OHIO STATE BAR ASSOCIATION REPORT

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Ohio case law summaries from Feb. 1, 2023 – April 30, 2023

In Case You Missed It: The following are selected summaries of cases decided by Ohio courts between Feb. 1, 2023 – April 30, 2023. 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/Standard of review. Barga v. St. Paris Village Council | 2023-Ohio-1067 | 2nd Appellate District | 03/31/2023 In police chief's administrative appeal of village council's decision to remove her as chief, trial court erred in affirming council's decision using the wrong standard of review where police chief was terminated pursuant to R.C. 737.171 and may appeal on questions of law and fact under the statute, but the court did not conduct a de novo review and stated that its decision was guided solely by R.C. 2506.04, presuming that the decision of the village council was valid and placing the burden of persuasion on the police chief.

Appeal/Procedural issues/Quasi-judicial. Harmon v. Cincinnati | 2023-Ohio-788 | 1st Appellate District | 03/15/2023 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 layoffs, and because 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.

Construction

Contract/Breach/Attorney fees. Menard, Inc. v. DiPaolo Indus. Dev., L.L.C. | 2023-Ohio-1188 | 11th Appellate District | 04/10/2023 In plaintiff's breach of contract and related claims action against defendant-contractor, alleging failure to timely complete construction work, resulting in a judgment for plaintiff, trial court erred in awarding attorney fees to plaintiff where the terms of the parties' contract provided for indemnification for third-party claims only, and other sections of the contract that reference attorney fees do not apply to the indemnification clause.

Mechanic's lien/Subcontractor/Attorney fees. Almasoodi v. J. Harris Constr. Inc. | 2023-Ohio-895 | 5th Appellate District | 03/21/2023 In property owners' action seeking removal of mechanic's lien placed on their property by subcontractor after completion of construction project, resulting in judgment for owners, trial court did not err in granting owners' motion for attorney fees and sanctions against subcontractor and counsel where owners demonstrated that mechanic's lien was void under R.C. 1311.011(B)(1) because owners had paid the general contractor in full, and evidence showed that subcontractor's counsel's conduct in filing claims and counterclaims was not warranted under law and that counsel willfully violated Civ.R. 11, R.C. 2323.51.

Breach of contract/Statute of Repose. State ex rel. Betton v. Burgess & Niple, Inc. | 2023-Ohio-740 | 6th Appellate District | 03/10/2023 In plaintiff-taxpayer's R.C. 309.13 action against defendant-project installer, alleging breach of waterlines construction and improvement contracts with county commissioners, incurring repair costs, trial court erred in denying defendant's motion for summary judgment where, even if plaintiff had standing to bring a taxpayer suit, the claims were time-barred because the complaint was filed more than 10 years after substantial completion of the improvements, and therefore the construction statute of repose under R.C. 2305.131 should have been applied, rather than the longer R.C. 2305.06 statute of limitations.

Standard of care/Expert affidavit. Riverside Drive Ents., L.L.C. v. Geotechnology, Inc. | 2023-Ohio-583 | 1st Appellate District | 03/01/2023 In plaintiffs-commercial developers' breach of contract and negligence action against defendants-contractors for failure to meet the standard of care in construction of retaining wall, summary judgment for defendants was not error since plaintiffs' claims required expert testimony to establish the standard of care, and plaintiffs' affidavit was properly stricken because it was untimely under Civ.R. 26(B)(7) and failed to properly supplement initial reports, which the trial court found did not constitute expert reports.

Contract/Attorney fees. Cleveland Constr., Inc. v. Ruscilli Constr. Co., Inc. | 2023-Ohio-363 | 10th Appellate District | 02/08/2023 In subcontractor's breach of contract action against general contractor for disputes about performance under agreement where subcontractor was awarded damages for its claim, but general contractor was awarded post-judgment attorney fees and costs, trial court did not err in denying subcontractor's motion to partially vacate the part of the arbitration award in favor of general contractor since general contractor submitted documentation, including notices of default under terms of the subcontract, the scope of indemnification was not limited under the subcontract, and subcontractor failed to show that the award was arbitrary or unlawful R.C. 2711.10(D).

Contracts

Non-compete/Injunctive relief. Total Quality Logistics, L.L.C. v. Johnson | 2023-Ohio-1319 | 12th Appellate District | 04/24/2023 In company's action seeking damages and injunctive relief against former employee for violation of non-compete agreement and misappropriation of trade secrets where the case had been filed in federal court, which remanded the case to state court for lack of jurisdiction, trial court erred in construing company's jurisdictional monetary claim in federal court as an agreement to accept cash payment in lieu of injunctive relief; the non-compete

Contracts (Continued)

agreement specifically entitled company to both types of relief, the federal court monetary stipulation did not require company to accept a cash-equivalent in forbearance of an injunction, and the trial court made no distinction between past compensatory damages and the equitable remedy of injunction.

Breach/Arbitration/Waiver. Lovano v. Setjo, L.L.C. | 2023-Ohio-461 | 8th Appellate District | 02/16/2023 In consumer action by vehicle purchasers against vehicle seller, trial court did not err in denying seller's motion to dismiss the complaint or, in the alternative, to stay the proceedings and compel arbitration where the parties' contract contained an arbitration provision under which purchasers complied with the provision and paid their share of the arbitration fees, then waited five months before filing the instant action in court, followed by seller's delay of six months before seller decided to seek arbitration without paying its share of the arbitration fees, with the result that seller's conduct constituted waiver of its right to arbitrate.

Breach/Declaratory judgment. TN-SWS, L.L.C. v. Ohio Dept. of Rehab. & Corr. | 2023-Ohio-800 | Court of Claims | 02/10/2023 In plaintiff's breach of contract, declaratory judgment and related claims action against defendant-state department, alleging that defendant failed to provide data in accordance with a written contract, which, in turn, caused plaintiff to sustain damages, magistrate recommends judgment for plaintiff and a hearing on damages where, inter alia, the parties signed a memorandum of understanding (MOU) that plaintiff was prepared to update and maintain its database, but defendant's breach of the agreement by failing to provide plaintiff an initial manual extraction of data from its files frustrated plaintiff's efforts, and therefore, the magistrate finds that plaintiff has proven that defendant breached the MOU; also, the magistrate finds that plaintiff's declaratory judgment claim is subsumed into its breach-of-contract claim.

Search/Motion to suppress/ Reasonable suspicion. State v. Deckard | 2023-Ohio-1398 | 2nd Appellate District | 04/28/2023 In a conviction by plea to aggravated drug possession, the trial court erred in denying a motion to suppress since officers lacked a particularized suspicion of criminal activity to justify an investigatory stop of defendant where there was no indicia of criminal activity by defendant to justify an investigatory detention because, even though defendant's act of walking through a university-owned parking lot toward an open convenience store while carrying a guitar in the vicinity of university-owned housing may have been odd, it did not give rise to a reasonable suspicion of criminal activity since officers admitted it was not illegal for a person to walk across a university-owned parking lot.

Sealing/Denial. Toledo v. Hair | 2023-Ohio-1415 | 6th Appellate District | 04/28/2023 Following a 2018 conviction of failure to reinstate driver's license and of failure to submit to a breath test and dismissal of an OVI charge and the trial court denial of pro se application to seal record to terminate the administrative license suspension, and to seal the record in four other traffic cases, the court of appeals affirmed the trial court's continuation of the administrative license suspension but reversed the trial court's denial of the motion to seal, holding that appellant was entitled to a hearing in all of the previous traffic cases and, on rehearing, the trial court did not err in denying appellant's application because he had two criminal cases pending against him and his interests did not outweigh the state's interest in maintaining the records.

Sentencing/Firearm specifications/ No-contact order. State v. Watts | 2023-Ohio-1394 | 1st Appellate District | 04/28/2023 In a bench conviction of aggravated robbery, R.C. 2911.01(A)(1), and two attached firearm specifications, the trial court erred in imposing both a one-year sentence and a three-year sentence on the firearm specifications since when one-year and three-year firearm specifications are attached to a single offense, a trial court may only impose one term of imprisonment on those specifications, R.C. 2941.141(B) and 2941.145(B); the trial court also erred by imposing a no-contact order since it imposed a prison sentence, precluding a community control sanction, including a no-contact order; remanded for re-sentencing.

Speedy trial/Notice of availability. State v. Corn | 2023-Ohio-1407 | 5th Appellate District | 04/28/2023 In an action pursuant to a secret indictment with multiple counts, including burglary and five counts of breaking and entering, the trial court did not err in granting defendant's motion to dismiss the indictment on statutory and constitutional speedy trial grounds, R.C. 2941.401 and the U.S. Const., Sixth Amend., where sheriff's office failed to timely serve defendant with the untried indictment when it had notice of his location, the Ohio Department of Rehabilitation and Corrections failed to properly inform him of the contents of the untried indictment and of his right to request a final disposition, and defendant substantially complied to provide the state with a Notice of Availability in August 2020.

Criminal

Search/Motion to suppress. State v. Thornton | 2023-Ohio-1404 | 2nd Appellate District | 04/28/2023 In a prosecution of having weapons while under disability, R.C. 2923.13(A)(2), and of carrying concealed weapons, R.C. 2913.12(A)(2), the trial court's grant of motion to suppress was error where officers were in a high crime area and had a reasonable articulable suspicion that criminal activity was afoot when they observed open containers of alcohol, and the officers were permitted to detain defendant briefly to resolve ambiguity in his conduct of running from them after being told to "stay put" and, moreover, the failure of a person to submit to an officer's instructions means there is no seizure, merely an attempted seizure that is beyond the scope of the Fourth Amendment, Brendlin.

Assault/Self-defense. Toledo v. Duckworth | 2023-Ohio-1412 | 6th Appellate District | 04/28/2023 Bench conviction of misdemeanor assault, R.C. 2903.13(A), met the sufficiency and weight of evidence standards where defendant's claims that the state did not provide sufficient evidence to establish that she did not act in self-defense and that the trial court's decision that she did not act in self-defense was against the weight of the evidence are without merit where, although defendant provided sufficient evidence that she was acting in self-defense when she twice pushed the victim away from her with her body, the state met its burden of persuading the court beyond a reasonable doubt that defendant was not acting in self-defense when the video evidence from security cameras showed that she later body-bumped the victim against a wall and then pushed her to the ground.

Sentencing/Weapons offense/ Mandatory sentence. Columbus v. Carmichael | 2023-Ohio-1386 | 10th Appellate District | 04/27/2023 In a conviction by plea to municipal code first-degree misdemeanor having weapons while under disability and imposition of an 180-day jail sentence, with two days of jail-time credit and 178 days suspended, two years of community control and a $100 fine, the payment of which was suspended, on city's challenge to the trial court's sentence, defendant concedes the trial court did not have discretion to impose a community control sentence for this offense since the city code required a mandatory minimum jail term of at least 180 consecutive days.

Sex offenses/Megan's Law/Law of the case. State v. Ameem | 2023-Ohio-1371 | 8th Appellate District | 04/27/2023 In a conviction by plea to failure to verify current address pursuant to Megan's Law, R.C. 2950.06(F), the trial court did not err in denying defendant's motion to dismiss based on the court of appeals' statements regarding defendant's Megan's Law classification and registration duties in a prior case since the court's comments were not law of the case, but rather misstatements that were dicta the trial court was not bound to follow because the prior case resolved a different issue, namely whether appellant's 2007 reclassification by the Attorney General under the Adam Walsh Act was constitutional, a separate and distinct issue from the issues of whether he was classified as a "sexually-oriented offender" or a "sexual predator" under Megan's Law and whether that classification required registration every 90 days for life.

Evidence/Admissibility/Non-hearsay. State v. Tegarty | 2023-Ohio-1369 | 8th Appellate District | 04/27/2023 In a bench conviction of rape and gross sexual imposition, although defendant's statements in the instant messages between defendant and the alleged victim were admissible under Evid.R. 801(D)(2)(a) as non-hearsay since it was the state that "offered" or "introduced" them in its case-in-chief, the admission did not adversely affect defendant's substantial rights since the trial court heard victim's testimony, including victim's reading of the messages verbatim, and defense counsel cross-examined victim extensively on the content of the messages and the discrepancies in her wording, text and tone.

Involuntary manslaughter/Sufficiency and weight/Sentencing. State v. Johnson | 2023-Ohio-1367 | 8th Appellate District | 04/27/2023 In a bench conviction of, inter alia, involuntary manslaughter, R.C. 2903.03(A), the trial court made a procedural error by sentencing defendant for voluntary manslaughter since the state had elected to proceed to sentencing on the involuntary manslaughter charge; conviction for involuntary manslaughter met the sufficiency and weight of evidence standards since defendant killed the victim as a proximate result of committing aggravated assault, R.C. 2903.12(A)(1), where a neighbor of defendant testified that as he was hearing an argument coming from defendant's apartment, he heard a gunshot and, despite multiple reports of an argument, defendant repeatedly denied to investigators that she and the decedent had been arguing before he was shot; sentence is vacated and matter is remanded for re-sentencing on the involuntary manslaughter charge.

Sentencing/Jointly recommended sentence/Consecutive sentences. State v. Stotts | 2023-Ohio-1411 | 5th Appellate District | 04/27/2023 In a conviction by plea to trafficking in drugs and weapon offenses with a joint recommendation of 36 months in prison, the trial court did not err by rejecting the joint recommendation since the sentence imposed by the trial court for each charge is within the statutory guidelines, Hairston; however, imposition of consecutive sentences was error since the trial court did not make the necessary R.C. 2929.14(C)(4) findings during the sentencing hearing and incorporate them into its sentencing entry; remanded for further proceedings.

Sentencing/Allied offenses. State v. Evans | 2023-Ohio-1357 | 5th Appellate District | 04/26/2023 In a conviction by plea to, inter alia, illegal conveyance of drugs of abuse onto the grounds of a specified governmental facility, R.C. 2921.36(A)(2), and aggravated possession of drugs, R.C. 2925.11(A), the trial court did not err by not merging the offenses for sentencing as allied offenses of similar import, R.C. 2941.25, since the offenses were committed separately by the different conduct of defendant since defendant committed the violation of R.C. 2925.11 by possessing drugs and committed the violation of R.C. 2921.36 by the conveyance of the drugs into the detention facility.

Obstructing official business. State v. Mattle | 2023-Ohio-1352 | 9th Appellate District | 04/26/2023 Conviction of municipal ordinance obstructing official business met the sufficiency and weight of evidence standards where defendant obstructed officer's investigation during a traffic stop since defendant refused to exit her vehicle that was stopped and obstructing traffic when she was ordered by officer to do so and, during officer's questioning, she placed her car in drive and attempted to roll up her window on the officer's hand, providing a reasonable inference that defendant was attempting to flee, constituting obstructing official business, Johnson, and the trial court did not lose its way in making its credibility determinations.

Rape/Force or threat of force/Gross sexual imposition/Mistake of fact. State v. Torres | 2023-Ohio-1406 | 4th Appellate District | 04/25/2023 In convictions of rape, sexual battery and gross sexual imposition, the state failed to present sufficient evidence that defendant used "force or threat of force" to compel another person to engage in sexual conduct or contact to support the rape or sexual battery offenses since there was no evidence that defendant made threats or applied any force to the other person's body or clothing in any way while the other person was sleeping; the trial court did not err by not giving a jury instruction on mistake of fact on the gross sexual imposition charge since defendant presented no evidence that he had an honest belief based in good faith that the victim was awake, aware and consented to his conduct.

Trial/Jury waiver. State v. Rogers | 2023-Ohio-1329 | 3rd Appellate District | 04/24/2023 In a bench conviction of first-degree misdemeanor assault, R.C. 2903.13, defendant was denied her right to a jury trial because the trial court conducted a bench trial without ensuring that defendant first sign a written waiver of her right to a jury trial after defendant had made a written request for a jury trial and without addressing her on the record to confirm that the waiver of jury trial without first confirming that her waiver of a jury trial was knowingly, voluntarily and intelligently made pursuant to R.C. 2945.05, Lomax; remanded.

Criminal (Continued)

Bill of information/Amendment of charge/Prosecutor's statement. State v. Woodall | 2023-Ohio-1334 | 5th Appellate District | 04/24/2023 In a conviction by plea to, inter alia, illegal conveyance of drugs onto the grounds of a detention facility or institution, R.C. 2921.36(A)(2), the prosecutor did not present a statement of facts that positively contradicted the felony charges in the bill of information since the prosecutor described the material recovered from defendant as "suspected narcotics, a crystal-like substance" a phrase that does not positively contradict "drug of abuse" and thus does not negate an element of the offense, defendant stated his understanding of the amendment and resulting charge, and defense counsel waived the presentation of evidence and conceded that the facts presented by the pleadings and the prosecutor were sufficient to obtain the conviction.

Search/Warrant/Emergency aid exception. State v. Morehead | 2023-Ohio-1314 | 9th Appellate District | 04/24/2023 In a conviction by plea to illegal cultivation of marijuana and an attendant forfeiture specification pertaining to a gun found in defendant's home during the time that officers were in his house to evacuate any persons because of a fire at a house near defendant's house, denial of motion to suppress was not error since the emergency aid exception to the warrant requirement applied because the dangers associated with the house fire constituted a set of circumstances that justified a reasonable belief on the part of the officers that entering the house was necessary in order to protect the people who lived there.

Sentencing/Community control violation. State v. Sefton | 2023-Ohio-1318 | 12th Appellate District | 04/24/2023 Following a 2022 conviction by plea to obstructing official business, R.C. 2921.31(A), imposition and violations of community control to which defendant admitted, the trial court did not err by revoking community control and sentencing defendant to the reserved 12-month prison term since he waived the requirement that the state present evidence and call witnesses against him by admitting to the violations, Patton, and claim that the trial court did not comply with Crim.R. 11 is without merit since Crim.R. 11 is not applicable to revocation proceedings, and the trial court fully complied with Crim.R. 32.3 in revoking community control.

Animals on a public roadway/ Sufficiency and weight. State v. Meyer | 2023-Ohio-1254 | 5th Appellate District | 04/23/2023 Conviction of animals on a public roadway, R.C. 951.02, met the sufficiency and weight of evidence standards where officer responding to a call by a motorist of loose cattle on a roadway noted there had been prior calls for the same reason, there was a gate on the ground at defendant's barn, there appeared to be no way to secure the gate to the doorway, the gate was longer than the width of the opening and there were no chains, ropes, or anything on the fence or the wall to which the gate could have been attached and, although defendant's brother testified he included gate hangers in the post that the gate was allegedly attached, the jury did not lose its way in believing the state's witness over defendant's witness.

Sentencing/Reagan Tokes/ Notifications. State v. Cencebaugh | 2023-Ohio-1309 | 2nd Appellate District | 04/21/2023 In a conviction by plea to felony drug offenses, including a second-degree felony aggravated possession of drugs offense, the trial court erred by failing to properly notify defendant at the sentencing hearing of the notifications required by R.C. 2929.19(B)(2)(c) of the Reagan Tokes Act, Massie; remanded for re-sentencing.

Search/Collective knowledge doctrine. State v. Hammer | 2023-Ohio-1307 | 2nd Appellate District | 04/21/2023 In a conviction of engaging in a pattern of corrupt activity and of two counts of receiving stolen property, the trial court did not err by not suppressing statements defendant made to an officer while defendant was detained in the backseat of a police cruiser since her detainment was constitutionally permissible where questioning of defendant was based on a suspect locator alert made by another officer, and the continued detainment of defendant was a permissible investigatory investigation since other officer's alert was imputed to the officer who detained defendant in this case and the other officer arrived and questioned defendant on the case that officer was investigating after giving defendant Miranda warnings; the court of appeals' holding in Armstead is overruled.

Sentencing/Appellate review. State v. McCormick | 2023-Ohio-1303 | 2nd Appellate District | 04/21/2023 In a conviction by plea to involuntary manslaughter, R.C. 2903.04(A), in one case and a conviction of aggravated trafficking in drugs, R.C. 2925.03(A)(1), in a second case, claim that the trial court failed to consider the applicable sentencing factors and properly weigh them is without merit since the trial court stated that it considered the purposes and principles of sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12, and "neither statute 'requires a trial court to make any specific factual findings on the record,' " Jones, and the sentences are not contrary to law since each sentence fell within the applicable sentencing guidelines.

Dismissal/Prejudice. State v. Payne | 2023-Ohio-1294 | 8th Appellate District | 04/20/2023 In an appeal by the state of the trial court's dismissal of action with prejudice after alleged victim failed to appear, the trial court erred since the dismissal was not based on any statutory or constitutional right of defendant, and a victim's failure to appear at trial does not by itself justify the dismissal of a criminal action with prejudice, Troisi; remanded to change the dismissal to be without prejudice.

Stalking/Threats. State v. Fluker | 2023-Ohio-1295 | 8th Appellate District | 04/20/2023 Bench conviction of two counts of stalking, R.C. 2903.211(A)(1), met the sufficiency and weight of evidence standards where mother of child that defendant had a relationship with provided testimony as well as exhibits of the threatening text messages that contained threats to the safety of mother and her family, police testified that the daughter confirmed the source of the texts and the trial court did not lose its way in making its credibility determinations; also discussed, community-based correctional facility placement was reasonably related to probationary goals, R.C. 2929.15(A)(1).

Self-defense/Jury instruction. State v. Smith | 2023-Ohio-1296 | 8th Appellate District | 04/20/2023 In a conviction of murder and felonious assault in which defendant claimed self-defense, the trial court did not commit plain error in its jury instruction on self-defense since there is no merit to defendant's assertion that "the self-defense elements should have been included either before the

consideration of the elements of the offense or at very least at the end of the elements of the offense so that it was properly considered by the jury before they determine guilt of the offense charged" since the amendment to the self-defense statute did not transform the absence of self-defense into an essential element of a criminal offense, Messenger, nor must a jury reject an affirmative defense of self-defense on a verdict form, Jones.

Fair trial/Curative instruction. State v. Zink | 2023-Ohio-1250 | 9th Appellate District | 04/17/2023 In a conviction of felonious assault in defendant's objection to the trial court's statement as to meaning of "[a]cute alcohol intoxication" as used in medical records of the person defendant was charged with assaulting was incorrect, the trial court later provided a curative instruction correcting its prior comment on the meaning of "acute" and defendant did not object to the curative instruction, and in light of the court's instruction, combined with the victim's acknowledgement that he "had a buzz" at the time of the incident, the trial court's initial statements that an acute condition is not "severe" and contrasting an acute condition from a chronic one did not violate defendant's right to a fair trial.

Severance/Simple and direct evidence. State v. Bradshaw | 2023-Ohio-1244 | 3rd Appellate District | 04/17/2023 In a conviction of multiple counts of rape and gross sexual imposition of three minors, the trial court's denial of defendant's motion to sever into three separate trials was not error since the evidence was simple and direct, the evidence was straightforward and there was little danger that the jury would improperly consider the testimony on one offense as corroborative of the others since each victim testified solely as to the acts against that victim, and jury's verdict acquitting defendant of two counts relating to one victim support a finding that the jury was able to segregate the proof required with respect to each offense and each victim; also discussed, other acts evidence, Evid.R. 404(B), and ineffective assistance of counsel.

Evidence/Forensic interview/Hearsay. State v. Seals | 2023-Ohio-1261 | 5th Appellate District | 04/17/2023 In a conviction of gross sexual imposition of a minor, R.C. 2907.05(A)(4), the trial court did not err in admitting two exhibits of forensic interviews of the alleged victim where the victim testified and was examined on the same sexual acts contained in the forensic interview recording and, since the admission was essentially cumulative, the admission of the hearsay statements was harmless, Burge.

Sentencing/Consecutive sentences. State v. Palmer | 2023-Ohio-1232 | 2nd Appellate District | 04/14/2023 In a conviction by plea to fourth-degree felony vehicular assault, fifth-degree felony possession of cocaine and first-degree felony OVI, although the trial court made the necessary consecutive sentence findings under R.C. 2929.14(C)(4) for the felony sentences, the trial court erred in concluding that pursuant to R.C. 2929.41(B)(3), defendant's six-month jail sentence for OVI was required to be served consecutively to the prison sentence for vehicular assault and in ordering defendant to serve his jail term prior to his consecutive prison terms, and the trial court also failed to properly impose jail-time credit, R.C. 2949.08(B) and 2967.191; Ohio Adm. Code 5120-2-04; remanded for re-sentencing.

Making a false alarm/Sufficiency and weight of evidence. State v. Arnold | 2023-Ohio-1223 | 1st Appellate District | 04/14/2023 Bench conviction of making a false alarm, R.C. 2917.32(A)(3), did not meet the sufficiency and weight of evidence standards since the state failed to prove that defendant made the report, an essential element that the state was required to prove to support the conviction, and the state's claim that it intended to charge defendant pursuant to R.C. 2917.32(A)(2) is unavailing since it did not do so, nor did the trial court find that the complaint was deficient and under Crim.R. 7(D) could have amended the complaint to charge a violation of R.C. 2917.32(A)(2), the record reflects that the court did not do so.

Sentencing/Right to appeal. State v. Walker | 2023-Ohio-1222 | 1st Appellate District | 04/14/2023 In a bench conviction of assault for spraying mace at the victim and her infant, the trial court did not err by informing defendant during sentencing that she could avoid a jail sentence by taking responsibility for her acts and apologizing to the victims and defendant did so, and defendant provides no support for her claim that her right to an appeal was jeopardized by admitting to the offense, and she cites to no case law to support that proposition, and the court of appeals could find no authority for defendant's position.

Plea/Validity/State sentencing recommendation. State v. Melson | 2023-Ohio-1231 | 2nd Appellate District | 04/14/2023 In a conviction by plea to fifth-degree felony breaking and entering, plea was validly made even though the trial court did not explicitly state that it was not required to follow the state's recommendation since defendant knew that when he entered his plea that he acknowledged in his plea form and during the Crim.R. 11 plea hearing that the only relevant promise made was the state's promise to "recommend" community control sanctions, and the state fulfilled that promise at sentencing, and the trial court, before accepting defendant's guilty plea, reviewed the potential penalties involved and its sentencing options, including references to both community control and the statutory maximum prison term, Downing.

Restitution/Hearing. State v. Fisk | 2023-Ohio-1228 | 2nd Appellate District | 04/14/2023 On remand from the Ohio Supreme Court to the court of appeals following the affirmance of a conviction of two counts of felonious assault to address the state's argument that the trial court erred by not awarding restitution to the victim, the court of appeals reverses and remands for a restitution hearing on victim's claim of unreimbursed medical expenses he incurred as a result of the felonious assault where the trial court failed to hold a hearing required by R.C. 2929.18(A) to determine the appropriate amount of restitution, if any.

Sentencing/Community control/Invited error. State v. Keeton | 2023-Ohio-1230 | 2nd Appellate District | 04/14/2023 In a conviction of domestic violence and assault and imposition of, inter alia, community control, inclusion of a condition that defendant undergo a drug and alcohol assessment and any recommended treatment was error since there was nothing in the record to link defendant's alleged drug or alcohol use or abuse with defendant's crime of domestic violence, Keegan, and defendant did not invite the error by his attorney merely mentioning that defendant had been trying to get into "some treatment facilities."

Criminal (Continued)

Sentencing/Firearm specifications. State v. Krill | 2023-Ohio-1216 | 8th Appellate District | 04/13/2023 In a conviction in two joined cases of having weapons while under disability with firearm specifications, the trial court did not err by imposing an aggregate total of 117 months imprisonment, including 54-month firearm specifications on each count of having weapons under disability and nine months for the underlying felony, defendant's claim that the trial court erred by imposing prison terms on the firearm specifications is without merit since defendant and his trial counsel stipulated to his prior conviction and that he was released from prison less than five years ago for the purpose of the firearm specification, and the weapons while under disability count and the acts were not committed as part of the same act or transaction.

