

OhioLawyer

THE OHIO STATE BAR ASSOCIATION MEMBER MAGAZINE

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Meet Dan Griffith 2024-2025 Ohio State Bar Association President

Also Inside:

New Ohio Supreme Court
Writing Manual Makes
Opinions Easier To Read
and Briefs Simpler To Write

A Few Good Lawyers:
Current and Former AGs
Discuss Civility and Public
Trust in Our Institutions

Remembering
Judge R.M. Wanamaker
on the Centenary
of His Death
*And His Lessons for Ohio
Attorneys*



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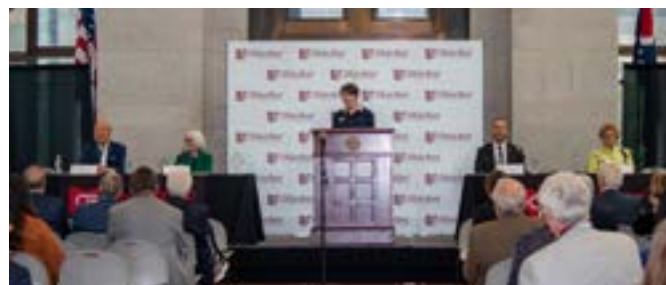


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Having
The Right
People
At The
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In Memoriam

2023

Robert E. Fletcher 71, Columbus, June 19, 2023
Thomas E. Jenks 94, Oakwood, June 28, 2023
Edward W. Rhode III 72, Sandusky, July 3, 2023
Anne M. Frayne 69, Dayton, July 8, 2023
Fred D. Shapiro 96, Cleveland, July 16, 2023
Nelson R. Leist 92, Cincinnati, July 16, 2023
Stephen L. Richey 76, Cincinnati, July 28, 2023
Sewall F. Jackson 90, Columbus, July 29, 2023
Walter C. Dissen 91, Fort Wayne, IN, Aug. 2, 2023
Michael R. Allison 65, Parkland, FL, Aug. 11, 2023
Yass A. Benis 60, Columbus, Aug. 12, 2023
Arthur R. Cerio 97, Parma, Sept. 18, 2023
Theodore A. Guilla 91, Cleveland, Sept. 23, 2023
Edmund J. Adams 85, Cincinnati, Sept. 24, 2023
Charles R. Ennis 90, Akron, Sept. 26, 2023
Michael J. Russo 68, Cleveland, Oct. 9, 2023
Laura T. Pizmoht 48, Willoughby, Oct. 12, 2023
Ronald M. Mottl 89, Cleveland, Oct. 13, 2023
Harold W. Babbit 82, Cleveland, Oct. 22, 2023
James P. Silk Sr. 92, Toledo, Oct. 23, 2023
Karen A. Davis 59, Maumee, Nov. 9, 2023
Kenneth M. Haneline 65, Hudson, Nov. 13, 2023

James R. Jeffrey 85, Toledo, Nov. 23, 2023
John A. Powers 85, Cincinnati, Nov. 30, 2023
Leonard S. Sigall 88, Columbus, Dec. 3, 2023
Michael T. Honohan 88, Rocky River, Dec. 9, 2023
Sidney M. Cornrich 95, East Liverpool, Dec. 11, 2023
Lincoln P. Oviatt 95, Hudson, Dec. 29, 2023
Robert D. Holmes 100, Columbus, Dec. 30, 2023
Gene Barnhart 95, Canton, Dec. 31, 2023

2024

David M. Martin 79, Springfield, Jan. 1, 2024
John C. Harrison 90, Beavercreek, Jan. 6, 2024
Richard C. Klein 91, Beachwood, Jan. 7, 2024
Jerry E. Ault 73, Mansfield, Jan. 14, 2024
Richard I. Fleischer 79, Cincinnati, Jan. 19, 2024
George N. Plavac 99, Cleveland, Jan. 29, 2024
Lee R. Schroeder 48, Leipsic, Feb. 18, 2024
James A. Katsanis 92, Cincinnati, Feb. 20, 2024
Nirakar C. Thakur 63, Toledo, Feb. 26, 2024
Timothy D. Gerrity 79, Columbus, March 13, 2024
Robert A. McCarthy 92, Troy, March 18, 2024
John R. Milligan 95, Canton, March 23, 2024



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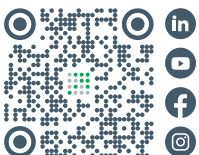


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What's Happening at the Bar?

Updates from the CEO



Promoting justice and advancing the legal profession.

While we are officially halfway through the calendar year (can you believe it?) here at the Ohio Bar, we're gearing up to ring in a brand new bar year! Beginning July 1, we're excited to welcome new and continuing leaders who will be taking up their new titles in the bar association. From new committee and section chairs to advisory board members (not to mention our incoming president, Dan Griffith, who you can get to know on pg. 10), our leaders are ready to hit the ground running for the 2024-2025 bar year. As many of you know, we kick off our transition season at the Ohio Bar Annual Meeting where, among other things, our members help shape the association's public policy priorities and

celebrate excellence in the profession. And boy, did this year's meeting deliver. Thank you to all who attended and made it a fun and productive day. If you missed it, read on to learn about all that we accomplished. I've said it before and I'll say it again, our members make this the best bar association in the country. I can't thank all of you enough for your continued support and engagement in our collective efforts to promote justice and advance the legal profession.

-Mary Amos Augsburger
Ohio Bar CEO



Board of Governors

Here are the actions taken by the Ohio Bar Board of Governors at their spring meeting:

- Accepted the report of the Rural Practice Gap Task Force (learn more in the annual meeting policy recap ahead).
- Updated the association's budget for Fiscal Year 2024 to include building improvements.
- Accepted a new reserves policy and amended the bar's investment policy to better serve the needs of the association.

Thank you to our outgoing board members for their service!



Judge Dean Wilson
Immediate Past President



Bryan C. Conaway
District 15 Governor



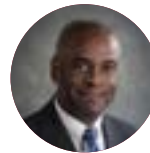
Magistrate Kathleen Lenski
District 2 Governor



Amy B. Ikerd
District 16 Governor



Frederick C. Fisher, Jr.
District 8 Governor



Michael E. Flowers
At-Large Governor



Christopher L. Brown
District 10 Governor

Welcome New and Re-Elected Board Members

The following attorneys will begin their three-year terms on the Ohio Bar Board of Governors on July 1, 2024.



Judge Gary Carter
District 2 Governor



Richard W. Clagg
District 8 Governor



Maura E. Scanlon
District 11 Governor



Howard Wernow (re-elected)
District 14 Governor



Kyle Bickford
District 15 Governor



Zachary Ferrall
District 16 Governor



Marlon A. Primes
At-Large Appointee



Andrew P. Lycans
Filling District 10 vacancy
Andy's term will run through
June 30, 2026.

Your 2024-2025 Bar Year Officers:



Dan Griffith
President



Michelle Kranz
Immediate Past-President



William Chris
President-Elect



Jan Allen Baughman
President-Elect Designee



Mary Amos Augsburger
CEO & Corporate Secretary



We Walked, Ran and Biked for Mental Wellness



The third annual Ohio Bar 25 Mile Challenge this May was a success! Thank you to everyone who put their best foot (or pedal) forward to help raise funds for the Ohio Lawyers Assistance Program and the National Alliance on Mental Illness of Ohio – and gained some valuable endorphins while they were at it.

Together, we logged more than 13,000 miles! Whether you went alone, with your family or colleagues, we couldn't have asked for better company.



Up Next From the Ohio Bar Wellness Advisory Board

Ready to take a rest and dive into a good book? Incorporate more well-being into your life by joining our Wellness Advisory Board Book Club! The next book club pick is "Big Magic" by Elizabeth Gilbert. Read along and discuss with fellow bar members as you learn how to uncover your creative nature. Join the club at ohiobar.org/wellness-book-club.



2024 Annual Meeting Policy Recap

The Ohio Bar returned to Capitol Square for our 2024 Annual Meeting of Members this spring. At the meeting, bar members had the chance to weigh in on the direction of the association and help set the bar's public policy agenda for the year to come. This year, the Ohio Bar Council of Delegates approved nine legislative proposals from Ohio Bar committees and sections, sending them on to become priorities for the association as we lobby to improve the law at the Ohio Statehouse.



The Council of Delegates approved five proposals from the Ohio Bar Estate Planning, Trust and Probate Law Section. Here is what each one would do:

1. Amend the Fiduciary Claims Statute to clarify that a fiduciary, executor or administrator is not exempt from the requirements of the general claims' statute, R.C. §2117.06.
2. Amend Ohio law to provide that actions under the Ohio Uniform Fraudulent Transfer Act occasioned by transfers of property at a decedent's death outside of probate administration may only prevail

if the transfer was made with an actual intent to hinder, delay or defraud a creditor and, in such case, to limit the time period during which such an action may be brought to six months after the decedent's death.

3. Enact a new Chapter 5818 to supplement R.C. §5808.08 to provide that a party that has the power to direct ("trust protector") a trustee ("directed trustee"), by default, serves in a fiduciary capacity and is held to the same standard as a trustee in a like position under like circumstances. If the trust instrument provides that the trust protector serves

in a non-fiduciary capacity, the trust protector will be liable for willful misconduct to protect a trust beneficiary.

4. Enact a new R.C. §5808.161 to provide an Ohio trustee with a discretionary power to pay a taxing authority directly or reimburse a grantor for income tax owed by the grantor attributable to grantor trust income and amend R.C. §5812.43 to provide that such a disbursement is paid from principal.
5. Amend Sections 1337.42 and 1337.34 of the Ohio Revised Code by incorporating a key sentence from the official comments to the Uniform Power of Attorney Act regarding the mandatory nature of duties imposed upon all agents under powers of attorney governed by Chapter 1337. Amend Sections 1337.42, 1337.52 and 5806.02 to more explicitly state the inability of an agent under a power of attorney to exercise the principal's right to withdraw assets from a revocable trust of which the principal is the settlor without such authorization being granted in both the trust agreement and the power of attorney. And amend Section 1337.36 to grant to courts the same power to award attorney fees in actions involving powers of attorney that they already have in cases involving the administration of trusts.

The council also approved two proposals from the Ohio Bar Military and Veterans' Affairs Committee. They would:

1. Amend R.C. §5901.03 to authorize veteran service commissions to provide direct financial support to veterans treatment courts, including by hiring and compensating individuals at the court who provide outreach.
2. Require all Ohio confinement facilities to identify and verify veterans who are imprisoned.

And lastly, the Council of Delegates voted to adopt the policy recommendations of the **Ohio Bar Rural Practice Gap Task Force**.

Convened by Past President Dean Wilson and chaired by Immediate Past-President Michelle Kranz, the task force was created to review current data and propose potential solutions to address attorney shortages in rural Ohio counties. That data indicated that 82 of Ohio's 88 counties do not have enough attorneys to meet the legal needs of their citizens.

This spring, the task force issued its recommendations.

With the vote of the council, the Ohio Bar advocacy and outreach teams will now be focused on implementing the task force's report. Learn more about the task force and its recommendations in Marisa Myers' Statehouse Connection column on pg. 34.

General Assembly Meeting – Constitutional Amendment

Also at the annual meeting, the Ohio Bar Board of Governors proposed and – and the General Assembly approved – an amendment to the association's constitution that will consolidate association elections.

The President-Elect, as well as the district representatives to the Board of Governors and the Council of Delegates will now all occur in one November online election. This change will streamline the elections process, enhance transparency and encourage member engagement in when it comes to selecting bar leaders.



With Unanimous Consent

We commend and thank 2023-2024 Ohio Bar President Michelle Kranz. She significantly advanced the Ohio Bar's efforts to address the attorney shortage in rural communities, ably led the board by encouraging thoughtful dialogue and debate, strengthened relationships with affiliate organizations, and not to mention, the woman is a whiz when it comes to parliamentary procedure (as anyone who attended the annual meeting will attest)! President Kranz's collaborative and inclusive leadership style will live well beyond her term and has set the stage for another successful 2024-2025 bar year with President Dan Griffith next wielding the gavel.

Thank you, President Kranz!



More From the Day

The bar held an informative discussion with current and former Ohio attorneys general on civility and how attorneys can work to bolster public trust in our institutions this election year. Read more about the discussion on pg. 24.

Thank you to all who joined us at the 2024 Annual Meeting of Members!

This year, the bar's biggest bash of the year was bigger than ever. Over two days, we gathered at iconic locations around Capitol Square to hold our 18 annual district meetings, honor our long-practicing members and recognize excellence in the legal profession. Relive the day with videos and photos at ohiobar.org/annualmeeting.

And learn more about this year's attorney honorees on pg. 26.



Save the date!

2025 Annual Meeting: May 12-13, 2025

We celebrate the accomplished.

Many outstanding Ohio attorneys are members of the Ohio Bar College or are recognized by the OSBA as Certified Specialists in their preferred areas of practice, or both!

For those who go above and beyond, we invite you to apply to become a member of the Ohio Bar College. Visit oblic.com/about/ohio-bar-college to fill out the free application.

Application deadline for the 2023 class of the Ohio Bar College is June 30, 2024.



For more information on becoming an OSBA certified specialist, visit ohio-bar.org/specialization

Congratulations to the current class of the Ohio Bar College!

Andrew Ruzicho II	Shirley Cochran	Bryan Everitt	Susan Eisenman
Terrence P. McHugh	William Davis	Victoria Munson	Melanie Dresch
Roberta Sue Fay	Kayleigh Summerville	James French	Thomas Cornn
Nathaniel Fouch	E. Michael Pfeifer	John J Kelley	George Montgomery
Tina Owens-Ruff	Charles Bartholomew	Marlene Manes	Katie Montgomery
Michael Dunham	Michael Honerlaw	Diane Chermely Tanner	George Wilber
Benjamin Childers	John Perez	Thomas Addesa	Veronica Armstrong
Beth Kolotkin	John Bull	Laura Curliss	Claudia Brown
Jessie Tower	Gerald Baynes	Troy Barnett	Cathy Cook
James Yavorcik	Neal Wainblat	Chandra Muster-Kahl	Karen Behm
Martin Mohler	Julia Wainblat	Debra Garverick	Dean Henry
Terrence Wheeler	L Robert Bolin	John DiSalle	Sarah Anjum
James Flaherty	Sarah English	Josephine Hesse	Jared Hoover
Alexander Keane	John Rogers	Joseph Houser	Chelsea Long
Chad Draheim	Charles Fitzpatrick	Jeff Heintz	Riley Wnorowski
Anthony Allen	Mark Zanghi	David Cory	Matthew Hochstetler
Theodore Frericks	John Ready	Oliver Koo	Nida Salahuddin-Mohler
Bryan Griffith	Paulette Balin	Patrick McCausland	Joseph Daher
Mark McCown	Matthew Shupe	Mary Whitmer	Tania Nemer
Kelly Parks	James Jewett	Sue Sokolowski	William McLoughlin
Karlek Jarvis	Judy Gano	Larae Schraeder	Ethan Arenstein
Diane De Pascale	Gerald R Walker	Christine Tobin	Dawn Garrett
Marcia Hurt	Mira Chopra	Melissa Riggins	Caroline Schmidt
David Blackwell	Kelly Stacey	Patrica Murphy	Phillip Garbig
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James Cameron	Richard Koblentz	Jeff Griffith	Michael Danchak
Natalie Reichard	Christopher Patrick	Theodore Gudorf	Brian Balser
Nathan Hosek	Nicholas Froning	Patrick Millican	Matthew Banal
James Sponseller	Melissa Graham-Hurd	Sara Light	James Stolly
Elizabeth DurnellMaier	Anthony Nici	William Kerner	Christopher Gallutia
Harry Zornow	Michael Kaufman	Rebecca Kells	Jack Vitale
Steven Fansler	Rodrigo Horna Rivera	Keith Rucinski	Brent Howard
Stacey Ganor	Rebecca Black	Grant Garverick	Zachary Fowler
Kelly Roberts	Robert Morje	Patricia Walker	Terrence McHugh
Michael Shapiro	Steven Schwartz	Ralph Jocke	
Benjamin F Farah	Jennifer Matyac	Joseph Trecaso	
Gregory French	Roy Gabbert	Stephen Tilson	

Meet Dan Griffith

2024-2025 Ohio State Bar Association President

By Annie Yamson
Ohio Lawyer Magazine Editor





Griffith earned his pilot's license in high school and had dreams of becoming a fighter pilot before deciding on the law.

On a rainy spring Tuesday in March, the Ohio Bar team hit the road to meet Dan Griffith, incoming Ohio State Bar Association president for the 2024-2025 bar year, at his Huntington Bank office in North Canton. After our visit, Griffith had road trip plans of his own: He and his son, who has shown a budding interest in the law, were headed to Washington, D.C. to see U.S. Supreme Court oral arguments in a major tax case, *Connelly v. Commissioner*.

The drive from North Canton is just over six hours and father and son would turn around and head home the following day. "It's not too far," Griffith said, shrugging his shoulders.

For anyone else, the trip would be quite a haul (especially in Ohio's stormy spring weather). But this is a good illustration of Griffith's dedication to his family and to education. The child of University of Mount Union employees, Griffith spent his childhood on a college campus, his home away from home. And whether it's his family, clients or colleagues, Griffith is always game for a teaching moment.

"My parents were alums and they worked for the university," Griffith said. "I loved going there and I really

spent a lot of time and formative years at Mount Union, which was a fantastic experience."

Early Life and Career

Born and raised in Stark County, Griffith followed in the footsteps of his parents, earning his undergraduate degree in political science at the University of Mount Union.

Though he dabbled with dreams of being a fighter pilot (he earned his pilot's license in high school), "I knew I always wanted to be a lawyer," he said. He also knew that his calling was serving his community.

"A lot of the people in the community have ultimately become mentors here in Stark County, many of them members of legal profession," Griffith said. "They were judges, librarians and other people who, I looked around and thought, I really respect not just what they do from a professional standpoint, but the commitment that they've made to the community itself."

So, after spending some time in Columbus at The Ohio State University Moritz College of Law to earn his J.D., Griffith returned to his northern Ohio

roots. And though he always knew he wanted to come back, his legal career trajectory came with time. A young Griffith initially saw himself becoming a prosecutor. But it was working with a mentor, Judge R.R. Denny Clunk of the Stark County Probate Court, that helped him find his calling in the area of estate planning.

"I quickly found out through my work with Judge Clunk that I wanted to do something very different and that I love the way that, as a lawyer in estate planning, you get a chance to reach out and really help people," he said. "I realized, from a skillset standpoint, that was probably a better match for me than trying to put people away. I'm not nearly intimidating enough for that."

So, Griffith joined the firm of Black McCuskey out of law school and set off on his estate planning path. He spent almost a decade with the firm, rising to partner, and focused his practice on business advisory and probate work.

"Something that I really resonated with and loved about the firm was that there was a lot of encouragement to be involved in boards, to be involved in volunteer opportunities," Griffith said. "That's a part of the culture, it's also

something I always wanted to do and the firm reinforced that.”

That culture led him to the Ohio Bar, where he signed up to be a member of the Estate Planning, Trust and Probate Law Section.

“I quickly realized that there were great benefits associated with getting more deeply involved with the sections and committees,” Griffith said.

Not only was Griffith now getting the continuing education that his field demanded of him, but he found himself with a community of like-minded people who could help answer the many questions of a fledgling lawyer. And as his career progressed, Griffith joined the section’s council – his first foray into bar leadership. Finding himself on the leadership team of one of the most prolific law-writing sections of the Ohio Bar, he helped to develop the domestic asset protection trust provision that currently exists in the state’s revised code.

“It is amazing to me how much wonderful work is done to improve the law in the sections and committees. People just raise their hand and say, ‘You know, Ohio’s law would be better if ...’” Griffith said. “As part of my current job, I have a chance to see different laws in different places, and many states have not done as good of a job as we have in Ohio of updating our law.”

Griffith’s career took a turn when he left his firm to become the head of a trust department at a small, startup bank. After practicing law on a daily basis, he was now in entrepreneurial territory, helping to develop the trust business from scratch. The experience allowed him to use his legal skills in a different way, like many attorneys today.



Griffith and his dad on his graduation day at Mount Union, where he earned his degree in political science.

“I think my experience reflects the change that we’re seeing in the practice of law overall right now, where you have more and more people who are not practicing law in a traditional setting,” Griffith said. “Maybe they’re practicing law in-house or helping in other ways. So, in many ways, my journey reflects the growing trend that we’re seeing in the bar overall.”

In 2011, he further expanded the ways in which he was using his legal skills by adding political office to his resume, successfully running for North Canton City Council as an at-large member and serving for six years.

Today, as the director of wealth strategy at Huntington Private Bank, he uses his educational and entrepreneurial roots to inform clients and colleagues on complex financial concepts, often appearing on financial news networks to break down the law for the public, too. He also spends time as an adjunct professor at the University of Akron, teaching estate and gift tax classes.

“In many ways, my journey reflects the growing trend that we’re seeing in the bar.”



Griffith at the Ohio Supreme Court to celebrate the swearing in of Ohio’s new lawyers in 2024.

“We have a lot of educators in our family historically and I love being able to take these complex topics – whether it’s business transition topics, tax topics or even just the way that probate or trusts work – and translating that for clients, getting them comfortable with these concepts that often can be very confusing and challenging,” Griffith said. “It’s what I get to do every day, and then doing that same thing in the classroom is really beneficial. There’s no better way to understand something than to teach it to somebody else.”

Ohio Bar Leadership and Vision

With his experience in crafting and lobbying for improved legislation as part of the Estate Planning, Trust and Probate Law Section Council,

it was only a matter of time before Griffith took his next step in Ohio Bar leadership by running for the Council of Delegates, the association's representative body. There, Griffith served on the council's Screening Committee, responsible for vetting committee and section legislative proposals and determining if they will become priority legislation for the association.

"It was fun to participate from that side because I'd been part of the creation of legislation in the section council," Griffith said. "This was a different perspective."

From the Council of Delegates, Griffith was encouraged by his peers to run for the Ohio Bar's Board of Governors. And when it came time to step up and throw his hat in the ring to become president, Griffith was driven by watching the leaders who came before him and the prospect of helping push the association along its existing trajectory.

"One of the things I was most excited about was the continuity of vision that we've had over the last several years as we deal with a rapid pace of change," Griffith said. "That's really what drove me to say, yes, I think I'd like to take a chance at becoming a better leader."

"Continuity of vision" may well be Griffith's theme for the 2024-2025 bar year as he leads the association through the work of improving access to justice for Ohioans around the state and improving practice resources for the attorneys who serve them.

"We need lawyers and we need them to be able to provide services to clients in a way that's affordable and reachable," Griffith said. "Combining people who have a desire to be involved in the law with the resources they need to physically run their businesses and be involved in the communities that need



Dan and his son, Ben, at the U.S. Supreme Court to see oral arguments in *Connolly v. Commissioner*.



The 2024-25 Ohio Bar officers, CEO Mary Augsburger, President Dan Griffith, Immediate Past President Michelle Kranz and President-Elect Bill Chris at the Great Rivers Conference in 2023.

them – that's the biggest challenge we have."

Griffith hopes that he can help carry on the strategic plans that were put in place long before his time at the helm and that will be in effect long after. For him, the calling of leadership is bigger than any one person's big ideas or pet projects. "Instead of working on projects year by year, we're able to create projects and priorities like our Rural Practice Gap Task Force, which I think is really important and that doesn't need to be

done in a 12-month period," Griffith said. "In fact, Past President Judge Wilson began great work there, [2023-24] President Michelle Kranz has hugely expanded it, and I'm glad to be able to pick up that baton and carry it and pass it on.

The task force, whose recommendations were issued in spring 2024, seeks to address Ohio's shortage of lawyers in rural areas. While Wilson convened the group and Kranz chaired it, Griffith's year as president will be focused on

putting the recommendations into practice. To do so, he'll need a cohesive board that's willing to focus on the big-picture.

"I think this board brings a lot of friendship and a lot of accountability. We know each other really well, a lot of us have worked together for some time, so we can be very candid with each other, we push each other. I think that makes it so that we can come up with consensus, we bring lots of different ideas but then it allows for execution over the long term."

But Griffith *does* have a bit of a pet project of his own for this year, aimed at getting Ohio lawyers the practice resources they need while providing a pipeline for quality bar leaders in the process: Getting members involved in committees and sections, just like he did.

"I'd love to really unlock the power of committees and sections by getting members to understand what they can

derive from a benefits standpoint, from not just participating, but also giving back," Griffith said. "I talk to my bar colleagues on the phone on a regular basis. We talk about technical issues, how did you interpret that statute or what does that tax law mean to you? What software are you looking at right now? How are you solving the issues relative to paralegals or young associates or getting office space? That connection comes directly as a result of those friendships."


And those friendships, Griffith says, are key to improving the communities that lawyers serve: "We've created deep relationships where all of our lives are improved as a result of being participants in this bar journey together. And frankly, our communities are all better as a result of that. Strong legal practices mean strong communities."

Looking forward, beyond his year as president, Griffith says he sees a bar that continues to reflect the diversity of those

communities in which its members live and work.

"I would love to see a bar that continues to be more and more diverse in a lot of ways, including the age of people who are getting involved and I'd love to see more and more second-career people, those who decide that they want to advocate for the members of their community by becoming a member of the bar, and maybe taking the experience that they had, adding a legal education to it, and advocating for the communities that they know," Griffith said.

Though his visions for the future of the legal profession may be lofty, for now, as he picks up the baton of the Ohio Bar presidency this July, Griffith has a simple, short-term agenda: "Hopefully, I'll do my best and leave it a little better than when I started." 

Learn more about Dan.
 Watch the video feature at ohiobar.org/meetdangriffith.



Griffith regularly appears on Yahoo! Finance and other financial news programs to educate the public.

Dan in His Own Words

On Family:

I'm lucky to be married to Marci and we have four kids – Madeline, Penelope, Maya and Ben – who are all teenagers now, as of just a couple days ago. Our oldest will be going college next year, Mount Union I hope!

They are all wonderful kids, involved in many wonderful things. I love our family and they have been incredibly supportive through this bar leadership journey. Marci has her own business, a custom window treatment business. She is a very creative person.

On Hobbies:

In a lot of ways, my bar work has become a bit of a hobby. But I love being a dad and that takes up a lot of time right now. I enjoy skiing with the kids, we enjoy hiking, I like playing golf a little bit, although I'm not very good. I generally love just being involved in the community and being supportive, seeing what I can create here.

On Volunteerism:

Volunteer service has always been something that I'm really driven by and really excited by. When you're an attorney in any community, but particularly in some of the communities around our state that may not have as many lawyers as some others, I think we have a responsibility to provide our

professional services as volunteers. Here in Canton, I've had the chance to be on a number of boards and things along those lines. Once a month, our family enjoys spending time volunteering for our local soup kitchen through our church. It's a good way to take that culture that we've had in our family and work together multi-generationally and to do service that goes beyond just the boardroom. That's the kind of service that I get really excited about.

Favorite Law-Related Book:

I was told I wasn't allowed to answer "To Kill a Mockingbird," but it truly is

my favorite book. As an officer of the court, I have to answer honestly. I try to read it about once a year and about two years ago, I read it to my wife, Marci.

If it's not that, I would say my favorite law-related book is "Ladies and Gentleman of the Jury: Greatest Closing Arguments in Modern Law" by Lief and Caldwell. Three different people have given me this book over time. It's a wonderful anthology of great closing arguments. I love to hear the actual words of great attorneys, it's very inspiring. I'd recommend it to anyone.



The Griffith family, with young Dan front and center, at their home away from home, the University of Mount Union.



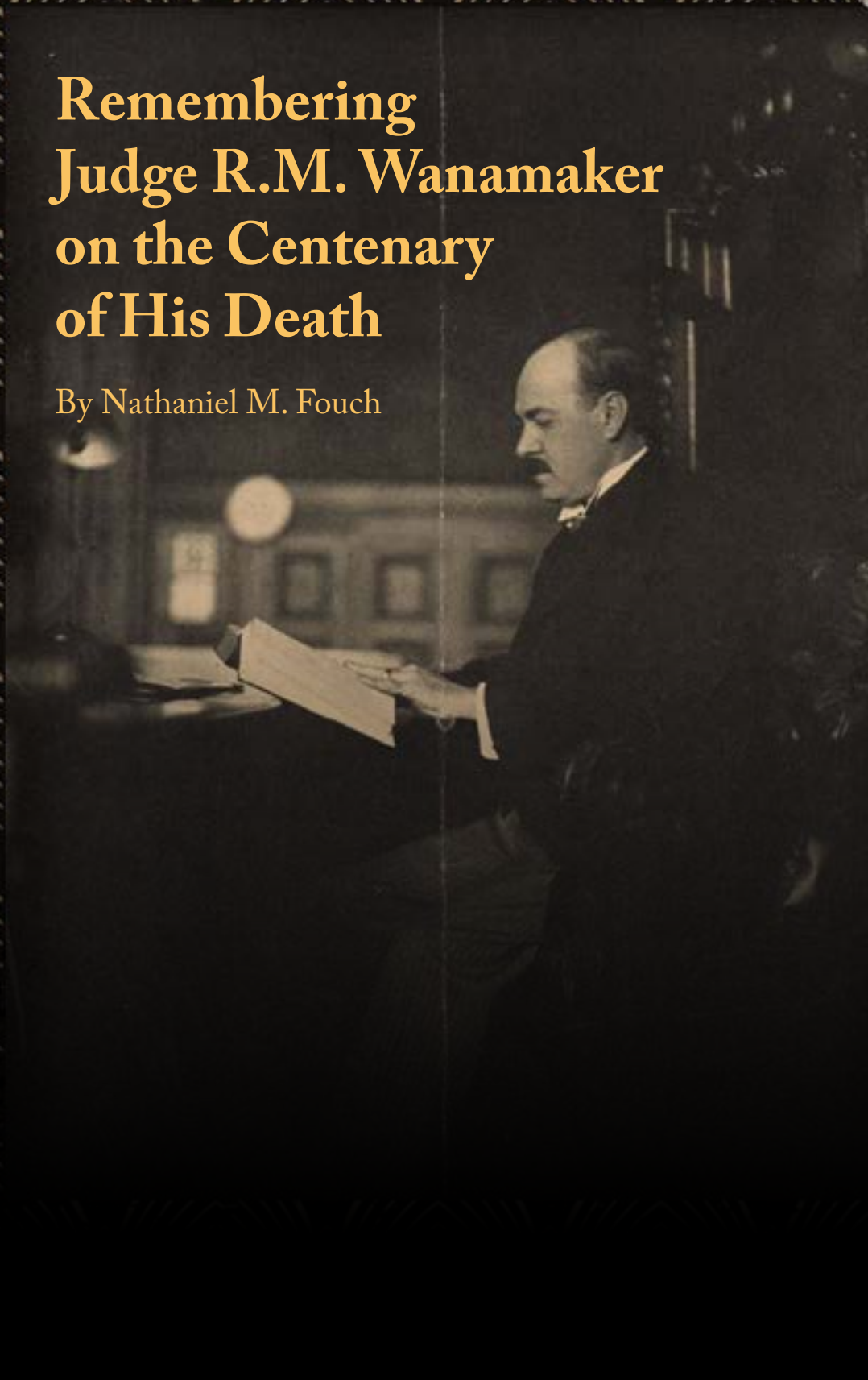
Griffith and his wife, Marci Held.



The Griffith kids.

**Remembering
Judge R.M. Wanamaker
on the Centenary
of His Death**

By Nathaniel M. Fouch



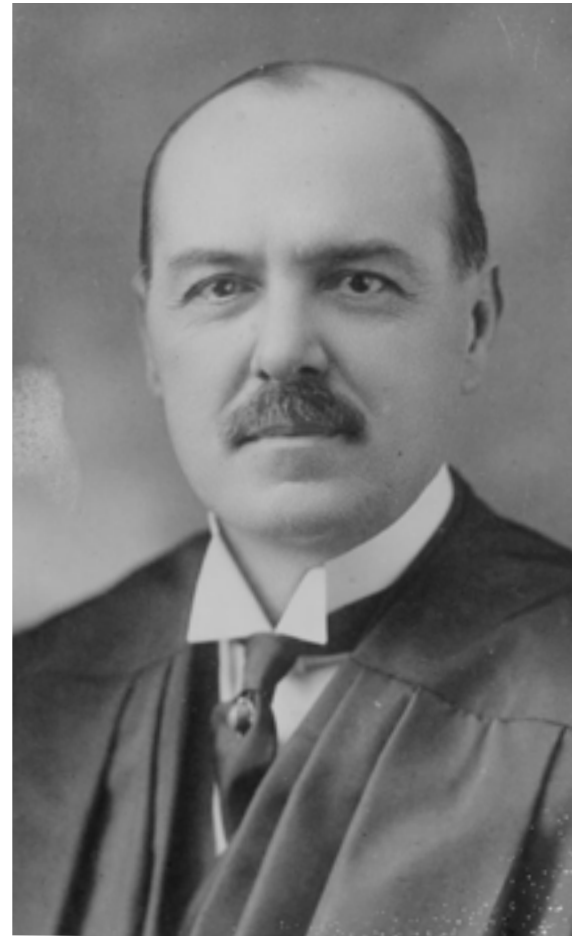
**This article contains discussion of depression and suicide. If you or someone you know is in crisis, call or text the national suicide and crisis lifeline at 988.*

On the morning of June 18, 1924, the Ohio legal community lost one of its leading lights. Judge Reuben Melville Wanamaker – or R.M., as he was universally known – leapt to his death from the fourth floor of Mount Carmel Hospital in Columbus. Aged 57, Judge Wanamaker had been a member of the Ohio Supreme Court for just over 10 years.¹ He was the first and remains the only justice ever elected to the court without the endorsement of a major political party, having run as an independent. Fittingly, he was known for his independence and support for Jeffersonian democracy and Lincolnian values. He strove to make the law understandable, to improve court efficiency and to combat the danger of judicial supremacy. As we face many of these same challenges today, it is fitting to remember and honor the legacy of Judge Wanamaker on the centenary of his tragic early death.

