ltd. v. Brown | 2024-Ohio-3253 | 10th Appellate District | 08/27/2024](#) In plaintiffs-prospective property purchasers' claims for breach of fiduciary duty and fraud against defendants-broker and listing agent, seeking benefit-of-the-bargain damages after broker purchased the property they bid on, trial court erred in denying defendants' motions for a directed verdict and JNOV where defendants were found liable for fraud, but because there was no contractual agreement between parties, plaintiffs lost only the opportunity for profit and were therefore limited to recovering out-of-pocket losses and not benefit-of-the-bargain damages.

Eviction/Rent/Course of conduct. [Redman v. Hope Harbor Baptist Church | 2024-Ohio-3056 | 3rd Appellate District | 08/12/2024](#) In plaintiff-property owner's forcible entry and detainer action against defendant-church for failure to pay rent, trial court did not err in denying eviction where, although defendant paid rent at the beginning of the parties' oral lease, it did not pay rent for many years on the basis of an alleged promise made by plaintiff's deceased husband to transfer the property to defendant, and defendant could not be evicted specifically for non-payment of rent because the course of conduct for numerous years did not require payment of rent.

Purchase/Easement/Estoppel. [Garcia v. Ewais | 2024-Ohio-3024 | 8th Appellate District | 08/08/2024](#) In plaintiff-property buyer's action against defendants-seller and neighboring property owner alleging, inter alia, trespass and claiming entitlement to an equitable easement based on the permanent nature of the driveway, trial court's denial of an equitable easement was error where the easement by estoppel doctrine applied because it was reasonably foreseeable that the plaintiff would

substantially change her position if use of the driveway was revoked, property was sold to plaintiff with newly poured driveway, and neighboring owner failed to exercise boundary rights prior to plaintiff's purchase; the case is remanded to establish the width of the easement and to order the removal or relocation of a fence that obstructed plaintiff's use of the driveway.

Foreclosure/Notice of default/Previous lender. [U.S. Bank Natl. Assn. v. Tye | 2024-Ohio-2922 | 1st Appellate District | 08/02/2024](#) In bank's foreclosure action against property owner, seeking the balance due on its promissory note, summary judgment in favor of bank was error where notice of default had been sent to the property owner by previous lender in an earlier foreclosure action, but previous lender subsequently voluntarily dismissed the foreclosure action, Civ.R. 41(A), and in the instant foreclosure action, the bank was not entitled to rely on previous lender's notice of default, so the bank failed to satisfy a condition precedent to bringing the action against property owner.

School boards/Appeals/Specific statute/Standing. [Westerville City School Dist. Bd. of Edn. v. Delaware Cty. Bd. of Revision | 2024-Ohio-2963 | 5th Appellate District | 08/02/2024](#) In taxpayer-property owner's complaint seeking to decrease the value of a parcel of property, resulting in board of revision's decision decreasing the value, trial court's sua sponte dismissal of school board's administrative appeal for lack of jurisdiction is affirmed on reasoning that the school board lacked standing where precedent holds that revised R.C. 5717.01 prohibits school boards from filing appeals from a decision by the board of revision regarding property the school boards neither own or lease, and only property owners have the right to appeal to the trial court under R.C. 5717.05; as well, R.C. 2506.01 is a general statute dealing with appeals from various bodies, while R.C. 5717.01 is a special statute specifically dealing with board of revision property valuations and rights of appeal therefrom, so R.C. 5717.01 prevails and is exclusively applicable.

Securities and Capital Markets

Violations of Act/Pleading. [Bitounis v. Interactive Brokers, L.L.C. | 2024-Ohio-2905 | 8th Appellate District | 08/01/2024](#) In plaintiffs-investors' action against defendants-brokers asserting violations of R.C. 1707.43 of the Ohio Securities Act for disregard of advisor's alleged mismanagement and misappropriation of account funds, trial court erred in granting defendants' Civ.R. 12(B)(6) motion to dismiss where the complaint asserted defendants' active involvement with plaintiffs' advisor in making allegedly unlawful sales, defendants were listed as the broker for advisor's transactions and holder of advisor's account, and plaintiffs' allegations were sufficient to set forth a claim for relief pursuant to R.C. 1707.43(A).

Taxation

Error/Corrective measures/Recovery/Mandamus. [State ex rel. Obetz v. Stinziano | 2024-Ohio-5460 | Supreme Court of Ohio | 11/22/2024](#) In dispute between city and county about corrective measures regarding tax-increment-financing (TIF) funds that city erroneously received, where city tried to correct the error by voluntarily tendering funds to county from its TIF account and county also tried to correct the error by withholding real-property-tax distribution it owed city, as a setoff against the erroneously-received TIF funds, city's petition for a writ of mandamus to return the money city tendered to county and to pay city future settlement distributions is granted, in part, ordering county to distribute future real estate settlement funds to city, without applying setoffs, R.C. 321.31 and 321.33, but the writ is denied regarding city's requests to recover previously tendered funds since they had already been reallocated to other taxing entities; as well, city's petition for a writ of prohibition is denied since county officials' actions did not constitute judicial or quasi-judicial conduct; there is a dissenting opinion.

Agricultural use/Clearing-cost rate/Deduction/Sufficiency of evidence. [Adams v. Harris | 2024-Ohio-4640 | Supreme Court of Ohio | 09/26/2024](#) In taxpayers-landowners' appeal of board of tax appeals' (BTA) decision

affirming tax commissioner's valuation for the per acre clearing-cost rate applied to woodlands under the Current Agricultural Use Valuation (CAUV) program, which taxpayers claim is too low, with the result that there is a lower deduction from the land's taxable value and higher property taxes, the BTA's decision is reversed on reasoning that the tax commissioner adopted the per acre clearing-cost rate without sufficient evidence and failed to follow the requirements of Ohio Adm. Code 5703-25-33, so the case is remanded for the tax commissioner to establish a clearing-cost rate based on reliable and accurate data.