Sex offenses/Unlawful sexual conduct with a minor. State v. Corcoran | 2023-Ohio-1218 | 8th Appellate District | 04/13/2023 Conviction of, inter alia, attempted unlawful sexual conduct with a minor, R.C. 2923.02 and 2907.04(A), was supported by the sufficiency and weight of evidence standards where, although the undercover agent posing as a minor could have been more specific in identifying himself as a minor, defendant was reckless with respect to the posed minor's age where the posed minor's profile picture displayed a very young male, combined with the undercover agent's comment, "that 15yo lyfe," his references to doing homework, living with his mother and additional pictures sent through text messages that were more youthful than the profile picture establish that defendant acted with heedless indifference to the consequences and disregarded a substantial and unjustifiable risk that "Logan" was under the age of 16, but older than the age of 13.

Sentencing/Allocution. State v. Light | 2023-Ohio-1187 | 11th Appellate District | 04/10/2023 In a conviction of cruelty to animals, R.C. 959.13(A)(1), the trial court denied defendant's right of allocution by sentencing him without giving him or his attorney an opportunity to respond to new information that the trial judge introduced at sentencing immediately prior to stating the sentence after defendant had been given the opportunity to speak and defendant was not presented the opportunity to refute the judge's statements about him, and the court relied on it in reaching its sentence; also discussed, judicial bias; remanded for re-sentencing.

Search/Traffic stop/Inventory search. State v. Nixon | 2023-Ohio-1160 | 2nd Appellate District | 04/07/2023 In a conviction by plea to cocaine possession, the trial court did not err in denying motion to suppress where officer had a reasonable, articulable suspicion of a traffic violation for speeding, and search of vehicle that resulted in the discovery of cocaine was lawful since, even if the warrantless protective search of defendant's vehicle was unlawful, the drug evidence would have been inevitably discovered during the subsequent inventory search of the vehicle since the vehicle had expired license plates and could not be driven, and the search pursuant to the city's standardized inventory policy did not provide officers with unfettered discretion as to when a vehicle may be impounded.

Evidence/Grand jury evidence/ Particularized need. State v. Gibson | 2023-Ohio-1154 | 1st Appellate District | 04/07/2023 In a bench conviction of murder, felonious assault and having weapons while under disability, the trial court did not err by not ordering the state pursuant to Crim.R. 16(B)(7) to relinquish the grand jury testimony of two witnesses, who claimed to have seen defendant and another person drive off together before the shooting of the victim and that defendant lied that he did not was not error since the testimony of the two witnesses was governed by Crim.R. 6, and the defense failed to establish a "particularized need" for them, Crim.R. 6(E), since the trial court was aware of the witnesses' interest in testifying for the state in light of the release of one witness from his mandated rehabilitation program and that the other witness was facing a number of unrelated criminal charges.

Sentencing/Consecutive sentences/ Proportionality. State v. Glover | 2023-Ohio-1153 | 1st Appellate District | 04/07/2023 In a bench conviction of six counts of aggravated robbery and five counts of kidnapping, imposition of consecutive prison sentences totaling 60 years was error where the record does not support the findings involving the proportionality of defendant's aggregate sentence to the seriousness of his conduct and the danger he poses to the public, R.C. 2929.14(C)(4), where there was no physical harm to the victims and his criminal history is minimal, with the trial court emphasizing a single juvenile delinquency adjudication of violating a municipal ordinance, since nothing in the record substantiates the finding that the adjudication was based on a violent act, and the only other conviction was for a misdemeanor obstructing-justice conviction.

Aggravated assault/Self-defense. State v. Williams | 2023-Ohio-1137 | 8th Appellate District | 04/06/2023 Bench conviction of aggravated assault, R.C. 2903.11(A)(1), was not against the weight of evidence where defendant's claim of self-defense is without merit since, although defendant was attempting to prevent his friend, the victim, from driving while intoxicated, there is no evidence in the record that victim was physical before defendant punched him, nor that defendant's only means of escape was the use of force.

Plea/Withdrawal/Res judicata. State v. Giarelli | 2023-Ohio-1134 | 8th Appellate District | 04/06/2023 Grant of 2021 Crim.R. 32.1 "Motion to Vacate Pleas to Correct Manifest Injustice," following a 2015 conviction by plea to aggravated menacing and theft following denial of a prior motion to vacate was not barred by res judicata where prior motion was prepared by trial counsel and presented no basis for grant, but the 2021 motion was prepared by new counsel and included evidence alleging defendant's non-involvement in the incident, newly discovered exculpatory evidence as to the credibility of the alleged victims and veracity of their statements to police, misinformation by prior counsel of the consequences of defendant's guilty pleas, and the same judge who presided at defendant's trial granted the motion based on the new issues raised in the motion.

Sentencing/Allied offenses/ Resentencing. State v. Miller | 2023-Ohio-1141 | 8th Appellate District | 04/06/2023 In a conviction of two counts of child endangering, R.C. 2919.22(B)(1) and (3), and one count of gross sexual imposition, R.C. 2907.05(A)(4), of defendant's daughters, where the trial court determined that the child-endangering offenses were allied offenses of similar import and the state elected to proceed with sentencing on the higher felony offense charged in the indictment but, despite the state's request, the trial court unambiguously sentenced defendant to eight years

in prison on the other count of child endangering and incorporated its sentence into the sentencing journal entry, the trial court committed reversible error by imposing a sentence on the lesser-degree felony since the court was required to accept the state's election to proceed with sentencing on the other count; remanded for re-sentencing.

Sentencing/Weapon offenses. State v. Logan | 2023-Ohio-1135 | 8th Appellate District | 04/06/2023 In a conviction by plea to attempted having weapons while under disability, R.C. 2923.02, 2923.13(A)(2), and (B), with a one-year firearm specification under R.C. 2941.141(A) and a forfeiture specification, the court of appeals affirms, holding that: (1) R.C. 2929.13(F)(8) does not require a trial court to impose a mandatory prison term for attempted having weapons while under disability; (2) the imposition of community control sanctions on that offense was not an unlawful split sentence, notwithstanding that the trial court also imposed the mandatory term of imprisonment required because of the firearm specification; and (3) R.C. 2929.15(A)(1) authorized the trial court to impose community control sanctions on the underlying offense.

Drug offenses/Confidential informant/Disclosure. State v. Petty | 2023-Ohio-1146 | 8th Appellate District | 04/06/2023 In an appeal by the state in a prosecution of drug offenses of the trial court's grant of defendant's motion to disclose identity of a confidential informant in a controlled drug buy, the trial court erred since the informant's identity, and thus the informant's testimony, was not needed to establish the elements of the nine counts of various felonies related to a gun and drugs that police found on defendant after a traffic stop, not the sale of drugs to the informant, and the informant's identity, and thus his testimony was not needed to establish the elements of the offenses that defendant was charged with committing.

Indictment/Dismissal with prejudice. State v. Nix | 2023-Ohio-1143 | 8th Appellate District | 04/06/2023 In an appeal by the state of the dismissal with prejudice of the indictment against defendant in prosecution of, inter alia, rape of a minor, the trial court erred since a dismissal with prejudice requires a statutory or constitutional violation that would, in itself, bar prosecution, Troisi, and neither Marsy's Law nor defendant's right to confrontation were violated simply because the alleged victim did not appear for trial, nor did the trial commence, and the mere fact that the witness who failed to appear was a minor and her guardian's refusal to allow her to attend did not warrant dismissal of the case with prejudice.

New trial/New evidence/Cumulative. State v. Stewart | 2023-Ohio-1150 | 10th Appellate District | 04/06/2023 In a conviction of, inter alia, purposeful murder, R.C. 2903.02(A), and felony murder, R.C. 2903.02(B), that was affirmed, the trial court did not err in denying a Civ.R. 33(B)(6) motion for leave to file a motion for a new trial and motion for a new trial that was based on newly discovered evidence of a witness' recantation of her trial testimony since the alleged evidence would not materially affect the outcome of the trial because the witness' original trial testimony placing defendant near the murder scene was cumulative to other evidence presented at trial linking defendant to the shooting, and the alleged new evidence does not contradict any of the evidence, including DNA evidence, linking defendant to the crime.

Sentencing/Concurrent community control. Cleveland v. Hess | 2023-Ohio-1147 | 8th Appellate District | 04/06/2023 Following a conviction in municipal court of first-degree misdemeanor, completion of a 180-day jail term and commencement of three-year community control and subsequent conviction by plea in common pleas court to several felony offenses and imposition of community control, denial of motion to terminate community control imposed in the municipal court was error since R.C. 2951.022 required the municipal court to terminate defendant's community control because he was under supervision and faced a longer possible term of incarceration from the court of common pleas.

Sentencing/Tampering with records/Restitution. State v. Brown | 2023-Ohio-1123 | 1st Appellate District | 04/05/2023 In a conviction of tampering with records, R.C. 2913.42(A)(1), the trial court erred in entering a conviction for tampering with records as a third-degree felony because the jury verdict for tampering with records did not list the degree of the offense or the element of the offense in order to elevate it from a first-degree misdemeanor to a third-degree felony, and the trial court also erred by failing to impose a specific amount of restitution at the sentencing hearing, notwithstanding that the trial court stated the amount in the sentencing entry, R.C. 2929.18(A)(1); reversed and remanded.

Sentencing/Review. State v. Fisher | 2023-Ohio-1131 | 5th Appellate District | 04/03/2023 In a conviction by plea to illegal use of a minor in nudity-oriented material or performance, R.C. 2907.323(A)(1), and of disseminating matter harmful to juveniles, R.C. 2907.31(A)(1), imposition of a prison sentence of four to six years on the first count and 12 months in prison on the second count, to be served concurrently, was not error since the trial court considered the statutory criteria in R.C. 2929.11 and 2929.12, the sentence is within the authorized statutory range, and nothing in R.C. 2953.08(G)(2) permits a court of appeals to independently weigh the evidence in the record and substitute its own judgment for that of the trial court to determine a sentence that best reflects compliance with R.C. 2929.11 and R.C. 2929.12, Jones.

Mistrial/Interpreter. State v. Abdalla | 2023-Ohio-1054 | 1st Appellate District | 03/31/2023 In a conviction of violating a protection order, the trial court's denial of defendant's motion for a mistrial because interpreters had not been sworn in at the start of the trial was not error since defendant raised no objection on the qualifications of the interpreters or that the interpreters did not properly translate the proceedings, and when the trial court was made aware that the interpreters had not been sworn, the court reporter administered the oath, and both interpreters swore that they had made true interpretations of the proceeding, defendant did not dispute the accuracy of the translation and the record is devoid of any evidence to support a finding that the interpreters did not give truthful interpretations of the proceedings.

Domestic violence. State v. Hemingway | 2023-Ohio-1075 | 9th Appellate District | 03/31/2023 Bench conviction of domestic violence, R.C. 2919.25, was not against the weight of evidence where defendant's claim that responding officers lacked credibility because they had no firsthand knowledge of what happened between defendant and his wife and daughter,

and that officers failed to test the daughter's sweatshirt for blood is without merit since an officer with 24 years' experience testified that it looked like blood to him, victim testified the spots on the sweatshirt were blood and, regardless of whether the spots on her sweatshirt were blood, the daughter testified defendant had knocked her to the ground on more than one occasion that night, and the trial court as trier of fact was in the best position to assess the credibility of witnesses.

Sentencing/Community control violation. State v. Hancock | 2023-Ohio-1102 | 5th Appellate District | 03/31/2023 Following a conviction by plea to first-degree misdemeanor knowingly permitting premises to be used for the commission of a felony drug abuse offense by another person, R.C. 2925.13(B), and three counts of first-degree misdemeanor creating a substantial risk to the health or safety of a child, R.C. 2919.22(A), and imposition of five-year period of community control, subsequent imposition of an 18-month jail term was error since the state did not appear at the hearing and thus did not prove any violation of community control, and the trial court failed to advise the appellant of her right to counsel at the hearing at which the sentence was imposed, Crim.R. 32.3 and 44, King.

Burglary/Sufficiency and weight. State v. Sickels | 2023-Ohio-1081 | 2nd Appellate District | 03/31/2023 Conviction of aggravated burglary, R.C. 2911.11(A)(2), with a firearm specification, met the sufficiency and weight of evidence standards since the victim's testimony and the 9-1-1 recording of her call to police supported the jury's verdict where victim testified defendant held her at gun point while forcing his way into her home, constituting menacing and/or abduction while trespassing, supporting the conviction with the firearm specification, responding officer encountered defendant nearby and, on the walkway to victim's residence, officer saw a gun in plain view extending out of a book bag.

Joinder/Other acts. State v. Scheeler | 2023-Ohio-1130 | 5th Appellate District | 03/31/2023 In a conviction of rape and gross sexual imposition of one minor under 13 years-old and gross sexual imposition of another minor under 13 years-old, denial of motion for relief from joinder was not plain error since, if separate trials were held, each offense would be admissible in the other case because the evidence of each offense was simple and direct, Crim.R 8(A), joinder was not prejudicial, Crim.R. 14, and also the evidence was admissible to show defendant's motive and intent (sexual gratification), opportunity and plan (defendant targeting young girls he has access to in his home when his wife is absent) and absence of mistake or accident (touching was not innocent or by accident), and thus admission of this evidence did not violate the exclusion of other acts evidence in Evid.R. 404(B).

Sentencing/Community control/Tolling. State v. Olds | 2023-Ohio-1078 | 9th Appellate District | 03/31/2023 In a conviction in multiple cases by plea to numerous offenses and subsequent violations of community control, the trial court did not err in tolling community control in one case while sentencing him to prison in two other cases since, under R.C. 2951.07, if the offender is confined in any institution for the commission of any offense, the period of community control ceases to run until the time that the offender is brought before the court for further action, and a defendant is not entitled to jail-time credit for any period of incarceration that arose from facts separate and apart from those on which the current sentence is based; also discussed, invited error.

Sentencing/Allied offenses/ Child pornography/Sex offender classification. State v. Stutz | 2023-Ohio-1082 | 2nd Appellate District | 03/31/2023 In a conviction by plea to four counts of pandering sexually-oriented material involving a minor, two second-degree felonies and two fourth-degree felonies, offenses were not allied offenses of similar import since downloading (creating a copy or reproducing) an image is a separate act from simply possessing it, violating R.C. 2907.322(A)(5); also, although the trial court failed to properly advise defendant of the maximum potential sentence as required by Crim.R. 11(C)(2)(a), defendant failed to demonstrate prejudice, but defendant was improperly classified as a Tier I sex offender on the fourth-degree felony offenses, remanded for reclassification as a Tier II sex offender on the fourth-degree felonies in Counts 19 and 20.

Sentencing/Reagan Tokes. State v. Scott | 2023-Ohio-1091 | 11th Appellate District | 03/31/2023 In a conviction by plea to second-degree felony felonious assault, R.C. 2903.11(A)(1) and (D)(1)(a), and third-degree felony abduction, R.C. 2905.02(A)(2) and (C), challenge to the constitutionality of the imposition of sentence of an indefinite prison term of four to six years on the felonious assault count pursuant to the Reagan Tokes Law as void for vagueness, that it unconstitutionally violates the doctrine of separation of powers, violates the constitutional right to trial by jury and violates his constitutional rights to fair trial and due process is without merit in light of this circuit's holding that the Law is constitutional, Refitt.

Jury/Instructions/Consciousness of guilt. State v. Mills | 2023-Ohio-1094 | 6th Appellate District | 03/31/2023 In a conviction of aggravated burglary, R.C. 2911.11(A)(1) and (B), and assault, R.C. 2903.11(A)(1) and (D)(1)(a), the trial court did not err in giving an instruction on consciousness of guilt since defendant's apologies and suicidal thoughts he told the victim about related to the assault that he made on her, and Ohio courts recognize that apologies and suicidal thoughts may constitute evidence of consciousness of guilt, Tvaroch.

Continuance/Self-representation. State v. Kovach | 2023-Ohio-1085 | 11th Appellate District | 03/31/2023 In a conviction of tampering with records, R.C. 2913.42(A)(1) and (B)(4), and three counts of forgery, R.C. 2913.31(A)(2) and (3), the trial court did not err by denying defendant's request for a continuance of her competency hearing due to a medical condition, and then by allowing her to represent herself without proper waiver and/or allowed hybrid representation at the hearing since, because of defendant's motions to continue, the competency hearing had been rescheduled seven times and was not heard until six months after the original hearing date, and defendant did not demonstrate that her alleged injuries had rendered her unable to proceed with the hearing, she only made the motion at the hearing and not prior, and the court appointed stand-by counsel for defendant to consult with if needed; also discussed, waiver of counsel.

Sentencing/Reagan Tokes. State v. Whethers | 2023-Ohio-1088 | 11th Appellate District | 03/31/2023 In an appeal of the trial court's imposition

of an indefinite term of imprisonment of eight to 12 years for possession of fentanyl and a concurrent 24-month term of imprisonment for possession of cocaine, challenge to the constitutionality of the Reagan Tokes Act as violative of the rights to trial by jury and due process and the doctrine of separation of powers is without merit based on this court of appeals' precedent in Moran and Taylor.

Costs/Ability to pay/Findings. State v. Velesquez | 2023-Ohio-1100 | 6th Appellate District | 03/31/2023 In a conviction by plea to two counts of endangering children, the trial court erred by imposing the discretionary costs of confinement, R.C. 2929.18 (A)(5)(a), where the court did not make any finding of defendant's ability to pay financial sanctions, R.C. 2929.19(A)(5), and the record contains no evidence to support the trial court's determination that defendant has, or may be expected to have, the means to pay costs of confinement.

Ineffective assistance/Identity of defendant. State v. Lauer | 2023-Ohio-1076 | 9th Appellate District | 03/31/2023 In a bench conviction of criminal mischief, R.C. 2909.07(A)(1)(a), defense counsel provided ineffective assistance by failing to move for acquittal under Crim.R. 29 at the end of the state's case-in-chief based on the state's failure to identify defendant as the person who committed the offense by its only witness, an officer, who did not identify the person as the defendant present in the courtroom, nor did the state present other evidence establishing defendant's identity as the person who actually committed the offense, Sandercock.

Joinder/Crim.R. 14/Prejudice. State v. Kramer-Kelly | 2023-Ohio-1031 | 8th Appellate District | 03/30/2023 In a conviction of three rape counts and one kidnapping count of one victim on one date and two counts of rape of another victim on another date that were joined, the trial court's denial of Crim.R. 14 motion for relief from joinder was error since defendant incurred prejudice by the joinder because the bootstrapping effect of the evidence to one alleged victim in one case onto another case of a different alleged victim that occurred on different dates permitted the jury to simultaneously consider the evidence in both alleged rape cases, and the state did not refute the showing of prejudice since the evidence it presented was disorderly, inherently inconsistent and had a high risk of confusing the jury, and also, had the trials been severed, evidence concerning one victim in the trial involving that victim would have been inadmissible in the trial involving the other victim, Evid.R. 404(B); convictions are vacated and remanded.

Sentencing/Jail-time credit. State v. Mims | 2023-Ohio-1044 | 8th Appellate District | 03/30/2023 In a conviction by plea to felonious assault, R.C. 2903.11(A)(2), with a firearm specification, R.C. 2941.141(A), and imposition of one year in prison on the specification to be served, prior and consecutive, for an indefinite sentence of two to three years in prison on the underlying felonious assault conviction, on appeal by the state of the grant of jail-time credit on the firearm specification, the court of appeals finds that the order for jail-time credit is ripe for review and that the trial court erred in granting jail-time credit on the specification since a sentencing entry that applies jail-time credit to a mandatory prison term imposed for a firearm specification is contrary to law under the plain language of R.C. 2929.14(B)(1)(b) and Moore.

Evidence/Identification/Plain error. State v. Wilson | 2023-Ohio-1046 | 8th Appellate District | 03/30/2023 In a conviction of, inter alia, attempted murder, the trial court did not commit plain error in the admission of a witness' testimony identifying defendant as the shooter that was based on the witness' review of surveillance videos, none clearly depicting defendant's face and the witness had no personal knowledge to base his identification of defendant, where the remaining evidence constituted overwhelming proof of defendant's guilt based on the circumstantial evidence of clothing and boots that defendant owned that were seen in the surveillance video, and also three jail house phone calls made by defendant indicated his concern that any testimony about his wearing red boots would secure a guilty verdict against him.

Contempt/Attorney. In re Contempt of Bensing | 2023-Ohio-1050 | 8th Appellate District | 03/30/2023 Trial court's finding defense attorney in direct contempt for failing to attend a scheduled hearing in a criminal proceeding against his client was error where, although defense counsel was solely responsible for the events and inconvenience that occurred, he presented extenuating circumstances to demonstrate that he did not simply disregard the trial court proceeding or intend to obstruct the administration of justice and made an effort to accommodate the competing demands of the trial court and the court of appeals proceeding involving another client, and his actions did not pose an imminent threat to the administration of justice.

Sentencing/Community control/Discretion. State v. Rudolph | 2023-Ohio-1040 | 8th Appellate District | 03/30/2023 In a conviction by plea to two counts of grand theft, R.C. 2913.02(A)(3), and imposition of 18-month concurrent prison sentences and to pay $211,486.67 in restitution, the trial court did not commit plain error where, although defendant qualified for a community control sentence, the trial court had discretion under R.C. 2929.13(B)(1)(b) to impose a prison sentence since defendant had a relationship akin to that of a fiduciary with the victims since the relationship between defendant and his victims was comparable to the relationship between a legitimate financial investor, broker or advisor and his or her clients, and although defendant knew his transactions with the victims were a scam, the victims did not.

Sentencing/Drive-by specification. State v. Wilson | 2023-Ohio-1042 | 8th Appellate District | 03/30/2023 In a bench conviction of three counts of felonious assault to three officers with specifications, improperly discharging a firearm at or into a habitation, discharge of a firearm on or near prohibited premises and aggravated menacing, the trial court erred by imposing a five-year drive-by shooting specification on the underlying offense of discharge of a firearm on or near prohibited premises, R.C. 2941.146(A), since the specification adds a mandatory five-year prison term for offenders who commit "a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another," R.C. 2941.146(A), but discharge of a firearm on or near prohibited premises is a strict liability offense that does not include the mens rea of "purposely or knowingly," James.

Search/Traffic stop/Suppression. State v. Hale | 2023-Ohio-1057 | 5th Appellate District | 03/30/2023 In a prosecution for drug and weapon offenses, the trial court erred by suppressing evidence seized during a traffic stop from defendant and a motor vehicle in which she was a passenger since the driver said the passenger was the vehicle's owner and that he, the driver, did not have a valid license and, during a search of the driver, officer found a baggie that the driver said contained cocaine, and when asked whether he had a weapon, he said a firearm belonging to defendant was in the vehicle, defendant admitted that her gun was in the vehicle, and in response to officer's question of whether there were drugs in the vehicle, she responded she had roach clips in the car, providing officer with probable cause to further detain defendant for possession of drug paraphernalia, R.C. 2925.14, search her purse in which methamphetamine was found and search the vehicle pursuant to the automobile exception to the warrant requirement.

Pre-indictment delay/Prejudice/Stacking inferences. State v. Craig | 2023-Ohio-1003 | 10th Appellate District | 03/28/2023 Dismissal of rape charges on grounds of pre-indictment delay was error since defendant failed to demonstrate that the loss of evidence during the pre-indictment delay actually prejudiced his defense where sheriff's office destroyed only a lighter and a dollar bill collected from the alleged crime scene and, although photographs relevant to the case were missing from the investigatory file, defendant failed to show how the loss minimized or eliminated the impact of the state's evidence and bolstered the defense's, and the death of three witnesses was not shown to be prejudicial since multiple inferences would be required to make their alleged testimony relevant since the rule against stacking inferences precludes a finder of fact from drawing that conclusion.

Sexual battery/Motion to dismiss. State v. Barr | 2023-Ohio-1017 | 7th Appellate District | 03/24/2023 In a conviction by plea of no contest to sexual battery pursuant to R.C. 2907.03(A)(7) by committing the offense while a coach at a school and the other person is enrolled in or attends that school, denial of motion to dismiss was not error where defendant argued that the contract did not provide a definitive end date and was ambiguous but, since only an unambiguous contract can be construed solely as a matter of law, his claim that his contract had expired prior to the dates the state alleged the offenses occurred would require the trial court to make a factual determination using evidence outside of the four corners of the contract in order to determine whether the contract had expired prior to the alleged conduct.

Sentencing/Merger/Separate harms. State v. Bishop | 2023-Ohio-947 | 1st Appellate District | 03/24/2023 In a conviction by plea to aggravated burglary, aggravated robbery and felonious assault for an incident at victim's home with the trial court merging for sentencing the aggravated burglary and felonious assault offenses as allied offenses of similar import, the trial court did not err by not merging the offenses since defendant's conduct caused separate, identifiable harms, one harm to the victim in the victim's kitchen with a knife and a separate, later harm to the victim in the garage with a brick since the harms were not the result of the same discrete beating, R.C. 2941.25; the trial court did err by ordering defendant to stay away from victim for life since community control and a prison term cannot be imposed for the same offense, and stay-away order is vacated.

Sealing/Juvenile adjudications. In re L.P. | 2023-Ohio-949 | 1st Appellate District | 03/24/2023 In applications for sealing and expungement of juvenile adjudications, the trial court erred by not sealing and expunging one unruly child adjudication where the state concedes error because R.C. 2151.356(A) and (B)(1)(e) mandate sealing, but the trial court did not err by not expunging nine delinquency adjudications and nine juvenile-traffic-offender adjudications since the trial court did not find "that the person has been rehabilitated to a satisfactory degree," R.C. 2151.356(C)(2)(e), in light of the applicant's lengthy adult criminal record, including drug trafficking and weapons convictions.

Sentencing/Right to counsel/Plea withdrawal. State v. Strojny | 2023-Ohio-1016 | 7th Appellate District | 03/24/2023 In a conviction by plea to contributing to the delinquency of a minor, the trial court violated defendant's Sixth Amendment right to the assistance of counsel since defendant's counsel was not at the sentencing hearing, defendant's sentence was invalid and the state conceded error, and the trial court also erred in denying defendant's pre-sentencing oral motion to withdraw her plea where the court had a mistaken recollection of the agreement made at the plea hearing since the judge had agreed the sentence would consist of community service and a fine in lieu of jail time and did not indicate any decision to impose incarceration until the sentencing hearing, and the alteration to the signed plea agreement without defendant's consent provided sufficient reason to allow withdrawal of the plea; guilty plea is vacated and cause is remanded.

Ineffective assistance/Trial strategy. State v. Taylor | 2023-Ohio-928 | 8th Appellate District | 03/23/2023 In a conviction of, inter alia, drug trafficking, denial of motion to suppress admission of testimony of the presence of debit cards, credit cards and a checkbook in other people's names that were found during search of motor vehicle defendant was driving at the time of the traffic stop, defendant's claim that this evidence was admitted to allow the jury to infer that defendant had bad character in violation of Evid.R. 404(B) and that trial counsel was ineffective in not challenging the admission of that evidence without merit since defense counsel's strategy at trial was to argue that it was not defendant's vehicle and that other individuals were associated with the vehicle.

Sealing/Hearing. In re S.D.L. | 2023-Ohio-929 | 8th Appellate District | 03/23/2023 In application to seal record of conviction of failure to comply and improperly handling firearms in a motor vehicle, denial of application without a hearing was error where the trial court denied application on the basis that applicant had not met his financial obligations to pay court costs and supervision fees while under community control since the state acknowledged that the applicant was an eligible offender, and the trial court was required by R.C. 2953.32(B) to hold a hearing in order to make the determinations required by R.C. 2953.32(C)(1).

Search/Suppression. State v. Anderson | 2023-Ohio-945 | 7th Appellate District | 03/23/2023 In a conviction of, inter alia, aggravated drug possession, denial of motion to suppress was not error since the officer investigating a stopped

vehicle was permitted to lawfully arrest defendant passenger for unlawful possession of a dangerous ordnance that was in plain view and conduct a search incident to arrest, including the pockets of the pants defendant was wearing, since defendant was arrested without delay after the frisk, and officer would have discovered the drugs incident to defendant's arrest without defendant's affirmative answer whether the matter in his pant pocket was dope during the frisk; also discussed, valid waiver of Miranda rights.