Wanamaker was born on a farm in North Jefferson, Ohio, on Aug. 2, 1866. By age 15, he earned enough baling hay and working at the village flax mill to enroll in a legal studies course at what is now Ohio Northern University.² He served for a short stint as a high school teacher in Ada and as a school principal in Lima before starting a law partnership in Akron with his friend and former classmate W.E. Young. Wanamaker quickly distinguished himself as an energetic advocate, compelling orator and rising star in the local Republican party. In 1895, he was elected Summit County prosecutor. Following the Akron Riots of 1900, he led one of the nation's first successful prosecutions of lynch mob participants, overseeing dozens of convictions. He was elected to the court of common pleas five years later and further distinguished himself by clearing one of the most clogged dockets in the state.

Judge Wanamaker was a vocal advocate for judicial reform and an early proponent of avoiding unnecessary litigation through settlement.³ When trial was inevitable, he curbed delays by sharply reducing drawn-out pretrial proceedings and made sure trials were concluded quickly.⁴ He lambasted waste, stating, “No human institution commits and permits such a waste of time, labor and money in the conduct of its business as the average trial court.”⁵ His reputation for judicial efficiency and common sense at the trial court level propelled Judge Wanamaker’s run for the state’s high court in 1912. His victory – joining a court two and a half years behind on its docket – was heralded as a “severe blow” to “long judicial vacations.”⁶

Announcing his platform for his supreme court campaign, Judge Wanamaker blended his longstanding emphasis on judicial efficiency with ideals of judicial restraint. He advocated the abolition of “needless delay,” “needless expense” and “old technical rules and antiquated precedents suited to ancient conditions.”⁷ He also promised “less trespassing by courts on the field of legislative power” and “less judge-made law, obstructing the general welfare and pervasive of justice.”⁸ Moreover, in the wake of Ohio’s progressive Constitutional Convention of 1912, he pledged not to “pull the teeth out of progressive laws, under the mask of interpretation.”⁹ Judge Wanamaker also championed the popular recall of judges – a proposal unsuccessfully floated by Theodore Roosevelt in a speech before the Ohio Constitutional Convention the same year.¹⁰ Like Roosevelt, he was occasionally referred to as a “Bull Moose” candidate, and even as the “Summit County Square Dealer,” in a nod to the former president’s famous platform. Unlike Roosevelt, who lost to Woodrow Wilson that year, Judge Wanamaker trounced his opposition, finishing first among a field of 13 judicial candidates. He was the only



state official elected that year who was not a Democrat.¹¹ Six years later, he was reelected – this time as a Republican – receiving the highest ever number of votes of any supreme court candidate to that point.¹²

Judge Wanamaker’s judicial opinions are a model of clarity. Unpretentious in style, with frequent recurrence to fundamental principles of law, they are suffused with common sense and wit. His unanimous majority in *Kintz v. Harriger*¹³ is a classic of legal reasoning, and quotes Solomon, Shakespeare and Lincoln en route to concluding that perjured testimony given in a grand jury proceeding could be used in a civil action for malicious prosecution. True to form, he elsewhere criticized “repetitions, superrefinements, trifling and technical distinctions, such as long ago should have been omitted from the standard practice of the law, in



the interest of simplified, substantial justice.”¹⁴ And he took aim at the sacrifice of people’s substantial rights to legal fictions, declaring, “Courts owe no higher duty to both the public and the profession than the duty to simplify and stabilize the rules of law.”¹⁵ This was consistent with his lifelong view of courts as “merely the people’s agents and servants in the administration of justice.”¹⁶

The touchstone of Judge Wanamaker’s political and judicial philosophy was the Declaration of Independence, “as declared by Jefferson and interpreted by Lincoln,” according to which “the individual’s rights were ever to be safeguarded and secured by government, federal, state, and local.”¹⁷ He observed that these principles were “written into the Constitution of Ohio by our early fathers.”¹⁸ He was a scholar of Lincoln, spoke widely on the president’s thought, life and works, and even authored a book about Lincoln’s mental processes and philosophy.¹⁹ These principles of popular constitutionalism and grassroots democracy led Judge Wanamaker to vigorously oppose what he saw as inappropriately centralized power, whether in the form of party bossism, corporate consolidation, sovereign immunity or judicial supremacy.²⁰

In February 1924, Judge Wanamaker began to experience severe depression. Unable to fulfill his regular judicial functions, he sat on the court only when necessary to break ties. In early June, he announced his decision to run for reelection as an independent, thereby opening the Republican primary to other candidates – a move which some interpreted to suggest a degree of forethought to ending his life.²¹ On June 12, he checked into Mount Carmel following what was described as a nervous breakdown. Within the week, he was dead.

While Judge Wanamaker’s precise reasons for taking his life are probably lost to history, it is clear he was



“Like his hero, Abraham Lincoln, one could rightfully say of Judge Wanamaker that he ‘lived the lawyer and loved the law, but more than all else he lived and loved justice.’”



experiencing severe mental health challenges. What’s worse, these challenges appear to have been widely known, even if not widely recognized. Various news outlets euphemistically referred to his being “ill,” “indisposed” or “in extreme ill health,” reflecting the era’s incomplete understanding of psychological health.²² In this sense his death seems entirely preventable. Judge Wanamaker was buried in Rose Hill Cemetery in Fairlawn, Ohio. He was survived by his wife of 34 years, Fannie (née Snow), his daughter, Mary Schwan, and his son, Walter B. Wanamaker, a war hero who would follow in his father’s footsteps and serve as a longtime judge of the Summit County Court of Common Pleas.

Judge R.M. Wanamaker left no grand, groundbreaking judicial precedent. His expansive construction of municipal home rule was largely rejected by the court.²³ And no other candidate has since won a spot on the high court without major party backing. So, what is it about this extraordinary man which speaks so clearly to our age?

First, it is the spirit of service which suffuses his work. Like his hero, Abraham Lincoln, one could rightfully say of Judge Wanamaker that he “lived the lawyer and loved the law, but more than all else he lived and loved justice.”²⁴ Next, it is the farsightedness of his ideals. His call to eliminate judicial backlogs – and the practical steps he

took to achieve this – echoes similar, recent calls by Chief Justice Sharon Kennedy over a century later.²⁵ His vision of widespread settlements has been achieved and his understanding of the state constitution’s independent force is being borne out in the revival of judicial federalism in this state. Finally, the tragedy of his untimely and preventable death begs the question of what he might have achieved had he received proper treatment for his mental health and reminds us of the importance of taking care of one another in this occasionally overwhelming profession. Judge Wanamaker was a man of and for his times, but also one who calls out to us from across the decades. Long may his memory and his name live “in the annals of Ohio.”²⁶

About the Author



Nathaniel M. Fouch is a judicial law clerk for Justice Pat DeWine of the Supreme Court of Ohio, and adjunct professor of political science at Sinclair Community College. He is also chairman of the Dayton Bar Association Editorial Board and a graduate of the 2023 Ohio Bar Leadership Academy. Nathaniel received his J.D. from the University of St. Thomas School of Law, in Minnesota. He writes on the Ohio Constitution, state constitutionalism and Ohio legal history. Nathaniel lives in Dayton with his wife and two sons.



Endnotes

- ¹ Associate justices of the Ohio Supreme Court were referred to as “judges” until the passage of the Modern Courts Amendment in 1968.
- ² *Our Candidates*, Summit County Beacon, Oct. 31, 1895, at 1.
- ³ R. M. Wanamaker, *Most Lawsuits Called Foolish; Sees Big Saving in Settlements*, Cincinnati Post, May 10, 1911, at 3.
- ⁴ R. M. Wanamaker, *Judge Who Really Rules Court Gets a Short Cut to Justice*, Cincinnati Post, May 15, 1911, at 4.
- ⁵ R. M. Wanamaker, *How Courts Waste Millions in Time and Money*, Cincinnati Post, May 9, 1911, at 1.
- ⁶ *Long Judicial Vacations*, Cincinnati Enquirer, Nov. 12, 1912, at 9.
- ⁷ *Judge Wanamaker Submits Platform of Judicial Reform to Voters of Ohio*, Akron Beacon J., Apr. 4, 1912, at 2.
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ See *Wanamaker Pleads for Recall*, Cincinnati Post, Apr. 27, 1912, at 1; R. M. Wanamaker, *Recall Applies to Judges*, Cincinnati Post, Sept. 7, 1911, at 4; “Proceedings and Debates of the Constitutional Convention of the State of Ohio” 378 (1912). Reprinted under the title “A Charter of Democracy,” 3 (1919), www.loc.gov/item/19027679/.
- ¹¹ *The Wanamaker Election*, Akron Beacon J., Nov. 18, 1912, at 4.
- ¹² *Judge Wanamaker Sets New Record*, Akron Beacon J., Nov. 16, 1918, at 1.
- ¹³ *Kintz v. Harriger*, 99 Ohio St. 240, 124 N.E. 168 (1919).
- ¹⁴ Cochran at 429-430.
- ¹⁵ *Hart v. Andrews*, 103 Ohio St. 218, 229, 132 N.E. 846 (1921).
- ¹⁶ Wanamaker, *How Courts Waste*, *supra* note 5, at 1.
- ¹⁷ *Fowler v. Cleveland*, 100 Ohio St. 158, 174, 126 N.E. 72 (1919) (Wanamaker, J., concurring).
- ¹⁸ *Id.*
- ¹⁹ R. M. Wanamaker, *The Voice of Lincoln* (1918).
- ²⁰ See R. M. Wanamaker, *We, the People, or We, the Judges?*, Saturday Evening Post, June 10, 1916 (advocating for federal court-constraining legislation to

narrow the practice of judicial review in the midst of the *Lochner* Era); Aldrich v. Youngstown, 106 Ohio St. 342, 140 N.E. 164 (1922) (Wanamaker, J., dissenting) (criticizing “[t]he old idea of the irresponsibility of the sovereign for wrongful acts to the citizens” as being “based upon the old-time monarchial fallacy that ‘the king can do no wrong.’”).

²¹ Laurence M. Benedict, *Judge R. M. Wanamaker Suicide*, Akron Beacon J., June 18, 1924, at 1.

²² *Id.* (“Judge Wanamaker has been in extreme ill health for the past eight or nine months”); see also *Ohio Supreme Court Justice in Death Leap*, Dayton Daily News, June 18, 1924, at 1 (“He has been ill for several weeks”); *Party Ties are Severed by Judge*, Cincinnati Enquirer, June 1, 1924, at 27 (“Judge Wanamaker has been indisposed for months”).

²³ George D. Vaubel, *Judge Reuben Melville Wanamaker and Ohio Municipal Home Rule*, 26 Ohio N.U.L. Rev. 231 (2000).

²⁴ R. M. Wanamaker, *The Voice of Lincoln*, *supra* note 19, at 123.

²⁵ Sharon L. Kennedy, *The Purposeful Agenda of Chief Justice Sharon L. Kennedy*, 37 Ohio Lawyer no. 2, 14-16 (July 2023), available online at <https://www.ohiobar.org/member-tools-benefits/practice-resources/practice-library-search/practice-library/2023-ohio-lawyer/the-purposeful-agenda-of--chief-justice-sharon-l.-kennedy/>.

²⁶ 4 Carrington T. Marshall, *A History of the Courts and Lawyers of Ohio* 166 (1934); see also 112 Ohio St. lxx (1925) (“Memorial of the life, character and public services of Reuben Melville Wanamaker”).

Mental Health Resources for Lawyers



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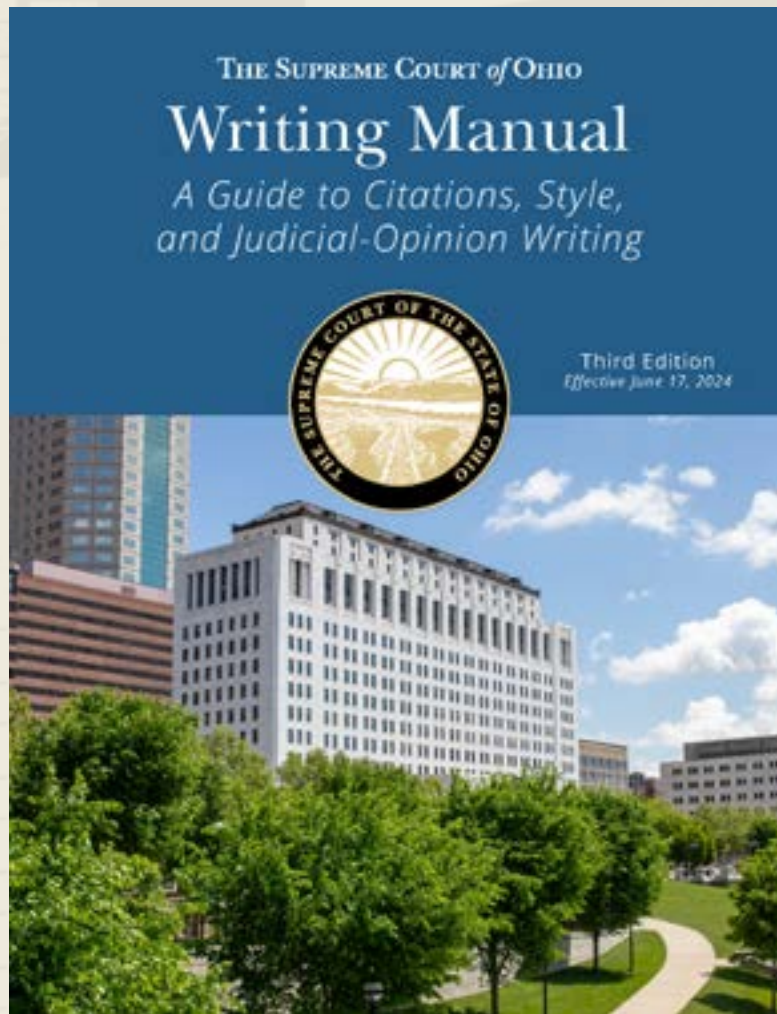
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New Ohio Supreme Court Writing Manual Makes Opinions Easier To Read and Briefs Simpler To Write

By Justice R. Patrick DeWine and Trane J. Robinson

Now here is something exciting: The Ohio Supreme Court has a new writing manual! Not exactly doing backflips yet? Well, give us this magazine page to convince you that this is a useful development that you ought to care about.

For starters, the Ohio Supreme Court Practice Rule 3.01 directs practitioners to the court’s writing manual for filing briefs in the Supreme Court and courts across Ohio widely use the manual. But formalities aside, the new edition aims to make briefs simpler to write and opinions easier to read.

So what is the Supreme Court of Ohio Writing Manual? The manual governs the citation format and style for opinions and briefs in the Ohio Supreme Court and for other courts that follow it. It includes rules for punctuation, capitalization, footnotes and other tricky things that detail-oriented lawyers obsess over. Think of it as a combination of the blue book and a style guide.

The writing manual has been around since 1985, but last year Chief Justice Kennedy appointed Justice DeWine to chair a committee of judges – including Justices Stewart and Deters – including practitioners and academics to revamp the manual. The committee looked to modernize the way opinions and briefs are drafted with a goal of improving readability.

The new manual confronts a tension familiar to all legal writers: Nearly every sentence in a legal argument requires citation, and yet sentences bogged down with long citations aren’t very readable. The headline in the updated manual is its elimination of most parallel citations. The committee recognized that most legal research is now done online, so there is no need for a brief or opinion to cite multiple print reporters for each case.

The previous manual called for reference to three reporters for a single citation to the Ohio Supreme Court: the Ohio State Reports (Ohio St.3d), the Ohio WebCite (___-Ohio-___) and the North Eastern Reporter

(N.E.2d). Citations to the U.S. Supreme Court called for reference to the United States Reports (U.S.), the Supreme Court Reporter (S.Ct.) and the Lawyers’ Edition (L.Ed.2d). Now, just a single citation will suffice. For Ohio Supreme Court cases, cite only the Ohio WebCite. For the U.S. Supreme Court, cite only the U.S. Reports. These changes should declutter briefs and opinions without sacrificing access to the cited authority. And they bring Ohio to the forefront of efforts to modernize legal writing, joining Colorado and Illinois as the three states to adopt this important change.

The revised edition significantly streamlines constitutional citations as well. Say you want to cite Ohio’s venerable jury trial right. The old manual required writing out: Ohio Constitution, article I, Section 5. Now, it’s just: Ohio Const., art. I, § 5. Same with the U.S. Constitution: The Executive Vesting Clause, for example, may now be abbreviated to U.S. Const., art. II, § 1, cl. 1.

Citations Then and Now

Court	Then	Now
Ohio, 2002 and later	<i>Bonacorsi v. Wheeling & Lake Erie Ry. Co.</i> , 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707, ¶ 15.	<i>Bonacorsi v. Wheeling & Lake Erie Ry. Co.</i> , 2002-Ohio-2220, ¶ 15.
Ohio, before 2002	<i>O’Brien v. Egelhoff</i> , 9 Ohio St.3d 309, 311, 459 N.E.2d 886 (1984).	<i>O’Brien v. Egelhoff</i> , 9 Ohio St.3d 309, 311 (1984).
Ohio Ct. App., 2002 and later	<i>State v. Jones</i> , 10th Dist. Franklin No. 02AP-1390, 2003-Ohio-5994.	<i>State v. Jones</i> , 2003-Ohio-5994 (10th Dist.).
Ohio Ct. App., before 2002	<i>State v. Croston</i> , 4th Dist. Athens No. 01CA22, 2001 WL 1346130 (Oct. 30, 2001).	<i>State v. Croston</i> , 2001 WL 1346130 (4th Dist. Oct. 30, 2001).
U.S. Supreme Court	<i>Dutton v. Evans</i> , 400 U.S. 74, 77, 91 S.Ct. 210, 27 L.Ed.2d 213 (1970).	<i>Dutton v. Evans</i> , 400 U.S. 74, 77 (1970).
U.S. Court of Appeals, published	<i>Baker v. Union Twp.</i> , 587 Fed.Appx. 229, 231 (6th Cir.2014).	<i>Baker v. Union Twp.</i> , 587 Fed.Appx. 229, 231 (6th Cir. 2014).

The manual also offers practitioners a style guide. This guide draws from such reference books as “The Chicago Manual of Style” and Strunk & White’s “The Elements of Style.” A welcome development is that the new edition guides practitioners to “avoid using archaic feminine suffixes (like -trix as in administratrix ...) and expressions implying value judgments based on gender (e.g., a manly effort).” Here are a few other things that you can find in the new writing manual:

<p>” Citations at a Glance: For easy reference, inside the front cover is a helpful one-page summary of the most commonly used citations forms.</p>	<p>⚖️ Citing Ohio’s Courts of Appeals: The old manual had cumbersome rules for citing Ohio appellate decisions. The new manual scraps that: Simply use the WebCite and note the district parenthetically. E.g., <i>State v. Jones</i>, 2003-Ohio-4669, ¶ 40 (8th Dist.).</p>	<p>* Footnotes: Few things break concentration more reliably than diverting a reader to the bottom of the page for a footnote. The style guide reminds that footnotes are “discouraged generally” and should be used sparingly for such items as “unwieldy internet citations, procedural details that do not affect the analysis (e.g., party substitutions), and string citations.” Legal authority belongs in the body of the page: “Do not follow the practice of relegating all citations to footnotes.”</p>
<p>§ Short Form Citations: The manual explains how and when to properly use short form citations to avoid unnecessary repetition.</p>	<p>⚠️ Unfamiliar Acronyms. Avoid them. Ever encounter a legal brief cluttered with an alphabet soup of unfamiliar sounding acronyms? As the style guide puts it, “A printed page littered with clumps of capital letters will irritate and distract readers.” The new manual provides guidance to help avoid this too-familiar legal writing no-no. “For example, after identifying the Greater Cincinnati and Northern Kentucky Car Dealers Association, provide a parenthetical such as (“the car dealers”) rather than create the abbreviation ‘GCKNCDA.’”</p>	
<p>() (Cleaned up): An emerging (and somewhat controversial) trend is the use of the parenthetical “cleaned up” to indicate a writer has removed non-substantive material such as internal quotation marks, alterations (e.g., brackets or ellipses), footnote reference numbers and/or internal citations from a quotation. The manual suggests that this parenthetical may be used, but only “when it would improve readability and would not deprive the reader of necessary information or alter the meaning of the quoted material.”</p>	<p>I Italics: Reading a brief with large swaths of bold text leaves readers with the sense that someone is shouting at them. The style guide tells writers to use italics for emphasis and to do so “sparingly.” Neither boldface nor underlining should be used for emphasis.</p>	<p>☰ Block Quotations: If you’re like most readers, you probably skim over block quotations. The manual cautions that “overuse of block quotations can overwhelm the prose and obscure the writer’s expression.” And when there is no getting around it, the manual demonstrates the correct way to format a block quote.</p>
<p>Ⓜ️ Internet Citations: The manual provides the format for internet citations and explains how to create a “permalink” to avoid “link rot” and ensure that internet sources are permanently accessible.</p>	<p>Ⓜ️ Misused Words and Phrases: Unsure about whether to call something a “decision,” a “judgment” or an “opinion”? What about whether to use “between” or “among”? Is it a “finding” or a “holding”? The style guide contains a section on commonly misused words and phrases.</p>	<p>⋯ Ellipses: A quirk in the old manual required the use of asterisks (* * *) instead of ellipses (. . .) to indicate omissions in quotations. The new manual fixes that, standardizing Ohio legal writing with the general convention.</p>
<p>⚙️ Emphasis in Original: The old manual required the use of “emphasis sic” to indicate that words in italics were emphasized in the original. Favoring English to Latin, the new manual uses “emphasis in the original.”</p>	<p>Ⓜ️ Misused Words and Phrases: Unsure about whether to call something a “decision,” a “judgment” or an “opinion”? What about whether to use “between” or “among”? Is it a “finding” or a “holding”? The style guide contains a section on commonly misused words and phrases.</p>	<p>Ⓜ️ Misused Words and Phrases: Unsure about whether to call something a “decision,” a “judgment” or an “opinion”? What about whether to use “between” or “among”? Is it a “finding” or a “holding”? The style guide contains a section on commonly misused words and phrases.</p>
<p>Aa Capitalization: Every wonder if words like “the state,” “the city,” the “Bureau of Workers Compensation” and the like should be capitalized? The manual answers your questions.</p>	<p>123 Numbers: Questions about whether to write out numbers (12 or twelve, 3 million or 3,000,000) in your writing? Look to the manual.</p>	<p>⚖️ Writing Judicial Opinions: For any judges reading, Part III of the manual is devoted to guidance on writing and structuring a judicial opinion.</p>

Here is the best part. Unlike the blue book and various other style guides, the Supreme Court of Ohio Writing Manual is free. You can download it on the Ohio Supreme Court’s website at supremecourt.ohio.gov/opinions-cases/opinions/writing-manual or you can contact the Ohio Supreme Court at REP@sc.ohio.gov for a hard copy.

About the Authors



Justice R. Patrick DeWine is currently serving his second term on the Supreme Court of Ohio. Prior to his election to the Supreme Court, he served for four years on the 1st District Court of Appeals and, prior to that, for four years on the Hamilton County Common Pleas Court. He is also an adjunct professor at the University of Cincinnati College of Law.



Trane Robinson is an associate in the Cincinnati office of Squire Patton Boggs, LLP. He clerked for Justice DeWine during the 2021-22 term and they co-teach appellate practice and procedure at the University of Cincinnati College of Law.



July 10 – Homicide or Accident: Baldwin Movie Set Shooting

July 11 – Rules of Practice and Procedure Update

July 16 – Finance for In-House Lawyers

July 17 – Condo and HOA Law and Trending Topics

July 18 – Juvenile Case Law Update

July 22 – This Year at One First Street: Supreme Court October Term Review

July 23 – An Unlicensed Ohio Family Trust Company

July 24 – Improve Trial Advocacy Through Storytelling

July 25 – Dissecting an Undue Influence Claim

July 30 – Long-Term Care Planning Basics: What Every Lawyer Should Know About Medicaid

Aug. 7 – Guardians of Data: Law Firm Cybersecurity

Aug. 13 – Tax and Financial Planning for the Closely Held Family Business

Aug. 21 – Fiduciary Income Tax Basics and More

Sept. 6 – Marvin R. Pliskin Advanced Probate and Estate Planning Institute

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A Few Good Lawyers

Current and former AGs discuss civility and public trust in our institutions at the Ohio Bar Annual Meeting

At some point in their career, every attorney has imagined themselves standing in a courtroom, cross-examining a witness, tension high, yelling “I WANT THE TRUTH!” as Jack Nicholson stares them deep in the eye and shouts back, “You can’t handle the truth!”

Alas, the legal profession rarely looks like the cinematic dramatization depicted in Rob Reiner’s “A Few Good Men.” Not to mention, that kind of behavior in a courtroom will likely get even the best attorney a serious reprimand from the presiding judge.

Instead, attorneys are expected to abide by rules of ethics and civility, in the courtroom and beyond. This code is intended, in part, to maintain the public’s trust in our systems and institutions. In recent years, though, confidence in our institutions has waned significantly.

For example, at the time that the PEW research center began tracking public trust in government in the late 1950s,

about 75% of the public said they “trusted the federal government to do the right thing almost always or most of the time.” After some fluctuation over the years, today we stand at a near-historic low of 16%.

Now add the current presidential election, in which a majority of the electorate do not hold either of the two major party candidates in high regard. The U.S. Supreme Court, is underwater too, earning 49% of the public’s trust in a recent Gallup poll. Congress is also struggling, sitting at only 32%. And according to Georgetown University’s annual Battleground poll, 81% of respondents from both parties believe that our Democracy as we know it is under threat.

Heated rhetoric and a notable lack of decorum undoubtedly contribute to this growing perception. And incivility is the rocket fuel for our 24-hour news cycle and hungry social media algorithms.

Here’s the bright side: In the same Battleground poll, voters *do* express hope about a wide range of solutions to help fortify our Democracy. Specifically, there is a bipartisan desire to see elected officials work together to solve problems, even if it means sacrificing some of their personal values to achieve this goal. In fact, 88% of respondents indicated this.

What profession is better equipped to evangelize this compromise mentality, to bring about resolution to complex problems *and be civil while doing it*, than the legal profession?

So, at our 2024 Annual Meeting at the Ohio Statehouse this spring, we invited four individuals who we thought were well-suited to tackle these big issues: a bipartisan panel of current and former Ohio attorneys general, moderated by Ohio Bar CEO Mary Amos Augsburger. Having served as the state’s top lawyer, each has had to defend our institutions, faced major controversies and, as such, provided a unique and helpful perspective on

where things stand, where we go from here and what role we can each play in making things better.

As we wade into the 2024 Presidential Election, Augsburgers asked the distinguished panel to weigh in on what legal professionals could do today to improve civility and help increase public trust and confidence in our institutions? Here's what they had to say:

Former Attorney General Betty Montgomery

It's not something we can do overnight. I think we start at the dinner table. We start in our junior highs and grade schools and teach civics. I believe if you don't teach history, and you don't teach civics and you don't teach the values at the dinner table, if winning is the only reason, then you completely miss the value system on which this democracy is founded, albeit imperfectly.

Attorney General Dave Yost

You won't often hear me quote Nietzsche but I'm reminded of a particularly apt phrase: A long obedience in the same direction. If we wish to get back to a place of civil discourse and classical liberalism, in which pluralism and freedom can coexist, we have to act trustworthy for a long time.


Former Attorney General Nancy Rogers

A democracy is at risk when the public loses confidence in its most basic institutions. My suggestion is for all of us to pick a public institution, one that is likely to be attacked unfairly, and get acquainted with its work, along with some friends from other political parties, and be prepared to defend it together. It might be a library, it might be a university, it might be a court system ... Pick a public institution and decide that you will defend it for the next few years. You can then speak out when inaccurate attacks are made, point out problems, but put them in context, and talk to the public about

why that institution matters in their lives.

Former Attorney General Lee Fisher

At orientation in our law school, I say to our students: Remember your why. You're about to spend the next three years of your life studying like most people won't, so that you can make a difference in other people's lives like most people can't. I tell them, I want you to think of yourselves as more than law students, I want you to think of yourselves as more than aspiring lawyers.

Think of yourselves as future truth tellers, fact finders, defenders of democracy, custodians of civility and guardians of justice. That's your why. If we focus less on the day-to-day drudgery and more on why we go into this profession, we will be a better profession and better lawyers. It goes way beyond the practice of law on a day-to-day basis. It's changing the lives of people we will never meet because we see a bigger purpose. 

To read more excerpts from the panel discussion, visit ohioabar.org/afewgoodlawyers.

About the Panelists



Dave Yost is Ohio's 51st attorney general. Currently serving his second term, he was elected in 2018 as a Republican after having served as auditor of state and as both county prosecutor and county auditor in his home county of Delaware.



Nancy Rogers served as Ohio's 48th Attorney General. She was appointed to the post by former Governor Ted Strickland in 2008. Prior to that she was Dean of The Ohio State University Moritz College of Law. She currently serves as professor emeritus and on the executive committee of the college's Divided

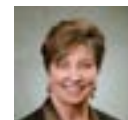
Community Project and wrote the textbook, literally, on dispute resolution.



Betty Montgomery was the first woman and the 45th individual to be elected as Ohio's attorney general. She served two terms. Montgomery was also Ohio's first female Auditor of State. Prior to that she served in the State Senate and as Wood County Prosecutor. She is currently of counsel at Mac Murray & Shuster, where she focuses her practice on helping clients understand and meet their regulatory compliance obligations.



Lee Fisher preceded Montgomery as Ohio attorney general, serving from 1991-1995 after having served in both the Ohio House and the Ohio Senate from 1981-1990. He also served as the state's 64th lieutenant governor from 2007-2011. Since 2017, Fisher has served as dean of the Cleveland State University College of Law and is part of the Ohio Bar's Deans and Practitioners Advisory Council, which focuses on legal education and the future of the profession.



Mary Amos Augsburgers is the CEO and corporate secretary of the Ohio State Bar Association. She previously served as chief legal counsel and policy advisor for the Ohio Senate majority caucus at just 30 years of age, division of financial institutions chief counsel and policy advisor for the Ohio Department of Commerce and as director of policy and public affairs for the Ohio Auditor of State. She joined the Ohio State Bar Association as legislative counsel in 2012 and by age 40, she had become its first female CEO and only the fourth leader in the association's 140-year history.



Honoring Excellence in the Legal Profession

Each year, at the Ohio Bar Annual Meeting, we come together to recognize the contributions of Ohio attorneys to the legal profession. These lawyers have gone above and beyond to improve the practice of law and their communities. This year, we added the following award recipients to the distinguished ranks of past winners. Congratulations to the 2024 award recipients!



Ohio Bar Medal Carol Seubert Marx

The Ohio Bar Medal, the Ohio State Bar Association's highest honor, is awarded to those who have given unselfishly of their time and talent by taking prominent leadership roles on the bench and in the organized bar, and to those who have worked quietly to earn the deep admiration and respect of the community.

Carol Seubert Marx is a Lancaster attorney whose career spans more than four decades. In that time, she has led the Ohio Bar and many other organizations aimed at improving equity in the practice of law and her local community. For her generous and quiet commitment to the betterment of the legal profession and the world around her, Carol Marx is the 2024 recipient of the Ohio Bar Medal.

Eugene R. Weir Award Janet Green Marbley

In 1998, the Ohio Bar Board of Governors established the Weir Award to recognize one lawyer annually who demonstrates an exceptional commitment to professional responsibility in the mold of Eugene R. Weir, a former member of the board who advanced professionalism and legal ethics throughout his career.

Janet Green Marbley is the director of the Supreme Court of Ohio's Lawyers' Fund for Client Protection which reimburses victims of attorney theft. She is a national advocate for law client protection, having served as president of the National Client Protection Organization and chair of the ABA Standing Committee on Client Protection. For the many ways in which champions professional responsibility among Ohio lawyers, Marbley is the recipient of the 2024 Weir Award.

Nettie Cronise Lutes Award Judge Terri Stupica

The Nettie Cronise Lutes Award is named after the first woman licensed to practice law in Ohio. The Ohio State Bar Association Women in the Profession Section established the Nettie Award to honor Lutes and to recognize woman lawyers who have improved the legal profession through their own high level of professionalism, opening doors for other women and girls.

Terri Stupica is judge of the Chardon Municipal Court where she has served since 2012 as the first elected woman trial judge in Geauga County's history. She is a founding member of the Geauga County Opiate Task Force and the Red Tulip Project, which provides recovery housing for women in Geauga County. For her wholehearted dedication to lifting up women and girls in her community and beyond, Judge Stupica is the recipient of the 2024 Nettie Cronise Lutes Award.



**Lawyer-Legislator
Distinguished Service Award
Senator Matt Huffman**

The bar association established the Lawyer-Legislator Distinguished Service Award in 2014 to recognize Ohio lawyers who also provide exceptional service as Ohio legislators.

Senator Matt Huffman is president of the Ohio Senate and represents Ohio's 12th District. A native of Lima, he has practiced law for the past 30 years in his family's private practice law firm. He is one of few attorneys in the General Assembly with an active private practice and, for years, has been a strong advocate for issues important to the legal profession and their clients. For his deep understanding of the practice of law and his support of Ohio lawyers and their clients, Sen. Huffman is the recipient of the 2024 Lawyer-Legislator Distinguished Service Award.



**Ohio Access to Justice
Foundation Presidential
Award
Robin Bozian**

The Ohio Access to Justice Foundation's Presidential Award annually recognizes attorneys who provide their professional expertise to increase access to justice in Ohio by serving those most in need.

Robin Bozian is the former managing attorney of Southeastern Ohio Legal Services where she worked for 44 years. In retirement, she continues to give her time and talent through pro bono service by developing and facilitating legal clinics. For her tireless dedication to serving others and her indispensable role in helping Ohioans address civil legal issues, Bozian is the recipient of the 2024 Presidential Award.