Real property/Valuation/Counter-complaint/Appeal/Dissent. [Marysville Exempted Village Schools Bd. of Edn. v. Union Cty. Bd. of Revision | 2024-Ohio-3323 | Supreme Court of Ohio | 09/04/2024](#) In school board's appeal of board of revision's (BOR) decision declining to increase the valuation of taxpayer's real property after school board had filed a counter-complaint with the BOR seeking an increase in the auditor's valuation of the property at issue, resulting in dismissal of the appeal by the board of tax appeals (BTA) on reasoning that recently-amended R.C. 5717.01 precluded the school district from appealing the BOR's decision on the basis that the school district did not own or lease the property, court of appeals' judgment that the BTA erred in dismissing the appeal is affirmed since the amended version of R.C. 5717.01 does not expressly mention retroactivity, and it is intended to apply prospectively, so the amended statute does not apply to the school board's appeal to the BTA where the counter-complaint was filed prior to the effective date of the amended version of the statute; there is a dissenting opinion.

Real property/Valuation/Standing. [Dublin City Schools Bd. of Edn. v. Union Cty. Bd. of Revision | 2024-Ohio-3368 | 3rd Appellate District | 09/03/2024](#) In school board's administrative appeal of board of revision's tax valuation of property within its school district that the school board does not own, trial court did not err in granting property owner's motion to dismiss the appeal for lack of jurisdiction where the school

board lacked authority to appeal the decision, R.C. 5717.01, because it was not the owner of the property in question, and it did not retain the right to appeal under R.C. 2506.01 because it was expressly prohibited by the subsequently-enacted and more specific R.C. 5717.01; as well, under Ohio Const. Art. IV, Sec. 4(B) there is no inherent right to appeal an administrative decision, but the right must be conferred by statute.

Valuation/Pipeline/Settlement agreement/Appeal/Dissent. [Snodgrass v. Harris | 2024-Ohio-3130 | Supreme Court of Ohio | 08/20/2024](#) In a case in which Tax Commissioner established a pipeline tax valuation that was appealed by taxpayer-pipeline's owner to the Board of Tax Appeals (BTA), resulting in a settlement agreement between the Tax Commissioner and the taxpayer and subsequent appeal to the BTA by the auditor of one of the counties in the pipeline's territory, the BTA's dismissal of the appeal is affirmed since the auditor's right to appeal a final determination made by the Tax Commissioner under R.C. 5717.02(A) is limited when the final determination stems from a settlement agreement because allowing an appeal would undermine the Tax Commissioner's authority to resolve tax disputes under R.C. 5703.05(C); however, the auditor could appeal if there were issues unrelated to the core terms of the settlement, such as claims of fraud or disputes over whether the final determination accurately reflects the settlement; also, there is a dissenting opinion in this case.

Torts

Medical statute of repose/Refiled action/Timeliness/Tolling/Constitutionality/Dissent. [Kennedy v. W. Res. Senior Care | 2024-Ohio-5565 | Supreme Court of Ohio | 11/27/2024](#) In plaintiff-executor's wrongful death action against healthcare defendants, alleging medical malpractice, resulting in a directed verdict for defendants on reasoning that plaintiff's complaint was refiled outside the four-year statute of repose, R.C. 2305.113(C), and that the saving statute did not preserve the claim, where plaintiff appealed, arguing that the statute of repose was tolled under R.C. 2305.15(A) because

defendant-physician had moved to another state and continued to live outside Ohio, the court of appeals erred in ruling that the tolling statute was unconstitutional under the dormant Commerce Clause where the statute is facially nondiscriminatory in tolling the running of the statute of repose for filing a medical claim while defendant remained out of state to practice medicine, her relationship to commerce was minimal, and neither the history nor the practical effects of the law evince an economically protectionist purpose; the case is remanded to the trial court for further proceedings, and there is a dissent stating that the case was improvidently accepted.

Crime victim/Witness intimidation/Obstruction of justice. [Gentry v. Silver Linings Agency | 2024-Ohio-5503 | 1st Appellate District | 11/22/2024](#)

In plaintiff-terminated employee's R.C. 2307.60 action, which permits crime victims to recover damages in a civil action, alleging that she witnessed abuse/neglect of residents in defendant's group home, that defendants terminated her after she raised concerns, and that defendants engaged in two crimes against her—witness intimidation and obstruction of justice—trial court's summary judgment for defendant is affirmed since plaintiff failed to produce evidence of an underlying criminal act so there was no basis for witness intimidation, and obstruction of justice could not apply where the state, rather than plaintiff, is the victim in such cases; as well, plaintiff's claim that defendants were unjustly enriched because she incurred expenses on defendants' behalf and defendants failed to reimburse her is without merit since plaintiff lacked sufficient evidence of her alleged expenses or a failure by the defendants to reimburse her.

Slip and fall/Construction site/Derivative liability. [Badra-Muniz v. Vinyl Carpet Serv. Inc. | 2024-Ohio-5507 | 2nd Appellate District | 11/22/2024](#) In slip and fall negligence action by plaintiff-general contractor's employee against defendant-subcontractor whose employee applied substances to construction site floor for its installation and

plaintiff sustained injury by slipping on the floor, summary judgment for defendant is affirmed on reasoning that defendant could not be held vicariously liable for negligence because claims against its employee who applied the substance were time-barred due to procedural defects, extinguishing any derivative liability, *Clawson v. Heights Chiropractic Physicians*; as well, plaintiff's premises liability claim is without merit since defendant did not control the premises or actively participate in the work leading to the injury, and the construction site's hazards were inherently dangerous, negating further duty under frequenter statutes.