Trial/Marsy's Law/Mootness. Grandview Hts. v. B.S.H. | 2023-Ohio-940 | 10th Appellate District | 03/23/2023 In a bench trial for criminal damaging in which the trial court denied alleged victim's motion made pursuant to Marsy's Law, Ohio Const., Art. I, Sec. 10a(A), to be present during all court proceedings involving defendant, the court of appeals dismisses appeal as moot since even if the court of appeals found trial court erred by denying the alleged victim's request to be present at trial, there is no remedy that could be provided to the alleged victim since after the hearing on the motion the case proceeded to a bench trial and the court acquitted defendant of the criminal damaging charge and, because defendant may not be tried again in appellant's presence, appellant's appeal of the court's decision denying her request is moot.

Mistrial/Brady violation. State v. Potts | 2023-Ohio-954 | 5th Appellate District | 03/22/2023 In a conviction of felonious assault, domestic violence and aggravated menacing, the trial court did not err by not declaring a mistrial after the state attempted to introduce evidence not provided in discovery by improperly introducing text messages sent by defendant to the victim that were not provided to defendant in discovery since it did not constitute a Brady violation because defendant learned of the text messages during the trial, but raised the motion for mistrial after the trial and, moreover, the trial court did sustain defendant's objection and prohibited the state from questioning him as to the challenged text message.

Evidence/Confrontation Clause/Hearsay. State v. Ocanas | 2023-Ohio-951 | 5th Appellate District | 03/22/2023 In a conviction of fourth-degree felony failure to comply with a police order or signal, R.C. 2921.331(B), and fifth-degree felony obstructing official business, R.C. 2921.31(A), a 9-1-1 call was admissible under the Confrontation Clause because it was non-testimonial since it was made during an ongoing emergency and not to provide a narrative report of a crime, admissible as an exception to the hearsay rule, Evid.R. 803, as a present sense impression or an excited utterance.

Sentencing/Community control violation/Consecutive sentences. State v. Crose | 2023-Ohio-880 | 3rd Appellate District | 03/20/2023 Following a 2020 conviction by plea to identity fraud, R.C. 2913.49(B)(1), imposition of five-year term of community control and subsequent judicial release that was thereafter terminated for violation of community control, the trial court did not err in holding that the community control violation was a non-technical violation, R.C. 2929.15(B), and in imposing the reserved six-month prison sentence, but it did err in holding that the six-month prison sentence was to be served consecutively to defendant's sentence that had been imposed in another county, Jones.

Burglary/Stealth/Failing to appear. State v. King | 2023-Ohio-875 | 12th Appellate District | 03/20/2023 In a conviction of burglary, R.C. 2911.12(A)(2) and (D), and of recklessly failing to appear, R.C. 2937.99(A), burglary conviction met the sufficiency and weight of evidence standards where evidence was presented that defendant trespassed into an open garage and then entered by stealth by using a ladder to enter the attic of victim's home, but conviction of recklessly failing to appear was not supported by sufficient evidence since the state failed to prove that it informed defendant of the date and time of the trial where there was no evidence that defendant was served with any notice of the trial date.

Ineffective assistance. State v. Palmer | 2023-Ohio-896 | 5th Appellate District | 03/20/2023 In a conviction by plea to second-degree felony kidnapping, R.C. 2905.01(A)(3), of defendant's eight month-old son, imposition of an indefinite prison term of 7 to 10.5 years and classification as a violent offender, claim that defense counsel provided ineffective assistance by offering de minimus mitigation at sentencing was not error where defendant failed to identify any factor or factors contained in R.C. 2929.12(C) or (E) that he believes his attorney should have offered in mitigation, nor does he explain how offering a specific factor or factors would have changed the outcome of the proceeding, and defense counsel negotiated a plea agreement with the state resulting in dismissal of five of the six counts in the indictment.

Burglary/Stealth/Recklessly Failing to appear. State v. King | 2023-Ohio-875 | 12th Appellate District | 03/20/2023 In a conviction of burglary, R.C. 2911.12(A)(2) and (D), and of recklessly failing to appear, R.C. 2937.99(A), burglary conviction met the sufficiency and weight of evidence standards where evidence was presented that defendant trespassed into an open garage and then entered by stealth by using a ladder to enter the attic of victim's home, but conviction of recklessly failing to appear was not supported by sufficient evidence since the state failed to prove that it informed defendant of the date and time of the trial where there was no evidence that defendant was served with any notice of the trial date.

Fair trial/Live streaming. State v. Reed | 2023-Ohio-878 | 12th Appellate District | 03/20/2023 In a conviction of felonious assault, R.C. 2903.11(A)(1), of a young child while in the care of defendant, the trial court did not deny defendant a fair trial by live streaming trial over the internet where defendant did not seek a mistrial or ask the trial court to instruct witnesses not to watch the live stream, but defendant only expressed concern about the potential for violation of the separation-of-witnesses order, and she failed to demonstrate prejudice where the state told the trial court that it instructed its witnesses not to view the live-stream, and the trial court advised defendant that she could cross-examine witnesses about the matter, but she did not; also discussed, shaken baby syndrome.

Sentencing/Plea agreement/Reagan Tokes. State v. Haynes | 2023-Ohio-858 | 2nd Appellate District | 03/17/2023 In a conviction in two cases by negotiated plea to two counts of aggravated robbery in one case and to carrying a concealed weapon in the other case, the trial court did not violate the parties' plea agreement for a "7-10 year prison sentence" by imposing an indeterminate prison term of 10 years minimum to 15 years maximum on one of the aggravated-robbery counts because the parties intended the minimum term

under the Reagan Tokes Act to be between 7 and 10 years in prison since it is consistent with defense counsel's request for an 8-year sentence and the prosecutor's suggestion of a 10-year prison term.

Evidence/Expert testimony/ Confrontation Clause. State v. Adams | 2023-Ohio-854 | 2nd Appellate District | 03/17/2023 In a conviction of receiving stolen property, R.C. 2913.51(A), and of failure to comply, R.C. 2921.333(B) and (C)(5), admission of state forensic witness' expert testimony, concluding that defendant's DNA matched the DNA on a baseball cap found in the stolen vehicle and the DNA on the vehicle's airbag, did not violate the Confrontation Clause since the testimony was not offered for the truth of the scientific conclusions reached by another analyst in the forensic laboratory, and nothing in the record suggests any report generated by the other state analyst was published to the jury during the witness' testimony, Barnett.

Indictment/Dismissal/Pre-trial diversion. State v. Sullivan-Eason | 2023-Ohio-862 | 6th Appellate District | 03/17/2023 In appeal by the state of the trial court's termination with prejudice of a weapons prosecution for defendant's failure to inform officers during a traffic stop that he was in possession of a loaded firearm, dismissal of indictment under R.C. 2935.36 was error where the trial court dismissed the indictment without a recommendation from the prosecutor of a successful completion of the pre-trial diversion program by defendant and without affording the state an opportunity to object, or to provide an argument in opposition to the dismissal, Crim.R. 48(B), and double jeopardy did not attach.

Appeal/Frivolous/Sanctions. State v. Baker | 2023-Ohio-855 | 2nd Appellate District | 03/17/2023 In appeal by the state of the trial court's imposition of sanction against the state to pay defendant $1,540 in attorney fees for filing a frivolous appeal, the trial court's judgment is vacated since it lacked authority to impose sanctions because App.R. 23 provides that the court of appeals, not the trial court, may determine whether the filing of an appeal is frivolous and whether to impose reasonable expenses as sanctions, In re Guardianship of Crandall; the trial court's order is vacated.

Sentencing/Allied offenses. State v. Smith | 2023-Ohio-866 | 6th Appellate District | 03/17/2023 In a conviction of gross sexual imposition, R.C. 2907.05(A)(1), and abduction, R.C. 2905.02(A)(1), and sentencing defendant to consecutive prison terms of 18 months and 36 months, the trial court did not err in not merging the offenses as allied offenses of similar import for sentencing since defendant, by force or threat, abducted victim and took her to a location where she was subjected to two assaults, one by defendant and a second by an acquaintance of defendant, whom defendant invited to the scene, prolonging the victim's restraint and facilitating a second sexual assault and then taking her to another location where she was released, Logan.

Ineffective assistance/Search. State v. Jones | 2023-Ohio-844 | 1st Appellate District | 03/17/2023 In a conviction of drug possession and drug trafficking, defendant received ineffective assistance of counsel at the suppression hearing since counsel failed to challenge the evidence obtained by officers from defendant's safe as a product of coercion and an unwarranted protective sweep in violation of the Fourth Amendment since nothing in the body-camera footage or officer testimony provides a reasonable suspicion of danger in the house warranting a sweep, and application of the inevitable-discovery exception is improper in situations that "encourage police to engage in their own Fourth Amendment speculation without a prior probable cause determination by a court and foster a 'search-first' mentality that disregards constitutional safeguards," Alihassan.

Evidence/Expert testimony/ Confrontation Clause. State v. Adams | 2023-Ohio-854 | 2nd Appellate District | 03/17/2023 In a conviction of receiving stolen property, R.C. 2913.51(A), and of failure to comply, R.C. 2921.333(B) and (C)(5), admission of state forensic witness' expert testimony, concluding that defendant's DNA matched the DNA on a baseball cap found in the stolen vehicle and the DNA on the vehicle's airbag, did not violate the Confrontation Clause since the testimony was not offered for the truth of the scientific conclusions reached by another analyst in the forensic laboratory, and nothing in the record suggests any report generated by the other state analyst was published to the jury during the witness' testimony, Barnett.

Sentencing/Community control/ Revocation. State v. Works | 2023-Ohio-861 | 2nd Appellate District | 03/17/2023 In a conviction by plea to failure to comply, R.C. 2921.331(B) and (C)(5), and imposition of community control, the trial court's subsequent revocation of community control was error since defendant's later arrest did not implicate the provision that he "will refrain from violation of any law" since being charged with a crime is not sufficient to show a violation of probation, and there was no inquiry into the underlying facts supporting the charge, nor was defendant's admission to using alcohol violating the provision that he "not use or possess any controlled substance or drugs of abuse" since alcohol is neither a controlled substance nor a drug of abuse as defined by the Ohio Revised Code, Stamps.

Protection order/Violation/Service. State v. Fleming | 2023-Ohio-849 | 1st Appellate District | 03/17/2023 Conviction of recklessly violating a protection order, R.C. 2919.27, was error where a temporary protection order and a magistrate's interim order had expired, and there was no proof that the final order adopting the civil protection order had been served on defendant in accordance with Civ.R. 4.1, nor was there any evidence that defendant was ever shown a copy of the order or that a judge, magistrate or law enforcement informed defendant of it.

Jury instructions/Self-defense. State v. Hall | 2023-Ohio-837 | 10th Appellate District | 03/16/2023 In a conviction of, inter alia, aggravated murder, R.C. 2903.01, the trial court erred in not instructing the jury on self-defense where defendant met his burden of production since his testimony demonstrated that the other party both initiated the physical altercations and escalated the confrontation by retrieving his gun that caused defendant to retrieve his own gun to protect himself, reasonably demonstrating that defendant was not at fault in escalating an otherwise hand-to-hand confrontation into a gunfight, and defendant presented testimony that he used only that force reasonably necessary to repel the attack, even though he made a pretrial statement to police that he shot the victim with the victim's gun after shooting him with

his own gun where the evidence was conflicting; remanded for a new trial.

Evidence/Patient-physician privilege. State v. Rydarowicz | 2023-Ohio-916 | 7th Appellate District | 03/16/2023 In a conviction of, inter alia, murder by defendant of his wife, the trial court did not err in denying defendant's claim of patient-physician privilege, R.C. 2317.02(B)(1), by admitting his surgeon's testimony about his injuries from the day of the stabbing of his wife, together with defendant's resulting medical records, since the surgeon was required to report it, R.C. 2921.22(B) and Jones, and surgeon gained knowledge about defensive wounds and self-inflicted wounds in his experience and training, and the medical records showed that defendant was consistently classified as a suicide attempt by those treating him at the hospital immediately after the injuries were sustained; also discussed, self-defense.

Indictment/Amendment/Grand jury transcripts. State v. Ramsey | 2023-Ohio-807 | 8th Appellate District | 03/16/2023 In a bench conviction of, inter alia, gross sexual imposition, R.C. 2907.05(A)(1), and voyeurism, R.C. 2907.8(D), the trial court's grant of the state's motion to amend the dates of the indictment for the voyeurism count complied with Crim.R. 7(D) since it neither changed the name or identity of the offense and did not prejudice defendant since he denied taking photographs of the victim, nor did the trial court err by denying defendant's request to allow his review of the grand jury transcripts since defendant did not demonstrate any particularized need for the review, and the court of appeals on review of grand jury transcripts of that testimony found no error in the trial court's denial.

Sentencing/Allied offenses. State v. Jeffrey | 2023-Ohio-817 | 8th Appellate District | 03/16/2023 In a conviction of felonious assault, R.C. 2903.11(A)(1), two counts of abduction, R.C. 2905.02(A)(1) and (A)(2), and domestic violence, R.C. 2919.25(A), the trial court did not err by not merging the offenses as allied offenses of similar import for sentencing since the offenses were committed separately, but the trial court erred by sentencing defendant to 36 months on each abduction count, to run concurrently, since it had determined that the two counts of abduction were allied offenses of similar import and therefore merged, but then the court proceeded to sentence defendant to 36 months on each count, to run concurrently, R.C. 2941.25(A).

Sentencing/Reagan Tokes. State v. Dotson | 2023-Ohio-821 | 8th Appellate District | 03/16/2023 In state's appeal of sentence imposed in a conviction by plea to felonious assault and having weapons while under disability, the trial court erred by sentencing defendant to a definite sentence of three years on the felonious assault offense, instead of an indefinite sentence pursuant to the Reagan Tokes Law, in light of this circuit's en banc decision in Delvallie holding the Law constitutional; remanded for re-sentencing in accordance with the Reagan Tokes Law.

Restitution/Creditor's bill/Community control. Pike v. Wilson | 2023-Ohio-814 | 8th Appellate District | 03/16/2023 In plaintiffs'-victims' creditor's bill seeking full restitution as the result of defendant entering a plea to securities fraud and aggravated theft and court order to pay restitution to the victims, the trial court did not err in granting plaintiffs' motion for judgment on the pleadings where, although plaintiffs filed the action after termination of defendant's community-control sanctions imposed under R.C. 2929.15, the obligation to pay restitution pursuant to R.C. 2929.18 did not expire at the termination of community control, and defendant is not discharged from the obligation until financial sanctions are satisfied or paid.

Sentencing/Impersonation of a police officer. State v. Rodriguez | 2023-Ohio-805 | 8th Appellate District | 03/16/2023 In a conviction by a negotiated plea agreement to, inter alia, first-degree felony kidnapping, R.C. 2905.01(B)(1), and third-degree impersonation of certain officers, R.C. 2921.51(E), the trial court committed plain error by misapplying R.C. 2929.13(F) by determining that defendant was subject to a mandatory prison term on the impersonation charge and to be ineligible for judicial release under R.C. 2929.20 or earned credit under R.C. 2967.193.

Mandamus/Prohibition/Witness immunity. State ex rel. Reynolds v. Kirby | 2023-Ohio-782 | Supreme Court of Ohio | 03/16/2023 In a criminal action for misdemeanor domestic violence and child endangering in which a witness refused to testify after asserting the privilege against self-incrimination, a probate-juvenile division of the Warren county common pleas court does not have jurisdiction to grant an application for witness immunity filed under R.C. 2945.44 since it is a court established, and limited by, statute, and the Ohio Supreme Court grants a peremptory writ of prohibition compelling the probate-juvenile court to vacate its order granting immunity to two witnesses in the criminal action; also, a prosecutor has no clear legal duty to file an application for immunity in the general division of common pleas court, R.C. 2945.44(A).

Plea/Crim.R. 11. State v. Mullins | 2023-Ohio-803 | 8th Appellate District | 03/16/2023 In a conviction by plea to OVI, R.C. 4511.19(A)(1)(a), and a repeat-offender specification, R.C. 2941.1413, plea was not validly made since defendant was never advised at the plea hearing of the number of his prior OVI offenses, was misinformed of his maximum sentence since there was never any mention of the possibility of community-control, Crim.R. 11(C)(2)(a), and this failure to properly advise defendant demonstrates a complete failure to comply with Crim.R. 11(C), eliminating defendant's burden to demonstrate prejudice by the trial court's error, Dangler.

Trial/Failure to proffer/Regularity of proceedings. State v. Prather | 2023-Ohio-784 | 1st Appellate District | 03/15/2023 In a conviction of, inter alia, two counts of aggravated robbery, although the trial court erred in refusing to allow the defense to call a witness by failing to balance the state's interests against defendant's Sixth Amendment right to present a defense where the state was aware of the witness and had provided his police interview to defendant, defense counsel failed to proffer the prospective witness' testimony to enable the trial court to determine whether the state would be surprised or prejudiced by the testimony or the impact the exclusion would have on the evidence or outcome, and the court of appeals, without the proffered testimony, must presume the regularity of the proceedings.

Evidence/Confrontation/Forfeiture by wrongdoing. State v. Dillion | 2023-Ohio-777 | 10th Appellate District | 03/14/2023 In a conviction of, inter alia, three counts of aggravated murder, the trial court did not err by admitting into evidence the recordings of a witness' statements to law enforcement under the forfeiture by wrongdoing exception,

Evid.R. 804(B)(6), an equitable exception to a defendant's constitutional right to confront the witnesses against the defendant, and the state provided circumstantial evidence that defendant, or someone acting on his behalf, by a preponderance of the evidence, Henderson.

Sentencing/Maximum sentence. State v. Dalton | 2023-Ohio-892 | 7th Appellate District | 03/13/2023 In a conviction by plea to trafficking in drugs, R.C. 2925.03(A)(2), (C)(9)(f), although the state incorrectly argued at the sentencing hearing that the conviction for the original charge would have resulted in defendant's classification as a "major drug offender," the record reflects that the trial court's imposition of the maximum sentence was based on defendant's lengthy criminal record, his failure to respond to lesser sanctions in the past, and his lack of good-faith effort during numerous prior diversion programs, and thus defendant incurred no prejudice from the error.

Plea/Withdrawal/Blanket policy. State v. Jackson | 2023-Ohio-762 | 11th Appellate District | 03/13/2023 In a conviction by plea to felonious assault, R.C. 2903.11(A)(2), with a repeat violent offender specification, the trial court abused its discretion by stating that it had a "blanket policy" against accepting more than one plea, rendering defendant's guilty plea involuntary, Beasley.

Sentencing/Post-release control. State v. Manzi | 2023-Ohio-732 | 2nd Appellate District | 03/10/2023 In a conviction by plea to failure to comply with an order or signal of a police officer and receiving stolen property, the state concedes the trial court erred by failing to properly notify defendant about his post-release control obligation and the consequences of violating post-release control at the sentencing hearing or in the judgment entry, R.C. 2929.19(B)(2)(d) and (e); remanded for re-sentencing on post-release control only.

Sentencing/Reagan Tokes/ Notifications. State v. Foster | 2023-Ohio-728 | 2nd Appellate District | 03/10/2023 In a conviction by plea to engaging in a pattern of corrupt activity and drug offenses, all first and second degree felonies, with the trial court imposing the agreed on prison term of 18 to 21 years, to be served consecutively to a prison term that defendant was serving in a separate case, the trial court erred in sentencing defendant by failing to provide the Reagan Tokes Law R.C. 2929.19(B)(2)(c) notifications at the sentencing hearing; remanded for re-sentencing.

Suppression/Warrantless arrest. State v. Rodgers | 2023-Ohio-734 | 2nd Appellate District | 03/10/2023 In a conviction of, inter alia, two counts of aggravated murder, the trial court did not err by denying motion to suppress evidence obtained as a result of an officer's warrantless arrest of defendant outside his home where claim that officer constructively entered defendant's residence to arrest him without a warrant, based on federal court of appeals' opinions, is not adopted by the court of appeals, defendant does not dispute that he was arrested outside his residence, and probable cause supported his arrest based on the information that officers were aware of, including evidence that the victims traveled to meet defendant, their vehicle was found near defendant's residence, the victims' phones became inoperable in that area and exigent circumstances justified the warrantless arrest; also discussed, certifying four witnesses as experts in front of the jury.

Plea/Sentence. State v. Acosta | 2023-Ohio-737 | 6th Appellate District | 03/10/2023 In a conviction by plea to attempted abduction, R.C. 2905.02(A)(2) and (C) and 2923.02, and domestic violence, R.C. 2919.25(A) and (D)(2), where the trial court told defendant of the maximum sentence he could receive for his new offenses, but failed to tell him that he was also subject to a separate consecutive sentence of over 200 days for a post-release control violation, nor did the signed plea form clarify the ambiguities created during the Crim.R. 11 oral plea colloquy concerning the sentence for a post-release control violation, and thus the trial court failed to comply with Crim.R. 11 since the court did not advise defendant at his plea hearing that the potential R.C. 2929.141(A) sentence was part of the "maximum penalty involved."

Evidence/Lay witness/Opinion testimony. State v. Haynik | 2023-Ohio-717 | 8th Appellate District | 03/09/2023 In a bench conviction of rape, R.C. 2907.02(A)(2), the trial court did not improperly permit an investigating officer to testify as an expert in violation of Evid.R. 702(A) by the admission of officer's testimony of his review of the victim's medical records since the testimony was admissible as opinion testimony by a lay witness that was based on the officer's training and experience, related to his personal observations during the investigation and helpful to determine facts at issue, Evid.R. 701.

Bail/Denial/Clear and convincing. State v. Dickey | 2023-Ohio-705 | 1st Appellate District | 03/08/2023 In a prosecution of felonious assault and weapons offenses, the trial court's denial of bail was error where the trial court was provided no evidence by the state to meet the clear and convincing evidence standard required by R.C. 2937.222(B) for the denial of bail since the state was seeking only to increase the bond, but did not propose any specific amount.

Sentencing/Mandatory/Consecutive. State v. Spires | 2023-Ohio-665 | 12th Appellate District | 03/06/2023 In a conviction of three counts of first-degree felony felonious assault and one count of third-degree felony discharge of a firearm on or near prohibited premises, arising out of defendant's shooting at three officers, the state concedes that the trial court erred by ordering the prison sentence for each of the three counts of felonious assault be served as mandatory prison time since there was no proof presented that any of the officers suffered serious physical harm; remanded for re-sentencing, including consideration of any harm officers suffered, as well as a consideration of each sentence on individual counts that the trial court intends to impose consecutively, and the aggregate prison term that will result, Gwynne.

Costs/Court-appointed counsel fees. State v. Barnett | 2023-Ohio-678 | 3rd Appellate District | 03/06/2023 In a conviction by plea to felony money laundering, R.C. 1315.55(A)(3) and 1315.99(C), and subsequent violation of community control and imposition of a 30-month prison sentence with 212 days of jail credit, although the court of appeals affirmed the judgment of conviction and sentence originally entered against defendant, the trial court erred in ordering that the court-appointed fees be assessed against defendant as costs since R.C. 2941.51 states that court-appointed counsel fees shall not be assessed as costs, Taylor.

Drug offenses/Complicity. State v. Foster | 2023-Ohio-746 | 4th Appellate District | 03/06/2023 Conviction of, inter alia, trafficking in cocaine met the sufficiency and weight of evidence standards where defendant jointly possessed cocaine and marijuana found by trooper in bag behind the driver's seat claimed by the driver of the car in which defendant was in the front passenger seat since defendant jointly possessed the cocaine and marijuana that driver claimed ownership and was convicted of drug offenses relating to that claim since defendant had constructive possession of the drugs in her immediate physical possession.

Evidence/Expert testimony/Medical diagnosis. State v. Beasley | 2023-Ohio-670 | 11th Appellate District | 03/06/2023 In a conviction of, inter alia, murder, R.C. 2903.02(B), by father of his infant son, the trial court did not err in permitting the state's expert medical witnesses to testify that the infant's condition was caused by "abuse" or "abusive" conduct or in allowing two prosecution witnesses to testify on the ultimate issue that infant's manner of death was a "homicide" since the state's expert testimony was not conclusory that abuse had happened but rather opined on the most likely medical diagnosis, nor did any expert opine as to defendant's mental state or degree of culpability or who the perpetrator was or on the mental state of the person who caused the injuries, Evid.R. 401 and 704; also discussed, right to confrontation.

Dangerous dog/Complaint/Notice/Crim.R. 3. Warren v. Postlethwait | 2023-Ohio-674 | 11th Appellate District | 03/06/2023 Conviction of owner of two dogs of violation of R.C. 955.22(D)(2) was error since complaint was invalid under Crim.R. 3 where, inter alia, it charged defendant with a first-degree misdemeanor but, under R.C. 955.99(G), a violation is a fourth-degree misdemeanor, and defendant did not have sufficient notice of the offense charged and the trial court did not have subject-matter jurisdiction because the complaint was fatally flawed by numerous inaccuracies and failed to allege the precedent requirement that the dogs ordered to be euthanized had been designated dangerous dogs by an authorized official or evidence at trial of prior acts of defendant's dogs in order for the court to deem them dangerous pursuant to R.C. 955.11(A)(1)(a).

Evidence/Surveillance video. State v. Harris | 2023-Ohio-648 | 2nd Appellate District | 03/03/2023 In a conviction of, inter alia, two counts of murder, the trial court did not err by not excluding two 19-second surveillance video clips from outside the apartment the murders were committed that substantiated one of the participants in the murders was defendant who was the person who kicked in the door to the apartment the victims were in shortly before the murders.

Domestic violence/Cohabitation. State v. Danner | 2023-Ohio-638 | 1st Appellate District | 03/03/2023 Bench conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of evidence standards where defendant's claim that the parties were not co-habitating was without merit since the state established that defendant and his victim had been living together for at least a year within five years prior to the incident pursuant to R.C. 2919.25(F)(1) and (2), and the trial court did not lose its way in making its credibility determinations.

Criminal mischief/Arson. State v. Dickinson | 2023-Ohio-686 | 5th Appellate District | 03/03/2023 Conviction of criminal mischief, R.C. 2909.07, and arson, R.C. 2909.03(A)(1), met the sufficiency and weight of evidence standards where the state presented evidence that defendant lived alone in her apartment, she was alone in the apartment when the fire started, she stated to the fire inspector "I'm not going to jail for arson. That was a satanic book," and the fire inspector testified that defendant created a substantial risk of harm to herself, the apartment building and the other occupants of the building by setting a book on fire in a bathtub due to the proximity to the shower curtain and towels that would have spread to the walls, and jury did not lose its way in its credibility determinations.

Evidence/Confrontation Clause. State v. Smith | 2023-Ohio-603 | 8th Appellate District | 03/02/2023 In a bench conviction of domestic violence in one case and conviction of felonious assault and domestic violence in a second case, defendant's right to confront his accuser under the United States and Ohio constitutions was violated in the domestic violence only case by admission of officer testimony and testimonial statements made by the alleged victim, who did not testify at trial, while she was receiving medical care in an ambulance since the primary purpose of the interrogation was to document past events for a later criminal investigation or prosecution, not to enable police assistance to meet an ongoing emergency, Davis and Bryant.

Fair trial/Prison clothing. State v. Letner | 2023-Ohio-610 | 8th Appellate District | 03/02/2023 In a conviction of promoting prostitution, R.C. 2907.22(A)(2), the trial court did not violate defendant's due process rights, a fair trial or the presumption of innocence by not permitting a continuance for trial counsel to obtain non-prison attire for defendant to wear at trial since defendant had six months from the time he was jailed to the time of trial, Hawthorne, nor does defendant demonstrate he was prejudiced since the jury found him not guilty of two counts of rape, indicating jury was "clearly able to deliberate objectively and fairly," the trial court issued a comprehensive curative instruction, and defendant was convicted of only one of the six counts, indicating the jury was focused on the evidence, not the attire.

Sentencing/Allied offenses. State v. Merz | 2023-Ohio-582 | 1st Appellate District | 03/01/2023 Following a conviction by plea to gross sexual imposition, R.C. 2907.05(A)(1), and abduction, R.C. 2905.02(B)(2), that was reversed on appeal on reasoning that offenses were allied offenses of similar import for sentencing and, on remand, the state elected to proceed on the abduction offense, but the trial court again sentenced defendant on both offenses and designated him a sex offender on both counts, the court of appeals holds that the trial court erred in again imposing sentencing for both offenses since imposition of concurrent sentences for those convictions is not equivalent to merging the offenses, Williams, and the trial court also erred by imposing a sex-offender classification for the merged offense; remanded for re-sentencing.