**Ohio Access to Justice
Foundation Voice of Justice
Award
Representative Kevin Miller**

The Ohio Access to Justice Foundation's Voice of Justice Award recognizes a person or organization who demonstrates outstanding leadership and advocacy on behalf of Ohioans who may need legal assistance to live stable, healthy and financially secure lives.

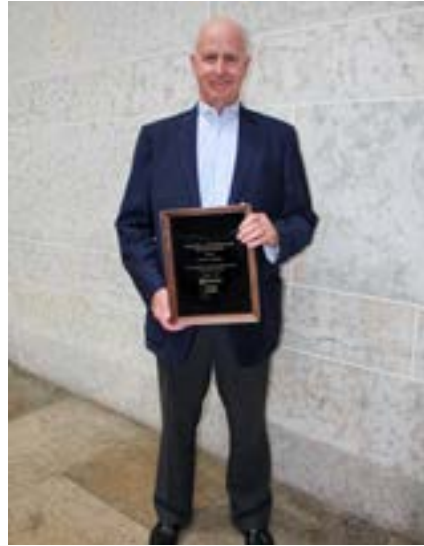
A native of Newark, Representative Kevin Miller serves Ohio's 69th District in the Ohio House. He serves as chair of the House Finance Subcommittee on Public Safety and, during the biennial budget process in 2023, led the effort to direct additional state dollars to legal aid, specifically in rural areas. For his vocal support and work to ensure adequate resources for civil legal services for low-income Ohioans, Rep. Miller is the recipient of the 2024 Voice of Justice Award.



**John and Ginny Elam
Pro Bono Award
Debra Rothstein Clark**

The John and Ginny Elam Pro Bono Award was established and endowed by Ginny Elam in honor of her husband John C. Elam, a Columbus attorney who generously donated his own time and talents to support the Legal Aid Society of Columbus, as well as other groups working to provide access to the courts for the poor and disadvantaged. This award recognizes attorneys who selflessly donate their time and talent to pro bono causes – not exclusively legal services – that assist persons of limited means, charitable and community organizations.

Debra Rothstein Clark is an attorney in Clermont County Ohio where, since 2019, she has provided pro bono representation for children and adults in the Adams and Clermont county juvenile courts and domestic relations courts. For her years-long donation of her time and talent to pro bono causes, Rothstein is a 2024 recipient of the John and Ginny Elam Pro Bono Award.



**John and Ginny Elam
Pro Bono Award
Jim Burnes**

Jim Burnes is retired from the firm of Bricker & Eckler. For the past eight years, he has served as a volunteer for Legal Aid of Southeast and Central Ohio, donating hundreds of hours to help Ohioans facing eviction across the state. For his extraordinary commitment to narrowing the justice gap through pro bono service, Jim Burnes is a recipient of the 2024 John and Ginny Elam Pro Bono Award.



Relive the Day

View the videos honoring the award winners, browse photos from the day and more at ohioabar.org/annualmeeting.



Celebrating Milestones

At the Ohio Bar Annual Meeting Recognition Luncheon, we celebrated the members of the bar who have achieved 50 and 65 years in practice. Congratulations to all of these inspiring attorneys!

University of Akron School of Law **50 Years in Practice**

Roger Bauer | District 18 | Warren
William Blake | District 15 |
Steubenville
James Carrothers | District 14 |
New Philadelphia
John Childs | District 11 | Akron
Lou D'Apolito | District 13 | Boardman
Stephen Fallis | District 11 | Akron
Preston Garvin | District 7 |
Worthington
Robert Hartford, Jr. | District 13 |
Poland
James Kamerer | District 14 | Canton
David Looney | District 11 | Akron
Mark Ludwig | District 11 | Akron
Ronald Macala | District 14 |
North Canton
James McGraw | District 1 | Cincinnati
W. Wyatt McKay | District 18 | Cortland
Robert Platt | District 18 | Cortland
Lloyd Ramsey | District 12 | Cleveland
James Roberts | District 13 | Poland
James Robertson | District 14 | Canton
Rosemary Rubin | District 14 | Canton
Scott Ruport | District 11 | Westfield, IN
Dennis Traver | District 14 | Dover
L. Terrence Ufholz | District 11 | Akron
Robert Wynn | District 18 | Jefferson

Albany Law School **50 Years in Practice**

Michael Lamanna | District 18 |
Chagrin Falls

Boston College Law School **50 Years in Practice**

James Skirbunt | District 18 |
Gates Mills
Mark Webber | District 12 |
South Euclid
Charles Williams | District 7 |
Columbus

Boston University Law School **50 Years in Practice**

Jonathan Garver | District 12 |
Cleveland
Marc Mezibov | District 1 | Cincinnati

University of California **Berkeley School of Law**

50 Years in Practice
Steven McCoy | District 7 | Columbus

University of California **Hastings College of the Law**

50 Years in Practice
Bruce Hall | District 10 | Medina

Capital University Law School **65 Years in Practice**

John Sentz | District 7 | Dublin

50 Years in Practice
William Biviano | District 18 | Warren
Dale Bring | District 7 | Gahanna
Thomas Campbell | District 9 | Newark
W. Charles Cooper | District 8 | Ironton
John Farthing | District 8 | Circleville
Stanley Flegm | District 5 | Delaware
Gary Gottfried | District 5 | Westerville
Richard Grafmiller | District 5 |
Upper Sandusky
James Jewett | District 7 | Columbus
Glennon Karr | District 7 | Columbus
Edward Lavelle | District 18 | Warren
William Ludwig | District 5 | Presto, AZ
Stephen Martin | District 5 | Delaware
Thomas McGrath | District 7 |
Columbus
Kenneth Molnar | District 5 | Galena
Timothy Nagy | District 7 | Columbus
Paul Scott | District 7 | Columbus
Peter Stephan | District 6 | Xenia
Gerald Todaro | District 7 | Columbus
Randolph Wiseman | District 7 |
Columbus
John Workman | District 7 | Columbus

Case Western Reserve University **School of Law**

65 Years in Practice
Robert Blattner | District 12 |
Pepper Pike
David Comstock | District 13 | Copley
John Norton | District 18 | Chesterland

50 Years in Practice

Charles Bauernschmidt | District 12 |
Bratenahl
Daniel Bennington | District 5 |
Delaware
Adrian Demer | District 12 |
Olmsted Falls
Stephen Freeze | District 2 | Kettering
James Gillette | District 18 | Chardon
Jeffrey Hollister | District 17 | Marietta
Ronald Kaffen | District 10 | Wadsworth
Stephen Kalette | District 12 |
Cleveland
Mark Katz | District 12 | Cleveland
James Kimbler | District 10 | Seville
Douglas Kohrt | District 7 |
Worthington
Lee Kolczun | District 10 |
Sheffield Village
Margery Koosed | District 12 |
South Euclid
Pearce Leary | District 12 |
Chagrin Falls
Christopher Mallin | District 11 |
Mogadore
John Pyle | District 9 | Howard
Harold Reader | District 12 | Cleveland
David Schaefer | District 12 | Cleveland
Richard Siferd | District 16 | Lima
Mark Skakun III | District 14 | Canton
Loren Souers Jr. | District 14 |
North Canton
Michael Thompson | District 14 |
Canton
Guy Tweed | District 12 |
Independence
Gerald Walker | District 18 | Painesville



(Case Western Reserve University School of Law cont.)

Dennis Watkins | District 18 | Warren
Linde Webb | District 4 | Ottawa Hills
David Welty | District 18 | Chesterland
Fred Wendel III | District 18 |
Chagrin Falls
John Wirtz | District 14 | Canton

University of Chicago Law School 50 Years in Practice

Stephen Buchenroth | District 7 |
Worthington
Barbara B. Peterson | District 4 |
Marblehead

University of Cincinnati College of Law

65 Years in Practice

Martin Young | District 1 | Cincinnati

50 Years in Practice

D. David Altman | District 1 | Cincinnati
John Blackburn | District 7 | Columbus
Robert Corbin | District 8 |
Georgetown
Timothy Cutcher | District 1 |
Cincinnati
Dain DeVeney | District 2 | Dayton
Lawrence Heiser | District 8 | Wellston
M. Howard Petricoff | District 7 |
Columbus
Fredric Robbins | District 1 | Cincinnati
Marc Rubin | District 1 | Cincinnati
Ronald Snyder | District 18 | Hudson
Margaret Stavick | District 13 |
Youngstown
Rodger Walk | District 1 | Cincinnati

Cleveland State University College of Law

65 Years in Practice

Sanford Shore | District 12 |
Beachwood
John Wiles | District 18 | Willoughby

50 Years in Practice

John Allen | District 10 | Mansfield
Frank Brancatelli | District 18 |
Concord Township
Thomas Brown | District 10 | Medina
Glenn Broz | District 12 | Strongsville
Mark DeVan | District 12 | Cleveland
John Doheny | District 10 | Avon Lake

Dennis Feola | District 12 | Cleveland
James French | District 12 | Westlake
Alan Harris | District 12 | Cleveland
Michael Hennenberg | District 12 |
Pepper Pike
David Hochman | District 12 |
Cleveland
Michael Hurley | District 18 |
Painesville
Dennis Ibold | District 18 | Chardon
Glenn Jones | District 10 | Medina
Thomas Kelly | District 12 |
North Royalton
David Knowles | District 12 |
Cleveland
Richard Lynch | District 10 | Norwalk
William McDonough | District 10 |
North Ridgeville
Russell McLaughlin | District 10 |
Sheffield Village
J. Michael Monteleone | District 12 |
Avon Lake
Quentin Nolan | District 10 | Lorain
Richard Perez | District 18 |
Willoughby
John Redeker | District 12 | Cleveland
David Reed | District 12 |
Independence
David Riehl | District 10 | Brunswick
Robert Rosenfeld | District 12 |
Chagrin Falls
Gary Rosenthal | District 18 | Mentor
Robert Rosplock | District 18 |
Willoughby
Thomas Taggart | District 17 | Marietta
Mary Lou Trattner | District 12 |
Cleveland
Dominic Vannucci | District 12 |
Rocky River

Columbia Law School 50 Years in Practice

Gregory Meurer | District 1 |
Hampton Bays, NY

Cornell Law School

50 Years in Practice

Robert Anspach | District 4 | Toledo

Duke University School of Law

50 Years in Practice

Ronald Janke | District 12 |
Moreland Hills

George Washington University Law School

50 Years in Practice

Richard Beckmann | District 2 |
Dayton
Darrell Dreher | District 7 | Columbus
Jack McGowan | District 1 | Hamilton
Joseph Tomain | District 1 | Cincinnati

Georgetown University Law Center 50 Years in Practice

Gregory Shumaker | District 4 |
Toledo
Robert Spittler | District 3 | Bowling
Green

Harvard Law School

50 Years in Practice

Stephen Black | District 1 | Cincinnati
William Martin | District 8 | Jackson
David Sloan | District 12 | Beachwood
Mark Wallach | District 12 | Cleveland

Indiana University Maurer School of Law

50 Years in Practice

Thomas Breed | District 1 | Cincinnati

University of Kentucky J. David Rosenberg College of Law

50 Years in Practice

Phillip Beard | District 6 | Xenia
J. David Rosenberg | District 1 |
Cincinnati

University of Louisville Louis D. Brandeis School of Law

50 Years in Practice

Joseph Moore | District 2 | Vandalia

University of Michigan Law School 65 Years in Practice

Richard Brunn | District 14 |
Bonita Springs, FL
Albert Cash | District 1 | Cincinnati
Frank Jacobs | District 4 | Toledo
Joseph Pilkington | District 4 |
Perrysburg

50 Years in Practice

W. David Arnold | District 4 | Toledo
Robert Buechner | District 1 |
Cincinnati
Kraig Noble | District 16 | Saint Marys



Fred Summer | District 7 | Blacklick
Robin Weaver | District 12 |
Shaker Heights

University of Mississippi School of Law

50 Years in Practice

Walter Wurster | District 1 | Cincinnati

Northern Kentucky University Salmon P. Chase College of Law

50 Years in Practice

Dwight Brannon | District 2 | Dayton
Michael Gehrig | District 1 | Cincinnati
Richard Goodman | District 1 |
Montgomery
William Huddleson | District 1 | Cleveland
John Hurd | District 1 | Cincinnati
David Izor | District 2 | Germantown
Jeffrey Rollman | District 1 | Mason
John Roszmann | District 6 |
Washington Court House
Vincent Salinas | District 1 |
Liberty Township
Norbert Scheper | District 1 |
Cincinnati
John Sharts | District 1 | Springboro
Joseph Shea III | District 1 | Cincinnati

Northwestern University Pritzker School of Law

50 Years in Practice

John Bartram | District 5 | Marion
Ed Duncan | District 12 | Lyndhurst
Kenneth Sechler | District 7 | Dublin

Notre Dame Law School

50 Years in Practice

Gerald Bednar | District 18 | Euclid
Thomas Moloney | District 7 |
Columbus
Robert Shedlarz | District 14 | Navarre
H. Patrick Weber | District 1 |
Cincinnati

Ohio Northern University Claude W. Pettit College of Law

65 Years in Practice

G. Brian Boltz | District 9 | Millersport

50 Years in Practice

William Alge | District 3 | Findlay
James Blair | District 16 | Lima
Frank Bruzzese | District 15 |
Steubenville
Kenneth Cardinal | District 13 | Sebring
Richard Collins | District 18 | Madison
T. Michael Dorner | District 10 |
Mansfield
Douglas Dotson | District 2 |
Miamisburg
John Gouttiere | District 4 | Waterville
Peter Halleck | District 3 |
Bowling Green
Timothy Hamman | District 16 | Lima
William Hatcher | District 3 | Van Wert
George Leshy | District 6 | Plain City
Richard Letts | District 7 | Columbus
Michael Malone | District 3 | Findlay
David McCombs | District 18 | Andover
Brian Melling | District 12 | Bedford
W. James Owen | District 6 | Dayton
E. Michael Pfeifer | District 5 |
Upper Sandusky
Kenneth Pohlman | District 2 | Dayton
Gregory Rakestraw | District 3 |
Findlay
James Richard | District 10 | Wooster
Randil Rudloff | District 18 | Warren
Sherry Ryan | District 9 | Zanesville
Stanley Scheetz | District 10 | Medina
Steven Schmidt | District 2 | Kettering
Stephen Snavely | District 3 | Defiance
James Sponseller | District 3 |
Paulding
J. Swank | District 9 | Newark
Thomas Tootle | District 8 | Circleville

The Ohio State University Moritz College of Law

65 Years in Practice

Bernard Fineman | District 13 |
East Liverpool
Richard Fraas | District 2 | Troy
Rollyn Gibbs | District 7 | Columbus
Jon Hapner | District 8 | Hillsboro
Chester Horlick | District 13 |
Youngstown
Dwight Hurd | District 7 | Columbus
John Koverman Jr. | District 2 | Dayton
Charles Kurfess | District 3 |
Perrysburg
Jacob Myers | District 2 |
Bonita Springs, FL

Richard Patchen | District 7 |
Worthington
Harry Paulino | District 7 |
Port Clinton
Leonard Sigall | District 7 |
Reynoldsburg
Donald Simmons | District 3 |
Perrysburg

50 Years in Practice

James Adair | District 7 | Columbus
Edward Bocik | District 4 | Sylvania
David Buda | District 7 | Amesville
Brian Buzby | District 7 | Columbus
J. Craig Carr | District 13 |
Youngstown
Edwin Coy | District 4 | Westerville
Edward Czopur | District 13 |
Canfield
William Davis | District 13 |
East Liverpool
Randy Deering | District 8 | Waverly
Gregory Denny | District 4 | Toledo
Philip Dombey | District 3 |
Grand Rapids
Susan Eisenman | District 7 |
Columbus
Charles Faruki | District 2 |
Marco Island, FL
Richard Fisher | District 3 | Napoleon
John Flynn | District 11 | Kent
David Frank | District 5 | Powell
Thomas Friedman | District 7 |
Columbus
Mark Frost | District 13 | Columbiana
Carl Fry | District 7 | Columbus
Geoffrey Goll | District 13 | Salem
James Gordon | District 7 | Hilliard
Ronald Greenblatt | District 12 |
Beachwood
Jeffrey Halm | District 14 | Canton
Anthony Heald | District 5 |
Delaware
William Hicks | District 6 | Springfield
David Hilkert | District 11 | Akron
Donald Hilliker | District 6 |
Bellefontaine
Charles Kampinski | District 12 |
Scottsdale, AZ
Donald Keller | District 7 | Galloway



(The Ohio State University Moritz College of Law cont.)

Richard Kerger | District 4 | Toledo
 Tunney King | District 7 | Columbus
 Charles Knight | District 17 | Pomeroy
 Edward Kress | District 2 | Dayton
 James Lagos | District 6 | Springfield
 M. Dale Leeper | District 17 | Marietta
 John Madigan | District 4 | Toledo
 John Mashburn | District 7 |
 Groveport
 Karl May | District 12 | Cleveland
 Ronald Noga | District 7 | Columbus
 Ronald O'Brien | District 7 |
 Columbus
 James Rench | District 11 | Medina
 Steven Rowe | District 7 | Columbus
 Alan Schaeffer | District 2 | Dayton
 Ronald Scharer | District 5 | Marion
 David Shade | District 5 | Delaware
 Michael Spurlock | District 7 |
 Columbus
 David Sternberg | District 18 | Mentor
 Stephen Tilson | District 5 | Galion
 Douglas Toot | District 13 | Canfield
 Louis Tosi | District 4 | Toledo
 Jerry Vande Werken | District 7 |
 Columbus
 Leslie Varnado | District 7 | Columbus
 Barry Waller | District 7 | Columbus
 Robert Warren | District 12 | Westlake
 Philip Weaver | District 12 |
 Rocky River
 Nancy Willis | District 9 | New Albany
 Jeffrey Wright | District 1 | Wilmington

The University of Pennsylvania Carey Law School

50 Years in Practice
 James Ehrman | District 12 |
 Napa, CA

Saint Louis University School of Law

50 Years in Practice
 Robert Hess | District 8 | Chillicothe
 Henry Wagner | District 2 | Dayton

Temple University Beasley School of Law

50 Years in Practice
 Ronald Greenspan | District 12 |
 Cleveland

University of Tennessee College of Law

50 Years in Practice
 Gary Pasqualone | District 18 |
 Geneva

University of Toledo College of Law

50 Years in Practice
 Guy Barone | District 4 | Toledo
 Martin Conry | District 10 | Amherst
 Ronald Cooperman | District 4 |
 Maumee
 Stephen Cottrell | District 4 | Genoa
 Nicholas Cron | District 4 | Toledo
 Ralph Dublikar | District 14 | Canton
 George Gusses | District 4 | Toledo
 James Hart | District 3 | Perrysburg
 William Hayes | District 3 |
 Bowling Green
 Garry Hunter | District 17 | Athens
 C. Allen McConnell | District 4 |
 Toledo
 Richard Meyer | District 6 |
 Bellefontaine
 Martin Mohler | District 4 | Toledo
 Jerome Parker | District 4 | Toledo
 Ron Rimelspach | District 4 | Toledo
 Charles Rowell | District 4 | Toledo
 John Schlageter Jr. | District 4 |
 Toledo
 Philip Schmidt | District 4 | Toledo
 Thomas Spinks | District 10 |
 North Ridgeville
 Kenneth White | District 4 | Toledo
 David Wicklund | District 4 | Toledo
 Vesper Williams II | District 4 | Toledo
 Sol Zyndorf | District 4 | Toledo

Tulane University Law School

50 Years in Practice
 Thomas Czechowski | District 2 |
 Centerville

Valparaiso University Law School

50 Years in Practice
 John Kocher | District 4 | Port Clinton

Vanderbilt Law School

50 Years in Practice
 Robert Burns | District 1 | Cincinnati

Villanova University Charles Widger School of Law

50 Years in Practice
 Daniel Carter | District 12 | Cleveland

University of Virginia School of Law

50 Years in Practice
 James Dickinson | District 18 | Novelty
 James O'Reilly | District 1 | Cincinnati

Wayne State University Law School

50 Years in Practice
 Vernelis Armstrong | District 4 |
 Toledo
 J. Robert Chambers | District 1 |
 Cincinnati

University of Wisconsin Law School

50 Years in Practice
 John Neville | District 16 | Ada
 Jerry Wild | District 1 | Cincinnati

Yale Law School

65 Years in Practice
 Burt Griffin | District 12 | Cleveland

50 Years in Practice

Keith Ashmus | District 12 | Vermilion



Watch the Video

Hear from some of our 50-year practitioners on how the practice of law has evolved and the words of wisdom they've picked up along the way in our video on their many years of practice:
bit.ly/50and65years2024.



ESTATE PLANNING GUIDED BY CLIENT VALUES

Always a partner, Johnson Trust Company works in concert with attorneys and other advisors to ensure communication, consistency, and innovation in client estate plans.

As part of an independent company owned by its employees, Johnson Trust Company attracts and retains trust and investment professionals with long-term experience and expertise in developing and implementing innovative wealth and trust plans. Our professionals are proactive in applying expertise, generating solutions, and determining the best approach to achieve client goals.



JOHNSONINV.COM



Statehouse Connection: Tackling the Rural Practice Gap

Marisa Myers
Ohio Bar Government
Relations Manager



You may have heard by this point of the growing shortage of attorneys in Ohio, particularly outside of the major metropolitan areas. And if you haven't, you will be hearing more on this topic in the coming years. Access to lawyers is critical, and the Ohio Bar has made this issue one of its highest priorities.

How Big of a Problem Is This?

The Ohio Bar has been reviewing information on bar admissions, attorney registrations and demographics, and, in particular, Interest on Lawyers' Trust Accounts (IOLTA) data. While not a perfect metric, IOLTA numbers are the best available indicator of attorneys in private practice.

In its annual Profile of the Legal Profession for 2020, the American Bar Association defined a legal desert as a county with fewer than one lawyer per 1,000 residents. In order to have adequate access to legal services, the Ohio Bar estimates that there should be approximately one lawyer per 700 residents on a county-wide basis. This is the standard the Ohio General Assembly adopted in House Bill 150 of the 134th General Assembly (more on this later).

Based on the number of attorneys holding IOLTAs, we can see the geographic location of private practice attorneys in the state. Of the 88 counties in Ohio, only six meet the standard of at least one private practice attorney per 700 residents. These are the major metropolitan areas – Cuyahoga, Franklin, Hamilton, Lucas, Montgomery and Summit counties.

These numbers are even more alarming when you consider the age demographics of the legal profession. The average age of an attorney in Ohio hovers around 54.5 years. As of early 2024, several counties are well above this average. In fact, the average age of an attorney is above 60 in 19 counties. Lucas County, for example, is currently one of the counties meeting the 1/700 ratio. However, the average age of the attorneys in that county is approximately 60 years old. Without additional attorneys to backfill those who may retire in the near future, Lucas County could also be facing a shortage soon.

Yikes! What Has the Ohio Bar Been Doing To Solve the Problem?

Rather than resting on these trends, the Ohio Bar is taking a proactive approach to addressing attorney shortages. As a first step, the Ohio Bar pursued and supported House Bill 150 last General Assembly, which created the Rural Practice Incentive Program. The program, under the Ohio

Department of Higher Education, funds a loan repayment option for newer attorneys serving as appointed counsel, public defenders and prosecutors in underserved areas. The state's initial appropriation for this purpose was \$1.5 million, and since the first-ever application period was closed in March, it appears that all of those funds will be allocated. A total of 120 eligible applications were filed and we're thrilled to see the initial interest in this program.

Additionally, under the leadership of Ohio Bar 2022-23 President Dean Wilson and 2023-24 President Michelle Kranz, the Ohio Bar took a deep dive on this topic through the Rural Practice Gap Task Force, with the goal of identifying recommendations and next steps to combat the growing shortage of attorneys.

Tell Me More About the Rural Practice Gap Task Force

The Rural Practice Gap Task Force, chaired by President Kranz, brought together stakeholders from across the state and legal profession and collaborated for over a year on potential solutions and recommendations. The task force divided the issue into three areas of focus: 1.) recruitment, mentoring and support, 2.) education and outreach collaborations and 3.) funding and policy reforms. From those areas of focus, the task force put forward a list of 13 recommendations.



What Are the Recommendations?

While all of the recommendations are worthy proposals, the task force identified a “top three”:

1. Create and support high school rural practice pipeline programs serving rural areas.
2. Add a staff position at the Ohio Bar to coordinate rural practice support.
3. Develop/support connection and mentorship programs for new rural practitioners.

These top three recommendations will serve as an initial starting point in our efforts to address attorney shortages. Additional recommendations include:

- Expand the rural practice incentives enacted by HB150 of the Ohio General Assembly (include more private practice attorneys).
- Explore opportunities for an incubator or fellowship program to provide more support to new lawyers practicing in rural areas, including financial, practice management and business development support.
- Develop a communications plan to change the perception of rural practice.
- Refine the list of potential partners/ other stakeholders and develop more specifically what we are asking these partners to do.
- Establish CLEs and other resources to support rural practice attorneys.
- Advocate to remove the requirement that assistant state public defenders serve in full-time capacity (prohibits private practice).
- Seek funding for and establish a fellowship program in northwest and southeast Ohio.



- Seek public funding to support legal aid.
- Explore allowing another option for bar admittance in Ohio that is based on demonstrating competencies in certain core curriculum while in law school and completing a minimum number of supervised hours while a student licensee and law school graduate.
- Encourage the Ohio Public Defender Commission to review and revisit experience requirements for appointed counsel to receive state reimbursements for providing indigent defense.

You can read the full task force report at ohiobar.org/ruralpracticegapreport.

Where Do We Go From Here?

Of the recommendations above, the Ohio Bar determined that three of them are public policy positions needing the approval of our Council of Delegates. Those include expanded access to the Rural Practice Incentive Program, removal of the requirement for assistant state public defenders to serve in a full-time capacity only and to encourage a review of experience requirements for appointed counsel.

We are pleased to report that the Council of Delegates considered and approved these public policy positions at our annual meeting in May, giving the Ohio Bar authority to use its legislative resources on these proposals.

Additionally, the Ohio Bar Board of Governors has also been active in these conversations. Notably, the Board of Governors recently approved recommendation #2 – to add a staff position at the Ohio Bar to coordinate rural practice support. The Ohio Bar has convened a small working group to identify the duties and goals of this new role and develop a job description for the position. We are excited to add new leadership on this important topic in the near future.

And we cannot end without expressing our gratitude to the Rural Practice Gap Task Force members, who have already given so much of their time and expertise to this difficult topic. We also have to extend a special thank you to Chief Justice of the Supreme Court of Ohio Sharon Kennedy, who has been a leader in identifying and working to solve this problem. We look forward to continued collaborations with our dedicated partners and with you, our members, to ensure there is adequate access to legal representation in every corner of our great state. 



SETTING THE STANDARD

OSBF COMMUNITY SERVICE AWARD FOR ATTORNEYS 40 AND UNDER

The Ohio State Bar Foundation is pleased to announce the recipients of the 2024 Community Service Award for Attorneys 40 and Under. The award is given to attorneys who work to make a difference in their communities, outside of their practice area, and without compensation.

"I am honored to celebrate the winners of the OSBF Community Service Award for Attorneys 40 and under. These exceptional individuals exemplify

the profound impact lawyers can have on society through their dedication to giving back. Their contributions serve as a beacon of inspiration, demonstrating the transformative role attorneys play in making our world a better place. We salute their outstanding efforts," said Belinda Barnes, OSBF President.

Congratulations!



Megan Bennett
Partner, Frantz Ward LLP
Cleveland



Vonsheay Brown
Assistant Director of Law,
Civil Division for the City of Cleveland
Akron



Adrienne Buckler-Callihan
Founder and Owner of
Buckler Callihan Law, LLC
Portsmouth



Chelsea J. Chalk
Associate, Dinsmore & Shohl LLP
Cincinnati



Jonathon "JC" Elgin
Attorney JC Elgin Co., LPA
Shelby



Carmen M. Hamper
Solo Practitioner, Carmen M. Harper,
Attorney at Law
Ashtabula



Katherine Hunt-Thomas
Disability Rights Attorney and
Director of Advocacy, Ability Center
of Greater Toledo
Toledo



Caitlyn Johnson
Senior Assistant Attorney General at
the Ohio Attorney General's Office
Columbus



ShaRay Lewis
Assistant Public Defender, State of Ohio
Youngstown



Stephen A. Moberg
Solo Practitioner
Springfield



Morgan Napier
Commercial Litigation Associate
at Faruki PLL
Dayton



OHIO STATE BAR
FOUNDATION

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EMPOWERING SURVIVORS: FREEDOM A LA CART'S LEGAL EDUCATION PROJECT



Thanks to an OSBF grant of \$19,500, OSBF grantee Freedom a la Cart is advancing its mission through the Legal Resource & Education Project, providing legal education and resource referrals to survivors of sex trafficking. Freedom a la Cart also created digital educational videos on specialty dockets and restorative justice which were utilized at community workshops. We are excited to share more about the work they are doing to empower survivors of human trafficking.

Freedom a la Cart is a nonprofit social enterprise, dedicated to empowering survivors of human trafficking and helping them rebuild their lives with dignity and self-sufficiency. Through various programs such as restorative justice support, workforce development, housing assistance, and the Butterfly Program, survivors are given the necessary tools and resources to thrive.

We joined Katie Kettlehake, Engagement Manager at Freedom a la Cart, at their offices in downtown Columbus to speak more about Freedom's mission and the project that OSBF supported. Underneath their offices, Freedom a la Cart runs their café, where survivors receive paid training and personal support while working in the kitchen. Each purchase also supports their programs, helping provide even more workforce training and services for local survivors.

"Freedom is a place where survivors can heal, learn, and grow as they establish personal and economic self-sufficiency. Through the workforce development program, survivors are able to experience paid job shadowing

and internships with business partners as they explore what different career paths might look like for them. As they secure their next stable job, we continue direct support for another year to strengthen job retention," Katie explains.

The Legal Resource & Education Project supported by the OSBF was focused on driving dialogue in the community. With funding from the OSBF, Freedom a la Cart conducted workshops to educate survivors on civil legal matters they may encounter, covering topics like debt and student loans, family law, expungement law, and housing law. The impact of these workshops has been profound, with 25 survivors gaining invaluable knowledge about their legal rights and receiving support from legal professionals. Additionally, the project extends its reach to educate the wider community on the effectiveness of specialty court dockets and restorative justice approaches.

“NEVER IN A MILLION YEARS
WOULD I HAVE THOUGHT THAT
I WOULD BE WHERE I AM
TODAY CELEBRATING THE
VICTORIES DUE TO THE HELP
OF THE EXPUNGEMENT
WORKSHOP AND FREEDOM.”

"Through these workshops, survivors were empowered with knowledge and now understand better their legal rights as citizens," said Katie. "A post-workshop survey showed that 100% of survivor respondents reported that their knowledge had increased on the legal topic presented, and 80% indicated they felt they had an easy next step to take," said Katie.

In addition to workshops, Freedom a la Cart produced digital educational videos to further amplify its message. These videos provide insights into specialty court dockets and highlight the successes of participants in the organization's programs, offering hope and inspiration to survivors and supporters alike.

"This project is important to creating a more just Ohio because survivors of human trafficking are being empowered to advocate for themselves when they face legal barriers due to their experience with being trafficked," said Katie. "The Legal Resource & Education Project provided an important opportunity to create public change as we believe survivor legal education and community education on restorative justice are both key to long-term justice for survivors of human trafficking throughout our region."

Collaborations with various restorative justice court programs and community organizations have also enhanced the project's effectiveness and outreach. Survivor workshops conducted in partnership with Advocating Opportunity, Legal Aid, Pohler & Keck, and the Ohio State Bar Association have created a supportive environment for survivors to access resources and guidance.

Nothing underscores the tangible impact of the project better than testimonials and stories from survivors who participated in the workshops:

"Thanks to the expungement workshop and help of Freedom a la Cart I gained the knowledge to complete paperwork and navigate the system," said one survivor. "A few months went by and the Judge herself called me explaining the gratitude she had for granting this order for someone that has been down the path and suffered from all the trauma and being able to give a 2nd chance at a new way of life. Never in a million years would I have thought that I would be where I am today celebrating the victories due to the help of the expungement workshop and Freedom."

As the project continues to unfold, Katie and Freedom a la Cart wanted to express their deep gratitude for the Ohio State Bar Foundation's support, acknowledging the pivotal role it has played in bringing about positive change. The Legal Resource & Education Project stands as a testament to the power of collaboration, advocacy, and education in creating a more just and equitable society for all.

Ohio case law summaries from Dec. 1, 2023 – March 31, 2024

In Case You Missed It: The following are selected summaries of cases decided by Ohio courts between Dec. 1, 2023 – March 31, 2024. To view all of the decisions issued in this time period or to read the selected cases in their entirety, please visit ohioabar.org/greenbook where you can search by case name or view by date.

Administrative and Regulatory

Unclaimed funds/Reporting/Liability. [Access Urgent Med. Care of Upper Arlington v. Ohio Dept. of Commerce | 2024-Ohio-445 | 10th Appellate District | 02/08/2024](#) Affirming state division's administrative order requiring medical clinics to report and remit their respective unclaimed funds liabilities is affirmed where evidence showed that clinics had possession, custody or control of monies owed to patients who sought treatment at their facilities, so clinics met the statutory definition of holders of unclaimed funds, R.C. 169.01(D)(1), with the duty to annually file accurate reports containing the information specified in R.C. 169.03(A)(2) and to remit their unclaimed funds liabilities; the responsibility for unclaimed funds liability could not be shifted to a third-party billing service because the statutory duty to report unclaimed funds is not delegable to a third party, and clinics' failure to retain or obtain the records needed to file accurate reports is not a defense to their failure to fulfill their duties under R.C. 169.03(A).

Appeal/Service/City council. [Hugh Ready Mix & Supply Co. v. Massillon | 2024-Ohio-427 | 5th Appellate District | 02/06/2024](#) In property owner's appeal of city zoning official's cease-and-desist order, ultimately affirmed by city council, stating that owner's business was not a permitted use under the property's light industrial zoning designation or a prior nonconforming use, trial court erred in dismissing the appeal, reasoning that there was a failure of service, where owner's notice of appeal was filed within 30 days, service was perfected on city by courier service, the notice of appeal did not need to be served on city council, and timely service on the city of an administrative appeal of a city council decision sufficiently complies with R.C. 2505.04.