Legal malpractice/Limitations/Standing. [Pincus v. Dubyak | 2024-Ohio-5390 | 8th Appellate District | 11/14/2024](#) In legal malpractice action in which client asserted that attorney failed to appoint a receiver in a prior lawsuit against her brother in law, resulting in the loss of collectible funds, where client had filed the prior action as legal representative of her disabled husband and co-owner of business with brother in law, the trial court erred in granting summary judgment to attorney on reasoning that the malpractice claim was time-barred and that client lacked standing since client demonstrated an attorney-client relationship with attorney and that the relationship existed until a later date, which made client's malpractice claim timely under R.C. 2305.11(A), and there are genuine issues of material fact about whether attorney breached his duty by not seeking a receiver and if this failure proximately caused client's damages, so the case is remanded.

Fraudulent conveyance/Judgment/Garnishment/Release of funds. [RNE Ents., L.L.C. v. Imperial Kitchen Cabinet Factory, L.L.C. | 2024-Ohio-5327 | 8th Appellate District | 11/07/2024](#) In plaintiff-commercial building owner's fraudulent conveyance action against defendants-tenant against whom plaintiff obtained a judgment and transferee to whom tenant transferred assets that tenant owed to plaintiff in underlying judgment, the trial court did not err in releasing funds garnished from transferee under previous judgment where transferee did not seek a stay prior to appealing order releasing funds, and judgment was voluntarily satisfied and became law

of the case when the Ohio Supreme Court declined to accept appeal of the prior judgment.

Slip and fall/Moving hazard/Comparative negligence. [George v. Miami Univ. | 2024-Ohio-5281 | 10th Appellate District | 11/05/2024](#) In a slip and fall negligence action against state university, arising from injuries plaintiff sustained by falling on ice and being struck by Zamboni machine, the trial court's judgment is reversed in part where the court erred by concluding that the open rink door was not an open and obvious hazard, but the trial court properly ruled that the moving Zamboni was not an open and obvious hazard, as it was not stationary, and the plaintiff could not reasonably appreciate the risk of being struck by it, so the case is remanded to reassess comparative negligence and the impact on fault and damages allocation, with the court distinguishing between static and dynamic hazards under Ohio premises liability law.

Premises liability/Immunity/Physical defect. [Howard v. Columbus | 2024-Ohio-5181 | 10th Appellate District | 10/29/2024](#) In plaintiff-emergency medical technician's premises liability physical defect action, alleging negligent training and supervision, against defendant-city for injuries sustained when he was descending a fire pole during training, trial court erred in denying defendant's governmental immunity-based motion for judgment on the pleadings where defendant was a political subdivision engaged in a governmental function pursuant to R.C. 2744.02(A)(1), and negligent training and supervision did not constitute a physical defect, R.C. 2744.02(B)(4), as not being a material or tangible thing, and the absence of safety equipment did not support a physical-defect claim related to the injury.

Medical negligence/Limitations/Extension. [Blackburn v. New Dawn Rehab & Healthcare Ctr. | 2024-Ohio-5170 | 5th Appellate District | 10/28/2024](#) In plaintiff-estate administrator's action against defendant-healthcare center, alleging negligent care and treatment of decedent, resulting in summary judgment for defendant on reasoning that the action was not filed within the statute of limitations, trial court

erred in denying plaintiff's subsequent Civ.R. 60(B) motion for relief from judgment where plaintiff provided documentation demonstrating that the limitations period was properly extended since plaintiff sent defendant a 180-day letter, the signature policy for certified mail adopted during the pandemic was sufficient to establish that notice was given and received, so defendant had been properly notified pursuant to R.C. 2305.11(B)(1); the 180-day letter at issue was not subject to the requirements of Civ.R. 4.1, which outlines the methods for obtaining service of process.

Toxic tort/Expert testimony. [Schleich v. Penn Cent. Corp. | 2024-Ohio-5005 | 8th Appellate District | 10/17/2024](#) In firefighter's toxic tort action under the Federal Employers' Liability Act against federal transportation employers for leukemia sustained from exposure to diesel exhaust, summary judgment in favor of employers is affirmed where plaintiff's expert physician's testimony was appropriately excluded because his method for analyzing scientific literature was found to be unreliable under state law, there was an analytic gap between data and expert physician's opinion that exhaust caused firefighter's condition, and expert testimony was required to address the issue of general causation, Evid.R. 702(C).

Wrongful death/Vicarious liability. [Orac v. Montefiore Found. | 2024-Ohio-4904 | 8th Appellate District | 10/10/2024](#) In plaintiff-estate executor's action against defendants-nursing home and medical provider, alleging wrongful death and related claims, asserting that defendants failed to provide adequate care, leading to decedent's death from complications related to pressure ulcers, summary judgment in favor of defendants is affirmed regarding defendant-provider on reasoning that there was insufficient expert testimony linking her conduct to the alleged negligence; however, judgment for the nursing home is reversed on the basis that the claims based on vicarious liability against defendant-nursing home for negligence by its non-physician employees can proceed against an institution, even without naming individual employees as defendants, so the case is remanded for further

proceedings on the claims against defendant-nursing home.

Defamation/Privilege/Scope. [Anderson v. WBNS-TV, Inc. | 2024-Ohio-4880 | 10th Appellate District | 10/08/2024](#) In defamation claim brought by family members against TV station, asserting that the station falsely accused them of robbing a child at gunpoint, based on inaccurate reporting of a police media release, trial court's ruling in favor of station on reasoning that qualified privilege applied, requiring proof of actual malice, is reversed where there is evidence that the station had altered the police report's content, making statements not based on official information and going beyond the scope of the privilege, and the case is remanded for a determination of damages based on the jury's finding that WBNS acted negligently.