Drug offenses/Search/Traffic stop. State v. Farrow | 2023-Ohio-682 | 4th Appellate District | 03/01/2023 In appeal by the state of grant of motion to suppress in a prosecution for drug offenses arising out of search of a motor vehicle during a traffic stop, trooper had a reasonable, articulable suspicion of a traffic violation based on trooper's detection of a strong odor of

raw marijuana, and his review of the recording of the driver and defendant passenger while they were in trooper's vehicle during trooper's initial search that led him to continue to believe that there was marijuana in the car was permissible, and he did not need a new articulable and reasonable suspicion to review the recording and conduct a second search of the vehicle in which he found methamphetamine and heroin in the engine compartment, Harper and Maddox.

Felonious assault. State v. Walton | 2023-Ohio-585 | 1st Appellate District | 03/01/2023 Bench conviction of, inter alia, two felonious assault counts following the shooting of victim was not against the weight of evidence where victim testified that when he talked to police after the shooting that he knew the shooter but did not know his legal name but only his aliases that the police used to determine defendant's name and arrest him, and a witness, who testified that the victim was not at her apartment shortly before he was shot as he claimed, was found not credible since she admitted in her testimony she was upset with the victim over her being shot a few weeks prior to victim being shot outside of her apartment, and she called in a false report of aggravated robbery against the victim after defendant was arrested and informed defendant of that during a call to him while he was in jail.

Sealing/Transcript. State v. Dixon | 2023-Ohio-587 | 1st Appellate District | 03/01/2023 Denial of application to seal the record of conviction for child endangering, R.C. 2919.22(A), was not error where the state asserted in its objection to the application that applicant was not eligible because the victim was under the age of one year-old, but the record filed in this appeal does not contain a transcript from the hearing on the application to seal and, if there was no recording of the hearing or no transcript available, appellant could have, but did not, file an appropriate substitute of the proceedings in accordance with App.R. 9, and the court of appeals presumes the regularity of the lower court's proceedings and affirms.

Domestic violence. State v. Cottrill | 2023-Ohio-600 | 5th Appellate District | 02/28/2023 Conviction of domestic violence, R.C. 2919.25(C), met the sufficiency and weight of evidence standards where defendant's claim that when his wife served divorce papers and he threatened to kill her and himself if she went through with the divorce was not an imminent threat and is without merit since he made his threat in their living room where he had a loaded shotgun.

Self-defense/Imminent or immediate danger. State v. Becker | 2023-Ohio-601 | 5th Appellate District | 02/28/2023 In a conviction of, inter alia, felony murder, claim that jury's determination that defendant did not act in self-defense is against the weight of the evidence is without merit since the evidence does not support that defendant possessed the necessary objective and subjective beliefs that he was in imminent or immediate danger of death or great bodily harm where he testified that victim did not have any sort of weapon in his hands during the altercation, no evidence was presented that defendant was aware of any violent propensity of the victim, victim only struck defendant with his fist, defendant's decision to shoot victim was disproportionate to the threat he faced under the circumstances, and the jury viewed video of the altercation.

Sentencing/Voidable sentence/ Res judicata. State v. Teagarden | 2023-Ohio-597 | 5th Appellate District | 02/28/2023 Following a 2008 conviction of rape of a minor under age 13, and three counts of gross sexual imposition with a child under the age of 13, that was reversed only as to failure to merge two counts of gross sexual imposition as allied offenses, and defendant was re-sentenced in 2009 with no appeal taken, but defendant thereafter filed a "motion to correct sentence" and the court of appeals held that the trial court erred by reinstating defendant's 2009 sentence since that sentence was barred by res judicata because defendant had a full and fair opportunity to challenge a voidable sentence on direct appeal and, since any alleged error in that sentence rendered the sentence voidable, not void, defendant's 2022 "Motion to Reinstate Sentence" was a collateral attack on a voidable judgment and barred by res judicata, Harper and Henderson.

Speedy trial. State v. Locke | 2023-Ohio-631 | 5th Appellate District | 02/28/2023 In a conviction by plea to, inter alia, aggravated drug possession, possession of cocaine, failure to comply with order or signal of police officer and OVI, defendant was denied his right to a speedy trial since he was not brought to trial within the speedy-trial time limits where defendant's motion to dismiss was filed 167 days after the date time began to run with 55 days chargeable to defendant, and the 112 total days in jail is in excess of the 90-day limit of R.C. 2945.71 for a defendant incarcerated prior to trial.

Drug possession/Dominion and control. State v. Troche | 2023-Ohio-565 | 3rd Appellate District | 02/27/2023 Conviction of possession of fentanyl, R.C. 2925.11(A), (C)(11), and aggravated possession of drugs, R.C. 2925.11(A), (C)(1), met the sufficiency and weight of evidence standards where the drugs were in a black case and defendant had dominion and control over those items, notwithstanding that he was driving his mother's vehicle since, inter alia, when defendant was stopped he was smoking a cigarette that was the same brand that was found beside him in the driver's side door pocket under the black case and, moreover, defendant had dominion and control of the drugs since they were within his reach and thus he had constructive possession of those drugs, and jury did not lose its way in making its credibility determinations.

Jury/Instructions. State v. Brand | 2023-Ohio-557 | 12th Appellate District | 02/27/2023 In a conviction of gross sexual imposition, R.C. 2907.05(A)(4), of defendant's 12 year-old daughter, the trial court did not err in not instructing the jury with defendant's requested jury instructions on "mistake of fact" and "accident" since his proposed instructions misstate the law, and the "purpose" mens rea contained in the R.C. 2907.01(B) definition of "sexual contact" as used in R.C. 2907.05(A) does not apply to the phrase "not the spouse of the offender."

Trial/Rebuttal testimony/Witnesses in courtroom. State v. Stroud | 2023-Ohio-569 | 11th Appellate District | 02/27/2023 In a bench conviction of first-degree misdemeanors assault, R.C. 2903.13(A), and possession of criminal tools, R.C. 2923.24(A), the trial court did not err in allowing the state's witnesses to testify in rebuttal after defendant testified in his own defense where there was no evidence that the state improperly allowed two state witnesses to remain in the courtroom during

defendant's testimony and, moreover, the rebuttal testimony of those witnesses was generally repetitive of their previous testimony, and in a bench trial the court is presumed to have considered only the relevant, material and competent evidence.

Sentencing/Jail-time credit. State v. Webb | 2023-Ohio-677 | 3rd Appellate District | 02/26/2023 In a conviction by plea to trafficking in drugs, R.C. 2925.03(A), a fifth-degree felony, and to felonious assault, R.C. 2903.13(A)(1), a first-degree misdemeanor, the trial court erred by failing to run the misdemeanor and felony sentences concurrently, resulting in the trial court's failure to give defendant 160 days of jail-time credit pursuant to R.C. 2929.41(A) for his pretrial detention served prior to the prison term imposed for his felony offense since sentences are presumed to run concurrently as a matter of law if the sentencing entry is silent as to whether the sentences are to be served consecutively or concurrently.

Felonious assault. State v. Dudley | 2023-Ohio-543 | 2nd Appellate District | 02/24/2023 Conviction of felonious assault, R.C. 2903.11(A)(2), was not against the weight of evidence where conflicting evidence was presented by defendant and the victim on how the victim received a stab wound to his upper torso, with victim testifying that defendant stabbed him and defendant claiming victim received his wound by falling into a sink, all of the issues defendant cited to in her appellate brief as being incredible were pointed out to the jury during trial, and jury's resolution of the competing testimony and evidence were part of its evaluation of the credibility of the witnesses.

Domestic violence. State v. Dyer | 2023-Ohio-544 | 2nd Appellate District | 02/24/2023 Conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of the evidence where arresting officer testified that he saw defendant-mother drag her child by the hair, clothes and book bag, defendant's claim that her only purpose was to remove her child from the house and not to harm her child is without merit since defendant's claimed purpose was irrelevant because the culpable mental state for the charged offense is "knowingly," R.C. 2901.22(B).

Trial/Cross-examination. State v. Waller | 2023-Ohio-493 | 3rd Appellate District | 02/21/2023 In a conviction of domestic violence, R.C 2919.25(A), (D)(4), the trial court did not permit the state to exceed the scope of cross-examination during redirect examination of the complaining witness since, even though the defense stipulated to the admission of defendant's prior domestic-violence convictions, the defense on cross-examination opened the door to evidence of the specific acts involving the victim and defendant by attempting to prove that the victim was the primary physical aggressor to support defendant's self-defense claim.

Disorderly conduct. Conneaut v. Emus | 2023-Ohio-508 | 11th Appellate District | 02/21/2023 Conviction of municipal ordinance aggravated disorderly conduct, access roads to trails and refusal to disclose personal information in a public place met the sufficiency and weight of evidence standards where officers' body cam videos showed defendant being detained with handcuffs after refusing to identify himself, refusing to take a traffic citation for driving an all-terrain vehicle on a public roadway and threatening and insulting officers with profane and vulgar language, and his offensive language did not constitute "protected speech," but rather offensive behavior, Reeder.

Miranda. State v. Kyles | 2023-Ohio-489 | 12th Appellate District | 02/21/2023 In a conviction of, inter alia, aggravated murder, the trial court did not err in denying motion to suppress confession to police where, even though defendant had an IQ of 66, he made a valid waiver of his Miranda rights since he did not claim there was any coercive police conduct and officer's testimony and the recorded interviews show that defendant's waiver was voluntary where he initially invoked his right to counsel as he was being read his rights and the interview was terminated, but an hour later he executed a written waiver, and the record shows he responded appropriately to police questioning during the interviews and his demeanor reflected a normal 18 year-old man, not a feebleminded person with intellectual deficiencies.

Sentencing/Judicial release revocation. State v. Arrendondo | 2023-Ohio-491 | 3rd Appellate District | 02/21/2023 Following a 2016 conviction by plea to drug and weapon offenses, imposition of 11-year prison sentence, grant of 2021 motion for judicial release with community control and 2021 admission of community control violation, the trial court's revocation of community control and reimposition of original sentence was not error since a trial court is limited to reimposing the remainder of the original sentence if judicial release is revoked, and the trial court is not required to reconsider R.C. 2929.11 and R.C. 2929.12 or make any statutory findings that would be required when a felony sentence is originally imposed, and R.C. 2929.13(E)(2) sanctions do not apply when a trial court is revoking judicial release, Thompson.

Search/Warrant/Suppression. State v. Green | 2023-Ohio-501 | 4th Appellate District | 02/21/2023 In a conviction of five counts of pandering obscenity involving a minor, R.C. 2907.321, the trial court's denial of a motion to suppress was not error since the search warrant was supported by probable cause where the search warrant affidavits contained information that, nearly ten months earlier, defendant had downloaded child pornography and, since these images may exist forever and because perpetrators often hold onto the images for long periods of time, the information was not stale; also, officer reasonably relied on information provided by a federal agent who identified himself and another agent as members of an internet crimes task force.

Evidence/Rape shield/Record. State v. Mincey | 2023-Ohio-472 | 1st Appellate District | 02/17/2023 In a conviction of ten counts of rape and ten counts of sexual battery of a minor, claim that the trial court erred by excluding evidence that minor had fabricated prior allegations of sexual misconduct against others is not reviewable where, although trial transcript indicated the court conducted some sort of review by an in-camera review or hearing and ruled that the specific instances of conduct that defendant sought to explore on cross-examination of minor were protected by the rape-shield statute, defendant failed to ensure that material necessary to the assignment of error is contained within the record, and thus the appellate court must presume the regularity of the lower court's proceedings and affirm; also discussed, admission of improper other acts evidence and expert witness' improper vouching of victim's credibility were harmless errors.

Criminal (Continued)

Domestic violence. State v. Harrison | 2023-Ohio-471 | 1st Appellate District | 02/17/2023 Conviction of domestic violence, R.C. 2919.25(D)(3), was not against the weight of evidence where, although victim's testimony creates some confusion as it relates to the times when she interacted with the police, her testimony did not create confusion as it pertains to defendant's harming her, and defendant failed to challenge his wife's testimony as to her injuries, nor did he present any conflicting testimony or evidence, responding officer's testimony clarified victim's jumbled timeline, and victim's intoxicated state during defendant's confrontation with her did not render her testimony per se incredible.

Search/Plain view/Automobile exception to warrant. State v. Travick | 2023-Ohio-460 | 8th Appellate District | 02/16/2023 In a prosecution of weapons offenses where officer found a gun in a vehicle following a traffic stop, grant of motion to suppress was error where officer had a reasonable and articulable suspicion that defendant committed traffic offenses, officer's use of a flashlight to see contraband did not preclude application of the plain-view doctrine and, under the automobile exception to the warrant requirement, the discovery of an open container of alcohol and loose marijuana constituted probable cause to search the remainder of the vehicle.

Plea/Validity. Cleveland v. Martin | 2023-Ohio-448 | 8th Appellate District | 02/16/2023 In a conviction by plea to city code second-degree misdemeanor attempted telecommunications harassment, plea was not knowingly, intelligently and voluntarily made since the trial court's failure to inform defendant that her guilty plea was an admission of guilt was a complete failure to comply with Crim.R. 11(E), and a showing of prejudice is not required, Crim.R. 11(E).

Plea/Withdrawal. State v. Silver | 2023-Ohio-451 | 8th Appellate District | 02/16/2023 In a conviction by plea in two cases to, inter alia, attempted robbery, denial of Crim.R. 32.1 motion to withdraw plea was not error where defendant had a full Crim.R. 11 hearing, and the trial court gave "full and fair consideration" to defendant's request to withdraw his plea that defendant made on day set for sentencing since he made no argument at the hearing on his motion concerning "whether he was perhaps not guilty or had a complete defense," Pinkerton, supporting the trial court's conclusion that his motion reflected only "a change of heart" that is insufficient justification for the withdrawal of a guilty plea.

Sentencing/Community control sanctions. Cleveland v. Boyd | 2023-Ohio-459 | 8th Appellate District | 02/16/2023 In a conviction by plea to criminal mischief, the trial court erred in sentencing defendant to community control sanctions requiring defendant to submit to substance abuse assessment and counseling and drug testing, where defendant's conviction stemmed from his tearing down of political posters and there is no allegation or even mention in the record that substance abuse contributed to defendant's tearing down political signs; however, anger management and mental health assessment requirements contribute to the rehabilitation of defendant because they both fall under the umbrella of mental health treatment and are designed to rehabilitate individuals, Jones.

Unlawful sexual conduct with a minor. State v. Harris | 2023-Ohio-454 | 8th Appellate District | 02/16/2023 Conviction of attempted unlawful sexual conduct with a minor, R.C. 2923.02/2907.04(A), and importuning, R.C. 2907.07(D)(2), met the sufficiency and weight of evidence standards since defendant makes no reference to the state's evidence of his knowledge of victim's (undercover officer's) age as 15 years-old, or acted recklessly in that regard, where defendant was texted a photo of a 15 year-old boy that undercover officer told him was his age, who lived with his father, and could not drive, defendant's texts to the officer specifically discussed his intention to engage in sexual activity with him, and jury did not lose its way in making its credibility determinations.

Confrontation Clause/Hearsay. State v. Johnson | 2023-Ohio-445 | 8th Appellate District | 02/16/2023 In a bench conviction of domestic violence, R.C. 2919.25(A), and child endangering, R.C. 2919.22(A), admission of alleged victim's 9-1-1 call was error since it violated the Confrontation Clause where the alleged victim's statements in her 9-1-1 phone call were testimonial and were not made as part of an ongoing emergency since before she made her call, she went to her parent's home and discussed her situation, and there was no imminent threat or on-going emergency to her during her 9-1-1 call where the operator confirmed that alleged victim and her son had left her apartment and were safe at her parents' home in another city.

Evidence. State v. Hawkins | 2023-Ohio-452 | 8th Appellate District | 02/16/2023 In a conviction of gross sexual imposition for the touching of a nine year-old girl's genital area, it was not error for the trial court to allow leading questions on direct examination of the then 10 year-old alleged victim when she declined to respond to the prosecutor's questions after answering several, nor were prosecutor's questions to her based on video-recorded statements she made to a social worker error since the disputed statements were not read into evidence from the video recording, and the video was not shown to the victim under Evid.R. 803(5) as recorded recollections, and a trial court has discretion to allow leading questions on direct examination, including permitting a prosecutor leeway with the use of leading questions on direct examination of a young witness victim, Evid.R. 611(C).

Search/Traffic stop/Reasonable suspicion. State v. McDonald | 2023-Ohio-464 | 8th Appellate District | 02/16/2023 In a prosecution of weapons offenses where officer found a gun in a vehicle following a traffic stop, grant of motion to suppress was error where officer had a reasonable and articulable suspicion that defendant committed a traffic offense by driving in a vehicle with unlawful tinted windows since, even if officer was mistaken that defendant violated the law, "or the evidence would be insufficient to prove the elements of [the relevant statute] beyond a reasonable doubt," the officer had an objectively reasonable belief that a traffic violation occurred, thus constituting reasonable suspicion to justify the traffic stop, and "[w]hether the tint was actually a violation is a sufficiency issue, not a reasonable suspicion/probable cause for the stop issue."

Right to counsel/Waiver. State v. Lockert | 2023-Ohio-440 | 9th Appellate District | 02/15/2023 In a bench conviction of criminal trespass, R.C. 2911.21(A), and criminal damaging, R.C. 2909.06(A), the trial court erred by failing to ensure that defendant

voluntarily, knowingly and intelligently waived her constitutional right to counsel since she was not advised by the court of the nature of the charges, the range of allowable punishments, possible defenses or applicable mitigating circumstances, nor was there any inquiry regarding her age, education and legal experience; remanded with instructions that defendant be given the opportunity to request a new trial or to request the jail term portion of her sentence be vacated.

Competency. State v. Kerns | 2023-Ohio-517 | 7th Appellate District | 02/15/2023 In a conviction by Alford plea to two counts of sexual battery and one count of gross sexual imposition of defendant's two sons under 13 years-old, the trial court did not err in finding defendant competent to stand trial after her psychological evaluation that concluded she was capable of understanding the nature and objective of the proceedings and assisting in her own defense where, during the plea colloquy, the court made certain defendant had reviewed the charges with counsel prior to the hearing and used the indictment as a guide, inquired more than once about the number of times that defendant had reviewed the charges with counsel, and inquired repeatedly about her understanding of the charges.

Sentencing/Allied offenses. State v. McDonald | 2023-Ohio-438 | 5th Appellate District | 02/14/2023 In a conviction by plea to kidnapping, R.C. 2905.01(A)(3), and felonious assault, R.C. 2903.11(A)(1), and imposition of consecutive prison sentences for a total of 14 years, with a possible indefinite term of 19 years, offenses were not allied offenses of similar import for sentencing since defendant's acts of physical assault on the victim and his acts of forcing her to remain in the home for approximately 12 hours are different and distinct acts which were committed separately.

Suppression/Miranda. State v. Epling | 2023-Ohio-418 | 5th Appellate District | 02/13/2023 In a conviction of gross sexual imposition, R.C. 2907.05(A)(1), of one minor, and sexual imposition, R.C. 2907.06(A)(1), of a second minor, denial of motion to suppress statements made to two officers without defendant being given Miranda warnings was not error since defendant was not in custody where officers told defendant that he did not have to speak with them, he was interviewed outside his home, the officers were wearing plain clothes and driving unmarked vehicles, defendant was not physically restrained while he was interviewed, and defendant was released at the end of the questioning.

Sealing/Rehabilitation. State v. Brown | 2023-Ohio-411 | 11th Appellate District | 02/13/2023 Denial of application to seal record of a 2015 conviction of fourth-degree misdemeanor menacing, R.C. 2903.22, was not error where, although applicant was an eligible offender, no criminal proceedings were pending against him, and he acknowledged wrongdoing, he minimized his offense in stating that the victim was also to blame, and his acknowledgements of wrongdoing did not demonstrate rehabilitation since he instead continued to blame the victim of a crime seven years later, and the record supports a conclusion that the applicant was not rehabilitated.

Sentencing/Reagan Tokes notifications. State v. Greene | 2023-Ohio-389 | 2nd Appellate District | 02/10/2023 In a conviction by plea to, inter alia, second-degree felony aggravated possession of drugs, the trial court failed to correctly provide the Reagan Tokes Act notifications required by R.C. 2929.19(B)(2)(c)(v) at the sentencing hearing by stating that if defendant had not been released prior to the expiration of the "minimum prison term imposed as part of this sentence," he must be released when that term expired, rather than stating the maximum prison term; remanded to conduct a new sentencing hearing pursuant to the Reagan Tokes Act, R.C. 2929.19(B)(2)(c).

Sentencing/Reagan Tokes/Self defense. State v. Wilson | 2023-Ohio-419 | 5th Appellate District | 02/10/2023 In a conviction of felonious assault, R.C. 2903.11(A)(2), the trial court erred in informing defendant that pursuant to the Reagan Tokes Law that his sentence would be a minimum prison term of seven years and a maximum prison term of nine years, R.C. 2929.144(B); also discussed, evidence presented demonstrated that defendant did not act in self-defense or defense of another in stabbing victim while victim was engaged in a fight with another person, R.C. 2901.05.

Unlawful possession of a dangerous ordnance/Inducing panic. State v. Ruetz | 2023-Ohio-398 | 6th Appellate District | 02/10/2023 Conviction of unlawful possession of a dangerous ordnance, R.C. 2923.17(A), and inducing panic with a gun specification, R.C. 2917.31(A)(3) and (C)(1)(4)(a), was not error where the state presented sufficient evidence that defendant's sawed-off muzzleloader met the legal requirements of a firearm for purposes of the dangerous ordnance charge and the firearm specification, R.C. 2923.11(K) and (L), since it had a primer ignition system and the ability to safely use other than black powder as a propellant, and defendant used, displayed or brandished a firearm with an intent or recklessness for the inducing panic conviction; also discussed, ineffective assistance of counsel.

Confession/Motion to suppress. State v. Elliott | 2023-Ohio-388 | 2nd Appellate District | 02/10/2023 In a conviction by plea to rape and pandering obscenity to a minor, denial of motion to suppress confession made to officer and of photos found on defendant's phone was not error where officer's interview with defendant was not a custodial interrogation since defendant voluntarily came to the school where officer interviewed him in the principal's office, with no meaningful restraint on defendant's freedom of movement, and there was no formal arrest until defendant confessed after officer found incriminating photos on defendant's cell phone that defendant permitted officer to examine.

Sentencing/Community control/ Driver's license suspension. State v. Angers | 2023-Ohio-369 | 8th Appellate District | 02/09/2023 In a conviction by plea to attempted deception to obtain a dangerous drug, R.C. 2923.02 and 2925.22, and imposition and subsequent violation of community control, resulting in the termination of community control and imposition of a reserved nine-month prison sentence and a two-year driver's license suspension, the trial court erred in ordering the license suspension since the court specifically told defendant it would not be imposing a driver's license suspension at the sentencing hearing and, moreover, a driver's license suspension is not a community control sanction, Curry.

Evidence/Hearsay/Harmless error. State v. Jones | 2023-Ohio-380 | 8th Appellate District | 02/09/2023 On reconsideration, in conviction of, inter alia, aggravated arson and felonious assault, although admission of officers' testimony of alleged victim's statements that defendant burned her violated the Confrontation Clause since statements were made an hour after the alleged incident and there was no longer an ongoing emergency, error was harmless since declarant's earlier statements to a neighbor, to a 9-1-1 operator and to an EMS dispatcher were non-testimonial and admissible as excited utterances, Evid.R. 803(2), and did not violate the Confrontation Clause since declarant observed a startling event and was suffering from life-threatening burn injuries, she was still under the stress of the event, and the primary purpose of the statements was to obtain medical assistance.

Evidence/Rape-Shield Law. State v. McCutchen | 2023-Ohio-368 | 8th Appellate District | 02/09/2023 In a conviction of, inter alia, two counts of first-degree felony rape of two minor children, claim that the trial court erred in not holding a hearing prior to excluding evidence of a prior allegation of sexual abuse involving one of the minors that a county child and family services agency found to be unsubstantiated is without merit since that type of evidence is precluded by the rape-shield law, R.C. 2907.02(D), where an investigation indicated that the allegations were unsubstantiated but did not indicate that they were absolutely false, Evid.R. 608(B) and Boggs, and the trial court had discretion in determining whether to permit defense counsel to proceed with cross-examination.

Failure to verify address/Classification hearing. State v. Scott | 2023-Ohio-370 | 8th Appellate District | 02/09/2023 Following a 2008 conviction of, inter alia, gross sexual imposition, R.C. 2907.05(A)(4), with a sexually violent predatory specification, conviction of failure to verify address pursuant to R.C. 2950.06(F) was error since the trial court failed to hold a classification hearing following defendant's original conviction, defendant was incorrectly classified under the Adam Walsh Act rather than Megan's Law, and a defendant cannot be convicted of violating the registration requirements of Megan's Law if the defendant was never designated a sexually-oriented offender, a habitual-sexual offender or a sexual predator by the trial judge, Eads.

Plea/Withdrawal. State v. Johnson | 2023-Ohio-371 | 8th Appellate District | 02/09/2023 In a conviction by plea to, inter alia, rape, in which defendant proceeded pro se until the sentencing hearing when he requested that his plea be withdrawn and that he be represented by counsel, the trial court did not err in denying motion since defendant failed to demonstrate a reasonable and legitimate basis to withdraw his plea where he had a full Crim.R. 11 hearing at which it was demonstrated that he understood the nature of the charges and possible penalties, his plea substantially reduced his criminal exposure, and the motion did not state specific grounds to support the request for withdrawal of the plea.

Jury instructions/Self-defense. State v. Huish | 2023-Ohio-365 | 10th Appellate District | 02/08/2023 In a conviction of, inter alia, two counts of murder, the trial court did not err by not providing a specific unanimity instruction on self-defense since there is no requirement that the jury be unanimous as to the specific element of self-defense they believed the state disproved, and thus it did not deprive defendant of a unanimous verdict if the jury reached different conclusions as to why he did not act in self-defense since the alternatives presented to the jury were not conceptually distinct, Gardner.

Search/Warrant/Automobile exception. State v. Gray | 2023-Ohio-338 | 12th Appellate District | 02/06/2023 In convictions of trafficking and possessing marijuana and engaging in a pattern of criminal activity, denial of motion to suppress was not error where defendant failed to claim that his vehicle was stopped by officers since officers approached his vehicle only after he was already stopped, and no search warrant was required since the automobile exception allows the warrantless search of an automobile by officers who have probable cause to believe that the vehicle contains contraband, and trained narcotics canine alert provided probable cause to search any part of the vehicle, including the trunk, for contraband; also discussed, ineffective assistance of counsel and indefinite sentencing.

Sentencing/Allied offenses. State v. Allen | 2023-Ohio-340 | 3rd Appellate District | 02/06/2023 In a conviction of tampering with evidence, R.C. 2921.12(A)(1), and criminal damaging, R.C. 2909.06(A)(1), the trial court did not commit plain error by not merging the offenses for sentencing as allied offenses of similar import since the victim of the criminal damaging was the company that owned the ankle monitor that measured whether defendant had alcohol in his system and company leased it to the municipal court while victim of the tampering with evidence offense was the state.

Evidence/Gruesome photographs/Self-defense. State v. Delehanty | 2023-Ohio-337 | 12th Appellate District | 02/06/2023 In a conviction of, inter alia, murder, R.C. 2903.02(B), admission of photographs of decedent's body were not excludable gruesome photographs since the photographs, while unpleasant, were not gruesome, photographs of the wounds were evidence of the type of weapon used, and the photographs were relevant to issues potentially at issue, including the perpetrator's identity and the direction from which the victim was attacked that potentially negated a self-defense claim; also, the trial court did not err in not giving the jury a self-defense instruction since it was logically and legally inconsistent for defendant to deny the charges and to also assert that she acted in self-defense or as a result of battered-woman syndrome.