Driver's license suspension/Uninsured motorist/Dormant judgment. [State ex rel. Stone v. Norman | 2024-Ohio-263 | 10th Appellate District | 01/25/2024](#) In driver's petition for a writ of mandamus to compel BMV registrar to vacate driver's license suspension or, alternatively, for a declaratory judgment that driver has satisfied all requirements to have his license suspension vacated, where driver was uninsured at the time of accident and insured's insurer obtained against driver a default judgment that has become dormant, trial court erred in ruling that driver's license suspension must remain in place where driver demonstrated that dormant judgment against him could no longer be revived and qualified as a "stayed" judgment under R.C. 4509.40 that requires, upon filing of evidence of financial responsibility, the vacation of a license suspension based on that judgment; as well, driver lacked an adequate remedy at law.

Appeal/Notice/Clerk of courts. [Rodriguez v. Galion | 2024-Ohio-129 | 3rd Appellate District | 01/16/2024](#) In police chief's administrative appeal of city's termination of his employment, trial court erred in granting city's motion to dismiss for lack of subject-matter jurisdiction where, although police chief did not file a notice of appeal with the civil service commission, as required by R.C. 2505.04, the question remains whether the notice of appeal sent to the commission by the clerk of courts was timely received by the commission to be considered filed and perfected for purposes of the statute.

License revocation/Evidence. [Valko v. State Med. Bd. of Ohio | 2023-Ohio-4676 | 10th Appellate District | 12/21/2023](#) In medical license revocation, trial court did not err in affirming medical board's decision where physician's claim is without merit that his right to due process was violated because the board reached its decision by relying on the testimony of an individual board member who was never identified or qualified

as an expert; the board is comprised of individuals who are trained medical professionals and for that reason the board may rely on its own expertise to determine whether a physician failed to conform to minimum standards of care, Demint, R.C. 4731.01.

Appeal/Jurisdiction. [Johnson v. Ohio Dept. of Job & Family Servs. | 2023-Ohio-4629 | 9th Appellate District | 12/20/2023](#) After state department's denial of nursing facility services for appellant where appellant's guardian filed a notice of appeal in the court of common pleas probate division, the probate division's certification of the appeal to the general division is affirmed, even though appellant was a ward of the probate division and had a pending guardianship proceeding there, since appellant did not show that the probate division had exclusive jurisdiction over her appeal of the administrative decision that she did not meet the criteria to remain in a nursing facility, and appellant did not demonstrate that the general division of the common pleas court lacked jurisdiction over the appeal, R.C. 5101.35(E), 2101.24(A)(2).

Public nuisance/Demolition/Appeal hearing. [Irving J. Franklin Realty, Inc. v. E. Cleveland | 2023-Ohio-4419 | 8th Appellate District | 12/07/2023](#) In property owner's action against city, alleging wrongful demolition of house without a hearing and violation of due process, judgment in favor of owner is affirmed since owner sent a letter via certified mail to the city making a written demand for a hearing within seven days of receiving the city's letter designating the house as a public nuisance, owner did not waive the right to be heard even though city found the hearing request to be technically inadequate under city ordinance, which did not require city to receive the request within a certain time, and city took no action upon receiving owner's hearing request.

Appeal/Legislative act/Jurisdiction.

Douglas v. Lakemore | 2023-Ohio-4399 | 9th Appellate District | 12/06/2023

In village council member's administrative appeal of village's passage of resolution censuring him for inappropriate conduct in his official capacity, trial court erred in denying village's motion to dismiss the appeal for lack of subject matter jurisdiction where passage of the resolution was a legislative act, rather than a quasi-judicial proceeding requiring notice and hearing, and the trial court did not have subject matter jurisdiction over council member's R.C. 2506.01 administrative appeal.

Aviation and Transportation

Contract/Breach/Dismissal/Notice.

Total Quality Logistics, L.L.C. v. All Pro Logistics, L.L.C. | 2024-Ohio-772 | 12th Appellate District | 03/04/2024

In plaintiff-logistics company's breach of contract action against defendant-motor carrier contracted to deliver fruit to supermarket for plaintiff's client, filed after fruit was rejected by supermarket as being damaged and plaintiff reimbursed its client for loss sustained by rejection of fruit, trial court erred in sua sponte dismissing plaintiff's claim where the court discussed only a single provision of the parties' contract, plaintiff's claim was not frivolous, it was not obvious that plaintiff could not prevail on facts alleged in the complaint, and plaintiff was not given prior notice that the claim might be dismissed or given an opportunity to respond.

Banking and Commercial

Guaranty enforcement/Waiver of defenses/Amended agreement.

Huntington Natl. Bank v. Schneider | 2023-Ohio-4813 | 1st Appellate District | 12/29/2023

In bank's breach of guaranty action against borrower for default on credit agreement, summary judgment in favor of bank on reasoning that borrower waived any defense to enforcement of the guaranty was error where amendment to underlying credit agreement provided for borrower's waiver of known defenses, rather than waiver of all available defenses, as provided for in original agreement, and because the new waiver provision was either contradictory to or more specific than the original provision, the question remains as to defendant's knowledge of asserted defense.

Construction

Contract/Breach/Civil theft/Damages.

Pham Construction & Co., L.L.C. v. Tran | 2024-Ohio-634 | 5th Appellate District | 02/20/2024 In construction company's action alleging, inter alia, breach of contract against business owners for refusing to pay remaining balance for work performed where owners filed counterclaims for breach of contract and for civil theft, R.C. 2307.61, resulting in a jury verdict for owners, trial court did not err in denying company's motion for JNOV where the economic loss rule did not apply to prevent owners' counterclaim for civil theft of payment, there was evidence that company engaged in deceptive conduct independent of parties' obligations under their contract, and civil theft damages were separate and distinct from breach of contract damages.

Contract/Breach/Arbitration/Waiver.

Guerrini v. Chanell Roofing & Home Improvement | 2024-Ohio-585 | 8th Appellate District | 02/15/2024

In commercial building owner's action seeking a declaration that roofing company was required to submit to arbitration, pursuant to the parties' construction contract for roof, which had become detached from building after it was installed, trial court did not err in granting building owner's motion for judgment on the pleadings since the contract contained a mandatory arbitration provision which covered the parties' dispute, and building owner did not waive the right to arbitration by filing a prior complaint without raising the issue of arbitration where owner filed a notice of voluntary dismissal of that complaint.

Contract/Breach/Settlement/Attorney fees.

Vitantonio v. Am. Constr. Group, L.L.C. | 2024-Ohio-325 | 9th Appellate District | 01/31/2024 In plaintiff-

homeowner's breach of contract and related claims action against defendants-construction companies and related defendants for failure to complete construction of swimming pool as specified in contract where the parties entered into a settlement agreement followed by plaintiff's motion to enforce the settlement agreement and a request for attorney fees, trial court did not err in denying plaintiff's request for attorney fees where the parties' agreement contained no provision that would allow for award of attorney fees to a party that prevailed on a motion to enforce the settlement agreement, and evidence

does not support the assertion that defendants acted in bad faith.

Contract/Anticipatory breach/Pleading.

Berkut, Inc. v. Devolver Corp. | 2024-Ohio-63 | 8th Appellate District | 01/11/2024 In subcontractor's action against contractor for failure to pay money owed for work on two projects, resulting in judgment for subcontractor for breach of contract on first project and for anticipatory breach on second project, issuing judgment for subcontractor on the anticipatory breach complaint was error since subcontractor failed to claim anticipatory breach in any pleading and the court erred in transforming subcontractor's defense to contractor's counterclaim into an affirmative claim for anticipatory breach of contract, and the record does not show that the anticipatory breach issue was tried by express or implied consent of the parties, Civ.R. 15(B).

Consumer

Motor vehicle/Damages. Warman v. Select Auto | 2024-Ohio-366 | 2nd Appellate District | 02/02/2024

In vehicle buyer's action against dealership, alleging deceptive and fraudulent sale of defective vehicle, resulting in judgment for buyer, trial court did not err in awarding buyer expectation damages, permitting buyer to recover losses sustained from violation of the Consumer Sales Practices Act, R.C. 1345.09(G), but trial court erred in awarding buyer reliance damages, including costs associated with the vehicle's purchase, since that award of reliance damages represented a rescission approach, but buyer did not seek rescission as a remedy.

Frivolous conduct/Connection to claims.

Hunter v. Rhino Shield | 2024-Ohio-261 | 10th Appellate District | 01/25/2024 In

plaintiff's consumer claims action against defendants-businesses for unsatisfactory work on home exterior where plaintiff ultimately voluntarily dismissed the claims, Civ.R. 41(A), against all defendants and recovered a refund in federal court action, trial court did not err in granting four of the defendants' motions for sanctions where plaintiff had no factual or legal basis for claims against the four defendants that had no plausible connection to the claims, plaintiff continued to fight to maintain the claims even when confronted with clear facts, and because the conduct was frivolous under R.C. 2323.51, attorney fees were appropriately awarded pursuant to App.R. 23.

Consumer (Continued)

Consumer Sales Practices Act/Auto repair/Damages. Nicholson v. Davis Auto Performance | 2024-Ohio-205 | 5th Appellate District | 01/22/2024 In plaintiff's action against defendant-auto repair shop, alleging violations of the Consumer Sales Practices Act (CSPA) for misrepresentations and work performed in an unworkmanlike manner, judgment in favor of plaintiff is affirmed where some evidence showed that the repairs were unworkmanlike and that defendant had violated the CSPA pursuant to R.C. 1345.02 and 1345.03, award of treble damages and attorney fees under the CSPA was not unreasonable, and defendant did not object to alleged hearsay and therefore waived objection on appeal.

Lemon Law/Nature of defect. Fagen v. Jaguar Land Rover N. Am., L.L.C. | 2023-Ohio-4324 | 1st Appellate District | 12/01/2023 In vehicle lessee's Lemon Law and related claims action against manufacturer, alleging that vehicle was a lemon after failed attempts to repair a recurring issue, summary judgment in favor of lessee was error where, although lessee satisfied her burden to show that vehicle had a defect and was presumptively a lemon under R.C. 1345.73(A), the question remains whether the defect or condition substantially impaired the use, value or safety of the vehicle.

Contracts

Arbitration/Record. Carter v. Takoda Trails | 2024-Ohio-911 | 1st Appellate District | 03/13/2024 In plaintiff-guardian's action against defendant-care center, alleging that ward had suffered injuries while a resident at the facility, trial court did not err in denying defendant's motion to stay proceedings and compel arbitration where defendant failed to submit authenticated copies of the parties' entire contract upon which defendant's motion was based, and the arbitration agreement compelled arbitration for claims arising out of a separate contract that was not part of the record.

Cemetery/Termination options. Ravenna Twp. Bd. of Trustees v. Ravenna | 2024-Ohio-892 | 11th Appellate District | 03/11/2024 In township board of trustees' action against city seeking a declaration that it had the right to cancel the parties' agreement to form a union cemetery on

township land surrounded by city, where township asserted that its commitment to the agreement was based on a mistake of fact, had become frustrated or was against public policy, summary judgment in favor of city was error since the cemetery was formed pursuant to R.C. 759.27, and while the parties' agreement provided for termination only by agreement of both parties, R.C. 759.39, the statute does not prohibit application of other contract principles, and trial court did not address whether alternative methods existed for termination of the contract.

Breach/Impede engagement/Summary judgment. Innovative Architectural Planners, Inc. v. Ohio Dept. of Adm. Servs. | 2024-Ohio-824 | 10th Appellate District | 03/07/2024 In breach of contract action against defendants-state department of administrative services and construction commission by plaintiff-business that was awarded a third-party administrator contract to serve as an intermediary between agencies and contractors where plaintiff alleged that defendants diverted projects away from plaintiff during the term of the contract, summary judgment in favor of defendants was error since plaintiff presented evidence that defendants prevented state agencies from choosing plaintiff and removed projects from plaintiff after agencies had issued task orders, so the question remained whether defendants impeded agencies' ability to engage plaintiff as administrator.

Breach/Unwritten policy/Past practices/Licenses. Ponsart v. Arnold | 2024-Ohio-640 | 11th Appellate District | 02/20/2024 In campers' breach of contract action against campground owners for not allowing transfer of rights to campsites as a package with sale of recreational vehicles, summary judgment in favor of owners is affirmed where unwritten transfer policy and past practices allowing transfers did not create a contract right, campsite use agreements were licenses to use the campsites and were not leases of real estate, licenses were non-assignable, and campers had no authority to sell or to transfer rights to campsites, R.C. Ch. 3729.

Breach/Limitations/Service. Hoague v. Cottrill Servs., L.L.C. | 2024-Ohio-531 | 5th Appellate District | 02/13/2024 In plaintiff-homeowner's action for, inter alia, breach of contract against defendants-inspection and restoration services company and related

defendants for causing damage to property during restoration work, trial court erred in granting defendants' motion for judgment on the pleadings, dismissing the complaint against all defendants, on reasoning that the claims were barred by contract's limitations period where, although claims against one defendant were properly dismissed due to limitations period, the second defendant did not move to dismiss the complaint or to join first defendant's motion, and there was a question as to proper service on second defendant, so dismissal was premature.

Tortious interference/Mechanic's lien. Universal Steel Bldgs. Corp. v. Dues | 2024-Ohio-698 | 3rd Appellate District | 02/01/2024 In plaintiff-contractor's action for, inter alia, foreclosure of mechanic's lien against defendants-property owners and finance company after property owners alleged that plaintiff failed to fulfill the parties' contract to build barn and therefore discontinued payments to plaintiff, prompting plaintiff to file a mechanic's lien, which was filed on a different property owned by defendants, trial court erred by granting plaintiff's motion for JNOV in response to defendants' counterclaim for tortious interference with defendants' contracts with finance company since plaintiff knew from the outset of litigation that its mechanic's lien was defective as being filed on the wrong property, plaintiff knew that if it would not stipulate to the priority of finance company's interest in the property, defendants would be in breach of contract and would be obligated to pay finance company's attorney fees, and plaintiff did not timely remove the lien, even after the lien was declared defective.

Breach/Consulting/LLC/Charging order. Campbell v. 1 Spring, L.L.C. | 2024-Ohio-308 | 10th Appellate District | 01/30/2024 In breach of contract action in which plaintiff contracted as a consultant to obtain a permit for placing an advertising sign on defendant-LLC and members' building where the parties entered into an agreed judgment, trial court did not err in granting plaintiff's motion for a charging order and in ordering that defendants be charged with the consulting contract unpaid balance where a charging order is a judgment creditor's sole and exclusive remedy to satisfy a judgment against the membership interest of an LLC's member, R.C. 1706.342, the agreed judgment entry was a binding contract that incorporated the terms of the

consulting agreement, and defendants failed to compensate plaintiff under the agreement.

Breach/Joint venture/Accounting.

Ladd v. Planchak | 2024-Ohio-24 | 2nd Appellate District | 01/05/2024

In plaintiffs' breach of contract action claiming expenses incurred in connection with the parties' joint venture involving ownership of a condominium, trial court's award of damages to plaintiffs and rejection of defendant's counterclaims is affirmed where defendant's argument that a partner (or joint venturer) may not bring an action against a partner before an accounting is of no avail since the current law, R.C. 1776.45(B), provides that a partner can bring a legal or equitable action against a partner without seeking an accounting.

Breach/Pre-judgment interest. HB

Martin Logistics, Inc. v. Hissong Group, Inc. | 2023-Ohio-4836 | 9th Appellate District | 12/29/2023

In truck purchaser's breach of contract action against seller, claiming failure to repair truck and hiring a third party to make repairs, resulting in judgment for purchaser for damages pursuant to jury verdict and post-judgment interest, trial court erred in implicitly denying purchaser's motion for pre-judgment interest, R.C. 1343.03(A), by failing to address purchaser's motion in the court's judgment, and the case is remanded for consideration of purchasers' motion.

Non-compete/Preliminary injunction/ Commercial speech. Medpace, Inc. v. ICON Clinical Research, L.L.C. | 2023-

Ohio-4552 | 1st Appellate District | 12/15/2023

In plaintiff-company's action against defendant-competitor, seeking an injunction to prevent alleged poaching of employees subject to non-compete restrictions, resulting in issuance of an order that was tantamount to a preliminary injunction, defendant's appeal is dismissed for lack of a final appealable order since the injunction involved commercial speech in the form of hiring, soliciting, and/or recruiting employees, which was not a prior restraint on First Amendment speech that would constitute a final appealable order, and the order was not final under R.C. 2505.02(B)(4) because the injunction was issued to preserve plaintiff's contractual rights during the pendency of litigation.

Breach/Collateral estoppel/Overbilling.

Ohio Bur. of Workers' Comp. v. Price | 2023-Ohio-4395 | 10th Appellate District | 12/05/2023

In state bureau's action for breach of contract and related claim to recover amount of alleged overbilling by vocational rehabilitation specialist, judgment for bureau is affirmed where collateral estoppel did not preclude the judgment, even though specialist was found not guilty of overbilling in an earlier related criminal action, since prosecutor's office and attorney general's office are distinct enough in their roles as government agencies to preclude privity, the bureau was represented by the attorney general's office, was not directly involved in the criminal case, and would have had no ability to appeal the judgment in the criminal case; as well, the bureau's claim for an increased amount of damages, discovered after the criminal proceeding, is permitted and its Civ.R. 41(A) dismissal of first civil action against specialist did not preclude instant action.

Criminal

Prohibition/Jurisdiction/Adequate

remedy at law. State ex rel. Taylor v. Montgomery Cty. Court of Common Pleas | 2024-Ohio-1127 | Supreme Court of Ohio | 03/28/2024

The Ohio Supreme Court affirms the court of appeals' dismissal of inmate's petition for a writ of prohibition against the court of common pleas where relator had an adequate remedy in the ordinary course of law by way of a direct appeal for his claim that the trial court lacked jurisdiction to convict him of, and to sentence him for, felony murder since the trial court had subject-matter jurisdiction to convict relator of, and to sentence him for, murder, R.C. 2903.02(B), and relator could have pursued that challenge in his direct appeal and in his application to re-open his direct appeal under App.R. 26(B), but failed to do so.

Consecutive sentences. State v. Jones | 2024-Ohio-1083 | Supreme Court of Ohio | 03/27/2024

In convictions by plea in two cases to drug trafficking, possessing criminal tools, and impaired driving, and imposition of concurrent and consecutive prison sentences totaling 60 months, court of appeals correctly applied the standard of review required by R.C. 2953.08(G) for the imposition of consecutive sentences in its determination that the trial court made the required R.C. 2929.14(C)(4) findings, including proportionality with regard to both the seriousness of defendant's

conduct and the danger he posed to the public in view of his extensive criminal record, and defendant has not demonstrated that those findings were not supported by the record.

Post-conviction relief/DNA test results.

State v. Clinton | 2024-Ohio-1018 | 10th Appellate District | 03/19/2024

Following a conviction of, *inter alia*, murder that was affirmed and appeal was pending, appellant filed a pro se petition for post-conviction relief that was denied since DNA test results were not outcome determinative because although the absence of appellant's DNA on the cigarette butts found at the scene of the murder excludes appellant as the person who smoked a cigarette at the crime scene on or about the time the crime occurred, it does not exclude appellant as not at the crime scene when the shooting occurred or that he could not have been the shooter, and other evidence admitted at the trial placed appellant at the scene of the shooting.

Right to counsel/Conflict of interest.

State v. Green | 2024-Ohio-997 | 9th Appellate District | 03/18/2024

In a prosecution of seven counts of illegal use of a minor or impaired person in nudity-oriented material or performance, the trial court did not err in disqualifying defendant's attorney for a conflict of interest where the attorney represented a potential witness "for months and pled him guilty to a case" and the trial court reasonably could have concluded that there was a serious potential for conflict since defense counsel's duties to defendant would be materially limited by the duties he owed to his former client, Prof.Cond.R. 1.7(a)(2), 1.9(c)(1)-(2).

Jury trial/Waiver/R.C. 2945.05.

State v. Frazier | 2024-Ohio-935 | 1st Appellate District | 03/15/2024

In a bench conviction of aggravated robbery, the trial court violated defendant's constitutional right to a jury trial by first addressing defendant in open court and confirming that his waiver was made knowingly, voluntarily and intelligently, as required by R.C. 2945.05, notwithstanding that defendant executed a written waiver, since there is no evidence in the record that the waiver was made in open court.

Sentencing/Consecutive sentences/ Potential prison term. State v. Pitts | 2024-Ohio-987 | 5th Appellate District | 03/15/2024

In a conviction by plea to aggravated drug trafficking and of having

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weapons while under disability, the trial court made the required R.C. 2929.14(C) (4) findings to impose consecutive sentences at the sentencing hearing and in its sentencing entry for the convictions of aggravated drug possession and having weapons while under disability, but the trial court erred in ordering the sentence to be served consecutively with a future potential prison term in another county in a felonious assault case for which appellant was on judicial release.

Sentencing/Mandatory prison term/

Lack of evidence. State v. Mullins | 2024-Ohio-986 | 5th Appellate District | 03/15/2024 In a conviction by plea of domestic violence, R.C. 2919.25(A) and (D)(4), the trial court erred by denying appellant's pro se post-judgment "Motion for Withdrawal of Plea" as to the judgment entry sentencing appellant to a "mandatory term," since a prison term is mandatory only "if the offender knew that the victim of the violation was pregnant at the time of the violation," and there was no evidence or allegation that the victim was pregnant at the time of the offense; remanded for imposition of a non-mandatory sentence of 24 months in accord with the parties' agreement and with the sentence imposed by the trial court at the sentencing hearing.

Search/Motion to suppress. State v. Harrell | 2024-Ohio-981 | 2nd Appellate District | 03/15/2024 In a conviction of, inter alia, engaging in a pattern of corrupt activity and two counts of aggravated trafficking in drugs, the trial court erred by denying motion to suppress evidence obtained from defendant's detention since claim that officers were permitted to make a traffic stop of defendant because other officers were to execute a search warrant for suspected drug trafficking on defendant's home and that there were concerns for officer safety is without merit since once an occupant is beyond the immediate vicinity of the premises to be searched, the search-related law enforcement interests are diminished and the intrusiveness of the detention is more severe, Bailey; also discussed, fair trial, motion to suppress identification testimony and double jeopardy does not preclude the state from retrying defendant on all counts.

Sentencing/Jail-time credit. State v. Leach | 2024-Ohio-978 | 2nd Appellate District | 03/15/2024 In an appeal by the state to the trial court's award of 303

days of jail-time credit to defendant for the prison terms imposed on him, the trial court erred in awarding defendant the jail-time credit because while he was being held on bond in the present case, he was serving prison time on an unrelated case, and also, the trial court ordered the sentences in this case to be served consecutively to those in the unrelated case, and jail-time credit is not allowed in that situation, R.C. 2967.191; remanded for the trial court to file a new judgment entry omitting the jail-time credit and to notify the Department of Rehabilitation and Corrections of the change.

Evidence/Admission of writing/Bench trial/Prejudice. State v. Hughes | 2024-Ohio-934 | 1st Appellate District | 03/15/2024 In a bench conviction of having a weapon while intoxicated, R.C. 2923.15, any error by the trial court in admitting an envelope indicating that it held a handgun was not prejudicial since the writing does not indicate the results of any test firing or that it was operable and, since it is presumed that the judge in a bench trial "considered only the relevant, material, and competent evidence in arriving at its judgment unless it affirmatively appears to the contrary," Beck, the trial court did not rely on the writing in finding the defendant guilty, and thus defendant could not be prejudiced by any potential error in admitting the exhibit.

Sentencing/Consecutive sentences. State v. Otero | 2024-Ohio-952 | 8th Appellate District | 03/14/2024 In convictions by guilty pleas to failure to comply, OVI, attempted domestic violence, attempted grand theft, theft, failure to stop after an accident, attempted burglary and four counts of drug possession, the trial court's imposition of consecutive sentences on revocation of community control was error where the trial court failed to notify defendant that the suspended sentences could be run consecutively, Jones; sentence is vacated and case is remanded for re-sentencing in accordance with opinion and Jones.

Evidence/Lay testimony/Evid.R. 701. State v. Hill-Bryant | 2024-Ohio-962 | 8th Appellate District | 03/14/2024 In a bench conviction of two counts of felonious assault, R.C. 2903.11(A)(1) and (A)(2), admission of an officer's testimony about the characteristics of the weapon used to shoot victim, although not admissible as expert testimony under Evid.R. 702(C), testimony "based on an

officer's training and experience, related to the officer's personal observations during an investigation, and helpful to determine facts in issue the testimony is properly admitted as lay testimony under Evid.R. 701," Harris, and was admissible in view of the officer's training and experience as a firearms instructor; also discussed, ineffective assistance.

Search/Motion to suppress. State v. Williams | 2024-Ohio-943 | 7th Appellate District | 03/14/2024 In a conviction by plea of no contest to having a weapon while under disability, the trial court erred by denying a motion to suppress where an unidentified person made two 9-1-1 calls concerning three African American men she saw at a car wash who were brandishing firearms, a responding officer saw three African American males outside a store 44 yards from the car wash, he stopped and, after deciding that they fit the description of the citizen's call based on their dress, he patted down defendant and found a gun and a small bag of marijuana, but officer lacked reasonable articulable suspicion to stop defendant, and thus the pat down also lacked justification.

Evidence/Hearsay. State v. Smith | 2024-Ohio-963 | 8th Appellate District | 03/14/2024 In a conviction of two counts of felonious assault and one count of having weapons while under a disability, admission of victim's statement to neighbor of who shot him was not error since it was admissible as an exception to the hearsay rule, Evid.R. 803(2), because very little time passed between the shooting and the victim's statement to a neighbor that he was "bleeding and hurting" and that "[his girlfriend's] son shot me twice" when he knocked on the neighbor's door and asked her to call the police, demonstrating that the victim was still under the stress of the event and was not the product of reflective thought.

Aggravated murder/Death penalty.

State v. Knuff | 2024-Ohio-902 | Supreme Court of Ohio | 03/14/2024 In convictions on two counts of aggravated murder, with death specifications in the killing of two persons, the Supreme Court of Ohio affirms the convictions and the imposition of the death sentence; issues discussed include: unrecorded "pretrial proceedings;" motion to sever; right to self-representation; jury selection; voir dire questioning, challenges for cause, death-qualifying prospective jurors and religious freedom; character evidence; reference to polygraph exam; jury

instructions, including denial of voluntary manslaughter instruction and giving consciousness of guilt and duty to retreat instructions; sufficiency and weight of evidence; merger of specifications; sentencing issues involving other acts evidence; prosecutorial misconduct; ineffective assistance; sentencing opinion, including mitigation issues; penalty phase issues; and in the independent sentence review, the Court finds the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt, R.C. 2929.03(D)(1).

Jury instructions/Purposeful/Ineffective assistance. State v. Chasteen | 2024-Ohio-909 | 1st Appellate District | 03/13/2024 In a conviction of sexual imposition, R.C. 2907.06(A)(1), arising from a massage to an individual at a facility where defendant was an employee, the trial court did not commit plain error by not instructing the jury on the meaning of the mens rea standard of "purposeful" conduct, nor was defense trial counsel ineffective for not requesting that instruction since, while it would have been preferable for the trial court to provide an instruction on the definition of "purposely," defendant did not request that instruction at trial, and the court of appeals holds that "[t]aking the instructions to the jury as a whole and the entire record, a manifest miscarriage of justice" did not occur as a result of the omission, Wamsley.

Plea/Withdrawal/Jurisdiction. State v. Cobb | 2024-Ohio-916 | 9th Appellate District | 03/13/2024 Following a 2013 conviction by plea to, inter alia, aggravated murder that was affirmed, the trial court erred by denying appellant's pro se motion to withdraw his guilty plea since the court's reliance on State ex rel. Special Prosecutors to hold that the trial court lacked jurisdiction over appellant's motion was error since appellant's motion raised issues that were not decided in his direct appeal, State ex rel. Davis; matter is remanded for consideration of the motion to withdraw guilty plea.

Dereliction of duty/Garrity materials/Dismissal. State v. Flynn | 2024-Ohio-941 | 7th Appellate District | 03/13/2024 In an appeal by the state of the municipal court's dismissal of 14 misdemeanor counts of dereliction of duty, R.C. 2921.44(B), against defendant police officer that was based on the state's failure to affirmatively prove that the evidence it intended to use at trial was derived from legitimate sources wholly

independent of the Garrity materials since the those materials were in the possession of the law director's office for months prior to the charges being filed, and the court found that the state failed to affirmatively establish that the Garrity materials were not used in the criminal investigation nor in the law director's decision to file charges and, in addition, it found the state did not affirmatively prove the evidence it intended to use at trial was derived from legitimate sources wholly independent of the Garrity materials.

Sentencing/Motion to suppress/Findings/Crim.R. 12(F). State v. Workman | 2024-Ohio-921 | 5th Appellate District | 03/12/2024 In a conviction by plea to OVI and weapons offenses, the trial court erred in denying a motion to suppress by failing to provide findings of facts since Crim.R. 12(F) provides "[w]here factual issues are involved in determining a motion, the court shall state its essential findings on the record."

Sentencing/Repeat violent offender specification. State v. McRae | 2024-Ohio-922 | 5th Appellate District | 03/12/2024 In a conviction by plea to, inter alia, aggravated burglary, the trial court erred by sentencing defendant for a repeat violent offender specification, R.C. 2929.14(B)(2)(a), since the court failed to comply with R.C. 2929.14(B)(2)(a)(iii) by imposing less than the longest minimum prison term for aggravated burglary because the court imposed a minimum prison term of ten years, but the longest minimum prison term for a first-degree felony is 11 years, R.C. 2929.14(A)(1)(a).

Verdicts/Inconsistency. State v. Berry | 2024-Ohio-923 | 5th Appellate District | 03/12/2024 In a conviction of aggravated robbery, felonious assault, discharge of firearm on or near prohibited premises and improperly handling firearms in a motor vehicle, a finding of not guilty on the firearm specifications does not create an inconsistent verdict that invalidates the guilty finding on the principal charges.

Preliminary hearing/Victim's testimony/Evid.R. 804(B). State v. Smith | 2024-Ohio-886 | 3rd Appellate District | 03/11/2024 In a conviction of felonious assault and abduction, admission of victim's testimony at the preliminary hearing over defendant's objection was not error since the testimony met the requirements of Evid.R. 804(B) where

the victim gave sworn testimony under penalty of perjury, the preliminary hearing was conducted in open court and recorded with both defendant and his counsel in attendance and the state directly examined the victim about the assault and defendant's counsel cross-examined him.

Search/Warrantless/Post-release control. State v. Harrison | 2024-Ohio-884 | 3rd Appellate District | 03/11/2024 In a conviction of drug offenses, the trial court did not err by denying a motion to suppress evidence seized during two searches, defendant's argument that R.C. 2967.131(C), authorizing warrantless searches of felons on post-release control, is unconstitutional is without merit since the Adult Parole Authority's (APA) warrantless-search authorization is not controlled by consent, but prescribed by statute, R.C. 2967.131(C), that describes the situations that a warrantless search may occur, and the APA is not required to obtain the individual's consent to be subject to warrantless searches, and any signature obtained from an individual is only an acknowledgment of the individual's receipt of the written notice, and similar statutes have been held to be constitutional, Griffin.

Due process/Video recorded interview. State v. Huffman | 2024-Ohio-889 | 11th Appellate District | 03/11/2024 In a conviction by plea to sexual imposition, the trial court did not err in holding that the state did not violate defendant's due process rights by not preserving and producing a video-recorded interview of defendant by officer since the interview was only potentially useful, and officer did not act in bad faith in not preserving it since both defendant and interviewing officer testified to what defendant said during the interview, namely, defendant denying the accusations against him; also discussed, jury instruction on definition of purposely.

Post-conviction relief/Serious Mental Illness/Competency/Waiver of counsel. State v. Ahmed | 2024-Ohio-904 | 7th Appellate District | 03/11/2024 Following appellant's conviction of four aggravated murders, R.C. 2903.01(A),(C), and the trial court's imposition of sentence to death, a "Petition for Post-Conviction Relief based on Serious Mental Illness" (SMI petition) was filed pursuant to R.C. 2953.21(A)(1)(a)(iv) and 2929.025, the court of appeals holds that the trial court erred in finding

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appellant competent to waive counsel and erred in dismissing the SMI petition since appellant's waiver of counsel was invalid, and the dismissal of the SMI petition was an error of law because appellant did not understand, and the trial court never informed him of, the consequences of the dismissal of the petition; judgment is reversed and vacated and the matter is remanded for the appointment of new counsel.

New trial/Newly discovered evidence/Due diligence. State v. Wright | 2024-Ohio-851 | 1st Appellate District | 03/08/2024 In a conviction of rape and attempted rape of a minor less than 13 years of age, the trial court did not err by denying defendant's post-conviction motion for a new trial where he claimed that his post-trial herpes "flare up" and diagnosis constituted newly discovered material evidence since defendant "had ample time to use due diligence to get diagnosed and investigate what affect his diagnosis would have had on his defense long before trial," defendant's counsel questioned several state witnesses about the absence of a positive sexually transmitted infections test result following the victim's physical exam and, at all times during the trial, defendant was aware that he had experienced a herpes outbreak before 2016; also discussed, expert testimony, delayed disclosure, improper vouching and statements made for medical diagnosis and treatment.

Sentencing/Merger/Drug offenses. State v. Stubbs | 2024-Ohio-839 | 8th Appellate District | 03/07/2024 In convictions of drug offenses, the trial court committed plain error by not merging drug possession and drug trafficking convictions as allied offenses of similar import since defendant possessed cocaine to prepare it for distribution under R.C. 2925.03(A)(2) and then to sell it under R.C. 2925.03(A)(1), and there was no evidence that he separately possessed the cocaine for his personal use or for some other reason; however, the trial court did not err by not merging two drug trafficking offenses under R.C. 2925.03(A)(1) (sell or offer to sell) and R.C. 2925.03(A)(2) (prepare for shipment or distribution) since there was no evidence that defendant separately possessed the cocaine for his personal use or for some other reason, Ruff.