Reconsideration/Ecclesiastical abstention. [Prey v. Franciscan Univ. of Steubenville | 2024-Ohio-4871 | 7th Appellate District | 10/03/2024](#) In plaintiff-instructor's action for defamation, breach of contract, and related claims against private university with a religious affiliation in which the instant court affirmed trial court's order granting defendant's Civ.R. 12(B)(1) motion to dismiss for lack of subject matter jurisdiction under the ecclesiastical abstention doctrine because plaintiff's claims required the court to interpret religious doctrine, plaintiff's App.R. 26 application for reconsideration is denied where plaintiff's argument that he is neither a clergyman nor a congregant, asserting a violation of his First Amendment rights, is without merit since the ecclesiastical abstention doctrine applied on the basis of the nature of plaintiff's claims and the religious issues they involved, rather than his relationship to the church.

Wrongful death/Standard of care/Expert testimony. [Krznaric v. Summa Rehab Hosp., L.L.C. | 2024-Ohio-4776 | 9th Appellate District | 10/02/2024](#) In plaintiff-son's wrongful death action against defendants-hospital and physician for injuries sustained by deceased mother when she fell after being left unattended at appointment, summary judgment in favor of defendants is reversed where the trial court focused on the standard

of care for the ambulette driver, who was not a party to the case, instead of whether the defendants met their own duty of care; as well, the trial court improperly excluded the plaintiff's expert testimony without a challenge by defendants under former Evid. R. 702 and failed to view evidence in a light most favorable to the plaintiff, and the case is remanded.

Medical malpractice/Wrongful death/Statute of repose/Expert witness. [Lockhart v. Kontak | 2024-Ohio-4744 | 9th Appellate District | 09/30/2024](#) In medical malpractice and wrongful death action by plaintiff-executrix of estate against defendant-physician, alleging that defendant was negligent in the management, care, and treatment of decedent, trial court did not err in granting defendant's motion in limine to exclude evidence concerning medical treatment that occurred outside the four-year medical statute of repose under R.C. 2305.113(C), which also applies to wrongful death claims; as well, the trial court did not err in allowing cross-examination of plaintiff's expert witness regarding the opinion of a prior expert witness who expressed no criticisms of defendant's care at remaining visit by patient, and any potential error in the cross-examination was harmless and did not affect the outcome of the trial.

Negligence/Reconvened jury/Revised verdict. [Cook v. M-F Transport, Inc. | 2024-Ohio-4678 | 8th Appellate District | 09/26/2024](#) In plaintiffs' negligence and related claims action, arising from three-vehicle accident, where the jury rendered a verdict and was discharged, but after informal discussion with judge, the judge reconvened the jury, minus one member, which rendered a revised verdict reflecting the true intention of the jurors, including the missing juror, regarding the amount of damages, the judgment is affirmed since defendants waived any objections by failing to raise them during trial, and the trial court had inherent authority to recall the jury to correct a mistake and accurately reflect the jurors' intentions; as well, defendants' Civ.R. 50(B) motion for JNOV was properly denied because defendants failed to timely object to the court's actions.

Civil abuse of process/Settlement agreement. [Williams v. Hung | 2024-Ohio-4682 | 8th Appellate District | 09/26/2024](#) In action filed by plaintiff-terminated county administrator against defendants-county commissioners and attorney, alleging civil abuse of process and related claims, judgment on the pleadings in favor of defendants is affirmed where plaintiff's claims against the defendants-commissioners is barred by the parties' settlement agreement in prior federal court case, which released defendants from liability, and plaintiff failed to allege fraud in the inducement and did not comply with the tender-back rule to void the settlement agreement, and defendant-attorney was protected by the doctrine of litigation privilege, as plaintiff's claims related to defendant-attorney's actions in the course of litigation.

Multiclaime/Counseling records. [Gabriel v. Kladitis | 2024-Ohio-4850 | 7th Appellate District | 09/18/2024](#) In wife's action alleging abuse of process, conversion and invasion of privacy, arising from divorce, trial court's judgment in favor of wife is affirmed where there is evidence that husband obtained wife's private counseling records using a fraudulent subpoena during a contentious custody battle, and wife's testimony that the breach caused her significant emotional distress, including panic attacks and inability to work, that she was at her most vulnerable when she attended therapy sessions, and that she told the doctor things she had not even told husband during their ten years of marriage, was sufficient to support her claims and the award of damages.

Wrongful death/Hazardous tree/Type of location. [Tauchert v. Rumpke Sanitary Landfill, Inc. | 2024-Ohio-4551 | 1st Appellate District | 09/18/2024](#) In plaintiff-estate administrator's wrongful death action against defendant-business property owner, alleging that decedent died from injuries sustained when tree fell on his vehicle, summary judgment in favor of defendant was error where the trial court found, as a matter of law, that the area was rural in nature and in doing so gave little

significance to the county auditor's designated land-use code, and there were also issues whether defendant had constructive notice of the tree's hazardous condition and whether plaintiff correctly identified the stump of the subject tree.

Medical negligence/Damages/Punitive/Standard. [Estate of Samples v. Lagrange Nursing & Rehab. Ctr., Inc. | 2024-Ohio-4441 | 9th Appellate District | 09/09/2024](#) In plaintiff-estate's medical negligence and related claims action against defendant-nursing facility, resulting in a jury verdict in favor of plaintiff and an award of punitive damages, trial court erred in granting defendant's motion for JNOV on the punitive damages award where the standard for actual malice required establishing that defendant had conscious disregard for the rights and safety of others and that this disregard had a great probability of causing substantial hardship, but the court incorrectly required plaintiff to show a positive element of conscious wrongdoing that was intentional in order to establish actual malice, so the judgment is reversed in part and the case is remanded for the trial court to apply the correct standard for punitive damages.