Sentencing/Jail-time credit/Nunc pro tunc entry. State v. Powell | 2023-Ohio-344 | 11th Appellate District | 02/06/2023 In a conviction by plea to weapon and drug offenses, imposition and subsequent violation of community control and imposition of an aggregate prison term of 24 months to run consecutive to a separate prison sentence imposed in another case, with defendant to receive 443 days of jail-time credit, the trial court erred by subsequently entering a nunc pro tunc entry stating that defendant would receive jail-time credit of 151 days since the nunc pro tunc entry reducing defendant's jail time credit by 292 days was improper and a nullity because it modified the final judgment of sentence, not a clerical error.

Sentencing/Consecutive sentences/Appellate review. State v. Amero | 2023-Ohio-345 | 11th Appellate District | 02/06/2023 In a conviction by plea to two counts

of sexual battery, R.C. 2907.03(A)(7) and (B), and sexual imposition, R.C. 2907.06, involving two students when defendant was a principal at the victims' school, imposition of concurrent and consecutive prison sentences totaling 10 years was error where the trial court made R.C. 2929.14(C)(4) consecutive sentencing findings that were unsupported by the record, particularly in relation to the harm caused by defendant's commission of the offenses, since nothing in the record demonstrates the extent of the harm to the victims as required by R.C. 2929.14(C)(4)(b) and "[a] trial court may not elevate the seriousness of an offense by pointing to a fact that is also an element of the offense itself," Polizzi.

Evidence/Hearsay/Medical diagnosis. State v. Barnes | 2023-Ohio-353 | 11th Appellate District | 02/06/2023 In a conviction of, inter alia, five counts of rape of a minor and imposition of concurrent sentences for an aggregate sentence of life with the possibility of parole after 25 years, admission of victim's statements made to a pediatric social worker at a children's hospital that defendant gave her alcohol, vapes and marijuana as a reward for sexual activity was not inadmissible hearsay since statements made for purposes of medical diagnosis or treatment are not excluded by the hearsay rule, even though the declarant is available as a witness, Evid.R. 803(4).

Jury instructions/Self-defense. State v. Gillilan | 2023-Ohio-325 | 2nd Appellate District | 02/03/2023 In a conviction of, inter alia, murder, the trial court erred by incorrectly instructing the jury on the allocation of the burden of proof for self-defense, R.C. 2901.05, and the error was not harmless beyond a reasonable doubt since defendant was entitled to a self-defense instruction, and the failure to correctly instruct the jury regarding the burden of proof on self-defense affects a substantial right.

Plea/No-contest. Lakewood v. Hocter | 2023-Ohio-375 | 8th Appellate District | 02/03/2023 In a conviction by plea to, inter alia, two first-degree misdemeanors, aggravated menacing, R.C. 2903.21, and intimidation of a victim in a criminal case, R.C. 2921.04, the trial court erred by accepting a no-contest plea without informing defendant of the effect of a no-contest plea as required by Crim.R. 11(E) and in accordance with the language of Crim.R. 11(B)(2), rendering the plea invalid; case is remanded with instructions to vacate plea and to conduct further proceedings consistent with the court of appeals' opinion.

Evidence/Prior bad acts/Intent. State v. Baird | 2023-Ohio-303 | 8th Appellate District | 02/02/2023 In a bifurcated trial, conviction of, inter alia, domestic violence in one case and abduction in another case, denial of motion for mistrial because of victim's comments about her tires being slashed in the courthouse parking lot was harmless error where the trial court gave a curative instruction that the jury is presumed to follow, and victim's testimony of defendant's past behavior of drinking and domestic violence was properly admitted since prior bad acts by a defendant against the same victim are admissible in domestic violence cases to prove a defendant's intent.

Aiding and abetting/Murder. State v. Gardner | 2023-Ohio-307 | 8th Appellate District | 02/02/2023 Conviction of defendant as an aider and abettor, R.C. 2923.03(A), to murder and felonious assault, met the sufficiency and weight of evidence standards since participation in criminal intent may be inferred from presence, companionship and conduct before and after an offense is committed, and defendant was more than a near bystander since she was upset that the victim had taken money that she had left in a cart at a store, and defendant "was at the center of the conflict from the start to finish" where she was with the two men who beat the victim and left the scene with them, and her jailhouse phone calls in which she essentially stated that the victim caused his own demise, Evid.R. 801(D)(2).

Competency. State v. Winegarner | 2023-Ohio-319 | 8th Appellate District | 02/02/2023 On reconsideration, in a conviction of, inter alia, attempted murder, although the trial court failed to hold a competency hearing when a competency issue was raised by defense counsel, there was no reversible error since the record does not contain sufficient indicia of defendant's incompetency that mandated a hearing where the concern by the competency examiner of defendant's willingness or inability to assist counsel was disproved where defendant did assist counsel through two trials, he was active at trial, discussed his decision to try certain charges to the court, objected to stipulations by his attorney and also voiced objections to certain jury instructions, R.C. 2945.37.

Ineffective assistance/Professional misconduct proceeding. Solon v. Depew | 2023-Ohio-304 | 8th Appellate District | 02/02/2023 In a conviction of disorderly conduct by plea to and bench conviction of two counts of aggravated menacing, defendant's attorney's lack of disclosure to defendant that he was under investigation by the Ohio Supreme Court for professional misconduct was not ineffective assistance of counsel since defendant failed to demonstrate the investigation created a conflict of interest between him and his counsel, and counsel adequately performed his duties prior to his suspension and termination of his professional relationship with defendant.

Evidence/Identification/Photographic array. State v. Aekins | 2023-Ohio-322 | 10th Appellate District | 02/02/2023 In a conviction of, inter alia, four counts of murder, denial of motion to suppress photo identification was not error where claim the photo array presentation was unnecessarily suggestive is without merit since officer's initial 13-minute interview with a witness was not an improper pre-view consultation because the prohibition against a pre-view consultation did not prohibit the officer from interviewing the witness regarding the facts of the incident, and defendant does not contend that the officer discussed the photo array with the witness during the initial 13-minute interview, nor does R.C. 2933.83(A)(2) and (3) prohibit an officer who performed an investigative role in the investigation from being a blinded administrator.

Speedy trial. Cleveland v. Thurman | 2023-Ohio-301 | 8th Appellate District | 02/02/2023 In a conviction by plea to city code first-degree misdemeanor OVI and minor misdemeanor failure to control, denial of defendant's motion to dismiss for speedy trial violation was error since, after counting the number of delays chargeable to each side, defendant was not brought to trial within the R.C. 2945.71(B)(2) speedy trial time limit.

Criminal (Continued)

Arraignment/Advisements/Interpreter. Akron v. Berenato | 2023-Ohio-296 | 9th Appellate District | 02/01/2023 In a conviction by plea to domestic violence, defendant was not properly arraigned where the trial court failed to comply with the requirements of Crim.R. 5(A) by not providing the required advisements of defendant's right to counsel, that he need not make any statement that may be used against him or that he had a right to a jury trial; the trial court also failed to properly secure an interpreter to ensure defendant understood the nature of the proceedings against him, undertook no curative action to advise defendant of his rights or ensure he understood the proceedings that he was participating in, R.C. 2311.14, and violated defendant's right to due process, Lopez-Olmedo.

Restitution/Economic loss. State v. Caldwell | 2023-Ohio-355 | 4th Appellate District | 02/01/2023 In a conviction by plea of unauthorized use of property, a 2000 Ford F-350 pickup truck, award of $16,500 restitution was error where the vehicle's owner had told defendant that his truck was worth $8,000 to $10,000, and thus this was the amount of economic loss that the owner incurred from defendant's unauthorized use of his vehicle, R.C. 2929.28(A)(1); remanded for determination of restitution consistent with the court of appeals' decision.

Disability

Benefits application/Medical evidence. State ex rel. Borling v. State Teachers Retirement Sys. Bd. of Ohio | 2023-Ohio-838 | 10th Appellate District | 03/16/2023 Granting teacher's petition for a writ of mandamus to compel retirement system to review her application for disability benefits is affirmed where teacher filed application prior to revision of administrative rules requiring a physician's report for each physician listed on the application, the application form plainly required only one physician's report, the physician's report identified disabling conditions pursuant to R.C. 3307.62(C), and the conclusions were supported with objective medical evidence.

Education

Employment/Termination/Due process. Matthews v. Springfield-Clark CTC Bd. of Edn. | 2023-Ohio-1304 | 2nd Appellate District | 04/21/2023 In school board's appeal of trial court's reversal of board's termination of custodial supervisor's contract, the court erred in reasoning that the board's termination action violated fundamental fairness and due process where, inter alia, supervisor attended a pre-discipline meeting with superintendent, supervisor received written notice that superintendent was recommending termination, the notice was detailed and informed supervisor of the specific grounds for termination, supervisor received a hearing before the board, where he was represented by an attorney and was allowed to examine any witnesses, and supervisor had the opportunity to present his case and to appeal the board's decision under R.C. Ch. 2506; as well, there was no evidence that the superintendent or board was biased against supervisor, and the board met its burden to provide evidence of supervisor's violations sufficient to justify termination.

Disciplinary action/CBA/Arbitration. Wright State Univ. v. Am. Assn. of Univ. Professors, Wright State Chapter | 2023-Ohio-1238 | 2nd Appellate District | 04/14/2023 In university's disciplinary action against professor, arising from students' complaints, where professors' association chapter filed a request for arbitration which resulted in an arbitration award to professor and university's objection that the chapter had not complied with the terms of the collective bargaining agreement (CBA), trial court erred in denying university's motion to vacate the arbitration award since professor's amended grievance was time-barred because it did not comply with the terms of the CBA and therefore the arbitrator lacked jurisdiction to consider the merits pursuant to R.C. 2711.10(D), and even if the arbitrator had jurisdiction, he acted beyond his authority and exceeded restrictions under the CBA by substituting his judgment for that of the university.

Elections and Campaign Finance

Board of elections/Reappointment/Attorney fees. State ex rel. Summit Cty. Republican Party Executive Commt. v. LaRose | 2023-Ohio-1165 | Supreme Court of Ohio | 04/11/2023 In case in which the Supreme Court of Ohio issued a writ of mandamus compelling the Secretary of State to reappoint an individual to county board of elections, the court denies political party's executive committee's motion for attorney fees allegedly incurred in the case since the committee has not shown that the Secretary of State acted in bad faith in rejecting the committee's recommendation to reappoint the individual; as well, the committee's argument that the rejection caused negative and long-lasting consequences to the committee is without merit and any reputational harm would have been sustained by the individual rather than the committee.

Zoning referendum/Brief summary. State ex rel. Pinkston v. Delaware Cty. Bd. of Elections | 2023-Ohio-1060 | Supreme Court of Ohio | 03/30/2023 Relators' petition for a writ of mandamus to compel county board of elections to place township zoning referendum on the ballot in upcoming election is granted where relators filed the petition after the board of elections sustained a protest to zoning referendum petition on reasoning that the petition failed to satisfy R.C. 519.12(H), which requires such petitions to include a "brief summary" of the contents of the zoning amendment, but the summary was not deficient because it identified the size and location of the land at issue, the proposed zoning change, and the nature of the intended development; also, the doctrine of laches does not apply since relators did not have actual or constructive knowledge that delay in commencing the action would cause the alleged harm.

Recall petition/Mandamus/Costs. State ex rel. Richardson v. Gowdy | 2023-Ohio-976 | Supreme Court of Ohio | 03/24/2023 After electors had completed collecting petitions to recall three members of city council and the clerk of city council position had been vacated, elector's petition for a writ of mandamus to compel appointment of a new clerk of council to complete the recall-petition process or, alternatively, to compel the board of elections to certify the number of valid signatures in each recall petition is denied where a new clerk of city council has been appointed, mooting that request, the council president has no legal duty to certify the number of valid signatures in the recall petitions, and the board of elections cannot be compelled to certify the number of valid signatures where the recall procedures in the city charter conflict with R.C. 705.92 and

elector's argument about the statute's applicability is without merit; also, elector is entitled to an award of costs in asserting a taxpayer action against council president with good cause to believe that the allegations were well founded, R.C. 733.59 and 733.61.

Levies/Renewal/General fund. State ex rel. N. Canton City Council v. Stark Cty. Bd. of Elections | 2023-Ohio-726 | Supreme Court of Ohio | 03/10/2023 City council's petition for a writ of mandamus seeking to order the county board of elections to place on upcoming primary-election ballot two proposed levies to increase and renew existing levies for street and storm sewer improvements is denied since the general rule is that a "renewal" levy may not be placed on a ballot until the general election of the final year that the existing levy is effective, which in this case is next year, and the proposed levies do not qualify for R.C. 5705.191 exception to the general rule since they are not imposed for the purpose of supplementing the general fund for at least one of the purposes specified in R.C. 5705.25(A)(2).

Environmental and Natural Resources

Quarrying/Lease/Extension. Mosholder v. Briae Hill Stone Co. | 2023-Ohio-1280 | 5th Appellate District | 04/19/2023 In breach of contract and related claims action by property owner against lessee-rock quarrying company that had entered into a lease providing that, during the primary term of the lease, the lessee could pay a delay rental fee instead of being required to engage in quarrying, but the lease further provided that during the secondary term, lessee could only extend the lease by engaging in quarrying, so trial court erred in ruling that lessee's payment of the delay rental fee, instead of quarrying rock, extended the secondary term, since once the primary term of the lease ended, the lessee's extension of the lease was dependent on it quarrying rock.

Mineral interests/Marketable Title Act. Dougherty v. Abarta Oil & Gas Co., Inc. | 2023-Ohio-1279 | 5th Appellate District | 04/18/2023 In heirs' complaint to declare that they are the lawful owners of mineral interests excepted in the original deed where the parties did not dispute any facts relating to the chain of title and the mineral interests but did file competing motions for summary judgment, arguing the application and impact of the Marketable Title Act (MTA), the trial court erred in ruling that the MTA extinguished the heirs' claimed mineral interests since, under R.C. 5301.49, the interest preserved by the reservation is well-defined, the interest is general, the prior deed references do identify specific recorded title transactions, and reference to names in a reservation is not mandatory, so the heirs' claimed interest was preserved under the MTA.

Estate Planning, Trust and Probate

Attorney fees/Contingent. In re Estate of Hunter | 2023-Ohio-1197 | 10th Appellate District | 04/11/2023 In settlement of estate where attorney's requested fees were approved in part for fees based on time spent on estate-related work, trial court did not err in denying attorney fees under contingent fee agreement where attorney failed to have contingent fee agreement preapproved by court, Sup.R. 71(I), and attorney failed to show that the amount of requested contingent fees was justified by the amount of time spent to achieve state's waiver of Medicaid estate recovery claim, Prof.Cond.R. 1.5.

Declaratory judgment/Settlement agreement/Consideration. Sowry v. Todd | 2023-Ohio-1162 | 2nd Appellate District | 04/07/2023 In executor's declaratory judgment action alleging that sister had improperly taken control of money contributed solely by mother to several bank accounts, trial court erred in finding that the parties' purported settlement agreement was enforceable since sister did not provide any consideration to make the settlement agreement enforceable because she had asserted no claim against executor which would be compromised by settling the parties' dispute, the desire to reduce the expense of litigation was a motive for a settlement but not consideration, and sister's acceptance of executor's promises did not convert them into an enforceable agreement.

Unjust enrichment/Decedent's commissions. Subel v. AMD Plastics, L.L.C. | 2023-Ohio-1139 | 8th Appellate District | 04/06/2023 In estate's breach of contract and unjust enrichment action against decedent's former employer seeking payment of commissions owed under their agreement, summary judgment in favor of employer was error since, although enforcement of their purported agreement was barred by the Statute of Frauds, as it relates to the breach of contract claim, where their agreement was not reduced to writing, the unjust enrichment claim does not require a written contract, and the question remains whether employer was unjustly enriched by decedent's performance.

Administrator/Fiduciary duty. In re Estate of Nugent | 2023-Ohio-700 | 10th Appellate District | 03/07/2023 Granting decedent's sister-heir's motion to remove appellant as administrator of decedent's estate was not error where appellant did not act for the benefit of heir as beneficiary when appellant transferred heir's entire interest in estate to herself, appellant committed a per se violation of the duty of loyalty under R.C. 2109.44, even though heir insisted on assigning her interests to appellant, and appellant's advice that heir retain counsel did not absolve appellant of her own duties as fiduciary.

Will/In terrorem clause. In re Estate of Stotz v. Stotz | 2023-Ohio-663 | 6th Appellate District | 03/03/2023 In estate's action against decedent's wife seeking a declaration that wife was entitled to nothing from the estate because an in terrorem clause in husband's will was triggered when wife filed a claim against the estate, summary judgment in favor of estate was not error where wife's claim against estate alleged entitlement to insurance proceeds as well as an equitable interest in the marital residence, and since husband's will left wife only a life estate in the residence, wife's claim sought to alter the will, so the in terrorem clause was clearly triggered to remove wife as beneficiary.

Family Law and Domestic Relations

Custody/Move from state. Marlowe v. Marlowe | 2023-Ohio-1417 | 6th Appellate District | 04/28/2023 In divorce action in which wife challenged the custody of the parties' children, trial court did not err in designating husband as the residential parent and legal custodian where, although wife complied with court-ordered visitation, she showed little regard for husband's ability to have a meaningful relationship with children, she moved children to another state without giving husband notice, she allowed the bare minimum of contact required by temporary

parenting time order, and children have no long-term meaningful connection to wife's community, R.C. 3109.04.

Adoption/Contact with child. In re Adoption of W.M. | 2023-Ohio-1365 | 8th Appellate District | 04/27/2023 In stepfather's petition for adoption of child, trial court erred in finding that father's consent was required where father failed to have more than de minimis contact with child because his first visit in several years occurred after the petition was filed, and although mother admitted to interfering with father's access to child, there was no evidence of a court order denying visitation, and even if there had been such an order, it would not have been a justifiable cause for failing to communicate with child.

Property division/Mortgage/Child support. Pringle v. Pringle | 2023-Ohio-1335 | 5th Appellate District | 04/24/2023 In divorce action in which husband challenged the division of property, the judgment is affirmed where husband failed to contest trial court's characterization of the outstanding mortgage as a marital debt and he also waived argument relative to that issue, even though the home was a combination of separate and marital property, and the parties' home equity loan was appropriately considered marital debt where wife's use of a portion of the money for surgery occurred during the marriage and was for a valid marital purpose; as well, husband's non-recurring overtime and bonus income was correctly used in calculating child support, and if his income was significantly lower at the end of the year he could file a motion to modify the support amount.

Property division/Joint account transfer. Turner v. Turner | 2023-Ohio-1298 | 6th Appellate District | 04/21/2023 In divorce action in which husband disputed the division of property, trial court did not err in awarding brokerage account, which was originally a joint account, to wife as separate property where, although the account was opened during parties' marriage and was funded with marital assets, husband transferred the joint account to wife alone in order to safeguard it from a potential creditor, and by doing that he relinquished his ownership and control over the account, making the entire account an inter vivos gift to wife.

Agreed entry/Clerical error/Relief from judgment. Cosari v. Cosari | 2023-Ohio-1126 | 9th Appellate District | 04/05/2023 In divorce action in which the parties reached an agreement regarding child support and wife prepared a judgment entry that the court signed, followed by wife's Civ.R. 60(A) motion for relief from judgment, asserting a clerical error and requesting correction, the court erred in granting the motion and in making the correction since wife acknowledges that she submitted the proposed order to the court and mistakenly represented that father had agreed to it; because of father's alleged agreement, the trial court may have considered his subsequent objection to the corrected entry waived.

Counsel/Contempt. Roberts v. Farrell | 2023-Ohio-1109 | 3rd Appellate District | 04/03/2023 In divorce action in which wife's counsel was found in contempt for failing to appear for final pretrial hearing due to family medical emergency, trial court's order of contempt is vacated where, although the court characterized the proceeding as indirect civil contempt, it was actually criminal contempt because it appeared to punish counsel, the sanction did not offer an opportunity to purge, counsel took appropriate steps to notify the court of the situation and mitigate his absence, and counsel did not act with requisite intent to defy the court.

Spousal support/Net worth/Use of assets. Marquart v. Marquart | 2023-Ohio-1108 | 3rd Appellate District | 04/03/2023 In divorce action in which husband sought modification of his spousal support obligation, trial court did not err in denying husband's motion where, although unanticipated drop in husband's income was found to be a change in circumstances, the existing spousal support award remained reasonable and appropriate because husband's net worth had increased significantly since the time of separation, and the use of separate assets to continue paying existing support award is not categorically unreasonable, R.C. 3105.18.

Spousal support/Jurisdiction. Gibson v. Gibson | 2023-Ohio-1072 | 2nd Appellate District | 03/31/2023 In divorce action in which wife filed a motion to modify husband's spousal support obligation, trial court's order terminating spousal support prior to ruling on wife's motion to modify is affirmed where the terms of the final judgment and decree of divorce required termination of husband's spousal support obligation on a specified date, and the issue of whether the order terminating spousal support divested the court of jurisdiction to rule on wife's motion to modify is not yet ripe for review.

Spousal support/Retirement/Change in circumstances. DiPalma v. Whipple | 2023-Ohio-1023 | 9th Appellate District | 03/29/2023 In divorce action in which husband-attorney moved for termination or modification of his spousal support obligation, trial court erred in denying husband's motion where husband asserted that he was winding down his practice, the parties' divorce decree provided that husband's retirement would be a change in circumstances, and although husband represented himself in an action and did not file an application with Supreme Court regarding retirement until months after filing his motion to modify support, the status of his application should not have been the sole determining factor in finding that husband was not retired.

Civil protection order. Hammond v. Sait | 2023-Ohio-893 | 7th Appellate District | 03/15/2023 Issuance of a domestic violence civil protection order against respondent is reversed since the evidence shows that petitioner suffered mere stress or annoyance, rather than actionable mental distress, where, inter alia, petitioner did not offer any evidence that she had difficulty sleeping or working, in order to demonstrate temporary substantial incapacity, or that respondent significantly impacted her daily life, or that she changed her routine in order to avoid respondent, R.C. 3113.31.

Parenting time/Contempt/Pandemic. Kulpa v. Kulpa | 2023-Ohio-891 | 7th Appellate District | 03/14/2023 Denial of mother's motions to find father in contempt for failing to return child to mother under the parties' agreed judgment entry is affirmed where father tested positive for COVID-19 and he followed the directives of the CDC by keeping the minor child under quarantine with him instead of returning the minor child to mother, reflecting primary concern for the minor child's health.

Financial misconduct/Estimated tax. Reed v. Reed | 2023-Ohio-756 | 3rd Appellate District | 03/13/2023 In divorce action in which husband challenged the determination that he had engaged in financial misconduct, trial court erred in finding that husband's failure to make estimated income tax payments constituted financial misconduct where, although husband's decision not to pay estimated taxes was against established practice and in contravention of court's temporary orders, the taxes were ultimately paid in full including penalties, and the amount awarded to wife in compensation for the penalty for unpaid taxes was punitive in nature and unreasonable under R.C. 3105.171.

Marital asset/Relief from judgment/ Spousal support. Baronzzi v. Gamble | 2023-Ohio-894 | 7th Appellate District | 03/10/2023 In divorce action, denial of wife's Civ.R. 60(B) motion for relief from judgment seeking equitable division of post-decree payout of husband's unused hours of sick and vacation leave time received at retirement was not error, even though the court erred in determining that the payout was income, rather than a marital asset, since wife did not prove that husband engaged in fraud, misrepresentation, or other misconduct under Civ.R. 60(B)(3) and did not prove that the information about husband's payout was newly discovered evidence under Civ.R. 60(B)(2); however, trial court's ruling that payout was husband's income does require reversal of court's ruling regarding husband's motion related to spousal support.

Custody. Thompson v. Thompson | 2023-Ohio-667 | 12th Appellate District | 03/06/2023 In divorce action in which father challenged allocation of parental rights and responsibilities, trial court did not err in designating the mother as children's residential parent and legal custodian since father had hostile bias toward mother where he assumed that mother was acting intentionally and maliciously for negative reasons, and he denied mother's parenting time and asserted that he would do it again, while mother sought counseling to address her past reactive behaviors, and appropriate factors under R.C. 3109.04(F) were considered with regard to children's best interests.

Prohibition/Jurisdiction/Separation agreement. State ex rel. Heyside v. Calabrese | 2023-Ohio-406 | Supreme Court of Ohio | 02/15/2023 Dismissal of husband's petition for a writ of prohibition to prevent judge in general division of common pleas court from hearing wife's breach of contract claim asserting that husband owes spousal support and property division under divorce decree, which incorporated the parties' separation agreement, is affirmed where the statutory language in R.C. 3105.10(B)(3), requiring that certain matters be assigned to the domestic-relations division, does not purport to grant exclusive jurisdiction to the domestic-relations division or otherwise divest the general division of subject-matter jurisdiction over those matters, and husband has an adequate remedy at law from the general division's exercise of jurisdiction by way of a direct appeal, Gray; also, a separation agreement loses its nature as a contract the moment it is adopted by the court and is incorporated into a decree of divorce.

Property division/Pre-marital home. Porter v. Porter | 2023-Ohio-403 | 3rd Appellate District | 02/13/2023 In divorce action in which husband challenged division of property and assignment of debt, trial court erred in awarding to wife half of equity in home since home was husband's separate property pursuant to R.C. 3105.171(D) where husband purchased home prior to marriage and made all mortgage payments, the home remained in his name alone, and improvements to home were made before parties married.

Spousal support/Child support/ Calculation. Doubler v. Doubler | 2023-Ohio-393 | 9th Appellate District | 02/10/2023 In divorce action in which husband challenged the orders for spousal and child support, trial court erred in determining the parties' income for purposes of calculating support where all of wife's income was not considered under the R.C. 3105.18 factors, husband's new job salary was used in calculation for entire year rather than for just the time he held the position, and the amount of spousal support paid to wife was not properly deducted from husband's income or credited to wife's income, under R.C. 3119.05(B).

Insurance

Default judgment/Service/Vacate/Res judicata. Geico Indemn. Co. v. August | 2023-Ohio-1196 | 10th Appellate District | 04/11/2023 In plaintiffs action alleging that defendant-driver was liable for damages from auto accident, resulting in a default judgment, trial court did not err in granting defendant's Civ.R. 60(B) motion, treated as a motion to vacate the default judgment due to lack of service of process, where defendant had filed a prior common law motion to vacate default judgment that was granted and then reversed, so the case was reinstated to the point before the trial court had ruled on defendant's initial motion to vacate, there was no valid judgment ruling to invoke res judicata and to bar defendant's second motion, and the second motion presented new evidence which could not have been presented in appeal of the earlier ruling in the case.

Motor vehicle/Underinsured motorist/ Commercial policy. Infield v. Westfield Ins. Co. | 2023-Ohio-1199 | 5th Appellate District | 04/10/2023 In insureds-business owner and his wife's action against insurer seeking a declaration they were entitled to underinsured motorist coverage under their commercial liability policy following vehicle collision with underinsured driver, summary judgment in favor of insurer was not error where insureds' vehicle was owned by business owner's wife and fell under "other owned auto" exclusion in the commercial policy, the plain language of the underinsured endorsement applied to covered autos only, and wife's vehicle was not listed as a covered auto under the commercial policy; however, the underinsured motorist endorsement in insureds' personal automobile liability policy did provide coverage.

Motor vehicle/Bad faith/Expert testimony. Crawford v. Am. Family Ins. Co. | 2023-Ohio-1069 | 2nd Appellate District | 03/31/2023 In insured's action against insurer alleging bad faith for failure to pay under policy terms for damages sustained in vehicle accident, summary judgment in favor of insurer on reasoning that insured did not present expert testimony to assess insurer's duty to act in good faith was error since there is no legal basis for adopting a blanket rule that expert testimony is required as a matter of law, the instant case is not a professional negligence case, an insurance adjuster is not a

Insurance (Continued)

"professional" for these purposes, and the deposition of the adjuster contained information that could have been used to determine whether insurer acted in bad faith.