Ineffective assistance/Self-defense.

State v. Wilson | 2024-Ohio-776 | Supreme Court of Ohio | 03/07/2024 In a conviction of felonious assault, trial defense counsel provided ineffective assistance by not raising self-defense, R.C. 2901.05, since the requisite state of mind or intent a defendant must have had to be entitled to a self-defense jury instruction is an intent to use force to repel or escape force, and thus an intent to harm or kill another person is not required to be entitled to a self-defense instruction and, because defendant's testimony tended to support his claim of self-defense and was not a negation of the element of intent required for the offense of felonious assault, defense counsel's decision not to request a self-defense jury instruction prejudiced the defendant, Strickland.

Involuntary manslaughter/Aggravated assault as a predicate/Self-defense.

State v. Torres | 2024-Ohio-837 | 8th Appellate District | 03/07/2024 Following a 2007 conviction by guilty plea to aggravated assault, the victim died in 2022, and defendant was convicted of involuntary manslaughter because the aggravated assault conviction served as a predicate for the involuntary manslaughter offense since defendant pled guilty to that charge by stipulating to the coroner's report, including the conclusion as to the death being caused by the injuries sustained through the aggravated assault, and the trial court did not err by precluding defendant from asserting a claim of self-defense to the aggravated assault since he has presented no authority demonstrating that he is permitted to collaterally attack his aggravated-assault conviction through the subsequent proceeding, App.R. 16(A)(7), and moreover, self-defense does not apply to aggravated assault, Hughkeith.

Contempt/Right to counsel. In re Contempt of Donegan | 2024-Ohio-840 | 8th Appellate District | 03/07/2024

Trial court erred in finding defense attorney in direct criminal contempt during his representation of defendant in a sex offense prosecution, and the trial court also erred in its summary dismissal of counsel since the trial court's holding, without a hearing, was based on defense attorney's alleged late arrival for a trial date, raised an allegation of indirect contempt and the procedural protections in R.C. 2705.03 apply, Tucker, that the trial court did not follow; also, the trial court's summary action denied defendant his right to counsel.

Sentencing/Consecutive sentences/

Appellate review. State v. Hayes | 2024-Ohio-845 | 8th Appellate District | 03/07/2024 On reconsideration in convictions by pleas in four cases to multiple felonies, including drug trafficking, aggravated robbery, felonious assault and involuntary manslaughter, the court of appeals holds that the trial court erred in imposing maximum, consecutive prison sentences totaling 71.5 years for a defendant, who was 18 years-old when the first act was committed and 19 years-old when the remaining offenses occurred, since the trial court's consecutive sentence finding that the aggregate prison term is not disproportionate to the seriousness of defendant's offenses or the danger he poses to the public was not "clearly and convincingly" supported by the record pursuant to R.C. 2929.14(C)(4), and prison sentence is modified pursuant to R.C. 2953.08(G)(2)(a) to an aggregate term of eight years for firearm specifications to be served prior and consecutively to a definite prison term of 36 months and an indefinite prison term of 33 to 49.5 years.

Right to Confrontation/9-1-1 call/Police body-camera footage.

State v. Lucas | 2024-Ohio-842 | 8th Appellate District | 03/07/2024 In a bench conviction of aggravated burglary, domestic violence and endangering children, although victim failed to appear at trial, the trial court did not violate defendant's constitutional right to confrontation by admitting victim's statements through victim's 9-1-1 call and officers' body-camera footage since victim was facing an ongoing emergency by defendant's entering victim's apartment without permission, threatening her with a gun, firing a shot across victim's body and threatening to return, and victim's statements to the dispatcher and to the officers at her residence were not made to document past events but were made with the "primary purpose" of obtaining protection and assistance in resolving an ongoing threat of gun violence, Evid.R. 803(2).

Drug offenses/Traffic stop/Motion to suppress.

State v. Braucher | 2024-Ohio-811 | 5th Appellate District | 03/07/2024 In a conviction by plea to two counts of aggravated possession of drugs, the trial court did not err in denying a motion to suppress since officer had a reasonable and articulable suspicion to stop defendant's vehicle and extend the stop for a K9 sniff where defendant stopped beyond a stop bar at a traffic light, as well as having an

excessively loud muffler, nor was the traffic stop unreasonably prolonged for the K9 sniff where the total time was between 12 and 14 minutes, especially since the officers were still attempting to identify the defendant due to his claimed lack of identification, the license plate did not match the vehicle defendant was driving, and officer observed a shell casing on the floor of the vehicle, as well as torches typically used for drugs in the vehicle.

Post-conviction relief/Timeliness in filing/Leave to file delayed appeal. State v. Dudas | 2024-Ohio-775 | Supreme Court of Ohio | 03/07/2024 Following a 2021 conviction by plea to, inter alia, aggravated murder, the court of appeals erred by affirming the trial court's denial of a 2022 pro se petition for post-conviction relief that the trial court summarily denied as filed untimely, with the Ohio Supreme Court holding that petitioner's obtaining leave to file a delayed appeal extended the time for filing the petition since petitioner filed his post-conviction petition within 365 days after the transcript was filed in the court of appeals in his delayed appeal, and thus the petition was filed within "365 days from the expiration of the time for filing a timely appeal," R.C. 2953.21(A)(2)(a).

Aggravated robbery/Threatening to inflict harm/Brady violation. State v. Brown | 2024-Ohio-749 | Supreme Court of Ohio | 03/05/2024 In a bench conviction of aggravated robbery of one person, robbery of a second person and having a weapon while under a disability, with defendant using the ruse of selling a used vehicle in order to rob the victims at gunpoint, the court of appeals erred by reversing the trial court and holding that defendant was not subject to conviction of robbery of the person who handed money to a person who was with her to give to defendant since, under the plain language of the robbery statute, R.C. 2911.02(A), defendant was correctly convicted because defendant threatened to inflict physical harm on both individuals; also, there was no Brady violation by the state not disclosing that one of the victims had conducted her own investigation and did not reveal that both victims had viewed Facebook photos of defendant prior to the photo lineups since the information was disclosed at trial, and defendant did not object or move for a continuance or a mistrial.

Polygraph examination/Expert evidence. State v. Nitso | 2024-Ohio-790 | 11th Appellate District | 03/04/2024

In a conviction of rape, compelling prostitution and eight counts of gross sexual imposition of defendant's-father's minor daughter, the trial court did not commit plain error in the admission of agreed-to polygraph examinations without providing the jury a cautionary instruction in accordance with the holdings in Souel and Clevenger about the weight to be given to polygraph evidence since there is substantial other evidence in the record of defendant's guilt; also discussed, ineffective assistance for failure to request a cautionary jury instruction on the admission of the polygraph results.

Sentencing/Consecutive sentences/ Crim.R. 11. State v. Geiger | 2024-Ohio-740 | 8th Appellate District | 02/29/2024

In a consolidated appeal of two cases finding defendant guilty of grand theft by plea in one case and of abduction and grand theft in a second case, the trial court erred in imposing consecutive sentences since defendant did not enter a guilty plea in the second case, the state concedes error and the court of appeals holds that the trial court completely failed to comply with Crim.R. 11 in the second case, and thus any sentence was erroneous, and defendant's trial counsel was ineffective for failing to object when the court imposed its sentence; case is remanded for further proceedings.

Subpoena/Motion to quash/Protective order. State v. Cruz | 2024-Ohio-733 | 8th Appellate District | 02/29/2024

In an appeal by the state of the trial court's denial of its motion to quash a subpoena and for a protective order permitting defendant to call an assistant prosecutor to testify at a pre-trial hearing concerning the alleged withholding of evidence alleged to be favorable to defendant, the trial court erred since it did not apply the correct standard of law, and the record does not support the denial of the protective order since the trial court did not find that the assistant prosecutor's testimony was the only evidence available on the issue raised, Coleman; dissenting opinion.

Failure to disclose personal information. State v. Guleff | 2024-Ohio-748 | 5th Appellate District | 02/29/2024

In convictions of obstructing official business, resisting arrest and failure to disclose personal information, although convictions for obstructing official business and resisting arrest met the

sufficiency and weight of evidence standards, the conviction for failure to disclose personal information was error since, although defendant did not immediately disclose his personal information, officer allowed defendant to call his attorney to ask whether he was required to do so, and he complied promptly with his attorney's response to comply; also discussed, no excessive force was used by officers where a c-clamp maneuver was used by officer, not a chokehold.

Certificate for qualification for employment/Rehabilitation. In re Sanders | 2024-Ohio-717 | 1st Appellate District | 02/28/2024 Denial of

appellant's Certificate of Qualification for Employment (CQE) was error where appellant, following completion of her prison term and discharge from post-release control, filed a petition to pursue employment in medical billing and, under the evidence presented, the fact that appellant did not have custody of her children did not provide support for holding that evidence presented clear and convincing evidence that she had not been rehabilitated, R.C. 2953.25(C)(6), since the legislature did not exempt any offenses from CQE eligibility, and nothing in the record provides support for a conclusion that appellant was not rehabilitated; remanded with instructions to grant the CQE.

Restitution. State v. Scott | 2024-Ohio-712 | 5th Appellate District | 02/27/2024

In a conviction by plea of guilty to, inter alia, breaking and entering, the trial court erred by ordering restitution in the amount of \$35,262 since defendant was not charged with any criminal damaging, any vandalism charges or any theft charges and the items listed on the victim's restitution request were not linked to the "actual damage or loss caused by the offense of which the defendant is convicted," Williams, since those damages arose on a date prior to the date that defendant was arrested for the current offenses to which he pled guilty.

Evidence/Other acts evidence/Evid.R. 403(A) and 404(B). State v. Wolfe | 2024-Ohio-701 | 11th Appellate District | 02/26/2024 Conviction of grand theft,

R.C. 2913.02, for defendant's taking \$150,000 from a homeowner while acting as a building contractor, the state did not err in the admission of other acts evidence since the evidence was admissible to prove intent/absence of mistake because the evidence

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demonstrated defendant defrauded other customers the same way and with a similar intent, contrary to his assertion that this case is a mere contractual dispute over conditions precedent to defendant performing any work while keeping the client's deposit since this was not a mere dispute over "contract clauses" that was a material issue at trial, Evid.R. 403(A) and 404(B).

Sentencing/Indigency/Right to counsel. State v. Yerkey | 2024-Ohio-724 | 7th Appellate District | 02/26/2024 In a conviction of misdemeanor assault, arising out of an encounter by defendant with his then girlfriend, although the conviction was supported by sufficient evidence and not against the weight of evidence, the trial court erred in denying defense counsel's motion to continue sentencing and to determine defendant's indigency status for purposes of appointing new counsel due to a conflict of interest where, although defendant had served his sentence, the court of appeals holds that appeal is not moot and cause is remanded for appointment of counsel and for re-sentencing.

Aggravated murder/Sentencing. State v. Nicholson | 2024-Ohio-604 | Supreme Court of Ohio | 02/22/2024 The Supreme Court of Ohio affirms a conviction of two counts of aggravated murder with prior calculation and design, R.C. 2903.01(A), with death penalty specifications, R.C. 2929.04(A)(5), and imposition of sentence of death, finding that the conviction met the sufficiency and weight of evidence standards; also discussed, other crimes, wrongs, or acts; loss or destruction of material evidence by the state; body-camera videos and photographs of deceased victims; denial of request for jury instructions on voluntary manslaughter and self-defense; ineffective assistance of counsel, voir dire procedure; readmission of trial-phase evidence during mitigation phase; weighing of the aggravating circumstances against the mitigating factors; prosecutorial misconduct; denial of request for jury instruction on mercy as a mitigating factor; proportionality review; and independent sentence evaluation.

Engaging in a pattern of corrupt activity/Venue. State v. Brown | 2024-Ohio-627 | 3rd Appellate District | 02/20/2024 In a conviction of engaging in a pattern of corrupt activity, R.C. 2923.32(A)(1), involving drug trafficking

and drug possession, venue was proper pursuant to R.C. 2901.12(H) since the enterprise's activities extended into the county where the trial was held, even though the drugs were located in another county and transported and sold in the county where the trial was held, and a sale of drugs in the county where the trial was held by an individual who was fronted by the enterprise, the enterprise became interested in the outcome of this transaction and in the profits generated by this sale.

Sentencing/Suspended sentence. State v. Burrell | 2024-Ohio-638 | 11th Appellate District | 02/20/2024 In an appeal by the state of the sentence imposed in a conviction by plea to, inter alia, two counts of aggravated possession of drugs, R.C. 2921.36, the trial court committed plain error when it imposed a suspended sentences on the two felony counts since the sentence is impermissible because "the only sentence that a trial judge may impose is that provided for by statute," Hitchcock, and in issuing a felony sentence, a court may not order a defendant to serve a suspended sentence, Duncan.

Self-defense/Aggravated menacing. State v. James | 2024-Ohio-621 | 12th Appellate District | 02/20/2024 In a conviction of two counts of aggravated menacing, R.C. 2903.21(A), the trial court did not err in holding that, although defendant was acting in self-defense concerning a charge of felonious assault, defendant was not acting in self-defense on the two counts of aggravated menacing since he was no longer acting in self-defense once he realized that a child had been running toward him and dropped to the ground when he threatened to shoot her if she did not, the child's mother ran towards defendant telling him that her daughter was looking for a dog, and the threat was neutralized by defendant's realization that a child was involved, but he continued to hold the child and her mother at gunpoint while he argued with her mother for an additional three to five minutes.

Plea/Sentencing/Failure to inform of maximum sentence. State v. Bowen | 2024-Ohio-606 | 6th Appellate District | 02/16/2024 In a conviction by plea to attempted failure to register and imposition of 11-month prison sentence and, as a result of the conviction, the trial court also found defendant in violation of the terms of his community control in another case and imposed, pursuant to R.C. 2929.141, an additional

term of incarceration of one year to be served consecutively, for a total term of imprisonment of one year and 11 months, the state concedes that the trial court erred since defendant was not advised in his Crim.R. 11 hearing of the maximum sentence that he could be subjected to as a result of his plea and, therefore, the court failed to comply with Crim.R. 11(C)(2)(a).

Search/Motion to suppress. State v. Jennings | 2024-Ohio-602 | 2nd Appellate District | 02/16/2024 In a conviction by plea of no contest to aggravated possession of drugs, the trial court did not err in denying a motion to suppress where officer made a valid traffic stop after observing expired license plates on the vehicle and, after officer discussed the expired plates with defendant, he learned that defendant's operator's license had expired, officer decided the vehicle would be towed and, during officer's discussion with defendant, a canine unit arrived with the dog alerting to the driver's side, and thereafter a search warrant was obtained and narcotics were found in a small safe in the car that contained letters with defendant's name on them.

Self-defense/Jury instructions. State v. Palmer | 2024-Ohio-539 | Supreme Court of Ohio | 02/15/2024 In a felonious assault conviction, the trial court erred by declining to give a self-defense jury instruction since defendant-taxicab driver, who shot a patron after a dispute on payment for the ride, was entitled to the instruction because defendant presented adequate evidence to support the elements of self-defense, namely evidence, that if believed, could convince a trier of fact beyond a reasonable doubt that defendant presented legally sufficient evidence to show that, under the same circumstances, a reasonable cab driver of defendant's age, with the same history and knowledge, could have subjectively believed that he was in imminent danger and that deadly force was necessary, R.C. 2901.05(B)(1); case is remanded for a new trial on the felonious assault charge and accompanying firearm specification.

Plea/Maximum sentence/Mandatory consecutive sentences/Crim.R. 11(C). State v. Beck | 2024-Ohio-578 | 8th Appellate District | 02/15/2024 In a conviction by plea to multiple offenses in three cases and imposition of consecutive sentences, the trial court advised defendant during the plea hearing that the sentences on two counts

would run consecutive to a sentence on another count, but did not notify defendant that the sentence in one case would run consecutive to a sentence in another case, so the trial court did not completely fail to address the maximum sentence and the mandatory consecutive sentencing, but provided incomplete instruction on the matter, and thus the court's recitation of the maximum penalty was not a complete failure to comply with Crim.R. 11(C), and defendant failed to show prejudice to establish his plea was less than knowingly, intelligently and voluntarily rendered, Fisher.

Sentencing/Community control violations/Consecutive sentences.

State v. Jackson | 2024-Ohio-583 | 8th Appellate District | 02/15/2024 Following convictions of menacing by stalking, criminal damaging, telecommunications harassment, failure to comply and burglary, imposition and subsequent violations of community control by the commission of new crimes, the trial court erred by imposing consecutive sentences where the court imposed consecutive service based on an erroneous belief that the consecutive service was required by law, Johnson; cause is remanded for a new sentencing hearing to address the consecutive service issue with respect to all the individual sentences imposed.

Sentencing/Restitution/Jail-time credit.

State v. Crawford | 2024-Ohio-582 | 8th Appellate District | 02/15/2024 In a conviction by plea to burglary and domestic violence, with defendant to not have contact with the victim, to pay restitution in an amount to be determined and to serve a prison sentence as determined by the court, the trial court erred by awarding \$1,000 in restitution to cover the insurance deductible for the victim's car because defendant was not convicted of, nor even charged with, any offense that involved damaging the victim's vehicle; also discussed, jail-time credit is remanded for recalculation since defendant is not entitled to any credit for days where he was being held on both a probation violation and the current case, including time spent at a correctional institute and any time after he posted bond in this case.

Obstructing official business/ Sufficiency and weight of evidence.

Parma v. Jackson | 2024-Ohio-575 | 8th Appellate District | 02/15/2024 Bench conviction of obstructing official business in violation of municipal codified ordinances for refusing to give his name and address to an investigating

officer was not supported by the sufficiency and weight of evidence since a person cannot be guilty of obstructing official business by doing nothing because the text of the ordinance specifically requires an offender to act, Brickner-Latham.

Jury/Voir dire/Due process. State v. Ferguson | 2024-Ohio-576 | 8th Appellate District | 02/15/2024 In a conviction of gross sexual imposition, although during voir dire, the trial judge gave an incorrect statement of the probable cause standard applicable to grand jury proceedings when the judge discussed with a prospective juror that it is incorrect that an individual's indictment by a grand jury means it is "likely" or "more likely than not" that the person has committed a crime since a grand jury indictment instead creates a presumption of probable cause, but the trial court repeatedly provided accurate explanations of the beyond a reasonable doubt standard, and Ohio courts have repeatedly held that a trial court's statements during voir dire, similar to those at issue in this case, do not violate a defendant's due process rights, McLoyd.

Search/Suppression/Lack of probable cause.

State v. Stephenson | 2024-Ohio-624 | 4th Appellate District | 02/13/2024 In a conviction of felony drug offenses, the trial court erred by denying a motion to suppress where, although officer did have reasonable suspicion to make an investigative stop of defendant's vehicle based on the information provided by an informant, officer lacked probable cause to search the vehicle since at no point did he observe defendant doing anything illegal, defendant did not admit to any illegal activity, officer did not see or smell any illegal drugs and, when officer was not able to obtain defendant's consent to search the vehicle, he falsely told defendant that he had lawful authority to do a search, and defendant merely acquiesced to officer's false claim of lawful authority to search.

Criminal trespass/Evidence/Custody and control/Harmless error.

State v. Ventura | 2024-Ohio-498 | 9th Appellate District | 02/12/2024 In a conviction of criminal trespass, R.C. 2911.21(A)(1), the trial court did not err in granting the state's motion in limine to exclude documents with the address of the residence that defendant had previously lived at with his estranged wife since, although the proposed exhibits may show defendant lived at the residence

and contributed toward household expenses, they had no tendency to prove who had custody and control of the residence on the date of the alleged offenses and, moreover, any error was harmless under Crim.R. 52(A) since defendant was permitted to introduce ample evidence to support his defense that his wife did not have exclusive custody and control of the residence.

Self-defense/Jury instructions/At fault.

State v. Grover | 2024-Ohio-505 | 11th Appellate District | 02/12/2024 In a conviction of, inter alia, felonious assault, although the trial court should have included in the jury instructions that defendant had no duty to retreat if he was in a place in which he lawfully had a right to be, the omission of the additional language did not prejudice defendant since he was at fault in creating the situation giving rise to the shooting by coming to an individual's home uninvited to assist in a fight and, even if the homeowner maced defendant, the force defendant employed in shooting the victim was more than reasonably necessary and was significantly disproportionate to the apparent danger of the mace, and also, it was defendant who fired the first two shots.

Sentencing/Confinement costs.

State v. Ali | 2024-Ohio-486 | 6th Appellate District | 02/09/2024 In a conviction by plea to two counts of felonious assault, the trial court erred by imposing the costs of confinement and supervision without considering on the record whether defendant has the ability to pay since these costs were not addressed by the trial court at the sentencing hearing, R.C. 2929.18(A)(5)(a) and Velesquez; costs of confinement are vacated.

Court costs/Financial sanctions/Ability to pay.

State v. Heiney | 2024-Ohio-490 | 6th Appellate District | 02/09/2024 Following defendant's conviction of two counts of gross sexual imposition and one count of tampering with records that was affirmed, the trial court's denial, in part, of a pro se motion seeking relief from court costs and the remaining financial sanctions due to a change in circumstances in his medical and financial conditions was not error since "waiver of costs is permitted—but not required—if the defendant is indigent," Taylor, and the trial court did consider defendant's argument that he was indigent, but found that in light of his relative youth and education, he had the ability to earn an income and pay his financial sanctions.

Subpoena/Medical records/Marsy's Law/Interlocutory appeal. State v. O'Neill | 2024-Ohio-485 | 12th Appellate District | 02/09/2024 In a prosecution for domestic violence in which an alleged crime victim pursuant to Marsy's law filed an interlocutory appeal of the trial court's denial of her motion to quash a subpoena of her medical records and ordering release of the documents to counsel during the trial and, since the trial court did not quash the subpoena, it was required to conduct an in camera review of records to which privilege had been asserted, R.C. 2930.071(A)(3), and if the trial court determines the records are privileged or constitutionally protected, it must "balance the victim's rights and privileges against the constitutional rights of the defendant," pursuant to R.C. 2930.071(A)(4), Boyle.

Sentencing/Allied offenses. State v. Cobb | 2024-Ohio-458 | 8th Appellate District | 02/08/2024 In a conviction of drug trafficking and drug possession, the trial court committed plain error in failing to merge defendant's convictions for drug possession and trafficking of the same drug as allied offenses of similar import, R.C. 2941.25, since "[b]y its nature, a drug-trafficking offense under R.C. 2925.03(A)(2), which requires that the offender knowingly '[p]repare for shipment, ship, transport, deliver, prepare for distribution or distribute a controlled substance,' necessarily includes some degree of possession," Martin.

Sex offenses/Former stepdaughter/Force. State v. George | 2024-Ohio-471 | 8th Appellate District | 02/08/2024 In a conviction of sex offenses, including forcible rape, R.C. 2907.02(A)(2), and gross sexual imposition, R.C. 2907.05(A)(1), with defendant's ex-wife's 18 year-old daughter, who considered defendant her stepfather, the trial court erred by instructing the jury that the element of force could be proven by evidence that the victim's will was overcome by fear or duress alone, nor does the alternative definition of force apply since the victim had reached majority at the time the activity underlying the indictments occurred; also discussed, R.C. 2907.03(A)(5) sexual battery conviction and incest conviction are reversed since the stepparent-stepchild relationship had terminated.

Prosecutorial vindictiveness/Dismissal with prejudice/Ripeness. State v. Shahin | 2024-Ohio-456 | 8th Appellate District | 02/08/2024 In state's appeal pursuant to R.C. 2945.67(A) of the trial court's dismissal with prejudice of case charging defendant with grand theft of a motor vehicle, a fourth-degree felony, was error because the dismissal for prosecutorial vindictiveness was not ripe since the state had not filed new charges for a greater charge than had originally been indicted when the trial court dismissed the action, Lindsey; remanded for the trial court to enter a dismissal without prejudice.

Gross sexual imposition of a minor/Indictment/Sufficiency of evidence. State v. Robinson | 2024-Ohio-455 | 8th Appellate District | 02/08/2024 Conviction of defendant for gross sexual imposition of a minor who was less than 13 years-old at the time of the contact, R.C. 2907.05(A)(4), was not supported by sufficient evidence since the indictment charged defendant "touched [the minor]'s bottom," and the minor testified that defendant's hand "stop[ped]" at the corner of her buttocks, not that he "touched" the corner of her buttocks" and, based on the wording of the indictment, it was not sufficient for the state to prove that defendant had sexual contact with the minor by touching any erogenous zone.

Violent offender registration/Sierah's Law/Retroactivity/Equal protection. State v. Worrell | 2024-Ohio-442 | 10th Appellate District | 02/08/2024 Denial of defendant's post-conviction motion for exclusion from the violent offender database registry requirements imposed by Sierah's Law, R.C. 2903.41-.43, was not error since the retroactivity provision of the Law to a defendant who committed a qualifying offense prior to the Law's effective date, who was sentenced before the Law took effect and serving a term of confinement for that offense on the Law's effective date, does not violate the equal protection provisions of the Ohio or the United States constitutions, because "it is rational to apply Sierah's Law only to those offenders situated in positions—i.e., before a sentencing court or while they are serving a term of confinement—where it is possible to ensure and verify that the statutorily required notice is received."

Evidence/Hearsay/Harmless error. State v. Boyce | 2024-Ohio-464 | 8th Appellate District | 02/08/2024 In a conviction of unlawful restraint, R.C. 2905.03(A), the trial court's admission of a 9-1-1 call was not error because it was not impermissible hearsay since officer's body camera and testimony unequivocally established defendant was restraining victim's liberty without a privilege to do so and, even if caller's statement that she believed defendant may have raised the knife to the victim's throat had been excluded, the remaining evidence would have supported the jury's finding that defendant committed unlawful restraint beyond a reasonable doubt.

New trial. State v. Williams | 2024-Ohio-469 | 8th Appellate District | 02/08/2024 Following a conviction of, inter alia, attempted murder and felonious assault that was affirmed, the trial court's 2023 denial of a previously filed Crim.R. 33(A)(6) motion for new trial was error since there is no forensic evidence linking defendant to the shooting, the person who identified defendant as the shooter was highly intoxicated on the night of the shooting, defendant's brother finally testified at the 2023 hearing and he authenticated his audio confession; also discussed, denial of motion to dismiss indictment was not error.

Sexually-oriented offender/Failure to register/Out-of-state offender. State v. LaSelle | 2024-Ohio-431 | 9th Appellate District | 02/07/2024 In an appeal by the state of dismissal of indictment for failure to register, the trial court erred in granting the motion to dismiss since Megan's Law is applicable under the facts, and it was improper for the trial court to conclude that defendant did not have a duty to register at the time he moved to Ohio since there was a contested issue of fact as to that issue; case is remanded.

Plea/Withdrawal. State v. Zachary | 2024-Ohio-422 | 1st Appellate District | 02/07/2024 In a conviction by plea to having weapons while under disability, the trial court's denial of motion to withdraw pre-sentence plea was not error where claim that the U.S. Supreme Court's opinion in Bruen precludes a conviction is without merit because the Ohio Supreme Court, prior to Bruen, determined that a juvenile adjudication for a felony offense of violence may serve as the basis for a firearms disability, Carnes, but defendant failed to file a motion to dismiss the indictment against

him based on a Second Amendment defense or otherwise raise the defense, even though Bruen had been decided prior to defendant's guilty plea, and a change of heart is an insufficient basis to withdraw a plea.

Plea/Withdrawal/Res judicata. State v. Bradford | 2024-Ohio-428 | 5th Appellate District | 02/06/2024

In a conviction by plea of guilty to murder, R.C. 2903.02(B) and (D) and 2929.02(B), and felonious assault, R.C. 2903.11(A)(1), that were merged for sentencing, and defendant did not file a direct appeal but subsequently filed a pro se motion to withdraw plea pursuant to Crim. R. 32.1, alleging ineffectiveness of counsel, that the trial court denied and the court of appeals affirmed, finding that defendant had been fully advised by the trial court pursuant to Crim. R. 11, and there was no evidence to show trial counsel was ineffective in his assessment of the case and advice to defendant, and also, since defendant did not file a direct appeal from his original convictions and sentence, he is precluded by the doctrine of res judicata from litigating these issues again.

Sentencing/Judicial bias/Consecutive sentences. State v. Haudenschild | 2024-Ohio-407 | 5th Appellate District | 02/05/2024 In a conviction by plea to endangering children, corrupting another with drugs, disseminating matter harmful to juvenile, sexual battery, importuning and three counts of sexual battery, the trial court did not err by imposing the maximum sentence for each offense to be served consecutively for a total term of maximum incarceration of 32 years, and the Ohio Supreme Court's most recent opinion in Gwynee does not require express consideration by the trial judge of the aggregate prison term that results from the imposition of consecutive sentences.

Sex offender registration/Applicable law. State v. Reyes | 2024-Ohio-403 | 11th Appellate District | 02/05/2024

In a challenge to defendant's classification under the Adam Walsh Act for an offense that was committed prior to the effective date of that Act, the trial court erred since the classification of defendant as a sexually-oriented offender under Megan's Law occurred by operation of law, and therefore Henderson does not apply to a trial court's error in determining a person's sex offender classification, Schilling; remanded for classification of defendant under the version of Megan's Law

that was in effect at the time of the commission of the offenses.

Violation of a protection order/Venue.

State v. Schultz | 2024-Ohio-405 | 11th Appellate District | 02/05/2024 In a conviction of violation of a protection order, the requirement of venue was satisfied since there was a significant nexus between the defendant and the county of the trial since the trial court was "in the territory of which the offense or any element of the offense was committed," R.C. 2901.12(A), where defendant contacted the victim with a telephone app in the county where the trial court was located; also, the trial court's decision met the sufficiency and weight of evidence standards.

Evidence/Forensic interview/Evid.R.

801(D)(1)(b). State v. Jennings | 2024-Ohio-383 | 12th Appellate District | 02/05/2024 In a conviction of gross sexual imposition of a 12 year-old female, the trial court's admission of the videotape of the minor's forensic interview was not error because it was admissible under Evid.R. 801(D)(1)(b) since the Rule "permits the rehabilitation of a witness whose credibility has been attacked by an express or implied charge that he recently fabricated his story or falsified his testimony in response to improper motivation or undue influence," Brown, where, during defendant's cross-examination of the minor and the questions posed to her, defense counsel implied that the minor fabricated information or was improperly influenced.

Plea/Post-release control/Failure to inform. State v. Mull | 2024-Ohio-370 | 6th Appellate District | 02/02/2024

In a conviction by plea in three joined cases to two endangering children offenses in one case and to domestic violence in another case, the trial court erred by imposing a total aggregate prison sentence of 12 years as a minimum definite term to 16 years as a maximum indefinite term since the court failed to orally inform defendant, separately from the written plea agreements, that any new sentence for violation of his existing post-release control could be imposed consecutively to the three offenses to which he pled, R.C. 2929.141(A) and Bishop.

Evidence/Google location records/Authentication. State v. Fowler | 2024-Ohio-361 | 2nd Appellate District | 02/02/2024 In a conviction of unlawful sexual conduct with a minor, R.C.

2907.04(A)/(B)(3), the trial court did not err in admitting global positioning system records from Google showing that defendant's cellular device was at a certain location during a specified period of time requested by the state since the records were self-authenticating business records and did not violate defendant's constitutional right of confrontation, Evid.R. 803(6), 901(B)(10) and 902(11); also discussed, defendant validly waived his Miranda rights.

Ineffective assistance/Generalized dissatisfaction. State v. Smith | 2024-Ohio-324 | 9th Appellate District | 01/31/2024

In a conviction by plea in 2021 to a weapon offense, community control was imposed and, in 2022 defendant violated community control and the reserved three-year prison sentence was imposed to run concurrent with his prior sentence for another offense, appellant's claim that the trial court erred by denying his request for new counsel is without merit since appellant expressed only a generalized dissatisfaction with counsel's performance and failed to allege any specific facts demonstrating ineffectiveness, Fry.

Sentencing/Jury verdict forms/Degrees of the offenses. State v. Shockey | 2024-Ohio-296 | 3rd Appellate District | 01/29/2024

In a conviction of two counts of assault, R.C. 2903.13(A), and one count of obstructing official business, R.C. 2921.31(A), the verdict forms for the counts failed to comply with R.C. 2945.75(A)(2) since the forms did not contain the degrees of the offenses or the additional enhancing elements of the offenses, and thus defendant could only be convicted of the lowest forms of the offenses, Pelfrey and McDonald; cause is remanded for re-sentencing.

Sentencing/Consecutive sentences. State v. Gable | 2024-Ohio-293 | 12th Appellate District | 01/29/2024

In convictions in two cases by plea to two counts of nonsupport of dependents in one case and to aggravated possession of drugs in a second case and imposition of, and subsequent violation of, community control in both cases, the trial court erred in ordering the 12-month prison sentence in one case to be served consecutively to a prison sentence in the second case where the trial court failed to make the required necessity and proportionality findings at the sentencing hearing, Crim.R. 32(A)(4), Bonnell; dissenting opinion.

Transcript/Failure to file. State v. Cross | 2024-Ohio-268 | 1st Appellate District | 01/26/2024 In a conviction by plea to aggravated drug trafficking and trafficking in a fentanyl-related compound, the court of appeals affirms since defendant's challenge to the length of the 12-to-15-year prison sentence imposed as inconsistent with those imposed for similar drug-related offenses and that he did not enter his pleas voluntarily because he was unable to cross-examine the co-defendant who accused him of participating in the crimes, are not reviewable since defendant failed to file a transcript of the trial court's proceedings, and thus the regularity of the proceedings must be presumed and the judgment affirmed.