Medical malpractice/Interrogatories/Same-juror rule/Dissent. [Hild v. Samaritan Health Partners | 2024-Ohio-3338 | Supreme Court of Ohio | 09/05/2024](#) In plaintiff-estate administrator's medical malpractice and related claims action against defendants-medical organizations and individual providers in which the trial court gave the jury several interrogatories to facilitate its decision-making and instructed the jury that the "same-juror rule" applied so only the jurors who had answered the interrogatory on the question of negligence in the affirmative could answer the interrogatory on the question of proximate cause, the court of appeals' decision ruling that trial court's use of the same-juror rule was prejudicial to plaintiff and reversing trial court's denial of plaintiff's motion for a new trial is reversed since the same-juror rule applies in all negligence cases in which the jury answers sequential interrogatories that separate the elements of negligence to reach a general verdict; the jury

verdict in favor of defendants is reinstated, and there is a dissenting opinion.

Legal malpractice/Civil protection order/Objections. [Stanford v. Williams | 2024-Ohio-3395 | 9th Appellate District | 09/04/2024](#) In plaintiff's legal malpractice action against defendant-attorney for ineffective counsel in underlying criminal and civil protection order cases, judgment in favor of defendant for representation of plaintiff in the criminal cases is affirmed; however, judgment for defendant in the protection order case in which plaintiff asserts that timely objections to the magistrate's decision were not filed, Civ.R. 65.1(F)(3)(d), is reversed since evidence showed that an attorney-client relationship existed between the parties for the protection order case at the time objections to magistrate's decision were to be filed, that filing objections was part of the trial court proceedings rather than an appeal, so filing objections was within the scope of representation of plaintiff, and that timely objections were not filed; the case is remanded for the trial court for further proceedings consistent with this decision.

Employer intentional tort/Limitations/Judicial notice/Verdict/Judicial economy. [Mundy v. Centrome, Inc. | 2024-Ohio-3358 | 12th Appellate District | 09/03/2024](#) In plaintiffs' employer intentional tort action against defendant-employer, alleging that employer knowingly exposed employees to dangerous chemicals and misrepresented the risks, where defendant asserted the statute of limitations defense, trial court erred in granting plaintiffs' motion for directed verdict where there was competing evidence as to when the limitations period under R.C. 2305.10(A) commenced, trial court's failure to take judicial notice of complaint's filing date was prejudicial to defendant, and the case is remanded for the sole determination of whether the claims were timely filed; as well, the jury rendered a verdict holding employer liable for the tort claims, and while it is more common to adjudicate a statute-of-limitations defense before reaching the merits of a case, there is no strict requirement for this order, and the approach here serves the interests of judicial economy by preserving the

existing liability determination pending resolution of the statute-of-limitations issue.

Defamation/Online reviews. [Amaro v. DeMichael | 2024-Ohio-3290 | 5th Appellate District | 08/28/2024](#) In plaintiff-law firm's defamation action, alleging that defendants flooded online ratings site with fake reviews intended to maliciously destroy its reputation, trial court erred in granting defendants' Civ.R. 12(B)(6) motion to dismiss where some reviews would lead a reasonable reader to believe that the reviewers had actual experiences with plaintiff and that the reviews were premised on first-hand information, when a review contains specific statements capable of being proved true or false in explanation for a negative online review or rating, these statements can be grounds for a defamation claim, and reviews that were opinion and not actionable were relevant to show defendants' pattern of conduct.

False imprisonment/Negligence/Immunity. [Randlett v. Ohio Dept. of Rehab. & Corr. | 2024-Ohio-4576 | Court of Claims | 08/28/2024](#)

In plaintiff-former inmate's action against defendant-state department, alleging false imprisonment and gross negligence on the basis that defendant improperly calculated his prison sentence and failed to award him earned credit for his participation in various programs, resulting in an extended period of incarceration, summary judgment is granted to defendant on reasoning that plaintiff's imprisonment was in accordance with facially valid sentencing entries and that all calculations of his sentence and earned credit were properly conducted; as well, the state is immune from a common law claim of false imprisonment when the plaintiff was incarcerated pursuant to a facially-valid judgment or order, even if the facially-valid judgment or order is later determined to be void.

False arrest/Judgment on pleadings/Immunity. [Hill v. Schildmeyer | 2024-Ohio-3261 | 1st Appellate District | 08/28/2024](#) In plaintiff's action against defendant-police officer, alleging, inter alia, false arrest committed with malice or gross negligence, trial court's denial of defendant's Civ.R. 12(C)

motion for judgment on the pleadings is affirmed where defendant's video camera evidence and affidavit were inappropriately attached to defendant's motion, as being matters outside the pleadings, and were not proper for testing the sufficiency of the complaint, and plaintiff sufficiently pleaded an exception to defendant's immunity defense, R.C. 2744.03(A)(6).

Medical malpractice/Insufficiency of service/Notice/Vicarious liability/Dissent. [Ackman v. Mercy Health W. Hosp., L.L.C. | 2024-Ohio-3159 | Supreme Court of Ohio | 08/22/2024](#) In medical malpractice action in which defendants-medical practice and physician raised the affirmative defense of insufficiency of service of process under Civ.R. 12(B), court of appeals' judgment affirming trial court's summary judgment in favor of defendants is affirmed since insufficiency of service of process was properly raised and preserved, and active participation in the litigation by defendants did not constitute a waiver of that defense, *Glozzo*; also, under Civ.R. 4.6(E), the attorney of record is responsible for determining if service has been made, which plaintiff's attorney failed to do, the action was not brought within the statute of limitations, and since the case against the defendant-physician was not properly commenced, the plaintiff could not prevail on claims against defendant-medical practice under a theory of vicarious liability; there is a dissenting opinion in this case.