Liability/Policy period. OTARMA v. Miami Twp. | 2023-Ohio-733 | 2nd Appellate District | 03/10/2023 In action by liability insurer against insured-township to declare that it had no duty to defend or indemnify insured after it was sued by underlying plaintiff for wrongful conviction and related claims, it was not error to grant summary judgment to insurer on all the claims, except for an emotional distress claim, since insurer's policies provide coverage only for occurrences taking place during the policy period, and all claims except the emotional distress claim were alleged to have occurred before the dates the policies took effect; the emotional distress claim may be read as alleging acts occurring during one of the policy periods, so it was error to grant insurer a summary judgment on that issue, and the court should have granted insured's cross-motion for summary judgment that insurer did have a duty to defend that claim, until it was later dismissed.

Homeowner's/Dog bite/Exclusion. Rolinc v. Williams | 2023-Ohio-309 | 8th Appellate District | 02/02/2023 In insured's negligence action against dog owner for injuries sustained when he was bitten by owner's dogs where insured's homeowner's insurer intervened, seeking a declaratory judgment that insurer had no duty to defend or indemnify insured because of policy exclusion for bites by dogs with a history of biting, trial court did not err in granting summary judgment to insured since, although dogs had a previous history of biting, the history was not "established" by a police report, and therefore the policy exclusion did not apply.

Juvenile

Dependent child. In re M.G. | 2023-Ohio-1396 | 1st Appellate District | 04/28/2023 Adjudication of 11 year-old child as dependent was not error where child's juvenile brother was charged as an alleged delinquent and was ordered to have no unsupervised contact with children under age 12, putting child at risk in home, mother did not object to the state's offer to remand custody with protective orders, and because mother agreed to court intervention and agreed to protective orders, any error in ruling that child was dependent was invited, R.C. 2151.011, 2151.353.

Custody/Remote visitation. In re C.P. | 2023-Ohio-1350 | 9th Appellate District | 04/26/2023 In award of legal custody of dependent child to maternal great aunt, trial court erred in granting to father only restricted remote interactions with child, even though there was no evidence that in-person visitation with father posed an inherent threat to child, and court's order was too vague to support enforcement of attempt by father to exercise in-person visits, R.C. 2151.353.

Custody/Legal/Non-parent/Motion. In re J.M. | 2023-Ohio-1390 | 5th Appellate District | 04/26/2023 Award of permanent custody of neglected child to agency was not error where paternal grandmother signed a statement of understanding when identified as child's proposed legal custodian, but she failed to file a motion for legal custody, she lacked the legal status of a parent in permanent custody proceedings, and she was placed on notice that a hearing could not be granted solely on her oral motion for legal custody, R.C. 2151.353.

Custody/Evidence. In re K.F. | 2023-Ohio-1286 | 8th Appellate District | 04/20/2023 In award of permanent/legal custody of three abused, neglected and dependent children, trial court did not err in admitting evidence of statements about abuse allegedly made by the children where much of the testimony, challenged as hearsay, was offered to provide an explanation for the children's ongoing behavioral and emotional issues, rather than to prove that the children were abused, and mother has not established that the trial court relied on the challenged testimony in making its decision; in dispositional proceedings, R.C. 2151.353(I), a trial court has broad discretion in admitting or excluding evidence.

Custody. In re K.T. | 2023-Ohio-1288 | 8th Appellate District | 04/20/2023 Award of legal custody of child to father and denial of agency's motion for permanent custody was error where father intended to remain in a relationship with mother, whose parental rights were terminated as to child's siblings, with ongoing concerns as to whether mother could be trusted with child, and father did not show the ability to provide a secure home, while child is well-bonded with siblings, who refused to rebuild relationship with mother, and is doing well in foster home where he can remain with siblings, R.C. 2151.414, 2151.353.

Dependent children. In re J.L. | 2023-Ohio-1127 | 9th Appellate District | 04/05/2023 Adjudication of children as dependent was error where children were not homeless under R.C. 2151.04(A) just because they did not have a permanent address, there was no evidence that their overnight shelter at friend's house was unsafe or inadequate, they were attending school regularly, there was no evidence that their basic needs were not being met, and there was no evidence that father's conduct in communicating with caseworker and taking one child against mother's wishes had a detrimental impact on children, R.C. 2151.04(C).

Delinquency/Community control/Mootness/Sexual offender. In re A.B. | 2023-Ohio-1047 | 8th Appellate District | 03/30/2023 Adjudication of juvenile as delinquent by admission to sexual battery, R.C. 2907.03(A)(1), challenge to imposition of community control conditions is moot since juvenile has completed his inpatient treatment; however, the juvenile court erred by classifying juvenile as a Tier I sexual offender where the judge misstated that the juvenile had not satisfactorily been engaged in sexual offender specific therapy since juvenile had completed four months of intensive inpatient treatment, continued to be engaged in treatment and has had no issues in complying with the terms of his treatment or other court orders throughout the duration of this case.

Custody/Award to parents. In re E.S. | 2023-Ohio-1009 | 5th Appellate District | 03/28/2023 In custody action in which dependent and neglected child's custodians sought to eliminate the presence of parents from child's life, trial court did not err in finding a change in circumstances and in awarding legal custody of child to parents where custodians acted contrary to child's best interest by upsetting her relationship with parents, custodians moved with child to another state and filed for adoption of child without parents' consent, child's emotional turmoil was found to be attributable to custodians' actions, and parents have satisfactorily dealt with their prior issues, R.C. 3109.04, 2151.42.

Delinquency. In re M.P. | 2023-Ohio-925 | 8th Appellate District | 03/23/2023 Adjudication of juvenile as delinquent on seven counts of adult rape and eight counts of adult gross sexual imposition of multiple minors was not error where convictions met the sufficiency and weight of evidence standards based on victims' testimony, and victims' statements provided to the an intake child protection specialist from the sex abuse unit of the county division of children and family services and to two hospital SANE nurses allowed them to understand where to look for any injury or to explain the absence of injury, and the information was received for the purpose of medical diagnosis and treatment, Evid.R. 803(4) and Jeffries.

Delinquency/Miranda/Suppression/Prejudice. In re M.D. | 2023-Ohio-845 | 1st Appellate District | 03/17/2023 In adjudication of juvenile as delinquent in two consolidated appeals for three charges of adult aggravated robbery, obstructing official business and tampering with evidence, juvenile has not proven that there was a reasonable probability that, absent trial counsel's error in failing to file a motion to suppress the juvenile's statements after he asked police during an interrogation whether he could have an attorney, the juvenile court would not have had a reasonable doubt of the juvenile's guilt in light of other evidence that connected the juvenile to the offenses.

Delinquency/Ineffective assistance. In re A.C. | 2023-Ohio-902 | 4th Appellate District | 03/15/2023 In adjudication of juvenile by admission as delinquent of adult making false alarms, R.C. 2917.32(A)(3), trial counsel did not provide ineffective assistance during the dispositional hearing by not presenting evidence to support juvenile's request for probation where juvenile failed to demonstrate prejudice since the probation officer, state, and guardian ad litem recommended placement in the rehabilitation program, juvenile's false allegation of rape was very serious, her current online school lacked a structured environment, and defense counsel did present an argument to support a probation request.

Custody/Right to counsel. In re Ja.S. | 2023-Ohio-722 | 10th Appellate District | 03/09/2023 Award of permanent custody of children to agency is reversed and case is remanded where agency refiled complaints a number of times, trial court failed to appoint counsel for mother after excusing her appointed counsel, and magistrate did not engage in waiver analysis or make a finding that mother was knowingly, voluntarily, and intelligently waiving her right to counsel; even though mother had not yet appeared to exercise her right to counsel in refiled action, she could reasonably rely on having appointed counsel to represent her for the duration of proceedings related to children, R.C. 2151.352.

Custody/Immigrant child/Special status. In re A.M.A. | 2023-Ohio-723 | 10th Appellate District | 03/09/2023 In motion by appellant-brother-in-law for legal custody of immigrant child, placed in appellant's care by federal agency, where trial court issued an emergency custody order with special findings, trial court's subsequent ruling vacating its special findings without a hearing, in violation of Juv.R. 14(C), was error since the court's decision had the effect of denying the child eligibility for special immigrant juvenile status under 8 U.S.C. 1101(a)(27)(J), there was no factual or legal basis for the decision to vacate the special findings, and uncontroverted evidence in the record established that child was an immigrant whose reunification with parents was not viable.

Custody/Case plan. In re F.D. | 2023-Ohio-706 | 9th Appellate District | 03/08/2023 Award of permanent custody of child to agency was error where, although evidence showed that mother was not capable of providing safety and stability for child, father has a significant bond with child and maintained their relationship even while serving prison sentence and child wishes to live with father; as well, father took responsibilities for his actions and took opportunities for education and self-growth, he saved a substantial amount of money and obtained a marketable skill, he consistently engaged in mental health services, and he exceeded the requirements of case plan, R.C. 2151.414.

Delinquency. In re K.D. | 2023-Ohio-699 | 10th Appellate District | 03/07/2023 In an appeal by the state in adjudication of juvenile as delinquent of adult aggravated robbery and a weapons specification, the juvenile court erred by imposing concurrent periods of commitment on juvenile for aggravated robbery and a weapons specification since R.C. 2152.17(E) requires the periods of commitment to be served consecutively.

Custody/Change in circumstances. Anders v. Seitz | 2023-Ohio-668 | 12th Appellate District | 03/06/2023 In case in which child's grandparents were granted legal custody of child, the juvenile court did not err in denying mother's motion for a change of parental rights and responsibilities on reasoning that mother failed to establish a change in circumstances; mother's claim that breakdown in communication about child's struggles in school constituted a change in circumstances was refuted by grandfather who testified that mother did, in fact, know about the child's school performance, and nothing in the record supports the suggestion that the juvenile court's decision was unreasonable, arbitrary, or unconscionable, R.C. 3109.04(E)(1)(a).

Custody. In re G.A. | 2023-Ohio-643 | 12th Appellate District | 03/03/2023 Award of permanent custody of dependent children to agency is in children's best interest where, inter alia, there is evidence that mother abandoned the children, that mother was given many opportunities to regain custody of her children but failed to take advantage of them, and that mother also failed to satisfy most, if not all, of the case plan's requirements, while the children are comfortable in their foster home and have bonded with their foster family, R.C. 2151.414(D).

Custody/Due process. In re R.G.M. | 2023-Ohio-685 | 5th Appellate District | 03/03/2023 Granting agency's motion to award temporary custody of dependent children to their maternal aunt was error where mother was deprived of her right to procedural due process when the trial court admitted psychologist's report into evidence and relied on the report in making its decision without providing mother the opportunity to cross-examine the psychologist.

Custody. In re T.H.C. | 2023-Ohio-687 | 5th Appellate District | 03/03/2023 Award of permanent custody of neglected and dependent children to agency was in children's best interest where, inter alia, mother has significant mental health problems and is not able to function well in terms of taking care of herself and her children, mother did not show real affection for the children or engage with them during visits, and mother does not have the ability to recognize what is safe and unsafe for the children, while children are doing well in foster care, they have been in

Juvenile (Continued)

the same home since their removal, and they are doing well in school and are attached to their foster parents, R.C. 2151.414.

Custody/Dismissal. In re Jane Doe | 2023-Ohio-614 | 8th Appellate District | 03/02/2023 Sua sponte dismissal of appellant-alleged father's action for allocation of parental rights of child is reversed where the record is limited primarily to appellant's complaint and motion, and the court's journal entries do not show that the court provided appellant with notice of its intent to dismiss the complaint pursuant to Civ.R. 12(B)(6), with an opportunity to respond, or with any rationale for its sua sponte dismissal.

Custody/Continuance. In re C.B. | 2023-Ohio-620 | 8th Appellate District | 03/02/2023 Award of permanent custody of children to agency is reversed where mother's counsel's motion for a continuance of the hearing to modify temporary custody to permanent custody was denied by the trial court when mother failed to appear; even though mother was properly served with notice of the hearing, she had appeared for prior hearings, agency's family advocate testified that she had been in contact with mother in the morning hours on the day of the hearing, and the court made no findings with respect to its decision to deny mother's request for continuance, Juv.R. 23.

Custody/Right to counsel. In re C Children | 2023-Ohio-588 | 1st Appellate District | 03/01/2023 Award of permanent custody of children to agency is reversed where maternal grandmother-legal custodian sought custody of children and did not expressly waive her right to counsel, even though she appeared at permanent custody hearing without counsel, since there was no indication that she knowingly, voluntarily and intelligently waived her right to counsel, her previous firing of attorneys did not reflect a desire to proceed pro se, she requested assistance from a non-attorney at the hearing, which was properly refused by the court, and she retained counsel to file objections following hearing, R.C. 2151.352.

Custody/Parental rights/Waiver. In re J.S. | 2023-Ohio-591 | 9th Appellate District | 03/01/2023 Award of permanent custody of child to agency was error where, although mother agreed to waive her right to a contested hearing to defend against the permanent custody motion, her waiver of parental rights was explicitly contingent on the agency receiving permanent custody, and because agency's motion for permanent custody was denied, mother's waiver of parental rights did not occur.

Custody/Magistrate's decision/ Objections. May v. Jarosz | 2023-Ohio-511 | 11th Appellate District | 02/21/2023 In father's action seeking allocation of parental rights and responsibilities, trial court did not err in denying wife's motion for extension of time to file objections to magistrate's decision since mother's reasoning that the hearing must be transcribed before she could file objections did not constitute good cause for extension under Juv.R. 40(D)(5) where the Rule contemplates that objections will be filed prior to the transcript, and mother failed to submit an affidavit or evidentiary materials in support of her motion for extension.

Labor and Employment

Non-compete/Medical specialty. Dr. Safadi & Assocs., Inc. v. McColley | 2023-Ohio-1234 | 6th Appellate District | 04/14/2023 In plaintiff-physicians group's action against formerly employed nurse practitioner, alleging breach of non-compete agreement, judgment in favor of nurse was not error where nurse's new employment is in a different medical specialty, not prohibited under the agreement, and because nurse's scope of practice is limited by R.C. 4723.43 and requires her to work in collaboration with a physician, her practice is necessarily limited to the new physician's specialty and she will not be required to provide care overlapping with plaintiff's specialty.

Hostile work environment/ Ecclesiastical domain. Montgomery v. St. John's United Church of Christ | 2023-Ohio-1168 | 5th Appellate District | 04/06/2023 In plaintiffs-minister and pastoral assistant's action against defendants-church and congregant alleging, inter alia, sexual harassment that created a hostile work environment and termination of their employment for resisting acts of harassment, summary judgment in favor of defendants was not error where plaintiffs were ministerial employees, and therefore the ministerial exception to state employment laws prevents application of secular review of church's internal disciplinary matters without engaging in excessive entanglement with the ecclesiastical domain, in violation of the First Amendment.

Hostile environment/Immunity. Kubala v. Smith | 2023-Ohio-991 | 11th Appellate District | 03/27/2023 In plaintiff-county employee's action alleging that defendant-county engineer created a sexually hostile work environment, trial court did not err in denying the motion for summary judgment filed by defendant in his individual capacity where questions remain as to whether defendant's acts were manifestly outside the scope of employment or were done with malicious purpose or bad faith, as exception to governmental immunity under R.C. 2744.03(A)(6), and the record is not devoid of evidence that defendant's conduct and comments were made with disregard of the risk of harm to another.

Discrimination/Limitations/ Retroactivity. Burch v. Ohio Farmers Ins. Co. | 2023-Ohio-912 | 5th Appellate District | 03/21/2023 In employee's discrimination and retaliation action against former employer and supervisor, alleging harassment and discrimination related to employee's pregnancy, it was error to grant employer's motion to dismiss refiled complaint since the workplace discrimination claims were timely filed under R.C. Ch. 4112, even though the refiled complaint was not substantially the same as the original complaint and the savings statute did not apply, where the new shorter statute of limitations under the Employment Law Uniformity Act (ELUA) has no retroactive effect and did not apply; as well, at the time employee's claims accrued, R.C. Ch. 4112 contained no provision prohibiting supervisor's liability and therefore employee is not barred from proceeding with that claim.

State retirement/Service credit. State ex rel. Richson v. Ohio Pub. Emps. Retirement Sys. | 2023-Ohio-901 | 10th Appellate District | 03/21/2023 Employee's petition for a writ of mandamus to compel public employees retirement system to find her eligible for retirement benefits is denied where employee attempted to combine her contributing service and her purchased service credit, based on her time with another state government; however, for

the purpose of satisfying the service credit requirement and determining eligibility for benefits under R.C. 145.32, five or more years of total service credit means five or more years of contributing service for which credit is allowed under R.C. 145.016(A) or (B), and purchased service credit cannot be added.

Retaliation/Whistleblower/Dismissal. Redding v. United States Parachute Assn., Inc. | 2023-Ohio-884 | 11th Appellate District | 03/20/2023 In plaintiff's action against his employer-skydiving center and related defendants, alleging, inter alia, a whistleblower law violation by having his membership in parachute association blocked in retaliation for filing various complaints with the FAA, resulting in his inability to be employed in the skydiving industry, trial court's dismissal is reversed since plaintiff's allegation is sufficient to overcome a motion to dismiss, and the question remains whether plaintiff notified employer orally and with a written report pursuant to the whistleblower statute R.C. 4113.52(A)(1).

Wrongful termination/Public policy. Dudley v. Siler Excavation Servs., L.L.C. | 2023-Ohio-666 | 12th Appellate District | 03/06/2023 In wrongful termination action by former employee, who was terminated after directing employee who tested positive for COVID-19 to remain away from work for 10 days, pursuant to CDC guidance, but contrary to the wishes of employer, trial court did not err in granting employer's Civ.R.12(B)(6) motion to dismiss on reasoning that at-will employee did not demonstrate that her termination violated a clear public policy since employee did not establish that the CDC or the state health department guidance amounted to a sufficient articulation of public policy.

Discrimination/Arbitration. Brown v. JC Austintown, Inc. | 2023-Ohio-553 | 7th Appellate District | 02/21/2023 In employee's discrimination action against employer, alleging various claims related to termination of her employment, trial court did not err in granting employer's motion to compel arbitration where employer's pre-litigation response letter primarily countered facts alleged in employee's letter and did not acquiesce to participation in the judicial process, employer's failure to invoke the arbitration agreement in the response letter did not waive arbitration, and the arbitration agreement was invoked before the time for filing an answer expired, R.C. 2711.03(A).

Staffing agency/Dismissal. Weiler v. Technipower, Inc. | 2023-Ohio-465 | 8th Appellate District | 02/16/2023 In plaintiff's action against defendant-staffing agency for ceasing contact after emailing him about a possible position of employment, trial court did not err in granting defendant's Civ.R. 12(B)(6) motion to dismiss where plaintiff failed to cite authority supporting his claimed right to employment by a specific employer, defendant did not make promises of employment or prevent plaintiff from obtaining or maintaining other employment, and plaintiff did not state a specific public policy that had been violated.

Tort claim/Agreement/Arbitration. Duff v. Christopher | 2023-Ohio-349 | 11th Appellate District | 02/06/2023 In employee's action against company president, claiming assault and intentional infliction of emotional distress for allegedly threatening to shoot her, trial court's denial of president's motion to dismiss, treated as a motion to stay proceedings, and to compel arbitration, R.C. 2711.02 or .03, is reversed and the case is remanded with the order to hold an evidentiary hearing before ruling anew on whether the arbitration clause must be enforced since the incident in question took place during a meeting related to employee's work performance, president claims that the alleged shooting motion he made with his hand referred to firing her, and the question remains as to whether employee's claim related to employment and would fall under the arbitration clause of employment agreement.

Procedure

Settlement agreement/Breach/Default judgment. Avalon Test Equip. Leasing, Inc. v. Emerald Design Constr., L.L.C. | 2023-Ohio-1375 | 8th Appellate District | 04/27/2023 In plaintiff's breach of contract action alleging that defendant breached parties' settlement agreement executed to terminate previous litigation, trial court erred in granting default judgment where defendant should have been allowed a period set forth in Civ.R. 12(A)(2) to answer the complaint following denial of its motion to dismiss, and defendant was not required to file Civ.R. 60(B) motion to vacate the judgment.

Discovery/Pre-suit. Tilr Corp. v. TalentNow, L.L.C. | 2023-Ohio-1345 | 1st Appellate District | 04/26/2023 In plaintiff-talent acquisition company's action for pre-suit discovery alleging that former officer took business data without permission when she resigned and joined defendant-competitor, trial court erred in granting plaintiff's motion to compel discovery where the question remains whether plaintiff's interrogatories were designed to discover facts necessary to file a subsequent complaint pursuant to Civ.R. 34(D) and R.C. 2317.48, and the court failed to consider whether plaintiff already had access to the information allegedly taken and whether requests were unreasonably cumulative or duplicative; the case is remanded with instructions to consider plaintiff's requests in a manner consistent with the instant court's opinion.

Contempt/Jury trial. State ex rel. Simpson v. Melnick | 2023-Ohio-1236 | 2nd Appellate District | 04/07/2023 Petition for a writ of mandamus to compel respondent-judge to proceed to a jury trial on post-judgment contempt motion against him in underlying action against veterans club is dismissed where respondent already ruled on the contempt motion, finding petitioner in contempt and imposing financial sanctions, and petitioner has an adequate remedy at law to challenge trial court's denial of his claimed right to a jury trial; also, there is no right to a jury trial in contempt proceedings unless a long term of imprisonment is involved.

Attorney fees/Enhancement. Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C. | 2023-Ohio-1079 | 9th Appellate District | 03/31/2023 In plaintiff-sales agency's action alleging tortious interference with business relationships and related claims, resulting in a jury verdict for plaintiff and award of compensatory and punitive damages, trial court did not err in awarding to plaintiff post-judgment attorney fees where the Supreme Court of Ohio's earlier ruling in the instant case that there should not have been an enhancement to the lodestar was limited to pre-judgment fees, rather than post-judgment fees, which is the issue in the instant appeal, and enhancement was awarded for attorneys' appellate work, based on market data analysis to account for time value of money since time of judgment, R.C. 1333.63.

Procedure (Continued)

Final appealable order/Voluntary dismissal of claims. Guernsey Cty. Community Dev. Corp. v. Speedy | 2023-Ohio-1026 | 5th Appellate District | 03/28/2023 In plaintiff-community development corporation's breach of fiduciary duty and related claims action, defendants' appeal of court's order granting partial summary judgment in favor of plaintiff on some of its claims is dismissed for lack of jurisdiction where plaintiff's voluntary dismissal without prejudice of remaining claims under Civ.R. 41(A)(2) did not create a final appealable order, and the mere use of Civ.R. 54(B) language did not convert the entire action into final appealable order.

Court costs/Stimulus check/ Garnishment. Martin v. Taylor | 2023-Ohio-1021 | 7th Appellate District | 03/24/2023 In plaintiff-inmate's action against defendants-correctional institution cashier and warden seeking restitution for garnishment of his American Rescue Plan Act stimulus check to pay court costs, trial court erred in granting defendants' Civ.R. 12(B)(6) motion to dismiss where the allowance of garnishment of stimulus checks remains an open question under R.C. 2329.66(A)(9), and even if garnishment was found to be appropriate, plaintiff presented evidence that his prison bank account funds were insufficient to cover garnishment while still satisfying Ohio Adm. Code 5120-5-03(D), which precludes depletion of an inmate's account.

Jurisdiction/Proper defendant. Weil v. Ohio Med. Marijuana Control Comm. | 2023-Ohio-944 | 10th Appellate District | 03/23/2023 Court of Claims' dismissal of plaintiff's complaint for lack of subject-matter jurisdiction and failure to state a claim under R.C. 2743.13(A) is affirmed since plaintiff's complaint, alleging that taxing medical-marijuana sales violates state law, failed to name a proper defendant where the complaint did not name a state department, board, office, commission, agency, institution, or other instrumentality.

Relief from judgment/Appeal/ Jurisdiction. Smith v. SOCI Petroleum, Inc. | 2023-Ohio-907 | 1st Appellate District | 03/22/2023 In claimant's action seeking workers' compensation benefits for a workplace injury, which the trial court dismissed for failure to prosecute, and claimant filed a Civ.R. 60(B) motion for relief from judgment while his appeal from trial court's dismissal was pending, resulting in court of appeals' affirming the dismissal, trial court erred in denying claimant's Civ.R. 60(B) motion on reasoning that it lacked jurisdiction to grant any relief, absent a remand from the court of appeals, since all appeals in the case were completed, and therefore the trial court had jurisdiction to consider the merits of claimant's Civ.R. 60(B) motion.

Vexatious litigator. State ex rel. Simpson v. Melnick | 2023-Ohio-783 | Supreme Court of Ohio | 03/16/2023 Court of appeals' dismissal of relator-veterans' organization's petition for a writ of prohibition to prevent respondent-judge from ruling in underlying case on plaintiff's motion for contempt and sanctions without holding a jury trial, and for a writ of mandamus ordering respondent to hold a jury trial on the motion, is affirmed since relator had been declared a vexatious litigator and had not obtained leave required under R.C. 2323.52(D)(3) and (F)(2) to proceed with the original action in the court of appeals; also, the filing restrictions do not apply when an attorney, who has been deemed a vexatious litigator, is representing a client, but when a vexatious litigator is represented by an attorney, the party must still seek leave to proceed.

Mandamus/Prohibition/Equitable claim. State ex rel. Gallagher v. Collier-Williams | 2023-Ohio-748 | Supreme Court of Ohio | 03/14/2023 In case in which the court of appeals ruled that underlying plaintiff-instant petitioner alleged that he was promised by successor company an equity stake and employment to reimburse him for the monies he loaned to original company and also ruled that a material fact issue existed whether successor company agreed to give petitioner an equity stake, court of appeals' dismissal for failure to state a claim of petitioner's petition for a writ of mandamus and/or prohibition to compel the trial court to follow the mandate of the court of appeals and to have a jury trial is affirmed where the trial court, on remand, determined that the only relief petitioner could seek was specific performance of employment at, or an equity stake in, successor company, which is an equitable remedy, precluding petitioner's right to a jury trial.

Pleading/Amended complaint. Weiler v. Osborn Eng. Co. | 2023-Ohio-619 | 8th Appellate District | 03/02/2023 In employee's action against former employer alleging tortious interference with prospective business relations for damaging his reputation with prospective employers, trial court erred in granting employer's Civ.R. 12(C) motion for judgment on the pleadings where employee filed amended complaint after employer's motion and within the period prescribed by Civ.R. 15(A), and employer's motion became moot upon employee's filing of amended complaint because original complaint was no longer active.

Revived judgment/Service/Hearing. Monogram Credit Card Bank of GA v. Yoakum | 2023-Ohio-546 | 2nd Appellate District | 02/24/2023 In action seeking payment on an account where plaintiff's motion for default judgment was granted and plaintiff later filed a motion to revive the judgment, prompting defendant to file a motion to vacate the judgment, arguing that she was never served, trial court's order reviving the judgment, without mentioning plaintiff's motion to vacate, is reversed since defendant submitted a sworn statement that she did not receive service of the original complaint, and the trial court should not have summarily denied or ignored defendant's motion claiming a lack of service without holding a hearing to accept evidence on the validity of her sworn statement.

Judge disqualification. In re Disqualification of Bickerton | 2023-Ohio-1104 | Supreme Court of Ohio | 02/22/2023 Affidavits of disqualification of judge in criminal action are denied since affiant-counsel for defendant has not established that judge is biased or prejudiced against him or that judge cannot be impartial and open-minded where, inter alia, judge was critical of affiant's failure to comply with prior instruction to file any discovery motions as soon as possible, but judge was not hostile or angry; also, affiant failed to sufficiently explain how judge's decision to rule on a pending motion demonstrates bias or prejudice, and viewing alleged legal errors is not the role of the chief justice in deciding affidavits of disqualification, R.C. 2701.03.

Vexatious litigator/Requirement to seek leave. State ex rel. Huber Hts. Veterans Club, Inc. v. Skelton | 2023-

Ohio-485 | Supreme Court of Ohio | 02/22/2023 Dismissal by the court of appeals of appellant-club's action challenging the validity of common pleas court's determination that appellant is a vexatious litigator is affirmed where the court of appeals issued appellant an order to show cause why its action should not be dismissed based on appellant's failure to seek leave under R.C. 2323.52(D)(3) and (F)(2), and in response, appellant again challenged trial court's vexatious litigator determination; the language of these statutes clearly required appellant to seek leave before filing a complaint in the court of appeals, and appellant's failure to file an application for leave deprived the court of appeals of jurisdiction.