Violating a protection order/Venue/ Domestic violence/Sufficiency of evidence. State v. Brady | 2024-Ohio-269 | 1st Appellate District | 01/26/2024 In a bench conviction of domestic violence and violating a protection order, the state failed to establish a venue for the offense of violating a protection order since it did not demonstrate that defendant's telephone calls to the alleged victim were either made or received in the county that the trial was held, and the state also concedes it failed to present sufficient evidence that defendant acted recklessly; victim's testimony was sufficient to demonstrate domestic violence.

Sentencing/Consecutive sentences. State v. Hanshaw | 2024-Ohio-253 | 8th Appellate District | 01/25/2024 In a conviction by plea to drug possession, failure to comply, resisting arrest and having weapons while under disability and imposition of consecutive prison sentences, although the trial court was not required to make consecutive sentence findings for making the failure to comply sentence consecutive to the other sentences since pursuant to R.C. 2921.331, it is a mandatory consecutive sentence with any other prison sentence, the trial court erred by not making the required findings under R.C. 2929.14(C) (4) in ordering that defendant's prison sentences for drug possession and having weapons while under disability be served consecutively; remanded for re-sentencing.

Sex offenses/Gross sexual imposition/ Sufficiency. State v. Sims | 2024-Ohio-250 | 8th Appellate District | 01/25/2024 In a conviction of, inter alia, three counts of gross sexual imposition of a minor, although there was sufficient evidence supporting two of the counts, the record is devoid of testimony demonstrating that defendant engaged in a third instance of gross sexual imposition since the child did not provide any additional testimony to suggest defendant continued or otherwise re-engaged in sexual contact with her after she moved her body away from him on the couch where child only testified she and defendant did not speak after she "scooted up" on the couch and that defendant left the room shortly thereafter.

Sentencing/Community control/ Termination/Marsy's Law/Notice. State v. Malfregeot | 2024-Ohio-257 | 8th Appellate District | 01/25/2024 In a conviction by plea to two counts of gross sexual imposition, R.C. 2907.05(A) (1) and (A)(5), and assault, R.C. 2903.13(A), imposition of two years of community control and subsequent grant of motion to terminate community control, the trial court erred by failing to provide notice to the victim pursuant to R.C. 2930.161(A)(1) and (B) that was enacted in accordance with Marsy's Law.

Sealing/Hearing. State v. W.A.R. | 2024-Ohio-256 | 8th Appellate District | 01/25/2024 Denial of application to seal record and conviction was error where the trial court failed to conduct a hearing on the application, R.C. 2953.32, since the statute's explicit language requires a trial court to both set and conduct a hearing on an applicant's filing of a motion to seal their record and, since the trial court's journal entry states that the applicant's motion to find his restitution paid in full was unopposed and granted, and thus the record reflects, through the court's docket, that the applicant satisfied his restitution in full.

Sentencing/Reagan Tokes Law/Post-release control/Advisements. State v. Holbert | 2024-Ohio-175 | 2nd Appellate District | 01/19/2024 In a conviction by plea of no contest to felonious assault, the state concedes the trial court did not comply with R.C. 2929.19(B)(2)(c) at the sentencing hearing by failing to provide certain advisements required by the Reagan Tokes Law, and the state concedes the trial court also failed to properly advise defendant of the conditions of post-release control at the sentencing hearing and, since defendant

acknowledges that he was properly advised about both sets of advisements during the plea colloquy and in the judgment entry of conviction, the court of appeals remands the cause for the required advisements at a sentencing hearing.

Evidence/Intent/Hearsay. State v. Stone | 2024-Ohio-177 | 2nd Appellate District | 01/19/2024 In a conviction of attempted trespass in a habitation when a person is present or likely to be present, R.C. 2911.12(B) and 2923.02(A), and possession of criminal tools, the trial court did not err by precluding defense counsel from asking a responding sheriff's deputy about defendant's intent since the questions were not relevant, asked for hearsay, were not based on a proper foundation and were not lay opinion testimony from law enforcement officers under Evid.R. 701 since the deputy's testimony did not suggest that he had interacted with defendant or had observed her behavior, nor did he have first-hand knowledge of defendant's actions.

Post-conviction relief/Timeliness/ Unavoidably prevented. State v. Johnson | 2024-Ohio-134 | Supreme Court of Ohio | 01/18/2024 Following a 2012 conviction of, inter alia, attempted murder that was affirmed, the trial court's denial of a 2020 successive petition for post-conviction relief without a hearing that was affirmed by the court of appeals was not error since the petition was successive and untimely filed under R.C. 2953.21(A)(2)(a) and did not qualify for the R.C. 2953.23(A)(1) (a) and (b) exceptions to the timeliness requirement where appellant relied on the August 2020 affidavit of the victim, who identified appellant at trial, recanting his testimony, but appellant failed to demonstrate he was unavoidably prevented from discovering the basis for his 2020 petition prior to filing it, and the holding in Bethel did not shift to the state the burden to demonstrate that the petitioner was capable of discovering the evidence sooner since Bethel involved discovery of Brady materials that were claimed to have been suppressed by the state that a petitioner would have been unaware of, nor did appellant show constitutional error at trial as required by R.C. 2953.23(A)(1)(b) since the witness' alleged perjury was not shown to have been known by the state, and thus its use was not a constitutional violation.

Evidence/Other acts/Evid.R. 404(B).

State v. Johnson | 2024-Ohio-158 | 8th Appellate District | 01/18/2024

In a conviction of, inter alia, aggravated murder and imposition of a prison sentence of life without parole, the trial court did not err in the admission of other acts evidence, Evid.R. 404(B), where there was an issue of identity of the perpetrator and evidence of domestic violence which showed a "strained relationship" between the defendant and victim-ex-fiancé, and the state demonstrated that defendant used the decedent's phone to send messages to himself and to the deceased's contacts that accused another person of threatening decedent with a gun and threatening to set the house on fire, and thus was admissible evidence of prior calculation and design.

Sentencing/Re-sentencing. State v.

Vawter | 2024-Ohio-131 | 3rd Appellate District | 01/16/2024

In a conviction by plea to felony trafficking in a fentanyl-related compound, the trial court erred by sua sponte re-sentencing to correct a failure to advise defendant of the reserved range of prison terms if prison sentences were subsequently imposed on a community control violation, R.C. 2929.19(B)(4), since, even assuming that the error at sentencing rendered the sentence voidable, the sentence was not challenged on direct appeal, and thus defendant had a legitimate expectation of finality in his sentence when that original sentence was imposed, and the protections of the Double Jeopardy Clause prohibited the trial court from later re-opening the case to reconsider or amend the final judgment previously entered.

Drug trafficking/Sale or resale/

Sufficiency of evidence. State v. Davis | 2024-Ohio-132 | 3rd Appellate District | 01/16/2024

Conviction of trafficking in drugs and possession of drugs was error in part since, although the state presented evidence that defendant had transported drugs to the premises, the state failed to present evidence that it was for the purpose of sale or resale since no evidence was presented that drug paraphernalia or large amounts of cash were found or even that trafficking was occurring at the location where the drugs were found or that the drugs were for anything besides personal use; also discussed, allied offenses.

Appeal/Reconsideration. State v. Ruitter

| 2024-Ohio-149 | 7th Appellate District | 01/16/2024

In an application by appellee-state for reconsideration pursuant to App.R. 26(A)(1) of part of the opinion and judgment entry of the court of appeals reversing defendant's rape, attempted rape and sexual battery convictions as to one of the victims, the court of appeals holds there is no obvious error since gross sexual imposition under R.C. 2907.05 requires "sexual contact," while the versions of rape, attempted rape and sexual battery in effect during the relevant time required "sexual conduct" with another, and there was no evidence of sexual conduct as to that victim.

Venue/Continuing course of conduct.

State v. McWilliams | 2024-Ohio-97 | 2nd Appellate District | 01/12/2024

In an appeal by the state in a prosecution for cocaine possession, the trial court erred by refusing to consider whether venue could be appropriate pursuant to R.C. 2901.12(H)(3) since the court failed to consider whether the state proved the offenses were committed in different jurisdictions as part of a continuing course of conduct under R.C. 2901.12(H)(3); however, to the extent that the state challenges the sufficiency of the evidence presented, there is no dispute that the state could not prove that any of the elements of aggravated possession of drugs occurred in the county that the trial took place in order to satisfy R.C. 2901.12(G).

Identity/Video clips/Distinctive gait.

State v. Short | 2024-Ohio-92 | 10th Appellate District | 01/12/2024

In a conviction of, inter alia, aggravated murder, jury's verdicts were against the weight of evidence since the state failed to prove defendant's identity since no credible identification could be made because of the poor quality of the surveillance cameras footage taken at night, and the witness' testimony that he recognized defendant by his distinctive walking gait was of limited value since the suspect's gait was captured for mere seconds on "[v]ery short video" clips shown to the witness, the witness' contacts with defendant were limited to indoor meetings, and the witness would not have had the opportunity to observe defendant's gait for any appreciable distance.

New trial/Newly discovered evidence.

State v. Minifee | 2024-Ohio-64 | 8th Appellate District | 01/11/2024

After a 2007 conviction of, inter alia, felony murder that was remanded for re-

sentencing to merge allied offenses, appellant filed 2021 Crim.R. 33(A)(6) motions for a new trial based on newly discovered evidence that included an affidavit by a witness recanting her trial testimony that she did not see victim shooting a gun at defendant before defendant shot back, the trial court erred by denying the motion since there was clear and convincing proof that the defendant was unavoidably prevented from discovering the witness' recantation, and the Ohio Supreme Court in Bethel eliminated consideration of whether the motion for leave was filed within a "reasonable time" from the time a defendant "discovered" the new evidence.

Sentencing/Consecutive sentences.

State v. Stiver | 2024-Ohio-65 | 8th Appellate District | 01/11/2024

In a conviction by plea to, inter alia, three counts of rape and kidnapping, the trial court made the necessary R.C. 2929.14(C)(4) findings before imposing the sentences to be served consecutively, the trial court is not required to provide reasons in support of the findings, and the Ohio Supreme Court's vacating Gwynne IV effectively reverted the standard of review to the case authority that predated the Court's departure from the deferential standard of review applied to appellate review of consecutive sentence findings, Scott.

Sealing/Civil judgment/Dormant.

State v. T.W.C. | 2024-Ohio-49 | 10th Appellate District | 01/09/2024

Grant of application to seal records of convictions in four cases was not error where, under the law in effect at the time to seal a record of conviction, the trial court first determined applicant qualified as an "eligible offender," R.C. 2953.31(A), and the state's claim that applicant was not eligible because he had not paid restitution is without merit since he had been ordered to pay a credit union "as a civil judgment," not as a criminal sanction, and thus he did not have to pay the money owed to obtain a "final discharge" of his conviction and, moreover, pursuant to R.C. 2325.18(A), the judgment is permanently dormant and can no longer be enforced.

Joinder/Severance. State v. Reed |

2024-Ohio-43 | 5th Appellate District | 01/08/2024

In a conviction by plea of no contest to sex offenses in four joined cases, with a different minor victim in each case, the trial court erred by denying defendant's motion to sever the cases for separate trials where, although

Criminal (Continued)

the offenses involved four different female victims and each victim was a minor when the alleged acts occurred, the offenses against each victim occurred years apart, and the danger of a jury improperly considering testimony on one offense as corroborative of another alleged offense is significant; also discussed, plea of no contest preserved the right to appeal pre-trial evidentiary decisions; dissenting opinion.

Search/Warrant/Jurisdiction. State v. Worthan | 2024-Ohio-21 | 2nd Appellate District | 01/05/2024 In an appeal by the state of the trial court's order sustaining defendant's motion to suppress cell-phone data obtained pursuant to a search warrant issued by a local municipal court and served on the phone company's legal-compliance office in Florida, grant of defendant's motion to suppress was not error since the municipal court's issuance of a warrant to be executed beyond its territorial jurisdiction violated Crim.R. 41(A), requiring suppression of the evidence obtained.

Appeal/Final appealable order. State v. Gronbeck | 2024-Ohio-26 | 2nd Appellate District | 01/05/2024 In a prosecution involving defendant-former family physician's sexual exploitation of patients, the trial court did not err in granting discovery to defendant to obtain patients' medical, counseling and other records in connection with his defense against criminal charges involving sexual exploitation of patients since the ruling that the non-parties' alleged victims have appealed from is not final under R.C. 2505.02(B) because "[a]n in camera inspection is not an order that requires the disclosure of materials to another party * * * and [t]herefore, orders for an in camera inspection do not constitute final orders," R.C. 2930.071(A); but cf. *State v. Boyle*, 8th Dist. Cuyahoga No. 113045, 2023-Ohio-3161.

Felonious assault/Weapon offenses/Sufficiency and weight of evidence. State v. Burks | 2024-Ohio-17 | 10th Appellate District | 01/04/2024 Convictions of, inter alia, two counts of felonious assault, weapons offenses and tampering with evidence were supported by sufficient evidence where an eyewitness identified defendant as the shooter and that he hid the gun in bushes that the police found, and the forensic evidence the state presented

connected the shell casings to the gun recovered near the scene, corroborating the eyewitness' testimony that she saw defendant fire his weapon before hiding the gun, and defendant had a the same caliber magazine on his person when police apprehended him.

Search/Suppression. State v. Kancler | 2024-Ohio-16 | 8th Appellate District | 01/04/2024 In a conviction by plea to drug possession, R.C. 2925.11(A), the trial court erred in denying a motion to suppress since, although officer had an objectively reasonable belief, based on the circumstances known to him at the time of the stop, that defendant had an inoperable headlight, officer no longer had a reasonable suspicion of a traffic violation to support the traffic stop because when the stop was made, both headlights were functioning and the officer's reasonable suspicion and probable cause ceased upon his examination that both headlights were functioning, and the trial judge's comment that sometimes headlights flicker on and off was not based on the evidence in this case.

Indictment/Motion to dismiss/Sufficiency of evidence. State v. House | 2023-Ohio-4833 | 9th Appellate District | 12/29/2023 Trial court's dismissal of an indictment for having weapons while under disability was error since the court improperly considered the quality and quantity of the state's evidence on the issue of whether defendant is a fugitive from justice, but this type of sufficiency analysis is not appropriate for a Crim.R. 12(C)(2) motion since only when the state presents its evidence at the trial of the general issue can the trial court properly determine whether the state introduced sufficient evidence to support a conviction pursuant to Crim.R. 29.

Mistrial/Prosecutor's closing argument. State v. Holland | 2023-Ohio-4834 | 2nd Appellate District | 12/29/2023 In a conviction of, inter alia, three counts of murder, the trial court did not err by overruling defendant's motion for a mistrial after the state made a reference in the closing argument that other gang members involved in the shooting death of the victim were not charged, with defendant arguing that if it was improper for the jury to be explicitly told during the trial that defendant was the only one charged, it was also "improper to allow the state to suggest the same in its closing argument" is without merit since the court of appeals holds that in the absence of the prosecutor's remark,

based on the evidence presented, the jury would have found defendant guilty beyond a reasonable doubt.

Evidence/Forfeiture by wrongdoing/Evid.R. 804(B)(6). State v. Hommes | 2023-Ohio-4868 | 11th Appellate District | 12/29/2023 In a conviction of knowingly causing or attempting to cause physical harm with a deadly weapon or dangerous ordnance, the trial court's admission of officer's body cam interview of the victim describing defendant's attack on her was not error since it is admissible under Evid.R. 804(B)(6), forfeiture by wrongdoing, where recorded jail call from defendant to victim instructed her to deny that any attack occurred and to "keep your phone off * * * and * * * your location off," and the state demonstrated that it exercised diligent and reasonable efforts to procure the attendance of the victim at trial by issuing a subpoena and then a warrant for her arrest.

Jury/Verdict form. Akron v. Calhoun | 2023-Ohio-4840 | 9th Appellate District | 12/29/2023 In a conviction of fourth-degree misdemeanor municipal ordinance disorderly conduct, since the verdict form did not include either the degree of the disorderly conduct conviction or the additional element that defendant persisted in disorderly conduct after reasonable warning or request to desist, defendant should have only been convicted of a minor misdemeanor; remanded for the trial court to enter a judgment convicting defendant of disorderly conduct as a minor misdemeanor.

Confrontation Clause/Hearsay/Harmless error. State v. Stevenson | 2023-Ohio-4853 | 6th Appellate District | 12/29/2023 In a conviction of robbery, although the trial court erred by admitting certain portions of investigating officer's body cam video of some of the alleged victims' statements since those victims did not testify at trial and there was no ongoing emergency when the statements were made, violating the Confrontation Clause, but the prior body cam video of one of the victims' statements made to the police at a gas station near the alleged robbery shortly after the crime occurred was admissible since, at that time, the assailants were potentially armed and still at large, and thus that victim's statements were non-testimonial in nature, Sproles.

Criminal trespass/Leased premises.

[State v. Randolph | 2023-Ohio-4753 | Supreme Court of Ohio | 12/29/2023](#)

On certified conflict, conviction of criminal trespass, R.C. 2911.21, was against the sufficiency and weight of evidence where defendant was on leased premises pursuant to the tenant's permission, and nothing in the lease agreement provided otherwise in order to preserve the landlord's possessory interests in the property leased.

Sentencing/Sex offender classification/ Megan's Law/Adam Walsh Act.

[State v. Todd | 2023-Ohio-4847 | 10th Appellate District | 12/29/2023](#)

Following a 1999 conviction by plea in one case to rape, with no violent sexual predator specification and gross sexual imposition and, in the other case, to rape, with no violent sexual predator specification, the trial court did not err by denying the state's motion seeking a nunc pro tunc entry to state the sex offender classification, but its reasoning was incorrect since under Ronan I and II, there was no final appealable order entered in the Megan's Law proceeding, so there was no judgment entry to correct, and the trial court did not err when it granted defendant's petition challenging his reclassification as a Tier III offender under the Adam Walsh Act since under Williams, defendant's reclassification violated the prohibition on retroactive punishment because he committed the sexual offenses that prompted the Tier III classification prior to the enactment of the Adam Walsh Act.

Evidence/Other acts/Evid.R. 404(B).

[State v. Fuller | 2023-Ohio-4837 | 9th Appellate District | 12/29/2023](#)

In a conviction of, inter alia, attempted murder, the trial court did not err by allowing into evidence the fact that defendant was a suspect in a shooting that occurred with the same gun in another city since it was not impermissible Evid.R. 404(B) other acts evidence where defendant denied that the weapon found when he was apprehended by police was his, and the testimony admitted from the investigation in the other city was evidence that the gun found on defendant in that case was the same gun found underneath him in this case.

Weapon offenses/Concealed carry/

Qualifying adult. [State v. Jones | 2023-Ohio-4829 | 9th Appellate District | 12/29/2023](#)

Conviction of improperly handling firearms in a motor vehicle, R.C. 2923.16(B), and carrying a concealed

weapon, R.C. 2923.12(A)(2), was not error since, even if defendant's claim that the enactment of the concealed carry law, R.C. 2923.111, applied retroactively to his situation, the record is devoid of any evidence indicating that defendant would be a "qualifying adult" under that statute since he provides no factual basis or citations to the record in support of his position, App.R. 16(A)(7).

Sentencing/Consecutive sentences.

[State v. Norris | 2023-Ohio-4788 | 8th Appellate District | 12/28/2023](#)

In a conviction by plea in two cases to gross sexual imposition, aggravated menacing and having weapons while under disability, and imposition of four years in prison for gross imposition in one case and in the other case sentenced to 12 months on the weapons offense and 180 days for the aggravated menacing offense to run concurrently, with the sentences in the two cases to run consecutively to each other, the trial court erred by failing to make the required R.C. 2929.14(C) (4) disproportionate finding for the imposition of consecutive sentences; the trial court judgment is vacated and remanded to make the required consecutive sentences finding.

Sealing/Rehabilitation. [State v. A.L.H. | 2023-Ohio-4789 | 8th Appellate District | 12/28/2023](#)

Denial of application to seal record of conviction of corrections officer for dereliction of duty, R.C. 2921.44(C) (5), a second-degree misdemeanor, was not error where applicant failed to provide any evidence at his hearing that he had been rehabilitated and, although applicant's counsel made strong arguments, statements of counsel do not constitute evidence and, based on the lack of evidence in the record of the applicant's rehabilitation, there is nothing to support a finding that the trial court improperly denied the application, Shaffer.

Competency. [State v. Haji | 2023-Ohio-4807 | 3rd Appellate District | 12/28/2023](#)

In a conviction by plea to OVI, the trial court erred by accepting defendant's guilty plea without conducting a competency hearing pursuant to R.C. 2945.37 since, once the issue was raised by defense counsel, the trial court was required to hold a hearing, Shine, and, although a hearing was held for the purpose of a competency evaluation review, the record shows that no evaluation was completed since the transcript shows that at no point did the trial court speak with the defendant at

that hearing, and the court's interactions with defendant prior to the change of plea were insufficient to demonstrate competency.

Evidence/Hearsay/Officer's

investigation. [State v. Shepard | 2023-Ohio-4791 | 8th Appellate District | 12/28/2023](#)

In a conviction of, inter alia, aggravated murder, the trial court did not allow the state to elicit inadmissible hearsay testimony from the witnesses since statements offered into evidence to explain an officer's criminal investigation including anonymous tips are not hearsay, and testimony was presented to establish the officer's investigation of the events and individuals involved in the shooting of the victim, and not offered to prove the truth of the matter asserted, but rather to merely establish the officer's reason for investigating the defendant; also discussed, sufficiency and weight of evidence.

Evidence/Forensic interview of minor/ Evid.R. 803(4). [State v. Keen | 2023-Ohio-4761 | 5th Appellate District | 12/27/2023](#)

In a conviction of, inter alia, multiple counts of attempted rape of defendant's minor stepdaughter, admission of videotape of minor's forensic interview was not error since it was relevant pursuant to Evid.R. 403(A) and not impermissible other-acts evidence under Evid.R. 404(B) since Evid.R. 803(4) permits statements for purposes of medical diagnosis or treatment as an exception to the hearsay rule, including forensic interviews of child sexual abuse victims conducted at child advocacy centers.

Failure to prosecute/Minor

misdemeanor. [Seville v. Kilgore | 2023-Ohio-4765 | 9th Appellate District | 12/27/2023](#)

In a prosecution of municipal ordinance of having a dog at large, a minor misdemeanor, the trial court erred by dismissing the action for failure to prosecute since the case was dismissed before the R.C. 2901.13(A)(1)(c) six-month time limit expired.

Contempt/Written notice. [Akron v. Albarez | 2023-Ohio-4770 | 9th Appellate District | 12/27/2023](#)

Following a conviction by plea to municipal code violations relating to the possession of a vicious dog or possession of pit bulls, with the trial judge finding the dogs presented a danger to the community and ordered both dogs be surrendered to the animal warden for euthanization, but defendant failed to do so and was held in contempt,

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but since defendant was never provided written notice of the contempt charges against her as required by R.C. 2705.03, the trial court committed reversible error.

Indictment/Motion to dismiss/Crim.R. 12(C)(2). State v. Swazey | 2023-Ohio-4627 | Supreme Court of Ohio | 12/22/2023 In a conviction by plea of guilty to three counts of non-support of dependents, the trial court erred in denying defendant's Crim.R. 12(C)(2) motion to dismiss the indictment because to establish the general issue at trial, the state would be required to demonstrate the existence of a support order and that defendant failed to pay it, and determining when defendant's support order terminated would be an issue for appropriate determination in a motion to dismiss since the rule contains no language restricting the arguments raised in a motion to dismiss to the content within the four corners of the indictment, Palmer and Brady; cause is remanded for consideration of the motion, Wilson.

Gross sexual imposition/Sufficiency of evidence. State v. Franco | 2023-Ohio-4653 | 8th Appellate District | 12/21/2023 In a bench conviction of gross sexual imposition, abduction, domestic violence and endangering children, although the evidence was insufficient to demonstrate gross sexual imposition, R.C. 2907.05(A)(1), when defendant slapped the mother of his children in the buttocks, where the alleged victim indicated it was not sexual in nature and R.C. 2907.05(A)(1) requires that the victim's submission to sexual contact be obtained by force or threat of force, and the state did not present any evidence that defendant used any force other than the act itself to cause this unwarranted touching, but the evidence was sufficient to support the lesser-included offense of sexual imposition pursuant to R.C. 2907.06(A)(1).

Sentencing/Consecutive sentences. State v. Banks | 2023-Ohio-4655 | 8th Appellate District | 12/21/2023 In convictions of felonious assault, abduction, theft and menacing by stalking, the trial court erred in imposing consecutive sentences since it failed to make the required R.C. 2929.14(C)(2) findings concerning proportionality; sentence is vacated and matter is remanded to the trial court for the limited purpose of considering whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and to make the

necessary findings and incorporate the findings into the sentencing entry.

Post-conviction relief/Untimely filed/Delayed appeal. State v. Green | 2023-Ohio-4658 | 8th Appellate District | 12/21/2023 In a conviction by plea to endangering children and to having weapons while under disability that was not appealed, and the trial court's subsequent grant of motion for delayed appeal and entry of a nunc pro tunc judgment reflecting a corrected consecutive sentencing entry, the trial court did not err by denying a petition for post-conviction relief as untimely filed since a delayed appeal does not toll the time for filing a petition for post-conviction relief, Dudas, and the petition was not filed within the 365-day deadline for filing the petition.

Aggravated disorderly conduct/Assault on a peace officer/Sufficiency and weight. State v. Larrick | 2023-Ohio-4663 | 5th Appellate District | 12/21/2023 Conviction of, inter alia, aggravated disorderly conduct and assault on a peace officer met the sufficiency and weight of evidence standards where considering defendant's conduct that resulted in injury to an officer, in addition to the words he used, were sufficient to meet the requirements for violation of the statutes under which he was charged with violating; also discussed, obstructing official business, resisting arrest and disrupting public services.

Prosecutorial misconduct/Closing argument. Broadview Hts. v. Thomas | 2023-Ohio-4645 | 8th Appellate District | 12/21/2023 In a conviction of theft, prosecutor's closing argument did not constitute prejudicial misconduct where prosecutor sought during closing argument to contrast the state's witnesses' testimony against defendant's testimony to suggest defendant's testimony and explanations for his actions were incredible and unworthy of belief and, although the prosecutor improperly vouched for the credibility of the owner of the item that was in defendant's possession, the closing argument did not permeate the entire atmosphere of the trial so as to make it unfair.

Sentencing/Allied offenses. State v. Smith | 2023-Ohio-4642 | 8th Appellate District | 12/21/2023 In a conviction of gross sexual imposition, R.C. 2907.05(A)(4); gross sexual imposition, R.C. 2907.05(A)(5); and two counts of gross sexual imposition, R.C. 2907.05(A)(1), the

trial court committed plain error by failing to merge two of the counts as allied offenses of similar import since the two offenses arose from the same incident that were committed simultaneously with the same purpose (sexual gratification) and stemmed from a singular incident of sexual contact, namely defendant's act of touching of victim's erogenous zone while she was sleeping, R.C. 2941.25(A); also discussed, sufficiency and weight of evidence.

Self-defense/Reasonable belief/Evid.R. 702(A). State v. Reed | 2023-Ohio-4694 | 5th Appellate District | 12/21/2023 In a conviction of felonious assault and menacing by stalking, the trial court did not err in not permitting a doctor to testify about his opinion of the medical outcome to defendant of an altercation with a man the victim's age and size to demonstrate defendant reasonably believed his life was in danger and acted in self-defense when he shot the victim since expert testimony was not necessary for a lay person to understand the potential fragility of an older person in poor health who is involved in a verbal or physical altercation, and to evaluate the objective reasonableness of defendant's belief that he was in imminent danger of death or bodily harm if engaged in an altercation with the victim, Evid.R. 702(A).

Search/Suppression/Abandonment of property. State v. Camper | 2023-Ohio-4673 | 10th Appellate District | 12/21/2023 In a conviction by plea to improperly handling firearms in a motor vehicle and carrying a concealed weapon, the trial court erred in denying a motion to suppress a weapon in a backpack that defendant had handed to another person from whom officer ordered to give to him and that officer opened, revealing a gun, since defendant did not abandon the backpack by handing it to a person who was a friend, nor did defendant deny ownership to officers and, since defendant's statements at the police station occurred in response to an officer's questions about the gun discovered during the unlawful search, these statements should have been suppressed as fruit of the poisonous tree.

Forfeiture/Motion to release property. State v. Glenn | 2023-Ohio-4654 | 8th Appellate District | 12/21/2023 Following a grant of motion by the state to dismiss a case against defendant because it needed additional investigation, the trial court erred in

granting defendant's motion to release his property that was being held as evidence since the trial court failed to hold a hearing on the defendant's motion that is required pursuant to R.C. 2981.03(A)(4); the trial court's order is reversed and case is remanded for further proceedings.

Evidence/Evid.R. 403(A)/SANE testimony. [State v. Hems | 2023-Ohio-4714 | 7th Appellate District | 12/21/2023](#)

In a conviction of rape, sexual assault nurse examiner's testimony that the alleged victim had left an imprint on her heart and affected her emotionally did not violate Evid.R. 403(A) by arousing the jurors' emotions and sympathy toward the alleged victim since the testimony was not unfairly prejudicial because the nurse examiner was describing the alleged victim on the date of the offense, and her physical and emotional conditions on the date of the offense were relevant since they tend to establish that the alleged victim was raped consistent with the charges against defendant; also discussed, improper vouching.

Witnesses/Hostile. [State v. Johnson | 2023-Ohio-4734 | 7th Appellate District | 12/20/2023](#) In a conviction of attempted murder, felonious assaults and multiple firearm specifications, the trial court did not improperly allow the state to treat two of its witnesses as hostile witnesses since the trial court satisfied the statutory requirements where one witness, defendant's mother, had on her own volition told police that defendant had shot the victim, and the other witness, who had a relationship with defendant, gave a videotaped statement to police implicating defendant in the crimes, and she gave no notice she had a change of heart and made no attempt to recant prior to trial.

Jury/State's peremptory challenges/Racial discrimination. [State v. Pinckney | 2023-Ohio-4630 | 9th Appellate District | 12/20/2023](#) In convictions of aggravated murder, aggravated burglary and felonious assault, the trial court did not err in its determination that defendant did not establish purposeful racial discrimination in the use of a peremptory challenge to remove a prospective black juror who indicated that he would be hesitant to convict someone if there was no forensic evidence since the state used three of its four peremptory challenges to remove prospective jurors who were initially hesitant about convicting someone

if there was no forensic evidence, even if those jurors later indicated that they could convict under certain circumstances.

Appeal. [State v. Riffle | 2023-Ohio-4808 | 4th Appellate District | 12/19/2023](#)

In an appeal of a conviction by plea to theft that defendant made remotely, the court of appeals reverses the judgment of conviction and sentence and remands matter for further proceedings where the state did not file an appellate brief or enter an appearance, and nothing in the record shows the trial court ever obtained a waiver of defendant's right to be present, in writing or on the record, nor does the record show compliance with other requirements for remote attendance during the hearing, Crim.R. 43(A)(2)(a).

Sealing/Eligible offender/Findings. [State v. H.M.G. | 2023-Ohio-4588 | 12th Appellate District | 12/18/2023](#)

Denial of application to seal the record of a conviction for disorderly conduct was error where the trial court denied the application based on applicant's refusal in a prior application to seal a drug test since the judge did not make any specific findings as to whether applicant is an "eligible offender" under R.C. 2353.31 since it did not allow applicant to provide evidence concerning her rehabilitation, the court never addressed this issue at the hearing, the prosecutor did not identify any legitimate need for keeping the record unsealed and the trial court did not make any specific findings on this issue in its written entry.

Witnesses/Expert witness/Ultimate issue. [State v. Houle | 2023-Ohio-4609 | 3rd Appellate District | 12/18/2023](#)

In a conviction of aggravated robbery and obstructing official business, the trial court did not err by excluding defendant's proposed expert witness in "General Law Enforcement and Arresting Procedures" from testifying at trial where the lawfulness of defendant's detention and arrest had been determined at the suppression hearing that defendant's witness testified at and, moreover, the proposed witness would be attempting to testify to ultimate issues in the case that are generally inadmissible unless it is in an area of specialized knowledge, and there is no indication that the proposed witness was going to provide testimony that was not within the common knowledge of a jury or that was not within the ability of the jury to understand.

Costs/Court-appointed counsel fees.

[State v. Ping | 2023-Ohio-4608 | 3rd Appellate District | 12/18/2023](#)

In a conviction by plea to illegal conveyance of drugs of abuse onto grounds of a specified governmental facility, imposition of community control and subsequent admission to violation, the trial court erred in ordering that the court-appointed attorney fees be assessed against defendant as part of his sentence as costs since those fees may be assessed at the sentencing hearing, but they cannot be included as a part of the offender's sentence, Taylor.

Sentencing/Community control violation/Final appealable order.

[State v. Forro | 2023-Ohio-4600 | 11th Appellate District | 12/18/2023](#) Following a conviction by plea to menacing by stalking and imposition of five years of community control with conditions, including submitting to random drug testing, the trial court denied defendant's motion to modify community control to permit him to use medical marijuana, defendant subsequently tested positive for THC and was taken into custody, the trial court did not err by denying a motion to modify community control since an appeal of that judgment entry does not allow the court of appeals to consider the denial of the motion because it did not determine or affect a substantial right of the parties or allow the court of appeals to provide any type of relief or remedy, and thus the appeal is dismissed for lack of a final appealable order.

Sealing/Eligible offender/Rehabilitation. [State v. H.M.G. | 2023-Ohio-4589 | 12th Appellate District | 12/18/2023](#)

Denial of application to seal the record of a dismissed charge of underage possession of alcohol was error where the trial court denied the application based on applicant's refusal in a prior application to seal a conviction for disorderly conduct to take a urine test since the trial judge did not make any specific findings whether applicant was eligible for record sealing under R.C. 2353.52 and, upon learning that applicant had an application to seal denied ten months earlier for a conviction of a different offense for lack of a showing of rehabilitation, the trial court denied the application but, under R.C. 2953.52, rehabilitation is not a factor that a trial court may consider in its decision.