Negligence/Service/Relief from judgment. [Berhane v. Walmart, Inc. | 2024-Ohio-3163 | 1st Appellate District | 08/21/2024](#) In plaintiff's negligence action against defendant-store for injuries sustained when she slipped on debris inside store and fell, where the trial court dismissed the complaint with prejudice pursuant to Civ.R. 3(A) and 12(B)(6) on reasoning that the case was not timely commenced and that the two-year statute of limitations period under R.C. 2305.10(A) had expired, trial court erred in denying plaintiff's Civ.R. 60 motion to vacate since plaintiff's certified mail service on the defendant raised the presumption of proper service under Civ.R. 3(A), and that presumption was un rebutted by defendant.

Infliction of emotional distress/Immunity/Pleading. [Doe v. Cuyahoga Community College | 2024-Ohio-3113 | 8th Appellate District | 08/15/2024](#) In plaintiff's action against defendants-county community college and personnel, alleging negligent, wanton, and reckless conduct and intentional infliction of emotional distress related to a claimed sexual assault by instructor, trial court did not err in denying defendants' Civ.R. 12(B)(6) motion to dismiss, arguing Ch. 2744 governmental immunity, where plaintiff claimed that defendants were aware of instructor's history of sexual abuse and failed to act to protect students, leading to assault on plaintiff, so the trial court concluded that if the allegations were proven, the defendants would not be entitled to immunity because the allegations were sufficient to meet the exceptions to immunity.

Unjust enrichment/Conversion. [Meyer v. Lucas | 2024-Ohio-3035 | 2nd Appellate District | 08/09/2024](#) In plaintiff's action against defendant-former fiancé for unjust enrichment and conversion claims in which the trial court awarded defendant half the equity in the house the parties shared, the judgment is affirmed where the court found that defendant had contributed financially and by working on the property and household, justifying the equity award, and the court also determined that plaintiff's valuation of the alleged converted personal property was speculative and unsupported by evidence, leading to the denial of his conversion claim.

Defamation/Limitations/Discovery rule. [Weidman v. Hildebrant | 2024-Ohio-2931 | Supreme Court of Ohio | 08/08/2024](#) In plaintiff-township trustee's defamation and related claims action against defendant-developer, who allegedly stated that plaintiff sought a kickback from defendant's consulting fee after sale of property to township, court of appeals' reversal of trial court's ruling that plaintiff's complaint was barred by the one-year statute of limitations in R.C. 2305.11(A) is affirmed since publication of the allegedly libelous statement was secretive or concealed in a private email, plaintiff did not know and could not have discovered that he had allegedly been defamed, and therefore

Torts (Continued)

the discovery rule applies so the action accrued on date it was discovered, making plaintiff's complaint timely; also, since plaintiff's derivative claims of intentional infliction of emotional distress and false-light invasion of privacy have the same substance and are virtually identical to the defamation claim, those claims are also subject to the discovery rule, and the case is remanded to the trial court for further proceedings.

Wrongful death/Summary judgment/Immunity/Fact questions. [Jones v. Davis | 2024-Ohio-2972 | 1st Appellate District | 08/07/2024](#)

In action by plaintiff-decedent's administrator against defendants-city and truck driver for wrongful death after decedent died shortly after being struck at landfill by trash dumped by a city garbage truck, partially covering decedent with trash and sludge, trial court erred in granting summary judgment to the defendants since the court improperly ruled that defendants were entitled to immunity under R.C. Ch. 2744 where the motor-vehicle exception to immunity applied because the incident involved the negligent parking and operation of the garbage truck, and also, there were genuine issues of material fact regarding the driver's identity and whether the city's actions proximately caused decedent's death.

Interference with business/Evidence/Opportunity to testify. [Garrett v. Jackson | 2024-Ohio-2902 | 8th Appellate District | 08/01/2024](#)

In plaintiff-business tenant's action against defendant-landlord for interfering with operation of businesses and related claims, trial court erred in awarding damages to plaintiff where defendant was not allowed to testify at the damages-only hearing, and his defense was prejudiced because his testimony could have rebutted plaintiff's testimony and provided additional information with which the court could evaluate the credibility of plaintiff's damages, Evid.R. 103(A)(2).

Traffic and OVI

Search and seizure/Probable cause/Sobriety tests. [State v. Hoey | 2024-Ohio-5399 | 5th Appellate District | 11/14/2024](#) In prosecution for operating a vehicle under the influence (OVI) under R.C. 4511.19(A)(1)(a), the trial court's order granting defendant's motion to suppress evidence related to his arrest is affirmed where officer's observations—including a slight odor of alcohol, slurred speech, and defendant's admission to consuming a few drinks—were insufficient to establish probable cause without field sobriety tests, and officer's decision not to conduct the tests, despite defendant's willingness, weakened the case; probable cause must be based on trustworthy facts and circumstances sufficient to lead a reasonable person to believe a crime was committed.

OVI/Search and seizure. [State v. Weaver | 2024-Ohio-5028 | 2nd Appellate District | 10/18/2024](#) In appeal by state of the grant of a motion to suppress in a conviction of, inter alia, OVI, R.C. 4511.19(A)(1)(a), and operating a vehicle under the influence of marijuana metabolite, R.C. 4511.19(A)(1)(j)(viii)(II), trial court erred in granting a motion to suppress the urinalysis results and the field sobriety testing, defendant's statements, and the observations and opinions of the arresting officer since officer had reasonable suspicion to administer field sobriety tests based on defendant's traffic violations, physical signs of impairment, and admission of recent marijuana use, and state substantially complied with administrative code's sealing requirements for the urine specimen; case remanded for further proceedings for trial court to determine whether there was probable cause for defendant's arrest upon consideration of the field sobriety tests results.