Cognovit note/Relief from judgment/Interest calculation. Hager v. Swickheimer | 2023-Ohio-414 | 11th Appellate District | 02/13/2023 In cognovit note payee's action against borrower for breach of cognovit note contract, resulting in judgment for payee, trial court erred in denying borrower's Civ.R. 60(B) motion for relief from judgment since her claim that interest was miscalculated was supported by evidence that calculation was contrary to the terms of the note, the borrower was not required to submit evidence in the form of an affidavit, and the defense that interest was miscalculated does not rely on evidence extrinsic to record.

Service/Presumption. Hathaway Brown School v. Cummings | 2023-Ohio-374 | 8th Appellate District | 02/09/2023 In plaintiff-school's action against defendant for breach of enrollment contract, resulting in a default judgment, trial court erred in denying defendant's motion to vacate the default judgment since defendant's affidavit was sufficient to rebut the presumption of service, and plaintiff failed to produce evidence that defendant resided at the address in question at the time of service or to rebut defendant's statement that he had not been served with the complaint.

Sanctions/Frivolous conduct/Dismissal. Woodrow v. Krukowski | 2023-Ohio-378 | 8th Appellate District | 02/09/2023 In plaintiff-mother's unjust enrichment and related claims action against defendants-daughter and son-in-law for inducing her to transfer property to them without consideration where all but the unjust enrichment claim were dismissed in response to defendant-son-in-law's Civ.R. 12(B)(6) motion, trial court did not err in denying son-in-law's motion for sanctions against plaintiff since sanctions cannot be based on the fact that some claims were dismissed by court under Civ.R. 12(B)(6), plaintiff presented evidentiary support for her claims in opposition to defendant's motion for summary judgment, and therefore frivolous-conduct standard was not met pursuant to R.C. 2323.51(A).

Relief from judgment/Service. Kassouf v. Barylak | 2023-Ohio-314 | 8th Appellate District | 02/02/2023 In plaintiff's negligent entrustment action against defendant-vehicle owner for entrusting vehicle to driver whose negligence led to collision with plaintiff, resulting in a default judgment against defendant, trial court erred in denying defendant's Civ.R. 60(B) motion for relief from judgment as being untimely where the court should have considered whether there was a lack of proper service on defendant, and the timeliness of defendant's motion was not relevant because a defendant who was not properly served does not need to file a motion or establish entitlement to relief under the Rule.

Professional Responsibility

Suspension. Disciplinary Counsel v. Russ | 2023-Ohio-1337 | Supreme Court of Ohio | 04/27/2023 Attorney is suspended from the practice of law for two years, with one year conditionally stayed, and with reinstatement on conditions.

Reinstatement. Disciplinary Counsel v. Wells | 2023-Ohio-1239 | Supreme Court of Ohio | 04/17/2023 Attorney is reinstated to the practice of law.

Suspension. Disciplinary Counsel v. O'Diam | 2023-Ohio-1118 | Supreme Court of Ohio | 04/06/2023 Attorney is suspended from the practice of law for six months, with the suspension stayed on conditions.

Suspension. In re Kingsbury | 2023-Ohio-920 | Supreme Court of Ohio | 03/23/2023 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Suspension. In re Boyuk | 2023-Ohio-903 | Supreme Court of Ohio | 03/22/2023 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Suspension. Columbus Bar Assn. v. Bryant | 2023-Ohio-853 | Supreme Court of Ohio | 03/16/2023 Attorney is issued an interim remedial suspension from the practice of law, with reinstatement on conditions.

Suspension. In re Buttars | 2023-Ohio-581 | Supreme Court of Ohio | 03/01/2023 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Reinstatement. Cleveland Metro. Bar Assn. v. Gottehrer | 2023-Ohio-433 | Supreme Court of Ohio | 02/15/2023 Attorney's petition for reinstatement to the practice of law is granted, on conditions.

Suspension. In re Rohrbaugh | 2023-Ohio-432 | Supreme Court of Ohio | 02/15/2023 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Suspension. In re Vick | 2023-Ohio-298 | Supreme Court of Ohio | 02/02/2023 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Public and Public Finance

Public records. State ex rel. Adkins v. Cantrell | 2023-Ohio-1323 | Supreme Court of Ohio | 04/26/2023 Inmate-requester's petition for a writ of mandamus to compel the clerk of court to provide public records is denied regarding information about his criminal convictions since he did not obtain a finding by the sentencing judge or successor that the records identified in the public-records request were necessary to support what appears to be a justiciable claim, R.C. 149.43(B)(8); however, the writ is granted for inmate's request for copies of internal guidelines or policies regarding the handling of complaints and warrants since that request does not relate to his criminal cases, so it does not implicate R.C. 149.43(B)(8), and requester is eligible for statutory damages under R.C. 149.43(C)(2) because he transmitted his request, which went unfulfilled, for internal guidelines or policies by certified mail.

Public nuisance/Abandoned property. Ohio Neighborhood Preservation Assn. v. Alaura | 2023-Ohio-1281 | 10th Appellate District | 04/20/2023 In neighborhood association's action for abatement of a public nuisance, injunction, and receivership regarding

an abandoned residence, Civ.R. 12(B)(6) dismissal on reasoning that the complaint relied solely on the theory that a vacant property alone is legally a public nuisance under R.C. 3767.41 was error since the association also asserted evidence of criminal activity and lack of adequate safe egress, providing information sufficient to allege that the property is a public nuisance, which is all that R.C. 3767.41(B)(1)(a) requires to make a claim for an injunction or the appointment of a receiver.

Public records/Mootness/Damages. State ex rel. Woods v. Lawrence Cty. Sheriff's Office | 2023-Ohio-1241 | Supreme Court of Ohio | 04/19/2023 Public records requester's petition for a writ of mandamus to compel respondent to produce its records-retention schedule is denied as moot since respondent has provided the requested documents, but requester is entitled to statutory damages since he mailed his public-records request to respondent by certified mail and respondent did not meet its obligations under R.C. 149.43(B) to provide the records until seven business days after requester filed this mandamus action, R.C. 149.43(C)(2); also, there is no award of attorney fees where requester did not retain counsel, and there are no court costs because requester filed an affidavit of indigency.

Open Meetings Act/Frivolous conduct/Jurisdiction. State ex rel. Ames v. Geauga Cty. Bd. of Revision | 2023-Ohio-1247 | 11th Appellate District | 04/17/2023 In relator's action alleging that respondent-board of revision violated the Open Meetings Act, R.C. 121.22, by acting without a quorum at a meeting, trial court had jurisdiction to rule that relator engaged in frivolous conduct and in awarding attorney fees to respondent, even though relator had already filed an appeal of summary judgment orders in this matter, where trial court's consideration of an award of attorney fees was a collateral issue that was not inconsistent with this court's jurisdiction to reverse, modify, or affirm the trial court's summary judgment orders in relator's separate appeal; an award of attorney fees under R.C. 121.22(I)(2)(b) is mandatory.

Village ordinance/Police power/Constitutionality. Taxiputinbay, L.L.C. v. Put-In-Bay | 2023-Ohio-1237 | 6th Appellate District | 04/14/2023 In taxicab business' action seeking a declaration that village ordinance limiting the width of taxicabs violates the state Home Rule Amendment, the trial court erred in declaring the ordinance unconstitutional where, although the ordinance is an exercise of police power, the ordinance is not in direct conflict with the vehicle size regulations in R.C. 5577.05(B), and this statute does not create a conflict by implication since it does not imply the right to operate, as a taxicab, a vehicle larger than the size specified in the village ordinance.

Public records. State ex rel. Pool v. Sheffield Lake | 2023-Ohio-1204 | Supreme Court of Ohio | 04/13/2023 Police officer-public records requester's petition for a writ of mandamus, R.C. 149.43, to compel the city to provide records related to former police chief's actions that requester asserts created a hostile work environment is denied where, inter alia, the evidence shows that the city made reasonable efforts to locate requested records, including retaining a third-party vendor to search for computer-generated images; as well, requester's motion for leave to supplement the record is denied as unnecessary since the parties made certain stipulations, and request for statutory damages, attorney fees and court costs are also denied.

Public records/Prison assaults. State ex rel. Sultaana v. Mansfield Corr. Inst. | 2023-Ohio-1177 | Supreme Court of Ohio | 04/12/2023 In inmate mother's petition for a writ of mandamus to compel prison to produce records regarding three assaults committed against her son during his incarceration, the writ is granted to compel prison to produce unredacted versions of incident and conduct reports already provided to mother, limited writ is granted to produce incident reports regarding one assault, conduct reports regarding two assaults, and any disciplinary decisions arising from three assaults, or to certify that no such records exist, and writ is denied regarding mother's request for security-video footage; as well, mother's motions to transfer the case to the Court of Claims, to strike prison's merit brief, and to seal or redact her own merit brief are denied, as is her request for statutory damages.

Zoning/Signs/Municipal interests. Cincinnati v. Fourth Natl. Realty, L.L.C. | 2023-Ohio-1012 | 1st Appellate District | 03/29/2023 In city's action for injunctive relief against building owner for hanging an outdoor sign without securing the necessary permit and zoning variance, summary judgment in favor of city was not error where city's commercial-speech restrictions directly advance its interest in public safety to temper driver distractions, zoning provisions directly advance city's interest in aesthetics to preserve the character of residential areas and business districts, and the city demonstrated that the regulations were carefully calculated to reasonably advance city's interests.

Public records/Medical board. Reigert v. State of Ohio Med. Bd. | 2023-Ohio-1172 | Court of Claims | 03/23/2023 In requester-father of deceased daughter's action seeking to compel respondent-medical board to provide records to aid in reviewing its handling of complaint against physician who treated daughter, special master recommends, inter alia, that the court order respondent to produce copies of records that respondent had submitted for in camera review because respondent failed to show that the records were exempted from disclosure by R.C. 4731.22(F)(5), which shields information received by the board pursuant to an investigation as well as the names or any other identifying information about patients or complainants, but special master recommends denial of all other requests because some requests were for information and not records and other records did not exist, R.C. 149.43.

Open Meetings Act/Attorney fees. State ex rel. Crilley v. Lowellville Bd. of Edn. | 2023-Ohio-775 | 7th Appellate District | 03/08/2023 In citizens' action in which the trial court ruled that the board of education failed to provide the requisite statutory notice under the Open Meetings Act, R.C. 121.22, the court did not err in declining to award attorney fees where the meeting challenged for inadequate notice was a special meeting to modify a school reopening plan earlier adopted by the board, which gave the school superintendent discretion to modify the plan, so any action taken by the board regarding the superintendent's decision was a nullity without any legal significance, and the notice used by the board was a model rule drafted by school board association and was adopted without revision; the court did order the board to formulate a rule consistent with R.C. 121.22(F) and did award civil forfeiture to the citizens.

Public records/Dash-cam video. State ex rel. Lusane v. Kent Police Dept. |

2023-Ohio-480 | Supreme Court of Ohio | 02/21/2023 In a mandamus action against city police department to order city police department to produce all the unredacted videos concerning a police department incident report, the Ohio Supreme Court grants the writ since a dash-camera video is a public record that is subject to disclosure, and the police department states in its merit brief that it will not argue that the videos contain Confidential Law Enforcement Investigatory Records that are not subject to disclosure pursuant to R.C. 149.43(A)(2) and, moreover, the department concedes that it "was wrong in denying the Relator a copy of the videos."

Public records/Discovery. State ex rel. Media & Democracy Ctr. v. Atty Gen. | 2023-Ohio-364 | 10th Appellate District | 02/08/2023 In relator-watchdog organization's public records request seeking to compel respondent-attorney general to respond to interrogatories and requests for documents for its assertion that respondent coordinated with, and attempted to obscure relationship with, political groups, respondent's motion to set aside magistrate's order compelling discovery responses and appearance for deposition is denied where relator is permitted to seek any nonprivileged matter relevant to its claim and proportional to the needs of the case, and respondent failed to show undue burden or cost of discovery, Civ.R. 26(B)(1).

Public records/Exemptions/Redactions. The Markup v. Ohio Dept. of Job & Family Servs. | 2023-Ohio-623 | Court of Claims | 02/07/2023 In requester's action seeking to compel state department to provide records related to computerized fraud prediction system implemented by the department, including weekly updates and reports on analysis of data, where the department provided records with redactions based on security and infrastructure exemptions in R.C. 149.433, special master recommends that the court order the department to provide copies of records identified as not falling under a proven exemption, and with regard to the trade secret exemption, the department did not claim redacted information as its own trade secret or as data algorithms that may qualify as intellectual property, R.C. 1333.61(D).

Open Meetings Act/Injunction. State ex rel. Ames v. Freedom Twp. Bd. of Trustees | 2023-Ohio-343 | 11th Appellate District | 02/06/2023 In mandamus action in which citizen asserted that township board of trustees violated the Open Meetings Act (OMA), and the board admitted three of the violations, the trial court erred in failing to issue an injunction to compel the members of the board to comply with the provisions of the OMA with regard to the three violations since R.C. 121.22(I)(1) states in pertinent part that upon proof of violation, the court of common pleas shall issue an injunction to compel the members of a public body to comply with its provisions.

Public Utilities

Appropriation/Prior easement. Columbia Gas v. Bailey | 2023-Ohio-1245 | 3rd Appellate District | 04/17/2023 In petitioner-gas company's action seeking appropriation of easement rights on property for a pipeline, trial court erred in ruling that the easement rights sought by petitioner were authorized where the department of agriculture was granted an agricultural easement on the property prior to petitioner's attempt to appropriate easement rights in the property, invoking the doctrine of prior public use, and the question remains whether petitioner's proposed public utility easement would destroy the current public benefit provided by the agricultural easement, R.C. 5301.67(C), 5713.30.

Jurisdiction/Appeal. Landmark 2, L.L.C. v. E. Ohio Gas Co. | 2023-Ohio-1070 | 9th Appellate District | 03/31/2023 In gas supplier's class action lawsuit against energy company for failure to credit suppliers for the actual volume of gas inserted into the pipeline system, energy company's appeal of denial of its motion to dismiss for lack of subject matter jurisdiction, arguing that PUCO has exclusive jurisdiction to resolve the claims, is dismissed since the order is not immediately appealable under R.C. 2505.02(B)(2) because denial of energy company's motion does not preclude it from appropriate future relief, and a delay in obtaining relief does not render an ultimate remedy ineffective under R.C. 2505.02(B)(4)(b).

Real Property

Sale/Consideration/Eviction. Grant-Ross v. Dunsmore | 2023-Ohio-1414 | 6th Appellate District | 04/28/2023 In home buyer's forcible entry and detainer action against seller for failing to vacate the premises following sale, trial court did not err in entering judgment in favor of seller where seller did not receive full consideration from buyer due to a stop-payment order on cashier's check, and therefore ownership of the house was not transferred and recording of the deed was inappropriate, R.C. 1901.18.

Zoning/Conditional-use permit. Piqua Store & Lock, L.L.C. v. Miami Cty. Bd. of Zoning Appeals | 2023-Ohio-1403 | 2nd Appellate District | 04/28/2023 In applicant-business' appeal of county board of zoning appeals' denial of a conditional-use permit to operate a storage facility on applicant's property, trial court did not err in affirming the board's decision, even though in reading the county zoning resolution, the board and trial court considered the city's comprehensive development plan and applied it to applicant's property located outside city, county's plan was consistent with city's plan in some ways, and evidence showed that applicant's proposed use was not harmonious with the existing or intended character of the vicinity.

Foreclosure/In rem/Notice. Wells Fargo Bank, N.A. v. Bass | 2023-Ohio-1405 | 2nd Appellate District | 04/28/2023 In bank's foreclosure action on property owned by decedent, seeking to enforce a security interest in decedent's property, trial court's summary judgment in rem judgment and decree in foreclosure in favor of bank is affirmed where bank was not required to issue decedent's heir a notice of default because the action was an in rem proceeding to reach the mortgaged property rather than a personal judgment against heir, and all conditions precedent were met to support the foreclosure claim.

Contract/Breach/Right of first offer. Halpern v. Smith | 2023-Ohio-1370 | 8th Appellate District | 04/27/2023 In plaintiff's breach of contract action against defendants-adjacent land owners who had agreed that if they planned to sell part of their land, plaintiff would have the right to make the first offer, where defendants were negotiating with a third party, summary judgment in favor of defendants was not

error since defendants notified plaintiff of the intention to sell a portion of their property, as required under terms of the parties' agreement, any written-notice violations by defendants did not affect enforceability of their agreement, there was no meeting of the minds as to sale of property following plaintiff's exercise of the right of first offer, and because the parties failed to agree, there was no contract for sale of the property.

Lease/Breach. DATFT, L.L.C. v. AM Reflections Cleaning Servs., L.L.C. | 2023-Ohio-1348 | 1st Appellate District | 04/26/2023 In plaintiff-new landlord's breach of lease agreement against defendant-business that was a tenant and was also a contractor with original landlord to clean the building where defendant ceased to pay rent following a dispute with the plaintiff involving plaintiff's alleged commingling of rent and cleaning contract funds, summary judgment in favor of plaintiff was not error since the lease agreement did not prohibit the previous landlord from assigning the parties' lease to plaintiff, defendant unilaterally terminated the lease and failed to pay rent, plaintiff established that it was unable to lease the premises following the breach and suffered damages, and plaintiff's alleged rude treatment of defendant did not justify termination of the lease.

Nuisance/Demolition/Consent judgment. Lu v. Akron Dept. of Neighborhood Assistance | 2023-Ohio-1351 | 9th Appellate District | 04/19/2023 In property owner's appeal to trial court of city building appeals board's decision declaring that his property was a nuisance and ordering demolition, the court did not err in releasing owner's surety bond and in ordering the demolition order to be executed where owner agreed to the terms of a consent judgment and waived his right to further appeal, and owner failed to schedule timely inspections to demonstrate full compliance with the city building code pursuant to the terms of the consent judgment.

Promissory note/Default judgment/ Relief from judgment. Armstrong v. U.S. Bank Natl. Assn. | 2023-Ohio-1203 | 1st Appellate District | 04/12/2023 In homeowner's action against bank seeking a declaration that the promissory note underlying home mortgage was unenforceable, resulting in a default judgment and a finding that the note was unenforceable, trial court did not err in denying bank's Civ.R. 60(B) motion for relief from judgment where homeowner's use of the judgment invalidating the note to extinguish mortgage lien was not an unforeseeable change in circumstances under Civ.R. 60(B)(4), and homeowner's failure to bring prior loan-modification agreement to court's attention was not fraud upon the court under Civ.R. 60(B)(5) because it was referenced in exhibit.

Demolition/Ownership/Standing. West v. Canton | 2023-Ohio-1193 | 5th Appellate District | 04/10/2023 In property owner's action challenging city's order for demolition of home, trial court erred in finding that owner lacked standing where, although owner was not titled owner of property at the time the demolition order was issued, when he took title of the property via quitclaim deed, he took the property subject to whatever rights previous owner had against city, and therefore owner had standing to assert claims for declaratory judgment and injunctive relief.

Tax liens/Transfers to land banks/ Mandamus. State ex rel. US Bank Trust, Natl. Assn. v. Cuyahoga Cty. | 2023-Ohio-1063 | Supreme Court of Ohio | 04/04/2023 In enforcement of real property tax liens on abandoned properties where the properties were ordered to be transferred to land banks, dismissal of bank's petitions for writs of mandamus to compel institution of appropriation proceedings under R.C. Ch. 163, claiming that the transfers of the properties to the land banks constituted takings, is affirmed where the bank had adequate remedies at law, including redeeming the properties (and protecting any security interests it had in the properties) by paying what was due on the tax liens, seeking transfers of the foreclosure actions from the boards of revision to common pleas courts, or appealing the boards' adjudications to common pleas courts, R.C, Ch. 323, and the bank lacked standing regarding one property since it did not own the mortgage at the time of the alleged taking.

Rental value/Mortgage payments. Chuma v. Patterson | 2023-Ohio-1128 | 4th Appellate District | 03/31/2023 Denial of plaintiff's claim to recover the reasonable rental value of home jointly purchased by the parties and in which defendant lived alone until it was ultimately sold at auction was not error under the specific circumstances of this case where plaintiff had been ordered to vacate the premises and stopped making any contribution to the mortgage payments while defendant continued to make the payments.

Landlord/Tenant/Rent escrow. Summers v. Lake of the Woods Apartments | 2023-Ohio-1093 | 6th Appellate District | 03/31/2023 In tenant's application for rent escrow, alleging landlord's failure to correct defects on property, trial court did not err in denying landlord's motion to dismiss the application where tenant verbally notified the landlord of the alleged deficient condition immediately after the apartment became unlivable and repeatedly thereafter, evidence shows that landlord was on notice of a continuing problem in the months prior to the hearing date, and the landlord had a reasonable time to remedy the condition of the apartment, even though written notice of defects was not provided within the time specified under R.C. 5321.07(B).

Planned-unit development/Signage. Lamar Co., L.L.C. v. Beavercreek | 2023-Ohio-964 | 2nd Appellate District | 03/24/2023 In business' administrative appeal of city's denial of application for permit to install a digital billboard on planned-unit development (PUD) property, trial court did not err in affirming city's denial where, although city council did not explicitly exclude digital billboards when approving landowner's application for a commercial PUD zoning classification, the proposed billboard was governed by the PUD sign plan, which identified signs permitted in development, and the proposed billboard was not identified in the document identifying the total signage allowed.

Demolition/Zoning code. Evil Empire, L.L.C. v. Troy Bd. of Zoning Appeals | 2023-Ohio-960 | 2nd Appellate District | 03/24/2023 Reversal by trial court of board of zoning appeals' approval of property owner's application for a certificate of appropriateness to demolish a building on commercial property is affirmed since the property owner failed to submit a rescue plan to mitigate adverse effects of the proposed removal on the property, as required by the city zoning code, owner's proposed reuse plan did not provide definite plans for reuse of site, and board's decision sought to impermissibly modify the requirements of the zoning code.

Prohibition/Jurisdictional priority. State

ex rel. Portaro Group, Inc. v. Parma Mun. Court | 2023-Ohio-937 | 8th Appellate District | 03/21/2023 After tenant filed an action in common pleas court to declare that it had not breached the parties' lease and landlord then filed a forcible entry and detainer (FED) action in municipal court, prompting tenant to file the instant petition for a writ of prohibition to prevent respondents-court and judge from adjudicating the FED action, the writ is denied where the jurisdictional priority rule does not patently and unambiguously deprive respondents of jurisdiction over the FED case, and tenant has an adequate remedy at law through appeal of the FED case, with a motion for a stay.

Contract/Summary judgment/ Discovery. Tillery Holdings, L.L.C. v. Judge Holdings, L.L.C. | 2023-Ohio-870 | 9th Appellate District | 03/20/2023 In property seller's action against buyer, alleging default on the parties' contract because buyer failed to deposit funds to extend the closing date and to close on the transaction as scheduled, trial court erred in granting seller's motion for summary judgment where seller primarily relied on the affidavit of seller's managing member, buyer repeatedly filed motions to compel the seller to appear for deposition, and since buyer alleged misconduct on the part of the seller, buyer should have been afforded the opportunity for discovery and a continuance of the matter under Civ.R. 56(F).

Fraud/Water entry/Inspection. Jones v. Gilbert | 2023-Ohio-754 | 3rd Appellate District | 03/13/2023 In home buyers' fraud action against seller, alleging material misrepresentations and omissions regarding the presence of water leakage in the home, trial court did not err in granting seller's motion for judgment on the pleadings where the purchase agreement with an "as is" clause placed the risk on the buyers to determine the existence of defects, and inspector advised buyers to make further evaluation and recommended that they contact a qualified waterproofing contractor, based on evidence of visible water entry, thereby precluding buyers from demonstrating justifiable reliance on alleged fraudulent misrepresentation or concealment.

Lease/Delivery/Substantial compliance. Am. Business Invests., L.L.C. v. Shaeena & Allos, L.L.C. | 2023-Ohio-739 | 6th Appellate District | 03/10/2023 In plaintiff-commercial tenant's action seeking a declaration that new lease with defendant was valid and binding and that termination notice was invalid, summary judgment in favor of defendant was not error where new lease agreement specifically required execution and delivery by both parties before the lease was effective, the executed lease was not delivered, even if both parties had signed it, and without delivery of the executed lease, a valid contract did not exist; even if the doctrine of substantial compliance applied, there was no substantial compliance since the requirement of delivery was not met, and the failure to deliver an executed lease is not merely nominal or trifling.

Foreclosure/Appeal. U.S. Bank Natl. Assn. v. Tye | 2023-Ohio-637 | 1st Appellate District | 03/03/2023 In foreclosure action in which the trial court granted bank's motion for summary judgment, appeal is dismissed since the trial court's entry did not allow the parties to determine their rights and obligations without reference to the magistrate's decision; while the court clearly entered judgment in favor of the bank, the entry failed to set forth any details of the decree in foreclosure and failed to rule on the objections to the magistrate's decision, R.C. 2505.02(B)(1).

Foreclosure/Advances/ Reimbursement. Fidelity Bank, N.A. v. Unknown Heirs of Bowyer | 2023-Ohio-611 | 8th Appellate District | 03/02/2023 In bank's foreclosure action, trial court did not err in denying bank's motion for reimbursement of advances following confirmation of sheriff's sale where confirmation of sale requires examination of the proceedings under R.C. 2329.31(A) to determine, in part, whether the amounts advanced for inspections, appraisals, property protection, and maintenance are accurate, and the bank did not request reimbursement of advances prior to the confirmation to allow examination of whether the recovery of amounts was authorized by R.C. 5301.233.

Eviction/Counterclaim/Summary judgment/Discovery. Rosett v. Holmes | 2023-Ohio-606 | 8th Appellate District | 03/02/2023 In landlord's forcible entry and detainer action against tenant for failure to pay rent, trial court did not err in denying tenant's unopposed motion for summary judgment on counterclaim that house was in uninhabitable condition since tenant was not automatically entitled, as a matter of law, to summary judgment just because the motion was unopposed, tenant's affidavit did not support the contention that landlord refused to correct problems with the house, and although landlord did not respond to request for admissions, the same admissions that were the subject of tenant's discovery request were previously denied by landlord in her answer to tenant's counterclaim.

Lease termination/Occupancy/Notice. USPG Portfolio Six, L.L.C. v. Dick's Sporting Goods, Inc. | 2023-Ohio-550 | 2nd Appellate District | 02/24/2023 In plaintiff-lessor's action against defendant-lessee retail business in shopping center for breaching the parties' lease agreement by failing to give timely notice of its election to terminate the lease, a limited right that defendant was entitled to assert in the event the occupancy rate in the shopping center fell below a certain number, summary judgment in favor of plaintiff was error where plaintiff never corrected or challenged defendant's statement of its understanding of the date when the occupancy rate decreased below the allowed number, plaintiff reinforced defendant's mistake as to date of the occupancy decrease, which led to defendant's untimely notice, and issues exist as to whether plaintiff should be equitably estopped from claiming an earlier date for the occupancy decrease.

Torts

Wrongful death/Immunity/Pleading. Provens v. Woodridge Place Apts. | 2023-Ohio-1388 | 10th Appellate District | 04/27/2023 In heirs' wrongful death action alleging that city did not act timely in gaining access to decedent's residence in response to an emergency call, prompting city to respond with a Civ.R. 12(C) motion for judgment on the pleadings, asserting political subdivision immunity, trial court erred in denying city's motion on reasoning that a question of political subdivision immunity could not be resolved on a motion for judgment on the pleadings since city's motion was an appropriate mechanism to seek determination of immunity, and the case is remanded to address the immunity issue, R.C. Ch. 2744.