Sentencing/Community control/Appellate review. State v. Ross | 2023-Ohio-4553 | 1st Appellate District | 12/15/2023 Following a conviction by plea to felony escape, R.C. 2921.34, and imposition of four years of community control and 30 hours of community service, with notification to defendant that he could be sentenced to 36 months in prison for a violation of community control, and defendant subsequently admitted to six violations and the trial court imposed 12 months of the reserved prison sentence, the court of appeals has no authority under any of the statutes referenced in R.C. 2953.08(G)(2) to review the trial court's decision.

Sentencing/Prison term/No contact order. State v. Sanders | 2023-Ohio-4551 | 1st Appellate District | 12/15/2023 In a conviction by plea to robbery, the trial court erred by sentencing defendant to a 24-month prison term and a no-contact order since a no-contact order is a community control sanction, and it is contrary to law for a trial court to impose a prison term and a community-control sanction for the same offense; the court of appeals vacates the no-contact order, Patrick.

Sentencing/Costs of confinement and court-appointed counsel. State v. Henderson | 2023-Ohio-4576 | 6th Appellate District | 12/15/2023 In a conviction by plea to attempted felonious assault and imposition of a 24-month prison sentence, the trial court erred by ordering defendant to pay the costs of confinement and the costs of court-appointed counsel because the court failed to address the matter of costs and defendant's ability to pay costs on the record at the sentencing hearing since the costs of confinement and costs of counsel "must be conditioned upon appellant's ability to pay," R.C. 2941.51(D) and 2929.18(A)(5)(a)(ii).

Post-conviction relief/DNA/Summary judgment/Issue of material fact. State v. Carswell | 2023-Ohio-4574 | 6th Appellate District | 12/15/2023 Following convictions of rape, gross sexual imposition and importuning of a minor, with the trial court merging the rape and gross sexual imposition offenses as allied offenses of similar import for sentencing and conviction and sentence were affirmed, the trial court erred by denying a petition for post-conviction relief without a hearing since an issue of material fact existed

involving a claim of ineffective assistance of counsel based on trial counsel's not investigating and challenging DNA evidence through expert testimony pertaining to innocent transfer of DNA and failure to provide testimony that the DNA results "were non-conclusive, unreliable and confusing for use in determining guilt;" remanded for hearing on this issue.

Sentencing/Community control/Prior notice of violation. State v. Kusinko | 2023-Ohio-4545 | 8th Appellate District | 12/14/2023 Following a 2016 conviction by plea to, inter alia, aggravated burglary, four counts of domestic violence, three counts of endangering children and imposition and subsequent violations of community control, the trial court erred by sua sponte terminating supervision without prior notice to the parties and without holding a hearing on the termination issue.

Plea/Validity/Crim.R. 11(E). Cleveland v. Byers | 2023-Ohio-4542 | 8th Appellate District | 12/14/2023 In a conviction by plea to city code attempted telecommunications harassment, a petty offense, the trial court erred in accepting the guilty plea by completely failing to inform defendant as required by Crim.R. 11(E) of the effect of a guilty plea as set forth in Crim.R. 11(B)(1), Hoctor, and no prejudice analysis is necessary, Dangler.

New trial/Prosecutorial misconduct. State v. Johnson | 2023-Ohio-4531 | 8th Appellate District | 12/14/2023 In convictions by plea in two cases to, inter alia, five counts of aggravated robbery, the trial court did not err by denying defendant's motion for a new trial where the state witness' comment of defendant's presence at another robbery was an isolated comment and did not substantially violate defendant's rights since the comment was immediately stricken from the record, and the trial court issued a curative instruction to the jury to disregard the comment, nor was prosecutor's comment during closing argument that "[t]here's nobody else sitting at that table except that individual," referring to defendant, deny him of a fair trial since it was made in response to defense counsel's argument that other persons may have been involved.

Post-conviction relief/Sentencing/Juvenile/Res judicata. State v. White | 2023-Ohio-4499 | 1st Appellate District | 12/13/2023 After a 1994 conviction of, inter alia, aggravated murder that appellant committed as a juvenile,

the trial court's denial of a 2022 pro se "Motion to Vacate or Set Aside Conviction" was not error where claims that the Ohio Supreme Court's holding in Patrick required trial courts to consider youth as a mitigating factor and that the 2021 enactment of R.C. 2967.132(C)(2), providing that certain juvenile homicide offenders are eligible for parole after serving 25 years in prison, are without merit since the motion is an untimely filed petition for post-conviction relief, Reynolds, and the exception in R.C. 2953.23(A)(1)(a) and (b) for the filing of an untimely petition does not apply to Patrick because the opinion announced a procedural rule that cannot be applied retroactively, Wiesenborn, and since appellant filed a 2021 pro se motion to vacate or set aside conviction but failed to raise his claim concerning R.C. 2967.132(C)(2), res judicata bars him from later raising that issue.

Felonious assault/Weapons offense. State v. Lowry | 2023-Ohio-4496 | 1st Appellate District | 12/13/2023 Bench conviction of having weapons under a disability and two counts of felonious assault met the sufficiency and weight of evidence standards based on the victim's eyewitness testimony that defendant shot her after he was handed a gun by a person with him, and a responding officer testified that the victim told him that defendant shot her and, although a person with defendant testified that someone other than defendant fired shots to disperse the crowd, that witness undercut her own credibility by providing testimony in which she insisted upon a chain of events conflicting with a reasonable interpretation of the timing of the gunfire in the surveillance video capturing the shooting.

Speedy trial. State v. Mahan | 2023-Ohio-4520 | 5th Appellate District | 12/13/2023 In a conviction by plea to a misdemeanor of the first-degree and two misdemeanors of the second-degree, the trial court did not err by denying defendant's motion to dismiss for speedy trial violation, R.C. 2945.71, since the time defendant spent in jail following the revocation of his bond was the cause of his incarceration and his trial date had been scheduled for a month before he was arrested and jailed on the bond violation, and had defendant not violated his bond conditions, his trial date would have been well within the speedy trial deadline, and thus the speedy trial clock restarted upon his arrest and had not expired when his trial had commenced.

Evidence/Other acts/Evid.R. 404. State v. Sowders | 2023-Ohio-4498 | 1st Appellate District | 12/13/2023

In convictions of aggravated burglary, aggravated robbery and kidnapping, the trial court did not commit plain error by admitting a video of defendant in another city being questioned by police about a gun he had with him that was prior to the commission of the offenses in this case, Evid.R. 404(B)(2), since the victim testified defendant had a gun when he confronted her at her house, and there is no requirement that a victim's testimony be corroborated to be believed, and also, a neighbor of defendant testified that defendant kept guns in his apartment, and the police in the other city retrieved firearms from defendant's apartment during their search, and defendant did not challenge the admission of either of those items of evidence.

Sentencing/Maximum sentence/Substantial compliance. State v. Lukan | 2023-Ohio-4742 | 7th Appellate District | 12/13/2023 In a conviction by plea to, inter alia, aggravated robbery, R.C. 2911.01(A)(1), in which the trial court provided defendant with erroneous information of the maximum sentence on the aggravated robbery count, the court realized its mistake prior to sentencing and allowed defendant time to discuss the sentence with counsel to determine whether he wished to keep his guilty plea and proceed to sentencing or to withdraw his plea, constituting substantial compliance with Crim.R. 11(C)(2), Treece.

Evidence/Best evidence rule/Testimony from memory. State v. Smith | 2023-Ohio-4504 | 7th Appellate District | 12/12/2023 In a conviction of trafficking in drugs and possession of drugs, the trial court did not err by allowing officers to testify as to what he heard between the defendant and the confidential informant, instead of the undercover audio contents, since the best evidence rule, Evid.R. 1002, did not require the recording to be played to the jury because the officer's testimony from memory of the transaction as it was occurring was competent primary evidence and was not an attempt to prove the contents of a recording, Cechura.

Search/Motion to suppress/Warrantless search/Expectation of privacy. State v. Herbert | 2023-Ohio-4490 | 7th Appellate District | 12/11/2023 In a conviction of possession of drugs, R.C. 2925.11(A), (C)(1)(e), the trial court's

denial of a motion to suppress was not error where the warrantless search of a package after a United Parcel Service (UPS) computer system flagged the packages due to previous illegal activity at the delivery address and when the boxes were opened by UPS employees and the contents of the package were "heavily wrapped," a UPS inspector contacted law enforcement to inspect the package and the substance in the box field tested positive for methamphetamine, a controlled delivery was then made, resulting in defendant's arrest at the residence and, since defendant was neither the named sender nor the named recipient of the package, he had no subjective expectation of privacy because he did not send the package, nor was it addressed to him.

Sentencing/Community control/No contact order. State v. Warnick | 2023-Ohio-4480 | 3rd Appellate District | 12/11/2023 In a conviction by plea to gross sexual imposition, with the trial court imposing the jointly recommended 12-month prison term as well as a no contact order, the state concedes that the trial court erred by imposing a community control sanction on defendant by ordering that he have no contact with the victim since a trial court may not impose a prison sentence and also impose a community control sanction such as a no contact order on a defendant for that same offense, Anderson.

Sentencing/Consecutive sentences/Failure to comply. State v. Gonzalez | 2023-Ohio-4466 | 9th Appellate District | 12/11/2023 In a conviction of a third-degree felony failure to comply with an order or signal of a police officer, the trial court did not err by imposing a prison term on defendant and running that term consecutively with the one he was already serving on an unrelated matter in another county since, if the crime is sentenced as a third-degree felony and a prison sentence is imposed, "the offender shall serve the prison term consecutively to any other prison term or mandatory prison term imposed upon the offender," R.C. 2921.331(D), see also, R.C. 2929.14(C)(3) and (D).

Search/Plain view/Protective sweep. State v. Washington | 2023-Ohio-4484 | 11th Appellate District | 12/11/2023 In a conviction of obstructing official business and having weapons under disability, the trial court did not err when it denied a motion to suppress firearms found near defendant while he was

attempting to conceal himself from officers searching for him to execute an arrest warrant since the firearms were in plain view beside defendant in a hiding space, and the fact that a flashlight was used by officers does not negate the plain view exception, and also, the weapons were found during a lawful protective sweep and a search-incident-to-arrest.

Death penalty/Post-conviction relief/Relief from judgment/Civ.R. 60(B). State v. Hill | 2023-Ohio-4486 | 11th Appellate District | 12/11/2023 In a conviction of, inter alia, aggravated murder, and imposition of the death penalty in which appellant raised issues of his intellectual disability during the sentencing mitigation phase, the court of appeals affirmed and, after the U.S. Supreme Court and the Ohio Supreme Court opinions updated the tests in determining intellectual disability, appellant filed a petition for post-conviction relief (PPCR) that was denied and then filed a Civ.R. 60(B) motion for relief from judgment that was denied, the trial court erred in recasting the Civ.R. 60(B) motion as a PPCR since, although a PPCR is the exclusive remedy to bring a collateral challenge to the validity of a conviction or sentence, it is a civil action, and the Civil Rules control that collateral challenge, Parker; remanded for consideration of the Civ.R. 60(B) motion pursuant to the three-prong test in GTE Automatic.

Plea/Validity. State v. Manning | 2023-Ohio-4455 | 6th Appellate District | 12/08/2023 In a conviction by plea to aggravated menacing, plea was not validly made when the plea was entered by defense counsel, and no one inquired on the record if defendant wanted to enter the plea, nor did the trial court inform defendant of the effect of a no contest plea since Crim.R. 11(E)(2) provides that "[i]n misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty."

Evidence/Other acts/Evid.R. 404(B). State v. Hulbert | 2023-Ohio-4502 | 7th Appellate District | 12/08/2023 In a conviction of felonious assault and a minor misdemeanor trespass, arising out of defendant's trespassing on various properties, admission of evidence regarding the defendant's actions at several neighboring properties and the

Criminal (Continued)

damage that he caused to property was not error where defendant's claim that it was inadmissible other acts evidence, Evid.R. 404(B), is without merit since the evidence was relevant to his intent on the charges of attempting to trespass into the habitations of other neighboring homeowners, Evid.R. 404(B), and other purposes as well, including the absence of mistake or accident.

Ineffective assistance/Sentencing/ Failure to argue mitigating factors. State v. Bennett | 2023-Ohio-4412 | 8th Appellate District | 12/07/2023

Following bindover from juvenile court, defendant pled guilty to, inter alia, attempted murder, and the trial court imposed an aggregate, indefinite prison term of 20 to 22.5 years, defendant's claim that defense counsel provided ineffective assistance by not specifically identifying the R.C. 2929.11(B)(1)(b) factor regarding defendant's youth that a trial court is to consider as a mitigating factor in sentencing is without merit since R.C. 2929.11(B)(1)(b) does not impose a burden on counsel to argue the mitigating factors to the trial court at sentencing, but rather the trial court is required to consider those factors, and the sentencing entry states that "the court considered all required factors of the law."

Election falsification. State v. Clark | 2023-Ohio-4434 | 10th Appellate District | 12/07/2023 Conviction of election falsification of campaign finance reports, R.C. 3599.36, by the inclusion of persons as contributors who did not make any monetary contributions, was not error where defendant admitted he knew the campaign had not yet received monetary contributions when he submitted the reports, the five listed campaign volunteers did not contribute any money to the campaign and defendant did not contribute \$53,000 to the campaign, and he also acknowledged he was the person who input the relevant information into the submitted forms and he was the person who clicked to submit each online report.

Sentencing/Nunc pro tunc sentencing entry. State v. Evans | 2023-Ohio-4416 | 8th Appellate District | 12/07/2023

In a conviction by plea to first-degree felony rape of a minor and imposition of a ten- to 15-year prison sentence under the Reagan Tokes Law, the trial court erred by entering a nunc pro tunc entry to correct a sentencing error to reflect

the sentence the trial court actually imposed on defendant at the sentencing hearing, Clausung; nunc pro tunc entry is vacated and matter is remanded for re-sentencing.

Sentencing/Consecutive sentences/ Statutory findings. State v. Coleman | 2023-Ohio-4418 | 8th Appellate District | 12/07/2023

In a conviction in three cases by pleas to, inter alia, domestic violence and gross sexual imposition, with the trial court imposing consecutive prison terms of 36 months in the domestic violence case and 60 months in the gross sexual imposition case, the trial court erred by failing to make all of the R.C. 2929.14(C) required consecutive sentencing findings; sentence is vacated and case is remanded for the trial court to consider whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and, if so, to make the required findings on the record and incorporate those findings in the sentencing journal entry.

Sentencing/Community control violation/Right to counsel. State v. Brown | 2023-Ohio-4436 | 10th Appellate District | 12/07/2023

Following a conviction by plea to, inter alia, failure to stop after an accident, and imposition of, and subsequent violation of, community control, the trial court's revocation of community control and imposition of the suspended sentence after a hearing was error because defendant was denied his constitutional right to assistance of counsel at those proceedings since "pursuant to Crim.R. 32.3 and 44, in the absence of a valid waiver, in open court, of [defendant's] right to counsel, the trial court could not lawfully revoke [defendant's] probation and impose the balance of his suspended sentence," White.

Sentencing/Community control/ Modification/Medical marijuana. State v. Lynn | 2023-Ohio-4429 | 5th Appellate District | 12/06/2023

Following a conviction by plea to attempted felonious assault, and imposition of, inter alia, three years of community control, including a condition defendant "shall abstain * * * from using illegal/non-prescribed drugs during his period of supervision," defendant obtained an Ohio medical marijuana identification card and filed a motion seeking modification of his community control conditions to allow his lawful use of medical marijuana, the trial court erred by denying the motion since the restriction is overly broad on non-constitutional grounds, Talty, because the probationary condition of an

absolute ban to using medical marijuana in this case does not have an obvious relationship to the crimes of which defendant was convicted.

Restitution/Economic loss. State v. Mazan | 2023-Ohio-4385 | 1st Appellate District | 12/06/2023

In a motor vehicle accident for which defendant was found guilty of operating his vehicle while under the influence and failing to maintain reasonable control, during the restitution hearing the victim and prosecutor admitted that defendant's insurance company reimbursed the victim for the value of the destroyed vehicle, but the restitution request was based on repairs to the replacement vehicle purchased by the victim, the trial court erred by awarding a restitution amount that was based solely on the repairs to the replacement vehicle since the amount of restitution exceeded the economic loss the victim incurred as a proximate result of defendant's criminal conduct.

Sentencing/Community control/ Jurisdiction. State v. Kolvek | 2023-Ohio-4402 | 9th Appellate District | 12/06/2023

Following a 2010 conviction in three cases by plea to drug offenses, imposition of a prison sentence of 3.5 months, a 2013 grant of motion for early release and placing appellant on a 24-month period of community control and subsequent community control violation in 2015, and 2015 convictions in two other drug-related cases, the trial court erred by denying defendant's two 2020 motions challenging sentences imposed after alleged violation of community control since the court lacked jurisdiction to reimpose the sentences because defendant had completed the community control period by the time he was sentenced.

Plea/Sentencing/Maximum penalty. State v. Davis | 2023-Ohio-4389 | 1st Appellate District | 12/06/2023

In a conviction by a guilty plea to robbery, R.C. 2911.02(A)(3), defendant entered the plea without understanding the maximum penalty since the trial court mistakenly advised him that he faced a discretionary two-year period of post-release control if convicted, but the trial court instead imposed a mandatory one-to-three-year period of post-release control as required by R.C. 2967.28, and thus the trial court breached its duty to advise defendant of the maximum penalty under Crim.R. 11(C)(2)(a) that was prejudicial, and thus the plea was not voluntarily, knowingly and intelligently made.

Sentencing/Sentence vacated.

State v. Pete | 2023-Ohio-4406 | 7th Appellate District | 12/05/2023 In a 2020 conviction by plea to aggravated trafficking in drugs, the trial court erred by denying defendant's motion to vacate the sentence since the trial court lacked jurisdiction to sentence defendant where he entered a plea to aggravated trafficking in drugs on April 27, 2020, but the trial court had not sentenced him due to his incarceration in federal prison as of November 21, 2022, and on January 5, 2023, the trial court imposed a 30-month prison sentence but, under the totality of the circumstances, the delay in sentencing was not reasonable, Crim. 32(A), since under the circumstances, defendant could have been timely extradited for sentencing.

Double jeopardy/Not guilty by reason of insanity.

State v. Street | 2023-Ohio-4405 | 7th Appellate District | 12/05/2023 In a bench trial for arson, order entering not guilty by reason of insanity verdicts constitutes an acquittal because there was insufficient evidence to prove the mens rea element of the charged crimes, as well as a factual finding that necessarily established defendant's lack of criminal culpability, and thus double jeopardy prohibits a re-trial; also, the trial court failed to strictly comply with R.C. 2945.05 requirements that a jury trial waiver be in writing and signed by a defendant in open court.

Evidence/Children's services records/Credibility.

State v. Green | 2023-Ohio-4360 | 3rd Appellate District | 12/04/2023 In a conviction after bindover of juvenile for murder and felonious assault, defendant's claim that the trial court violated his constitutional right to present a complete defense by not allowing him to present evidence that he claims would have undermined the state's witnesses' credibility and shown he acted in self-defense is without merit since his claim relating to authorizing a review of children's services records involving decedent or defendant's mother, with whom decedent had been married before separating, and who had been a father figure to defendant, failed to show there was a reasonable probability that the records he sought existed or contained material evidence relevant to his defense.

Sentencing/Death penalty/Intellectual disability.

State v. Williams | 2023-Ohio-4373 | 11th Appellate District | 12/04/2023 After a 1989 conviction of, inter alia, three counts of aggravated

felony-murder and imposition of the death penalty that was affirmed by the Supreme Court of Ohio, but pursuant to the subsequent U.S. Supreme Court holding in *Atkins*, appellant filed state and federal challenges to his conviction that ultimately resulted in the court of appeals holding that the trial court erred in determining appellant did not prove that the onset of his alleged intellectual deficits occurred while he was a minor, and the court of appeals remands the matter to the trial court to expressly consider and weigh all of the evidence in relation to each prong of intellectual disability and issue findings explaining its determinations consistent with the governing law and supported by the evidentiary record.

Plea/Withdrawal/Res judicata.

State v. Burton | 2023-Ohio-4370 | 11th Appellate District | 12/04/2023 Following a conviction by plea to failure to comply and receiving stolen property, imposition of, and subsequent violation of, community control and termination of probation, the trial court did not err in denying a pro se Crim.R. 32.1 motion to withdraw plea since appellant's claim that he should be permitted to withdraw his plea because his conviction in another county, that the trial court ran consecutively to the conviction in this case, violates double jeopardy and that his trial counsel was ineffective for refusing to raise the claim in the trial court at the time of his plea is barred by res judicata since he could have raised his claims in a direct appeal.

Sentencing/Community control violation/Jurisdiction.

State v. Padgett | 2023-Ohio-4357 | 3rd Appellate District | 12/04/2023 Following a 2001 conviction by plea to nine counts of forgery, imposition and subsequent violation of community control, and service of 2003 arrest warrant in 2022, the trial court lacked jurisdiction to conduct the community control revocation proceeding that was initiated after the expiration of the community control term without it having been properly tolled by the trial court and without probation revocation proceedings initiated within the required time-frame, Rue, notwithstanding that an arrest warrant had been issued since it contained no language that would have served to put defendant on notice that her term of community control had been extended, or tolled, as a result of her failure to abide by the conditions of her supervision.

Restitution/Ability to pay.

State v. Messer | 2023-Ohio-4355 | 3rd Appellate District | 12/04/2023 In a conviction of misdemeanor arson, the trial court erred by ordering restitution in an amount exceeding the statutory limit for the crime defendant was convicted of, but the trial court did not err by not considering defendant's ability to pay since the misdemeanor statute governing restitution does not require a trial court to consider a defendant's ability to pay prior to ordering restitution; remanded for a re-sentencing hearing limited to determining the amount of restitution to be paid in an amount not to exceed \$999.99.

Sex offenses/Rape/Sufficiency of evidence.

State v. Coker | 2023-Ohio-4339 | 6th Appellate District | 12/01/2023 Conviction of rape was not supported by sufficient evidence since no evidence was presented at trial to support that the state established that any of the terms used during the alleged victim's testimony or throughout the course of the trial that included "sexual activity," "sexual encounters," "being intimate" and "having sex" would denote that defendant and alleged victim engaged in "sexual conduct," as defined under R.C. 2907.01(A), Ferguson.

Disability**Medicaid/Qualification/Resources.**

Shell v. Ohio Dept. of Job & Family Servs. | 2024-Ohio-160 | 8th Appellate District | 01/18/2024 In applicant's administrative appeal of state department's denial of long-term care Medicaid on the basis of excess resources, trial court erred in affirming department's denial of application where applicant irrevocably assigned her insurance policies and their cash surrender values to a third party, she would need assignee's consent for the policies to be considered available to her, and her total countable resources minus the amount irrevocably assigned was under the resource limit, so applicant therefore qualified for Medicaid, Ohio Adm. Code 5160:1-3-05.12.

Education

Unused school facility/Community school. Olentangy Preparatory Academy v. Howland Twp. Local School Dist. | 2024-Ohio-783 | 11th Appellate District | 03/04/2024 In plaintiff-preparatory academy's action seeking a declaration that defendant-school district was required to offer to sell unused school facility to plaintiff pursuant to R.C. 3314.03, which requires a board of education to offer to lease or sell any unused school facilities to the governing boards of community schools that are located within the territory of the school district, summary judgment for defendant is affirmed where plaintiff was not a community school under R.C. 3314.03 because its charter contract did not strictly comply with the statute, and even if plaintiff were a community school, it was not located within defendant's territory.

Teacher/Reinstatement/Contempt. Fiedelvey v. Finneytown Local School Dist. Bd. of Edn. | 2024-Ohio-536 | 1st Appellate District | 02/14/2024 In teacher's action seeking sanctions against school board for contempt after board failed to comply with court's order to reinstate her with back pay, judgment ordering board to pay teacher is affirmed where board failed to comply with purge conditions requiring board to reinstate teacher to her former position and remit back pay; although teacher lacked an active teaching license at time back pay was awarded, the board failed to raise the issue on its first appeal and is precluded under the doctrine of res judicata from challenging the award in current appeal, R.C. 3319.30, 3319.36.

Student loan/Disbursement/Credit. Kent State Univ. v. Manley | 2023-Ohio-4650 | 8th Appellate District | 12/21/2023 In university's claim on account and unjust enrichment action against student, alleging failure to pay for tuition and other services, trial court erred in granting summary judgment to university where student asserted that she was informed by university that her federal student loan had been disbursed to pay for her tuition, and she further asserted that the remaining credit was turned over to third-party servicer rather than paid to her as required under the loan agreement, student did not have an account with servicer or make a choice about how to receive the credit, and the question remains whether university's transfer of credit to servicer was sufficient to qualify as timely disbursement of the credit.

Unemployment compensation/Teacher/Statements/Dissent. Evans v. Dir., Ohio Dept. of Job & Family Servs. | 2023-Ohio-4299 | 5th Appellate District | 12/04/2023 Hearing officer's denial of teacher's application for unemployment compensation benefits, affirmed by trial court, is affirmed since teacher made a series of statements that prompted complaints, and the teacher was terminated based on multiple disciplinary violations evidencing an unreasonable disregard for her employers' best interests, so teacher's constitutional arguments fail to establish that the hearing officer's decision was unlawful, unreasonable or against the manifest weight of the evidence; there is a dissenting opinion in this case noting that the legislative intent is to presume that employees are entitled to receive benefits, R.C. 4141.281(C)(2).

Elections and Campaign Finance

Recall/Prohibition/Mandamus/Quasi-judicial hearing/Attorney disqualification. State ex rel. Peterson v. Licking Cty. Bd. of Elections | 2024-Ohio-646 | Supreme Court of Ohio | 02/21/2024 After certificate of sufficient recall petitions was sent to village council and council set election to recall village mayor, mayor's complaint for a writ of prohibition to prevent respondents from setting recall election date and conducting election is denied where mayor did not file an election protest and respondents did not conduct a quasi-judicial hearing, a necessary requirement for entitlement to a writ of prohibition, and mayor's complaint for a writ of mandamus to order respondents to remove the special recall election from upcoming ballot is also denied since the determination whether the recall petition was sufficient was properly made by the clerk of council, rather than the boards of elections under R.C. 3501.39(A), and the duty of the election boards upon receiving the ordinance was to hold the special election; as well, mayor's motion to disqualify the village's attorney is denied since the village, rather than the mayor, is village attorney's client, attorney's duties to the village may put him at odds with mayor, but that does not mean that the attorney is conflicted from representing the village in such instances.

Zoning referendum/Signatures/Constitutionality. State ex rel. Thomas v. Wood Cty. Bd. of Elections | 2024-Ohio-379 | Supreme Court of Ohio | 02/02/2024 Relators-property owner

and company's petition for a writ of mandamus ordering county board of elections to sustain property owner's protest and to prevent the board from certifying zoning-amendment referendum for placement on upcoming election ballot, which would result in removing referendum from the ballot, is denied where the number of signatures was sufficient to qualify the referendum for placement on the ballot under the version of R.C. 519.12(H) that was in effect on the date the township trustees adopted the proposed zoning amendment; as well, the referendum-petition summary satisfied R.C. 519.12(H), relators have not established that the board violated the meeting requirement in R.C. 121.22(F), and relators' argument that the referendum, if approved by the voters, would be unconstitutional is without merit since such an amendment becomes void and unenforceable only when declared unconstitutional by a court of competent jurisdiction.

Mandamus/Withdrawal of candidacy. State ex rel. Renner v. Athens Cty. Bd. of Elections | 2024-Ohio-356 | Supreme Court of Ohio | 02/01/2024 Candidate's petition for a writ of mandamus to compel board of elections to certify her name to primary ballot for county board of commissioners or, in the alternative, to determine the validity of signatures on her petition and then certify her name to the ballot, is denied where candidate's first declaration of candidacy and petition contained a flaw, prompting her to attempt to withdraw the petition and file a second declaration and petition; however, candidate's attempt to withdraw her first petition was ineffectual because she did not withdraw her candidacy, R.C. 3501.38(l)(2)(a), and also since candidate did not withdraw her candidacy, her second petition constituted an attempt to alter, correct, or add to her first petition, prohibited under R.C. 3501.38(l)(1).

Mandamus/Affidavit/Personal knowledge. State ex rel. Henderson v. Clermont Cty. Bd. of Elections | 2024-Ohio-333 | Supreme Court of Ohio | 01/31/2024 Candidate's petition for a writ of mandamus ordering respondent-county board of elections to place his name on primary-election ballot as a candidate for nomination for the office of U.S. Representative is dismissed for failure to comply with S.Ct.Prac.R. 12.02(B)(2) where candidate submitted an affidavit purporting to testify to the truth of the facts set forth in his complaint and to the authenticity of the

documents attached to the complaint, but candidate's original affidavit and amended affidavit both failed to satisfy the personal-knowledge requirement of the Rule; an affidavit that is made "to the best of" an affiant's personal knowledge and information does not satisfy the personal knowledge requirement.

Prohibition/Disqualification/Management of property. State ex rel. Schreiner v. Erie Cty. Bd. of Elections | 2024-Ohio-290 | Supreme Court of Ohio | 01/29/2024 Relator's petition for a writ prohibiting respondents-county board of elections and members from placing candidate for state representative on the primary election ballot is denied where relator asserts that candidate is not qualified to hold office under R.C. 2961.02(B) due to his conviction of a "disqualifying offense," but because relator has not shown that the office of state representative involves substantial management or control over the property of a state agency, political subdivision, or private entity, as required by R.C. 2961.02(B), relator has not established that the board of elections abused its discretion or acted in clear disregard of statutory law when it denied his protest; as well, the court determined that it did not need to address whether a sealed conviction is the equivalent of an expunged conviction for purposes of the disqualification statute.

Commission/Quorum. Hubay v. Ohio Elections Comm. | 2023-Ohio-4801 | 10th Appellate District | 12/28/2023 Affirming an order of elections commission sanctioning appellant for filing a frivolous complaint about a political mailing was error since the commission did not have the requisite quorum present when it voted; the statutory quorum requirement mandates the participation of at least five members at the time the commission acts, R.C. 3517.152(G)(3).

Environmental and Natural Resources

Mineral interests/Lease/Term royalty conveyance. Bounty Minerals v. LL&B Headwater | 2024-Ohio-944 | 7th Appellate District | 03/14/2024 In plaintiffs-energy companies' and property owners' action seeking to quiet title to mineral interests and requesting a declaratory judgment that interests were not burdened by defendant's claimed term royalty interest, summary judgment in favor of plaintiffs is affirmed where the term royalty conveyance expressly stated that it lasted only as long as the

existing oil and gas lease remained in effect, and the last antecedent interpretation rule did not apply because the lease reached full term by expiring at the end of the primary term, which also ended the conveyance.

Mineral interests/Lease/Breach. SJBK, L.L.C. v. Northwood Energy Corp. | 2023-Ohio-4729 | 7th Appellate District | 12/22/2023 In landowner's action for a declaration that energy company breached the parties' oil and gas lease by failing to include all of landowner's leased acreage in the pooled unit by the end of the term and also a declaration that company's failure resulted in termination of the entire lease, summary judgment for company is affirmed where the Pugh clause in the parties' lease provided for release of unpooled acreage at the end of the term rather than termination of the lease, and language requiring prior written consent for pooling did not create a condition precedent to triggering the Pugh clause, which is triggered by the pooling of less than all acreage.

Mineral interests/Heirs/Abandonment/Publication. Jeffco Resources, Inc. v. Abrecht | 2023-Ohio-4712 | 7th Appellate District | 12/22/2023 In plaintiff-company's action against defendants-mineral interest heirs seeking to quiet title to property and to declare that their mineral interest was abandoned, judgment for defendants is affirmed on reasoning that plaintiff failed to conduct a reasonably diligent search for the mineral interest holders before serving notice of abandonment by publication under the Dormant Mineral Act; although an earlier search when the mineral holder's estate was settled showed that heirs' places of residence could not be ascertained pursuant to R.C. 2703.14(F), plaintiff failed to demonstrate that its effort to locate the heirs was reasonably diligent because probate court records offered some information as to the identity of potential successors in interest.

Mineral interests/Reservation/Royalty payments. Mineral Dev., Inc. v. SWN Production (Ohio), L.L.C. | 2023-Ohio-4749 | 7th Appellate District | 12/21/2023 In development company's action to declare that royalty reservation in deed provided a fixed 1/16 and 1/32 royalty on two parcels, the trial court erred in dismissing the complaint and in ruling that the reservation language was not ambiguous and needed no interpretation because the royalty reservations

do contain ambiguous and unclear provisions that can only be reconciled by viewing the entire deed, and based on a reading of the entire deed, it is clear that the grantor of the deed reserved fixed fractional royalties of 1/16 in one parcel and 1/32 in the other.

Mineral interests/Root of title/Prior interest. Kemp v. Rice Drilling, L.L.C. | 2023-Ohio-4732 | 7th Appellate District | 12/20/2023 In property owners' action against oil and gas lessees alleging, inter alia, that previously severed mineral interests were extinguished under the Marketable Title Act (MTA), summary judgment in favor of lessees was error where the root of title did not contain a specific reference to a prior mineral interest that might be preserved under the MTA exception found in R.C. 5301.48, and a general reference to a prior interest did not qualify as an exception under R.C. 5301.49(A) because it did not contain specific identification of a recorded title transaction.

Landfill/Contempt/Purge. State ex rel. Yost v. Crossridge, Inc. | 2023-Ohio-4721 | 7th Appellate District | 12/14/2023 In enforcement action brought by state environmental protection agency where landfill operator was found in civil contempt for violations of previous orders, trial court did not err in adopting state's proposed purge terms since significant progress would be made in cleaning up the landfill site if operator complied with the terms, operator failed to present independent evidence of inability to comply with the orders, operator's intentional unemployment does not support a finding of impossibility, and the total amount of fines was within the R.C. 2705.05(A)(1) framework.