Plea/Effect/Understanding. [Cleveland v. Greene | 2024-Ohio-4899 | 8th Appellate District | 10/10/2024](#)

Defendant's plea to having physical control of a vehicle while under the influence, R.C. 4511.194, is reversed on reasoning that the trial court failed to comply with Crim.R. 11(E) because it did not inform defendant of the effect of his guilty plea, as required for a misdemeanor involving a petty

offense; the record reflects that the court did not state that defendant's plea was a complete admission of guilt, either orally or in writing, and there was no evidence in the record to suggest that defendant understood the consequences of his plea.

Self-representation/Advisement.

[State v. Arcuri | 2024-Ohio-4825 | 9th Appellate District | 10/07/2024](#) Defendant's conviction for driving under an OVI suspension, R.C. 4510.14(A), is reversed due to a violation of his Sixth-Amendment right to counsel since defendant represented himself at trial without a valid waiver of counsel where the trial court failed to conduct a sufficient inquiry into whether defendant's waiver was knowing, intelligent, and voluntary, as required by State v. Gibson; the trial court did not address defendant's education, legal sophistication, potential defenses, or the complexities arising from an interrelated case in another court, and given these omissions, defendant was not adequately advised of the dangers of self-representation.

Impaired driving/Leave to file motion to suppress. [State v. Walters | 2024-Ohio-3179 | 7th Appellate District | 08/20/2024](#)

In a prosecution for OVI, the trial court did not err by granting the defendant's motion for leave to file a motion to suppress and motion in limine, Crim.R. 12(H) and Traf.R. 11(F), and the court of appeals holds that the state's evidence was insufficient to prove beyond a reasonable doubt that the defendant had committed the offense, noting that the state had failed to establish that the defendant had knowingly caused physical harm to the victim or had placed the victim in fear of imminent physical harm, and the court also found that the victim's testimony was inconsistent and not credible.

Impaired driving/Evidence/Manual and known substance chart. [State v. Berhe | 2024-Ohio-3135 | 5th Appellate District | 08/15/2024](#)

In a bench conviction of OVI and possession of marijuana, the trial court did not err in admitting into evidence over the defendant's hearsay objection a manual and known substance chart pursuant to which the trooper was trained since

the manual was admitted for the limited purpose of demonstrating the trooper's training regarding the effect of drugs, as opposed to alcohol, on the horizontal gaze nystagmus test that the defendant tested six of six clues on and, since the case was tried to the bench, an appellate court must presume that the trial court considered nothing but relevant and competent evidence, and the defendant did not overcome the presumption, Wiles.

Impaired driving/Double jeopardy/Retrial/Invited error. [State v. Hicks | 2024-Ohio-3422 | 2nd Appellate District | 08/06/2024](#) In a prosecution for, inter alia, OVI, and appeal by state from trial court's grant of defendant's motion to dismiss on double jeopardy grounds, although trial court did not err by admitting evidence of defendant's prior OVI conviction since defendant's strategy was to force the state to prove every element of the offense, with defense counsel arguing that meant the state had to bring in an authenticated record of a previous conviction for driving under an OVI suspension, and trial court granted state's motion for a mistrial, trial court did not err by granting defendant's motion to dismiss on double jeopardy grounds because there was no manifest necessity requiring the granting of the state's motion since it was not because of misconduct by the defendant or jury, and trial court did not consider any available, reasonable alternative, including a curative jury instruction, before declaring a mistrial.

Workers' Compensation

Temporary total disability/Workplace injury/Unrelated termination/Causal connection. [State ex rel. AutoZone Stores, Inc. v. Indus. Comm. | 2024-Ohio-5519 | Supreme Court of Ohio | 11/26/2024](#) In case in which employee injured his shoulder while performing his regular job duties and was awarded temporary total disability compensation (TTD) under R.C. 4123.56(A), then was able to resume light duty work, but was later terminated for violating employer's employment policies prior to undergoing shoulder surgery, denial of employer's subsequent petition for a writ of mandamus to compel commission to vacate its TTD order is reversed since employee's

inability to work following shoulder surgery was not the direct result of an impairment arising from the injury, and R.C. 4123.56(F) requires a causal connection between the injury and the inability to work, and that connection was severed by employee's termination, so the instant court grants the writ of mandamus ordering the commission to vacate the TTD award; the third sentence of R.C. 4123.56(F) reflects the legislature's intent to replace voluntary-abandonment decisions with the standard articulated in the first two sentences of the statute.

Loss-of-use/Physician's reports/Objective findings. [State ex rel. Heilman v. Indus. Comm. | 2024-Ohio-5518 | Supreme Court of Ohio | 11/26/2024](#) Judgment granting relator-decedent's wife's petition for a writ of mandamus to compel industrial commission to vacate its denial of total loss-of-use compensation for deceased husband is affirmed where commission improperly relied on nonexamining physician's reports, which did not comply with the holding in *State ex rel. Wallace*, because nonexamining physician did not accept the objective findings of the coroner and therefore nonexamining physician's reports could not constitute some evidence upon which commission could base its order, R.C. 4123.57(B), but the commission may use the observations and analysis in nonexamining physician's reports as guidance in evaluating the credibility of the remaining medical evidence in the file; the case is remanded to determine whether the decedent's injuries met the statutory standard for scheduled-loss compensation; there is a dissenting opinion.