Negligence/Settlement agreement. Gouveia v. Cvengros | 2023-Ohio-1325 | 11th Appellate District | 04/24/2023 In plaintiffs' negligence action against defendant-driver for injuries sustained in vehicle accident, trial court erred in denying plaintiffs' Civ.R. 60(B) motion to vacate judgment enforcing parties' alleged settlement agreement since nothing in the record linked unsigned agreement to an oral settlement agreement parties allegedly reached following mediation, plaintiff-wife immediately expressed her unwillingness to accept the proposed settlement agreement, plaintiff-husband did not attend mediation, and there was no evidence that he assented to the terms of the agreement.

Discovery/Sanctions/Frivolous conduct. Duff v. Centrome, Inc. | 2023-Ohio-1321 | 12th Appellate District | 04/24/2023 In plaintiffs-former employees' strict liability and negligence action against defendant-employer and related defendants where plaintiffs moved for sanctions against defendant under Civ.R. 37(C), contending that defendant willfully and intentionally withheld thousands of pages of responsive documents, trial court erred in awarding attorney fees to plaintiffs since plaintiffs' motion for discovery violation sanctions was filed under Civ.R. 37(C), rather than for frivolous conduct pursuant to R.C. 2323.51, the court did not issue an opinion imposing sanctions for a Civ.R. 37(C) discovery violation, and the court did not provide defendant notice that a hearing would be held on the issue of frivolous conduct; also, a trial court may consider R.C. 2323.51 sanctions on its own initiative, but notice is still required to allow the party threatened with sanctions the opportunity to prepare a factual and legal defense.

Replevin. Peterson v. Booth | 2023-Ohio-1301 | 2nd Appellate District | 04/21/2023 In plaintiff's replevin and conversion action against defendant-former romantic partner, and owner of home they shared, for preventing him from retrieving personal items from property after the parties split up and plaintiff was evicted, judgment in favor of defendant as to the replevin claim was error where defendant did not dispute that the property belonged to plaintiff and that plaintiff was entitled to possess it, plaintiff was not required to prove that defendant unlawfully possessed the property, and although plaintiff did not remove all the items by eviction deadline, there is evidence that defendant physically prevented him from doing so, R.C. 2737.14.

Negligence/Pleading. Gaither v. Kelleys Island Local School Dist. Bd. of Edn. | 2023-Ohio-1299 | 6th Appellate District | 04/21/2023 In plaintiffs' negligence action on behalf of student against defendants-school board and superintendent for failure to intervene and to discipline respondent-student for bullying, trial court did not err in denying superintendent's Civ.R. 12(C) motion for judgment on the pleadings where plaintiffs alleged that superintendent misrepresented and intentionally concealed respondent's bullying in bad faith and did not properly address bullying as required by Board Policy, and the pleadings were sufficient to show that an exception to immunity under R.C. 2744.03(A)(6) could apply.

Medical malpractice/Insurance/Exclusion. Blundell v. Lazzerini | 2023-Ohio-1275 | 5th Appellate District | 04/20/2023 In estate's wrongful death and medical malpractice action against insured-physician, convicted of, inter alia, unauthorized writing of prescriptions, trial court did not err in granting insurer's motion for summary judgment declaring that it was not obligated to extend coverage to insured since the insurance policy excludes coverage for any liability from criminal acts by insured, and convictions were proof that insured's prescribing of controlled substances was not done in the course of medical practice, so insured's argument that it is against public policy to deny coverage for liability resulting from the negligent practice of medicine is meritless.

Medical records/Access. Frank v. Univ. of Cincinnati Med. Ctr. | 2023-Ohio-1255 | 1st Appellate District | 04/19/2023 In plaintiff's negligence action against defendant-medical center for failure to timely produce medical records of his mother's prenatal care, trial court did not err in granting defendant's motion to dismiss where R.C. 3701.74(C) provides the right to enforce access to medical records but does not create a cause of action for monetary relief, and plaintiff was not authorized to obtain mother's medical records, so there was no negligence per se.

Negligence/Immunity/Recreational user. Farris v. Mill Creek Metro. Park Dist. | 2023-Ohio-1214 | 7th Appellate District | 04/13/2023 In plaintiff's negligence action against defendant-city park district for injuries sustained when his bicycle hit a pothole and caused him to crash while on park grounds, trial court erred in denying defendant's recreational immunity-based motion for summary judgment where, although plaintiff was riding on a multi-use public roadway at the time of the accident, the roadway qualified as a recreational premises, and even though plaintiff was traveling on a bicycle to a privately-leased, for-profit restaurant within the park, he was acting as a recreational user and defendant was immune from liability under R.C. 1533.18 and 1533.181.

Negligence/Assured clear distance/Appeal. Kerns v. Hale | 2023-Ohio-1175 | 4th Appellate District | 04/03/2023 In plaintiff-pedestrian's negligence action, alleging that he was injured when he was struck by defendants' vehicle while walking in or near the side of roadway, resulting in summary judgment for defendants, plaintiff's appeal is dismissed for lack of a final appealable order where, although plaintiff properly raised a negligence per se claim at trial, summary judgment resolved plaintiff's general negligence claims under R.C. 4511.48 but did not resolve the claim that defendant violated the assured clear distance ahead rule, R.C. 4511.21.

Negligence/Summary judgment. McFadden v. Discerni | 2023-Ohio-1086 | 11th Appellate District | 03/31/2023 In visitor's negligence action against homeowners for injuries sustained when exterior steps collapsed as visitor left house, summary judgment in favor of owners was error where, although visitor had previously expressed to owner concerns about creaky steps, questions remain as to whether visitor knew the steps presented a danger and whether steps were an open and obvious danger when homeowners frequently used them and did not consider them a danger.

Negligent supervision/Spoliation of evidence. Shaver v. Peters | 2023-Ohio-1097 | 6th Appellate District | 03/31/2023 In minor's action alleging sexual assault by friend and negligent supervision by friend's parents, summary judgment in favor of parents on issues of negligent supervision and spoliation of evidence was not

error since there was no evidence that parents had knowledge of friend's sexual activity, parents had no knowledge that litigation was possible when they erased hard drive on friend's old device, and there was no evidence that friend's new device was destroyed or contained material helpful to minor's case.

Negligence/Equipment inspection. Sens v. Fitness Internatl., L.L.C. | 2023-Ohio-1004 | 10th Appellate District | 03/28/2023 In fitness center member's negligence action against center owner for failing to maintain equipment, which led to her injuries, trial court erred in granting defendant's motion for summary judgment where defendant owed a duty of care to inspect and repair equipment, and although defendant did not cause the equipment to malfunction by an act or failure to act, the question remains whether he breached his duty by failing to perform reasonable inspection of the equipment.

Wrongful death/Survivorship/ Damages. Starling v. Ohio Dept. of Dev. Disabilities | 2023-Ohio-799 | Court of Claims | 03/24/2023 In wrongful death, survivorship and related claims action by mother of decedent, who was disabled and was cared for by mother, in which the court of appeals ordered the trial court to enter judgment in her favor and to make a determination of damages, wrongful death damages, R.C. 2125.02(B), are awarded based on the mind of the decedent's loved ones and derived from the decedent's presence in their life where mother's initial suffering was so intense that she had to be admitted to the hospital, and survivorship claim damages, R.C. 2305.21, are assessed based on the evidence that decedent certainly experienced pain and suffering between the incident and time of his death to such an extent that he reported to the emergency room.

Derivative claims/Loss of consortium/ Dismissal. Horn v. Cherian | 2023-Ohio-931 | 8th Appellate District | 03/23/2023 In husband's action against physician, alleging that his wife was left without medical care, where there is evidence that the physician-patient relationship was terminated on the basis that physician was exchanging inappropriate messages with husband's wife, trial court erred in granting physician's motion to dismiss with prejudice husband's claims for loss of consortium and spousal expenditures on reasoning that husband failed to file an affidavit of merit since the derivative claims belong to husband and are independent of a medical malpractice claim that would belong to wife, and husband's claims should have been dismissed without, rather than with, prejudice, so the lack of an affidavit of merit could be rectified.

Negligence/Vehicle accident/Summary judgment. Dunbar v. Beacom | 2023-Ohio-857 | 2nd Appellate District | 03/17/2023 In plaintiff's negligence action for injuries sustained when she was struck by defendant's vehicle while standing in front of her house, summary judgment in favor of defendant was error where, although plaintiff's version of where she was standing at the time of the accident was contradicted by the record, defendant's expert made it clear that the impact area and vehicle speed were unknown, defendant's testimony was inconsistent as to his speed and whether he crossed the lane of travel, and the question remains whether plaintiff was standing off the road at the time of the accident.

Wrongful death/Arbitration. Lee v. Bath Manor Ltd. Partnership | 2023-Ohio-816 | 8th Appellate District | 03/16/2023 In administrator's wrongful death action against nursing facility, alleging negligent care of her mother, trial court erred in denying facility's motion to compel arbitration without a hearing where the plain language of R.C. 2711.03 requires a hearing on a motion to compel arbitration when the issue of arbitration agreement's enforceability is raised, and because administrator claimed that the arbitration agreement was substantively and procedurally unconscionable, a hearing was necessary to determine the validity of the arbitration agreement prior to ruling on the motion to compel arbitration.

Medical malpractice/Expert testimony. Yung v. UC Health, L.L.C. | 2023-Ohio-789 | 1st Appellate District | 03/15/2023 In plaintiff's medical malpractice action against medical defendants, alleging that technician's failure to properly secure his ear plugs during MRI test led to permanent hearing damage, trial court erred in granting defendants' motion for summary judgment where, although plaintiff's expert did not practice the same specialty as treating physician, plaintiff's expert was qualified to offer an opinion on the standard of care for ear protection in response to loud noises, and he minimally established the medical malpractice elements to generate a question of fact for the jury.

Negligence/Assault/Afterschool program. Fonderlin v. Trumbull Family Fitness | 2023-Ohio-767 | 11th Appellate District | 03/13/2023 In plaintiff-mother's negligence action alleging that her son was sexually assaulted by other children while in locker room at defendant's afterschool program, trial court erred in granting defendant's motion for summary judgment where defendant's policy was to leave no child unattended, and there is evidence that the locker room was left unsupervised when incidents occurred and that defendant knew that plaintiff's son and assailants did not get along and tried to keep them separated, and the questions remain as to whether defendant undertook the duty to supervise and whether defendant failed in that duty.

Fraud/Evidence. Best Motors, L.L.C. v. Kaba | 2023-Ohio-804 | 8th Appellate District | 03/06/2023 In plaintiff-car dealership's action against defendant-alleged car seller, asserting fraud and related claims for selling a stolen vehicle, summary judgment in favor of plaintiff was error where defendant's cousin signed the bill of sale as seller and accepted payment for the vehicle, plaintiff was unable to show that defendant was present during negotiation of sale of the vehicle or that he received proceeds of the sale, and plaintiff failed to show that defendant had knowledge that the vehicle was stolen or that there would be a problem with the certificate of title.

Defamation/Discovery/Privilege. Evans v. Gardner | 2023-Ohio-558 | 12th Appellate District | 02/27/2023 In receiver's breach of fiduciary duty action against defendant-trade association board chairman after association rejected offers to settle underlying defamation action, resulting in a large verdict which association was unable to pay, trial court did not err in ruling that an email communication between defendant and attorney who represented his member company was not protected by the attorney-client privilege on reasoning that defendant had waived the attorney-client privilege by asserting advice-of-counsel defense, and waiver of the privilege applied not just to communications with the association's trial attorney but to communications with any attorney representing the association, including member-company's attorney

participating in the settlement discussions; defendant's claim that the inadvertent-disclosure rules in Civ.R. 26(B)(8)(b) apply is meritless in the circumstances of the instant case.

Medical malpractice/Discovery/ Protective order. Coon v. OhioHealth Corp. | 2023-Ohio-492 | 3rd Appellate District | 02/21/2023 In plaintiff-estate's wrongful death action against medical defendants for death of patient following outpatient surgery, trial court did not err in denying defendants' motion for a protective order to protect allegedly confidential documents from disclosure where there was evidence that the documents in question, consisting of healthcare system's policies and procedures and medical-staff bylaws, were neither confidential nor proprietary, defendants failed to show that serious injury would result from disclosure of the documents, and because the documents were not trade secrets, defendants did not establish good cause for a protective order pursuant to Civ.R. 26(C).

Slip and fall/No duty winter rule. Cristino v. Rock Creek Kitchen & Bar | 2023-Ohio-450 | 8th Appellate District | 02/16/2023 In restaurant patron's slip and fall negligence action against restaurant after patron was injured when she slipped and fell on the concrete floor of the patio during a late winter day, summary judgment for restaurant is reversed where patron argued that the unnatural accumulation exception to the "no-duty winter rule" should apply because attempts by restaurant's staff to shovel snow on the patio redistributed the snow and ice in an unnatural way and the patio had a retaining wall that created an unnatural melting and refreezing of snow and ice on the patio that was not present in the parking lot or elsewhere on the premises; because numerous genuine issues of material fact exist surrounding the application of the no-duty winter rule and the actual conditions of the patio, restaurant was not entitled to summary judgment as a matter of law.

Negligence/City/Judgment/ Mandamus. State ex rel. Hunt v. E. Cleveland | 2023-Ohio-407 | Supreme Court of Ohio | 02/15/2023 Petition for a writ of mandamus by petitioners, victim and administrator of estate of other victim of motor vehicle accident during emergency call, to compel city to pay the amount of damages and pre- and post-judgment interest awarded to petitioners-plaintiffs in underlying negligence action is granted since the city was found liable for a civil judgment under R.C. 2744.06(A) where jury determined that former police officer acted with a conscious disregard for the victims' rights and safety, resulting in the accident, the city has made no payments, petitioners have demonstrated a clear legal right to enforcement of their judgment and a clear legal duty on the part of the city to satisfy it, and petitioners have also established that they lack an adequate remedy in the ordinary course of the law.

Tortious interference/Immunity/ Statutory/Common law. Morelia Group-DE, L.L.C. v. Weidman | 2023-Ohio-386 | 1st Appellate District | 02/10/2023 In real estate developer's tortious interference with business relationship action against township trustee, claiming that trustee acted in bad faith to prevent developer from contracting with township, trial court did not err in denying trustee's Civ.R. 12(C) motion for judgment on the pleadings where, although immunity under R.C. 2744.03(A)(6) would apply to trustee generally, developer's allegations that trustee's opposition to purchase offer was pretextual and that other trustees were in favor of accepting developer's offer, were sufficient to overcome trustee's claim of immunity; also, trustee claimed qualified immunity under common law, which challenges the merits of a tortious interference claim, but an order denying alleged immunity arising from common law is not a final appealable order.

Fraud/Arbitration/Hearing/Stay. Menter Family Trust v. Menter | 2023-Ohio-367 | 8th Appellate District | 02/09/2023 In plaintiff-co-trustee's action against defendants-brother and trust management company alleging, inter alia, fraud for transferring funds from trust to account controlled by brother, trial court erred in dismissing complaint and in granting defendants' motion to compel arbitration since the plain language of R.C. 2711.03 requires a hearing on a motion to compel arbitration when the question of an arbitration agreement's enforceability is raised, and if the issues in a case are found to be arbitrable, R.C. 2711.02 calls for a stay rather than dismissal of the case.

Negligence/Damages/Double recovery. Cunning v. Windsor House, Inc. | 2023-Ohio-352 | 11th Appellate District | 02/06/2023 In plaintiff-estate's action against defendant-nursing home, asserting negligence, violation of the Nursing Home Residents' Bill of Rights (NHRBR), and related claims, arising from fall, injury and death of resident, trial court's damages award did not constitute double recovery since plaintiff is permitted to recover for damages suffered and expenses incurred by decedent while was living along with children's loss of consortium while she was living, and another set of damages compensating the beneficiaries for the injury and loss to them resulting from the wrongful death of the decedent; also, in order for the estate to seek punitive damages, it had to set forth a claim for relief under the NHRBR, and trial court's judgment granting plaintiff prejudgment interest is reversed where neither party submitted an affidavit or other evidentiary materials evidencing offers of settlement.

Defamation/Dismissal/Respondeat superior. White v. Family Dollar Store, Inc. | 2023-Ohio-329 | 2nd Appellate District | 02/03/2023 In store patron's action for defamation and related claims against store, trial court erred in dismissing the defamation claim where patron asserted that store employee accused patron of shoplifting and that a witness to the incident stated that the store employee "is always accusing someone of stealing," so patron presented sufficient factual allegations that the store may have been aware that its employee often accused customers of stealing, these allegations were sufficient to survive a motion to dismiss, and under the doctrine of respondeat superior, a corporation may be held vicariously liable for its employees' acts, Civ.R. 12(B)(1), (2), and (6).

Traffic and OVI

Plea/Validity/Crim.R. 11(B). State v. Muhire | 2023-Ohio-1181 | 12th Appellate District | 04/10/2023 Conviction of second-degree vehicular manslaughter, R.C.2903.06(A)(4), was error where at a combined plea and sentencing hearing, the trial judge essentially amended the charge of first-degree vehicular homicide to a charge of second-degree vehicular homicide since the record indicates the judge made the guilt finding without defendant ever entering a no contest plea into the record on either the originally charged

first-degree misdemeanor vehicular homicide or the court-amended charge of second-degree misdemeanor vehicular manslaughter, and the court also failed to advise defendant that a no contest plea is not an admission of guilt or that that a no contest plea could not be used against him in any subsequent civil or criminal proceeding as required by Crim.R. 11(B); remanded with instructions.

Impaired driving/Sufficiency of evidence. State v. Samples | 2023-Ohio-1186 | 9th Appellate District | 04/10/2023 Bench conviction of OVI, R.C. 4511.19(A)(1)(a), was not supported by sufficient evidence that defendant was under the influence of a drug of abuse where the two officers involved in traffic stop of defendant who showed erratic behavior while driving and during his interaction with the officers after he stopped his vehicle since neither officer in this case testified that defendant appeared to be under the influence of alcohol, and testimony that defendant appeared to be under the influence of some kind of stimulant is not equivalent to demonstrating that defendant was under the influence of a drug of abuse as defined by the Revised Code, and the state did not introduce any test results with respect to defendant or the vape pen in his vehicle.

Jury trial/Right to/Traf.R. 8(D). State v. Glaspy | 2023-Ohio-1073 | 9th Appellate District | 03/31/2023 In a bench conviction of driving under suspension, R.C. 4510.11(D)(1), and of first-degree misdemeanor assured clear distance, R.C. 4511.21(A), the trial court erred in failing to inform defendant of her Sixth Amendment right to a trial by jury of the driving under suspension charge since, pursuant to Traf.R. 8(D)(4), a court must inform an accused of the right to a jury trial during the accused's initial court appearance, and the court's failure to comply with Traf.R. 8 is prejudicial error; however, the assured clear distance is a minor misdemeanor charge under R.C. 4511.21(P)(1)(a), and carries no right to a jury trial.

Impaired driving/Sentencing/Jail-time credit. State v. Grout | 2023-Ohio-1074 | 2nd Appellate District | 03/31/2023 In a conviction by plea to OVI, R.C. 4511.19(A)(1)(a), the trial court erred by failing to impose a required 60-day mandatory prison term and by failing to reduce the 30-month prison sentence by the mandatory term pursuant to R.C. 2929.13(G), and the trial court also erred at sentencing by failing to specify the total number of days of jail-time credit that defendant would receive against his prison sentence, R.C. 2949.08(B) and (C)(1), as of the date of sentencing, and defendant was not given an opportunity to be heard on the issue of jail-time credit.

Impaired driving/Suppression. State v. Rudder | 2023-Ohio-993 | 5th Appellate District | 03/27/2023 In an appeal by the state of grant of motion to suppress in an OVI prosecution, the trial court erred in finding that trooper lacked probable cause where there was evidence that defendant had recently drove the vehicle where she was alone at the side of an interstate highway in a snow storm, the car's hazard lights were on, there was evidence indicating she had recently either driven off the road or slid off the road, she was on her phone attempting to direct her boyfriend to her location to help her, and she demonstrated signs of impairment where trooper noticed a strong odor of alcohol, that her eyes were red and glassy with contracted pupils, her speech was slow and slurred and she had six of six clues on the horizontal gaze nystagmus test.

Aggravated vehicular assault/ Suppression. State v. Poudel | 2023-Ohio-995 | 5th Appellate District | 03/24/2023 In a conviction by plea to two counts of aggravated vehicular assault, R.C. 2903.08(A)(1)(a) and (A)(2)(b), denial of motion to suppress was not error where claim that foreign national, who had been in the United States since 2012 and had been a citizen since 2018, did not understand English when given the field sobriety tests is without merit since nothing in the video of the field tests suggests defendant had difficulty understanding or speaking English in his interactions with the trooper, and never said that he didn't understand, and Miranda warnings are not required prior to the administration of field sobriety tests.

Impaired driving/Sentencing. State v. Wilson | 2023-Ohio-830 | 5th Appellate District | 03/16/2023 In a conviction by plea to two counts of OVI, each occurring on separate dates, and both in violation of R.C. 4511.19(A)(1)(a), imposition of consecutive sentences totaling 42 months was not error where sentence fell within the parameters set forth in R.C. 4511.19(G)(1)(d) and (G)(2), R.C. 2929.14(B)(4), and the trial court made the required findings for the imposition of consecutive sentences pursuant to R.C. 2929.14(C)(4); also discussed, defendant's guilty plea waived his right to assert any challenge to the trial court's ruling on his motion to suppress.

Impaired driving/Suppression/ Paramedics. State v. Cruz | 2023-Ohio-794 | 5th Appellate District | 03/14/2023 In a prosecution for OVI, the trial court erred in part in suppressing testimony from paramedics, who observed defendant's dangerous driving and talked with him after he stopped, of statements made by defendant to any officer, and any testimony on defendant's performance on field sobriety tests since the court improperly suppressed the testimony of the paramedics relating to their pre-seizure observations and actions and, on remand, the trial court should also consider whether the community-caretaking/emergency-aid exception applies to the paramedics' testimonies.

Impaired driving. State v. Mets | 2023-Ohio-710 | 5th Appellate District | 03/08/2023 In a conviction of OVI, R.C. 4911.19(A)(1)(a), denial of motion to suppress horizontal gaze nystagmus test and remaining field sobriety tests was not error since, during traffic stop, trooper had a reasonable suspicion that defendant was impaired where trooper smelled an odor of alcohol coming from inside the vehicle and defendant had glassy and bloodshot eyes and his speech was slurred, the stop was not unduly extended to perform field sobriety tests, and the tests were administered in substantial compliance with NHTSA guidelines; also, defendant's refusal to take a breathalyzer test, and instead to have a blood test taken at a hospital, constitutes a refusal to take the designated test, Raine.

Failure to maintain reasonable control. State v. Meier | 2023-Ohio-490 | 12th Appellate District | 02/21/2023 Bench conviction of city code minor misdemeanor of operation of a motor vehicle without being in reasonable control was supported by sufficient evidence since there was evidence presented that defendant attempted to pass a vehicle on the right as the other vehicle was attempting to make a right-hand turn, even though there was no lane available to make such a pass, and the ordinance imposed strict liability for failure to maintain reasonable control.

Traffic and OVI (Continued)

Aggravated vehicular assault/Blood-alcohol test. State v. Parsons | 2023-Ohio-502 | 5th Appellate District | 02/21/2023 In a conviction by plea to two counts of aggravated vehicular assault, R.C. 2903.08(A)(1)(a), and two counts of vehicular assault, R.C. 2903.08(A)(2)(b), claim that the trial court erred by not suppressing results of defendant's blood-alcohol test on reasoning that the use of an alcohol swab by the phlebotomist violated hospital policy is without merit since R.C. 4511.19(D)(1)(a) allows admission of test results, even if the blood was not drawn and analyzed in accordance with hospital policy because the statute simply provides if the sample is drawn and analyzed by a health care provider, the result may be admitted with expert testimony.

Speeding. State v. Shamansky | 2023-Ohio-405 | 3rd Appellate District | 02/13/2023 Conviction of speeding met the sufficiency and weight of evidence where trooper's testimony that the BEE III instrument that he used to measure defendant's speed uses radar technology, defendant provided trooper the BEE III manual during questioning of the trooper, trooper indicated the manual describes the BEE III as a "[m] oving radar unit" or "radar," he testified on his training and certification in the use of speed-measuring devices, his certificate was entered into the record and, although there was a discrepancy whether trooper's confidence-check was performed properly, he also testified his visual estimation of defendant's speed was consistent with his BEE III's measurement.

Workers' Compensation

Flow-through injury/Expert evidence. Shields v. Bur. of Workers' Comp. | 2023-Ohio-1368 | 8th Appellate District | 04/27/2023 In employee's action seeking the right to participate in the workers' compensation fund for a flow-through injury to his right shoulder, allegedly caused by earlier shoulder injury that was an allowed claim, resulting in a jury verdict in favor of employee, trial court did not err in denying employer's motion for a JNOV where employer's argument that employee's expert testimony was erroneously admitted was without merit because employer's challenge related to the reliability and correctness of facts rather than to the methodology underlying expert's testimony, Evid.R. 702(C), and employee presented sufficient evidence to support the jury's verdict.

Employment status/Right to control. State ex rel. Friendship Supported Living, Inc. v. Ohio Bur. of Workers' Comp. | 2023-Ohio-957 | Supreme Court of Ohio | 03/28/2023 In dispute about the employment status of workers who provide in-home direct-care for healthcare company where the bureau of workers' compensation issued an order classifying the workers of healthcare company as employees rather than independent contractors, reversed by the court of appeals, it is determined that the bureau abused its discretion in adopting its order by failing to sufficiently account for the relevant factors bearing on the work relationship between the healthcare company and its direct-care workers—the key factual determination being who had the right to control the manner or means of doing the work—so the court of appeals' judgment is reversed and a limited writ of mandamus is granted directing the bureau to issue an amended order that sufficiently accounts for the relevant work relationship factors.

Permanent disability/Some evidence. State ex rel. Columbus Distrib. Co. v. Reeves | 2023-Ohio-898 | 10th Appellate District | 03/21/2023 Employer's petition for a writ of mandamus seeking to compel industrial commission to vacate orders granting permanent partial and total disability to employee is denied where the medical reports relied on by the staff hearing officer (SHO) meet the "some evidence" standard and are internally consistent, they identify the allowed conditions correctly, describe physical findings after examination, and apply the AMA Guides to assess impairment, R.C. 4123.58; as well, employer failed to timely raise the affirmative defense that employee voluntarily abandoned employment.

Attorney fees/Amended statute. Russell v. McCloud | 2023-Ohio-886 | 11th Appellate District | 03/20/2023 In claimant's post-trial motion for attorney fees after a jury verdict in claimant's favor entitling him to participate in the workers' compensation fund for four medical conditions, trial court erred in awarding claimant the new higher amount of attorney fees pursuant to H.B. 27 since the claim arose before the effective date of the amendment, the amendment is to be applied prospectively, and the trial court should have applied the prior version of R.C. 4123.512(F).

Psychological condition/Pre-existing/Objective evidence. Dunn v. Devco Holdings, Inc. | 2023-Ohio-680 | 3rd Appellate District | 03/06/2023 In employee's action seeking workers' compensation benefits for substantial aggravation of psychological conditions related to a physical workplace injury, trial court did not err in allowing additional benefits where, even though the test given to evaluate employee's condition elicited subjective responses, evidence showed that the test provided objective results, and physician's testimony that employee's injury substantially aggravated a pre-existing condition was based on objective findings, as required by R.C. 4123.01(C).

Jurisdiction/Court of Claims/Prohibition/Mandamus. State ex rel. Ohio Bur. of Workers' Comp. v. O'Donnell | 2023-Ohio-428 | Supreme Court of Ohio | 02/16/2023 In city-public employer's action in common pleas court claiming that the bureau of workers' compensation's former premium-calculation method had resulted in excessive premium charges for non-group-rated employers, prompting the bureau to file petitions for a writ of prohibition to prevent common pleas trial judge from exercising jurisdiction and for a writ of mandamus to compel judge to dismiss the underlying case, both writs are granted since the city's claim for declaratory and injunctive relief against the bureau is a claim seeking refunds of premiums that went into a general fund and became commingled with premiums paid by other public employers, so the city's claim for relief sounds in law and must proceed through the Court of Claims, which has exclusive jurisdiction over legal claims against the bureau under the Court of Claims Act, R.C. 2743.01 et seq.