Refunds/Calculation/Fewer injuries/Group program. [State ex rel. Kent Elastomer Prods., Inc. v. Logue | 2024-Ohio-5451 | 10th Appellate District | 11/19/2024](#) Company that filed a petition for a writ of mandamus to compel the bureau to apply former Ohio Adm. Code 4123-17-73(Q), which sets forth a process for calculating and issuing refunds to employers who participate in the group retrospective rating program and who, as a group, have fewer injuries and loss than the initial premium calculation assumed, is granted a

limited writ where the bureau lacked the authority to unilaterally nullify the group program by issuing a one-time 100% premium refund as a dividend under R.C. 4123.321 and Ohio Adm. Code 4123-17-10 without performing the mandatory premium calculations specified in former Ohio Adm. Code 4123-17-73, and the bureau must follow its own regulations, with the group retrospective rating program operating independently of surplus dividend policies, and the bureau's actions, including its failure to amend the rule through formal administrative procedures, violated its clear legal duty.

Specific safety requirement/Impossibility/Alternative. [State ex rel. Prime Roof Solutions, Inc. v. Indus. Comm. | 2024-Ohio-5221 | 10th Appellate District | 10/31/2024](#) Employer's petition for a writ of mandamus to compel industrial commission to vacate its order finding that employer violated a specific safety requirement that was the proximate cause of injuries to claimant is denied where claimant fell through roof he when he was inspecting the roof for leaks before safety anchors were installed, and fall prevention equipment was required because claimant was exposed to hazards of falling; employer's defense of "impossibility" failed since temporary alternative protection methods could have been used to protect workers on the roof before permanent safety anchors were installed.

Permanent partial disability/Cancer/Evidence. [State ex rel. Cincinnati v. Indus. Comm. | 2024-Ohio-5010 | 10th Appellate District | 10/17/2024](#) City's petition for a writ of mandamus to compel industrial commission to deny claimant-firefighter's application for permanent partial disability after he was diagnosed with cancer is denied where claimant established that his disease was caused by employment under the general provisions of R.C. 4123.68, based on expert testimony from physician, who refuted the claim that smoking was a significant factor and linked claimant's cancer to his exposure to group 1 and 2A carcinogens during his work as a firefighter, claimant was not relying on the presumption-of-causation provision under R.C. 4123.68(X), and

Workers' Compensation (Continued)

city failed to show that claimant did not qualify for compensation pursuant to R.C. 4123.57.

Cancer/Presumption/Medical

evidence. [State ex rel. Cincinnati v. Indus. Comm. | 2024-Ohio-4915 | 10th Appellate District | 10/10/2024](#) Employer-city's petition for a writ of mandamus to compel commission to vacate an order that allowed claimant-firefighter's workers' compensation claim for papillary thyroid cancer is denied since employer's medical evidence did not meet the required standard to rebut the presumption that cancer contracted by a firefighter arises from employment unless rebutted by competent scientific evidence, R.C. 4123.68(X), where doctor's report did not produce a preponderance of competent scientific evidence that exposure to certain carcinogens could not have caused the firefighter's cancer; the commission exercised continuing jurisdiction based on a finding of a clear mistake of law in the SHO's order that denied the firefighter's claim.

Permanent total disability/Vocational rehabilitation/Job search/Reemployment potential. [State ex rel. Lee v. Indus. Comm. | 2024-Ohio-4696 | 10th Appellate District | 09/26/2024](#) Claimant's petition for a writ of mandamus to compel industrial commission to vacate its order denying claimant's request for permanent total disability compensation is denied where evidence showed that claimant refused to engage in vocational rehabilitation and job search efforts and that she had a few years until retirement age, her self-reported abilities to read, write, and perform basic math supported the finding that her education was a positive factor, and claimant had an extensive and varied work history, including positions in the retail industry, financial services, hospitality, and other fields, and had transferrable skills from her past jobs, which contributed positively to her reemployment potential, R.C. 4123.58(D).

Temporary total disability/Sufficiency of evidence/Appeal/Timeliness. [State ex rel. Tchankpa v. Indus. Comm. | 2024-Ohio-3430 | Supreme Court of Ohio | 09/11/2024](#) Denial of claimant's petition for a writ of mandamus to order the commission to vacate two of its decisions, to order employer to pay for claimant's medical treatment for his shoulder injury, and to order employer to pay temporary total disability compensation (TTD) is affirmed where, although claimant was initially granted TTD compensation by a district hearing officer, claimant's claim was later disallowed due to insufficient evidence that the injury occurred during employment, prompting claimant to file an appeal, which he voluntarily dismissed, and he then failed to file an appeal within the one-year saving period, R.C. 2305.19(A), which barred him from pursuing the claim further; as well, claimant's motion for continuing jurisdiction was time-barred, R.C. 4123.52(A), as it was filed more than five years after his last compensation payment.

Specific safety requirement/Platform/Guard rails. [State ex rel. Whirlpool Corp. v. Rice | 2024-Ohio-3252 | 10th Appellate District | 08/27/2024](#) Employer's petition for a writ of mandamus seeking to compel industrial commission to vacate its order finding that employer committed a violation of a specific safety requirement to provide employees a safe means of passage over conveyors is denied where, although employee fell from platform that did not cross conveyor, employer was required to comply with Ohio Adm. Code 4123:1-5-05(C)(3) because the purpose of the platform was to allow crossing at that point, the platform did not have the required standard guard railing or toeboards, and the Rule applied.

Loss of use/Permanency. [State ex rel. Randstad N. Am., Inc. v. Bullard | 2024-Ohio-3169 | 10th Appellate District | 08/20/2024](#) Employer's petition for a writ of mandamus seeking to compel industrial commission to vacate order awarding scheduled loss-of-use compensation to employee, who was injured on the job, is denied where explicit medical evidence of permanence of loss of use was not required pursuant to R.C. 4123.57(B) because employee's loss of use of partially amputated foot was inherently permanent, and even though the foot retained residual function, physician's opinion that employee had lost all use of his foot constituted some evidence supporting commission's finding.