Mineral interests/Remainder/Root of title. White Revocable Trust v. Kemp | 2023-Ohio-4513 | 7th Appellate District | 12/05/2023 In plaintiffs-property owners' action against defendants-purported heirs to oil and gas rights, claiming fee simple ownership of property, trial court erred in finding that defendants' interests were preserved where the root of title had only a general reference to a prior lease and therefore any lease claimed by defendants was extinguished by the Marketable Title Act (MTA), no subsequent transaction mentioned an interest claimed by defendants, and the exception to the MTA under R.C. 5301.53(A) did not apply because defendants' interest was a remainder and not a reversionary interest.

Concealment/Embezzlement/Default judgment/Special proceeding. Williams v. Williams | 2024-Ohio-758 | 2nd Appellate District | 03/01/2024

In action brought by mother's guardian alleging that her sister had concealed or embezzled assets from estate, trial court erred in granting guardian's motion for default judgment since an action under the statutes for concealment of embezzlement in probate court is a "special proceeding which is inquisitorial in nature and involves a charge of wrongful or criminal conduct on the part of the accused," the court did not issue a citation compelling sister to appear after filing of amended complaint, her non-appearance could have resulted in imprisonment for failure to obey court's order to appear pursuant to R.C. 2109.50, and the court lacked statutory authority to issue a default judgment in sister's absence.

Accounting/Creditor/Government benefits. In re Guardianship of LaRue | 2024-Ohio-692 | 12th Appellate District | 02/26/2024

In nursing home's action against resident's guardian for failure to secure government health benefits for resident, probate court erred in declining to hold a hearing to approve guardian's final accounting of estate where nursing home was a creditor of the estate and was authorized to file exceptions to guardian's account pursuant to R.C. 2109.33, guardian had the duty under R.C. 2111.14(A)(3) to pay all just debts, including nursing home charges, and guardian's duty included having an obligation to make timely application for government benefits.

Property sale/Court approval/Relief from judgment. In re Estate of Winkelmes | 2024-Ohio-288 | 5th Appellate District | 01/26/2024

In action for specific performance of first buyers' agreement to purchase property from estate after estate entered into another agreement with second buyer to sell the same property where the probate court granted attorney's motion to allow estate to sell to second buyer, trial court did not err in granting first buyers' motion to vacate the judgment where Civ.R. 60(B)(1) applied because the estate breached the purchase agreement with first buyers, who proved that they signed a purchase agreement first, both agreements were appropriately voided because each sale was contingent on approval by the probate court, and estate could offer the

parcel for sale to any interested parties "on such terms and conditions as may be in the best interest of the estate."

Paternity declaration/Inheritance. Chabek v. Gajdos | 2024-Ohio-254 | 8th Appellate District | 01/25/2024

In plaintiff's action against defendant-estate seeking to be declared the legal son of decedent with right to inherit, judgment in favor of defendant is affirmed where a declaration of paternity established an individual different from decedent as the legal father for issuance of amended birth certificate, R.C. 3705.09, and parent-child relationship between plaintiff and decedent was not established prior to decedent's death in order for plaintiff to inherit as an "illegitimate child born out of wedlock," R.C. 2105.06.

Distribution/Trust terms. Farmers Trust Co. v. Lake Erie College | 2023-Ohio-4745 | 7th Appellate District | 12/20/2023

In plaintiff-trustee's action asking the trial court to declare whether defendant-trust beneficiary was eligible to receive distributions after its operations and property were sold to a for-profit company, summary judgment in favor of defendant was error where the terms of the trust allowed for distribution only to non-profit organizations, and defendant did not merge with another non-profit organization to allow its share of trust proceeds to be distributed to a successor organization.

Inventory/Check/Prior contract/ Application for authority. In re Estate of Wolff | 2023-Ohio-4457 | 6th Appellate District | 12/08/2023

Denial of son's objection and exceptions to fiduciary's account of father's estate is affirmed where the trial court properly found that an account check that son used after father's death to purchase property that was contracted for prior to father's death was a loan and an asset of the estate where son failed to file an application for authority to complete the contract for purchase of property, R.C. 2113.50, and the check was included in the estate inventory because it was owned by father at time of his death, even though it was transferred for purchase of property as father had intended.

Family Law and Domestic Relations

Property division/Marital residence/ Due process. Zinsmeister v. Gillen-Zinsmeister | 2024-Ohio-938 | 10th Appellate District | 03/14/2024

In divorce action in which husband

challenged the court's order, issued without a hearing, for pre-decree sale of marital residence, judgment is affirmed where proceeds of the sale were placed in escrow to be later included in the calculation of equitable division of marital property, and husband's right to due process was not violated since he had the opportunity to be heard and to present his arguments in briefing on pretrial motions, and he did not indicate what additional evidence he would have presented at a hearing.

Foreign judgment/Registration. Slayton v. Peterson | 2024-Ohio-863 | 6th Appellate District | 03/08/2024

In divorce action, trial court did not err in granting wife's motion to register a foreign judgment from a second state where husband failed to establish that the divorce decree from the second state had been vacated or modified by a court having jurisdiction pursuant to R.C. 3127.35(D)(2) where changes made to custody by a court in a third state were temporary and no longer in effect, and wife was entitled to register the decree regardless of the trial court's ability to modify the order.

Motions/Post-decree/Continuing jurisdiction. C.L.A. v. D.P.M. | 2024-Ohio-836 | 8th Appellate District | 03/07/2024

In divorce action in which husband sought modification of his spousal and child support obligations, trial court erred in dismissing husband's post-decree motions where husband invoked court's continuing jurisdiction by filing a motion for judicial review in accordance with R.C. 3119.63, the motion was not subject to Civ.R. 75(J) service requirements, and dismissal of support modification motion pursuant to Civ.R. 4(E) was error because service of motion was perfected within the time required under Civ.R. 3(A) prior to wife's motion to dismiss.

Spousal support/Agreement/ Jurisdiction. Sawyer v. Raney | 2024-Ohio-690 | 12th Appellate District | 02/26/2024

In dissolution action in which husband sought modification of spousal support, trial court did not err in granting wife's motion to dismiss where the parties' original and amended separation agreements set forth a specific amount of support to wife for a period of 10 years and, with the consent of both parties, the court modified the amended agreement to include a general reservation of jurisdiction over spousal support, but the court's reservation did not affirmatively state whether that reservation was over the amount or terms of spousal support,

as required by R.C. 3105.18(E)(2), and on the basis of the record before the court, the parties never intended the domestic relations court to possess continuing jurisdiction to modify their agreed-upon spousal support award.

Adoption/Jurisdiction/Lawful permanent residents/Indigency. In re Adoption of U.I. | 2024-Ohio-682 | 2nd Appellate District | 02/23/2024

Dismissal for lack of subject matter jurisdiction of grandmother's petitions to adopt her two grandchildren who were born in foreign countries is reversed where trial court relied on provisions of the Hague Adoption Convention which relates to intercountry adoptions, but the grandmother and grandchildren were lawful permanent residents of the U.S., 8 U.S.C. 1101(a)(20), and the petition for adoption was filed in the county in which grandmother and grandchildren were residents, R.C. 3107.04; trial court's other basis of dismissal, failure to pay court costs, was error where the court properly waived the initial filing fee but dismissed her petitions because she had not paid the next set of costs, in spite of its finding that grandmother was indigent, depriving her of access to the court.

Spousal support/Change in circumstances/Retirement. Loewe v. Loewe | 2024-Ohio-323 | 9th Appellate District | 01/31/2024

In divorce action in which husband filed motions to modify or to terminate spousal support, denial of his motion asserting a change in circumstances based on his voluntary retirement is affirmed where the court found that husband retired early with the intention of circumventing spousal support obligations, there was no substantial change in circumstances to allow modification of original spousal support award because husband was voluntarily underemployed, and husband did not demonstrate that wife's income from inherited businesses was a change in circumstances.

Property division/Tax debt. Head v. Head | 2024-Ohio-276 | 2nd Appellate District | 01/26/2024

In divorce action, trial court erred in declining to require wife to pay one-half of a marital debt for federal income tax deficiency where the court relied on wife's assertion that her wages were garnished to pay for husband's pre-marital debt pursuant to an agreement by the parties that she would pay that debt in lieu of paying on the tax debt, which was factually incorrect based on wife's later testimony and on review of the online docket of

parties' separate forcible entry and detainer case.

Annulment/Consent/Domestic relations court. Trunk v. Coleman | 2024-Ohio-244 | 8th Appellate District | 01/25/2024

In wife's annulment of marriage action in response to husband's ex parte petition to establish the fact of marriage by acquiring a court-ordered delayed marriage certificate, trial court did not err in issuing annulment where wife had no knowledge of husband's actions in acquiring the marriage certificate and did not consent or participate in the court proceedings, wife was not served notice of the petition, the certificate was not conclusive proof of marriage, and wife proved that she did not consent to the marriage, so the void marriage was invalid from moment of inception, and annulment was warranted; R.C. 3103.011 grants the domestic relations court full equity powers and jurisdiction in domestic relations matters and the courts may exercise their equitable authority by statute and common law when the facts and circumstances demand it.

Property division/Modification. Jowiski v. Gustafson-Jowiski | 2024-Ohio-197 | 9th Appellate District | 01/22/2024

In divorce action in which husband sought modification of distribution of pension, trial court erred in modifying the terms of the final divorce decree where the decree provided for issuance of a qualified domestic relations order for wife's share of husband's retirement benefits, the division of property was made in accordance with R.C. 3105.171 and was not subject to future modification by court without express written consent of both parties, and because wife did not consent to modification, the court lacked jurisdiction to modify decree.

Spousal support/Pending appeal/Change in circumstances. Baronzi v. Gamble | 2024-Ohio-154 | 7th Appellate District | 01/17/2024

In divorce action in which husband sought modification of spousal support, trial court's reduction in the support order is affirmed since the court had authority to modify the order while the parties' appeal of a different post-decree decision was pending, Civ.R. 75(H), the trial court had jurisdiction to consider husband's motion because it was not the same motion as the court previously denied, and there was a change in circumstances allowing modification of the support order under R.C. 3105.18(E), even if the change in circumstances had been foreseeable,

where it was not considered as the basis for the existing award.

Child support/Imputed income. Jestice v. Jestice | 2024-Ohio-122 | 12th Appellate District | 01/16/2024

In divorce action in which husband sought modification of his child support obligation, trial court did not err in reducing husband's support obligation and imputing income to wife on reasoning that wife was voluntarily unemployed where disabled unemancipated child did not require constant supervision, wife did not show that she was unable to work, and income was appropriately imputed based upon her prior employment experience and other factors pursuant to R.C. 3119.01(C).

Separation agreement/Capacity/Relief from judgment. Kelly v. Kelly | 2024-Ohio-124 | 12th Appellate District | 01/16/2024

In dissolution of marriage action in which husband claimed that he lacked capacity to enter into separation agreement, trial court did not err in denying husband's Civ.R. 60(B) motion for relief from judgment where there was no evidence that husband was subject to a guardian or was institutionalized on the date of the hearing, both parties acknowledged that they had voluntarily entered into the agreement, and husband failed to present sufficient information to merit a hearing on allegations of fraud to work around the prohibition of modification of separation agreement pursuant to R.C. 3105.65(B).

Child support/Change in circumstances. Lloyd v. Lloyd | 2024-Ohio-56 | 4th Appellate District | 01/03/2024

In divorce action, trial court erred in denying wife's motion for modification of child support, claiming a change in husband's income, where recalculation of husband's support obligation was required pursuant to R.C. 3119.79(A), and although the court issued a detailed judgment entry, it provided no formal recalculation worksheet or explanation for large deposits in husband's bank accounts.

Custody/Relocation. Wallace v. Wallace | 2023-Ohio-4777 | 12th Appellate District | 12/28/2023

In dissolution of marriage action in which appellant sought changes to residence and to child's school district, trial court did not err in denying the request to relocate where child was established in the community and was doing well at current school, child would benefit from a more consistent relationship with appellee and extended

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family, constant traveling between homes would not be in child's best interest, child was apprehensive about changing school districts, and appellant had no plan for continuing child's counseling services after requested move, R.C. 3109.051(G).

Child support. Smith v. Smith | 2023-Ohio-4755 | 9th Appellate District | 12/27/2023 In divorce action, trial court's child support order is affirmed where the court reasoned that husband's income had increased, justifying an increase in child support, but husband was entitled to a downward deviation of child support because his parenting time exceeded 90 days, R.C. 3119.051, resulting in a child support order which was the same amount that husband was already paying prior to any modification; there is a dissenting opinion in this case.

Property division/Vested compensation. Jardim v. Jardim | 2023-Ohio-4797 | 6th Appellate District | 12/27/2023 In divorce action property division dispute, trial court did not err in denying wife's motion to receive one-half of the value of husband's unvested restricted stock units (RSU's) from previous employer since the RSU's were cancelled when husband voluntarily left his previous employment and the RSU's had no intrinsic value and/or no tangible value until vesting was complete, so there was no value to distribute; as well, there is no evidence that husband committed financial misconduct by allegedly leveraging the value of the unvested RSU's to secure a compensation package from new employer.

Adoption/Consent. In re Adoption of M.R.W. | 2023-Ohio-4705 | 3rd Appellate District | 12/26/2023 In stepfather's petition for adoption of child, trial court did not err in finding that father's consent was necessary where, although father did not have more than de minimis contact with child for a year preceding filing of petition, lack of contact was justified because evidence showed that mother manipulated and significantly interfered with father's attempts to have a relationship with child and showed that father delayed visitation in reliance on mother's and stepfather's misrepresentation about their intention to refrain from filing petition for adoption until after their marriage, R.C. 3107.07.

Custody/Change in circumstances/Health. Lipp v. Lipp | 2023-Ohio-4741 | 7th Appellate District | 12/21/2023 In divorce action in which husband sought reallocation of parental rights due to concerns about the health of child, trial court's finding no change in circumstances warranting change in custody is affirmed where there was no immediate concern about child's health, child had not had major health issues that required hospitalization, his mental health concerns were being treated, past issues regarding his weight were resolved, and he was active and participated in normal activities; as well, husband's argument was identical to one advanced in prior appeal.

Separation agreement/Compliance/Damages. Kaine v. Kaine | 2023-Ohio-4743 | 7th Appellate District | 12/21/2023 In divorce action in which the parties disagreed about compliance with their separation agreement which provided that wife would reside for a specific period in the house owned by husband, after which husband would take possession, the trial court erred, inter alia, in declining to award husband the full amount to cover replacement of cabinets since evidence shows that they were substantially damaged; the case is remanded so the trial court can correctly award damages for many similar items in dispute.

Property division/Mortgage reduction/Active participation. Roberts v. Opalich | 2023-Ohio-4652 | 8th Appellate District | 12/21/2023 In divorce action in which husband challenged the division of property, the judgment is affirmed where the parties acted in good faith and in substantial compliance with the law of the state where they married, so the marriage was voidable rather than void and the trial court had jurisdiction to resolve all issues relating to the complaint for divorce; the mortgage reduction of husband's separate property was appropriately considered a marital asset because husband's work to collect rent and maintain the property was not passive, R.C. 3105.171(A)(3)(a)(iii).

Civil protection order/Continuance/Criminal charges/Marsy's Law. S.D. v. S.L. | 2023-Ohio-4575 | 6th Appellate District | 12/15/2023 In petitioner's action seeking a domestic violence civil protection order against respondent where the trial court granted petitioner an ex parte order and evidence shows that criminal charges were subsequently filed against respondent for conduct

related to petitioner, the court did not err in denying petitioner's motion for a continuance of the full hearing where Marsy's law permits, but does not mandate, that criminal charges against a respondent constitute good cause for continuing a hearing, the instant hearing had already been significantly delayed, the law does not insulate petitioner from testifying in court, and the full hearing can still take place while criminal charges against respondent are pending, R.C. 3113.31, Civ.R. 65.1(D).

Civil protection order. P.A. v. Rorick | 2023-Ohio-4578 | 6th Appellate District | 12/15/2023 Issuance of a civil stalking protection order against respondent-father of relator's former wife is affirmed where evidence shows that respondent confronted relator on two occasions within a seven-month period—sufficient to establish a pattern of conduct—yelled at relator, and according to relator, engaged in physical contact, resulting in relator's mental distress reflected in staying home at night, scanning parking lots to avoid respondent, setting alarms, and locking his doors, R.C. 2903.211(A)(1).

Property division/Prenuptial agreement/Tracing funds. Seipelt v. Seipelt | 2023-Ohio-4468 | 12th Appellate District | 12/11/2023 In divorce action in which husband challenged the division of property, trial court did not err in finding bank accounts to be marital property where husband failed to fully trace funds in the parties' accounts to his separate account, R.C. 3105.171(A), both his employment income and funds from the parties' joint accounts were transferred into an account labeled as separate property in prenuptial agreement, and there was no evidence in the parties' prenuptial agreement that they intended their incomes to be considered separate property.

Property division/Marital home/Debt. Hertzfeld v. Hertzfeld | 2023-Ohio-4411 | 8th Appellate District | 12/07/2023 In divorce action in which husband challenged the distribution of property, trial court erred in declining to award husband an equal share of equity in the parties' marital home where there was no evidence that equal division of the home would be inequitable, R.C. 3105.171(F), and it was improper for the court to characterize wife's assumption of the mortgage as an allocation of a marital debt for the purposes of awarding her the entire equity in the home, so the case is remanded to determine the market value of the home, to determine

the value of the equity in the property as of the de facto termination date, and to award husband an equal share of this equity, if such equity exists.

Spousal support/Jurisdiction/Working capability. Lathrop v. Lathrop | 2023-Ohio-4449 | 7th Appellate District | 12/07/2023 In divorce action in which husband sought an award of spousal support, trial court did not err in declining to award spousal support to either party where husband failed to make a request for support in his complaint or at the hearing and therefore the court likely lacked jurisdiction to consider the issue, and even if husband had timely requested support, the request would have been appropriately denied because husband's retirement account was divided equally, and both parties were capable enough of returning to work to pay their own expenses.

Preuptial agreement/Enforceability. Maloney v. Maloney | 2023-Ohio-4448 | 7th Appellate District | 12/06/2023 In divorce action in which wife sought invalidation of the parties' prenuptial agreement, trial court did not err in finding that the prenuptial agreement was enforceable where the agreement was signed weeks before the parties' wedding, but wife chose not to consult an attorney prior to signing, there were no guests attending the wedding who would experience hardship if it had been postponed to allow consultation with an attorney, husband's statement about not marrying in the absence of the agreement did not render wife's signing involuntary, and wife retained ownership of her home under the terms of the agreement.

Spousal support. Poe v. Poe | 2023-Ohio-4394 | 10th Appellate District | 12/05/2023 In divorce action, trial court did not err in awarding wife spousal support where the court went through each of the statutory factors in R.C. 3105.18(C)(1), listed the evidentiary support relative to each of the factors, and specifically noted the long duration of the marriage, the disparity in the parties' incomes, and the division of retirement and other assets.

Property division/Postnuptial agreement/Disputed language. Condrin v. Condrin | 2023-Ohio-4382 | 5th Appellate District | 12/04/2023 In divorce action, trial court erred in ruling that wife surrendered her rights to husband's investment account and that the account was his separate

property, R.C. 3105.171(B), where the parties entered into a postnuptial agreement, recently permitted under R.C. 3103.06(A), with a provision which wife construed to mean that she would surrender her rights to the account only in the event of husband's death, the court stated that it would have QDRO consultants determine the effect of the disputed language, and then without the consultation, the court ruled that wife surrendered all her rights to the account.

Relief from judgment/Decree modification/Property division. Fahrer v. Fahrer | 2023-Ohio-4380 | 5th Appellate District | 12/01/2023 In divorce action in which the parties entered into an agreed judgment entry, denial of wife's Civ.R. 60(B) motion for relief from judgment is affirmed where, inter alia, wife's assertion that the court erred by ruling that relief from judgment could be granted because she contested only property division, R.C. 3105.171(I), Walsh, is without merit since she did seek to modify only the agreed property division, there was no mutual mistake of fact, the trial court did not have the authority to modify the decree, and wife could not use Civ.R. 60(B) to circumvent R.C. 3105.171(I).

Property division/Agreed judgment/Mistake. Fahrer v. Fahrer | 2023-Ohio-4379 | 5th Appellate District | 12/01/2023 In divorce action, trial court's agreed judgment entry is affirmed where wife's argument that because of a mutual mistake of law in the business interests' provision of the entry she should receive her share of the appreciation in value of stock in husband's two companies is without merit; the contested provision states that husband owned the companies' assets free and clear of any claim by wife and that wife never owned any stock in husband's companies.

Marital debt/Bankruptcy. Halbeisen v. Fantozz | 2023-Ohio-4340 | 6th Appellate District | 12/01/2023 In divorce action in which wife agreed as part of consent judgment entry and decree to pay one-half of home equity line of credit, wife failed to make payment, and husband filed a motion to show cause, trial court erred in dismissing husband's motion where wife asserted that her debt was discharged in bankruptcy, but the dischargeability of wife's debt was not raised in bankruptcy court, and therefore the trial court had jurisdiction to consider the specific exceptions set forth in 11 U.S.C. Sec. 523(a) and to determine whether the debt was non-dischargeable.

Health Care

State departments/Nursing services/Mental health services. Morris v. Ohio Dept. of Job & Family Servs. | 2023-Ohio-4826 | 9th Appellate District | 12/29/2023 In ward's administrative appeal of Ohio Department of Mental Health and Addiction Services' (OhioMHAS) denial of nursing facility services, affirmed by trial court, trial court's judgment is also affirmed where, although the Ohio Department of Developmental Disabilities (DODD) determined that ward was not subject to its further review and could continue to reside in nursing facility, nothing in former Ohio Adm. Code 5160-3-15(B) (30) indicates that OhioMHAS may not conduct a resident review if DODD conducts a review and rules an individual out.

Insurance

Motor vehicle/Bad faith/Discovery. Eddy v. Farmers Property Casualty Ins. Co. | 2024-Ohio-1047 | 1st Appellate District | 03/22/2024 In insureds' action against insurer, alleging bad faith in negotiation of claim under underinsured motorist policy for damages sustained in vehicle collision, trial court did not err in granting insureds' motion to compel discovery where documents that may show lack of good faith effort to settle are not afforded protection of the attorney-client privilege, insurer failed to support opposition to the motion to compel with information showing that the privilege existed, and insureds' filing of complaint did not constitute constructive denial of coverage that would limit access to the claims file.

Medical malpractice/Arbitration/Bad faith. U.S. Acute Care Solutions, L.L.C. v. Doctors Co. Risk Retention Group Ins. Co. | 2024-Ohio-605 | 5th Appellate District | 02/15/2024 In insured-emergency care services company's action against insurer, alleging bad-faith in handling claims and seeking to recover the amount of self-funded settlement payment in underlying medical malpractice case, trial court erred in granting insurer's motion to stay proceedings and compel arbitration where the insurance policy contained a clause requiring arbitration for disputes relating to the policy, but a bad-faith claim is not rooted in contract, rather arising by operation of law, and therefore insured's claim is an extra-contractual matter not subject to arbitration.

Insurance (Continued)

Cargo loss/Freight broker/Contract/Breach. Certain Interested Underwriters at Lloyd's, London, England v. Total Quality Logistics, L.L.C. | 2023-Ohio-4470 | 12th Appellate District | 12/11/2023 In breach of contract action filed by insurer of freight broker's client against broker to recover for client's loss of stolen cargo where broker had contracted with third-party carriers to transport client's cargo, summary judgment in favor of broker is affirmed where, even if third-party carrier hired by broker was not an authorized motor carrier, broker was not obligated to provide an authorized carrier under the terms of broker's agreement with client, agreement did not impose a contractual duty on broker to contract with a carrier maintaining cargo loss and damage liability insurance, and broker was not obligated to pay loss claim.

Juvenile

Bindover/Probable cause. State v. Pickens | 2024-Ohio-951 | 8th Appellate District | 03/14/2024 In juvenile's convictions of involuntary manslaughter and unlawfully discharging a firearm into a habitation, the juvenile court did not err in finding probable cause the juvenile committed a category one offense and transferring case to the general division since juvenile's claim that mandatory transfer cannot be based on complicity to commit the offenses is without merit because R.C. 2152.12(A)(1)(a)(i) provides for a mandatory transfer if there is probable cause to believe the juvenile committed an act that would be an offense if committed by an adult, Bond, and by pleading guilty, the juvenile admitted to committing the act of intentionally discharging a weapon into the building, causing the death of the victim.

Custody/Magistrate's decision/ Transcript/Judgment. In re A.J. | 2024-Ohio-953 | 8th Appellate District | 03/14/2024 Award of legal custody of child to father is reversed where mother timely filed objections to the magistrate's decision, her objections were overruled, she filed a request for a transcript of the proceedings, and the juvenile court abused its discretion by prematurely adopting the magistrate's decision without waiting for the transcript to be submitted in order to conduct the independent review required by Juv.R. 40(D)(4)(d).

Delinquency/Weapon offenses. In re A.S. | 2024-Ohio-731 | 8th Appellate District | 02/29/2024 Adjudication of juvenile as delinquent of adult discharge of a firearm on or near prohibited premises, with one- and three-year firearm specifications, and adult improperly handling firearms in a motor vehicle was supported by security officer's testimony who, after viewing surveillance footage, identified juvenile as one of the shooters, and the fact that the juvenile was found not guilty of improperly handling a firearm in a motor vehicle did not constitute inconsistent verdicts since, although the offenses deal with similar forms of conduct, the improperly handling a firearm in a motor vehicle count includes the additional element that an offender acted "knowingly;" also discussed, other acts evidence, Evid.R. 404(B).

Bindover/Plea/Withdrawal. State v. Peak | 2024-Ohio-735 | 8th Appellate District | 02/29/2024 In bindover of two juvenile cases to the general division pursuant to the mandatory transfer provision in R.C. 2152.10(B), in which appellant pled guilty to, inter alia, felonious assault, R.C. 2903.11(A)(2), the trial court did not err in denying post-sentencing motion to transfer the case back to the juvenile court for an amenability hearing and to withdraw plea since claim that juvenile believed he would be subject to a reverse bindover after pleading guilty to the offenses charged as amended is without merit since the aggravated robbery conviction qualifies as a mandatory bindover offense, R.C. 2152.10, because the complaint alleged that the juvenile possessed a firearm, even though all firearm specifications had been dismissed, Brookshire; also discussed, denial of motion to withdraw plea.

Delinquency. In re H.R. | 2024-Ohio-739 | 8th Appellate District | 02/29/2024 Juvenile court's denial of the state's motion to transfer jurisdiction of a complaint to the general division for, inter alia, adult attempted murder was not error since the state failed to present sufficient evidence of identification to warrant transfer where investigating officer, after reviewing home surveillance tapes, did not identify the masked person who attacked the victim from behind and immediately tackled him to the ground, a second unidentified person appeared to be looking for something on the victim, the incident occurred in under 30 seconds at night and there was no evidence that the juvenile had

threatened the victim or knew where he lived.

Delinquency/Miranda rights/Waiver. In re T.D.S. | 2024-Ohio-595 | Supreme Court of Ohio | 02/21/2024 In an adjudication of juvenile as delinquent for multiple adult felony counts, including felony murder arising from the shooting death of a juvenile, the trial court did not err in denying motion to suppress statements juvenile made to police in light of juvenile's "prior experience in the juvenile system, his understanding of that system, and his communication with the detectives indicate that his waiver of his Miranda rights was made knowingly and intelligently," and there was no evidence of police coercion; also discussed, applicability of Farris opinion.

Custody/Special immigrant status/ Appointed custodian. Calel v. Tzun | 2024-Ohio-409 | 5th Appellate District | 02/02/2024 In case in which biological mother filed a complaint for legal custody of child and asked the trial court to make findings of fact to allow child to petition the federal government for status as a Special Immigrant Juvenile, 8 U.S.C. 1101(a)(27)(J), an immigration classification that may lead to permanent residency, trial court did not err in awarding legal custody to mother but in denying her request for child's special status, requiring a finding that the juvenile is dependent or that the juvenile court has placed the child in the custody of an agency or department of a state or an individual or entity appointed by the juvenile court, 8 C.F.R. 204.11; a parent's right to custody of their child arises from the operation of law rather than from a court appointment.

Delinquency. In re T.I. | 2024-Ohio-292 | 12th Appellate District | 01/29/2024 In an adjudication of juvenile as delinquent of adult criminal damaging, investigating officer was not required to advise juvenile of his Miranda rights when interviewing him at his mother's home with his mother present when juvenile confessed since juvenile was not in custody; also, the juvenile court did not err in ordering juvenile to write an apology letter to the victim.

Custody/Guardian ad litem/ Observation. In re A.A. | 2024-Ohio-224 | 10th Appellate District | 01/23/2024 Award of permanent custody of child to agency was not error where, although guardian ad litem (GAL) did not observe child with mother, as required pursuant to Sup.R. 48.03(D), the Rule is a general

guideline that lacks the force of law and non-compliance is not grounds for exclusion of GAL's report, community control sanctions imposed on mother did not allow visitation for a long period and therefore GAL had little opportunity to observe mother and child together, and other evidence showed that permanent custody was in child's best interest, R.C. 2151.414.

Delinquency. In re E.M.P. | 2024-Ohio-237 | 5th Appellate District | 01/23/2024

In an adjudication of delinquency for adult rape, R.C. 2907.02(A)(1)(c), claim that the trial court's conclusions of law are contradictory because juvenile was found not guilty of rape pursuant to R.C. 2907.02(A)(2), but guilty of rape pursuant to R.C. 2907.02(A)(1)(c), is without merit since "force" pursuant to R.C. 2901.01(A)(1)(c) was not present, but the record is replete with evidence that juvenile engaged in sexual conduct with the victim when her ability to resist or consent was substantially impaired because of her alcohol consumption, and juvenile knew, or had reasonable cause to believe, that her ability to resist or consent was substantially impaired.

Custody/Parentage/Same-sex partners/Artificial insemination. In re L.E.S. | 2024-Ohio-165 | 1st Appellate District | 01/19/2024

In custody dispute, trial court erred in ruling that appellee/cross-appellant could not be recognized as the legal parent of the child(ren) consensually conceived by her same-sex partner, appellant/cross-appellee, as a result of non-spousal artificial insemination, during their relationship since a partner such as appellee/cross-appellant should be recognized as a legal parent under Ohio law if evidence affirmatively establishes that the parties would have been married at the time of the child(ren)'s conception but for Ohio's unconstitutional ban on same-sex marriage; the case is remanded for the trial court to determine whether the parties would have been married at the time of the child(ren)'s conception before deciding that Obergefell did not create a pathway for appellee/cross-appellant to become a parent under Ohio law.

Custody/Grandparents/Dissent. In re S.L. | 2024-Ohio-117 | 9th Appellate District | 01/16/2024 In custody action in which father sought termination of child's companionship time with maternal grandparents following death of mother, trial court did not err in merely reducing grandparents' companionship time where child's siblings were residing with

grandparents, but father did not facilitate contact between child and siblings, father's allegations of neglect and abuse by grandparents were unfounded, child was bonded with grandparents and siblings, and R.C. 3109.051(D) best interest factors were considered; there is a dissenting opinion in this case.

Custody/Independent counsel. In re E.A.G. | 2024-Ohio-315 | 4th Appellate District | 01/16/2024 Award of permanent custody of child to agency is affirmed where, inter alia, the trial court did not err in declining to appoint an attorney to represent the child since a child in custody proceedings is entitled to independent counsel only in certain circumstances, including when the child has consistently and repeatedly expressed a strong desire that differs and is otherwise inconsistent with the guardian ad litem's recommendations; in the instant case, the record shows that only once did the child tell the guardian ad litem that he would like to return home, and the guardian ad litem's testimony further suggests that the child may not possess the maturity to accurately convey his wishes.

Child support/Contempt/Laches. Reid v. Reese | 2023-Ohio-4815 | 1st Appellate District | 12/29/2023 In action to enforce father's child support obligation where mother filed a motion for father to be held in contempt for failure to comply with the court order, trial court erred in finding that the doctrine of laches applied to bar mother's claim since her long delay in seeking enforcement was not unreasonable because father failed to demonstrate that he was materially prejudiced by the delay, arising from mother's inability to prove the amount of payments made by father, and inconvenience to father in meeting the obligation was insufficient to show material prejudice.

Bindover/Mandatory. State v. McCray | 2023-Ohio-4814 | 1st Appellate District | 12/29/2023 Following a complaint alleging that juvenile was delinquent of adult felony murder, and the juvenile court's finding of probable cause and transfer of case to adult court, with juvenile pleading guilty to involuntary-manslaughter with a firearm specification, the adult court erred by staying the juvenile's sentence and transferring the case back to juvenile court under R.C. 2152.121, with the juvenile court imposing a serious youthful offender disposition, since juvenile pled guilty to an offense in the indictment that would have been

subject to a mandatory bindover had the offense been alleged in the delinquency complaint, R.C. 2152.12(A)(1)(b)(ii).

Delinquency/Miranda. In re D.T. | 2023-Ohio-4832 | 9th Appellate District | 12/29/2023 In an adjudication of juvenile as delinquent of adult gross sexual imposition, the juvenile court erred by denying motion to suppress since juvenile was in custody and, moreover, the juvenile did not knowingly, voluntarily and intelligently waive his Miranda rights where, although he was read his Miranda rights, he was never asked if he understood them or if he wanted to continue talking with the officer.

Custody/Video evidence. In re M.V.P. | 2023-Ohio-4778 | 12th Appellate District | 12/28/2023 Award of legal custody of neglected children to mother is affirmed where, inter alia, trial court did not err under R.C. 3109.04(B)(3) in admitting video evidence of mother's question directed at child about hitting behavior, eliciting a response that father hit child in the face; the videos do not refer to the proceedings and do not indicate the child's preference for where he wanted to reside, the questions that mother asked the child about hitting behavior were appropriate, and it was unlikely that the child even knew the camera was on.

Custody/Permanent/Standard of review. In re Z.C. | 2023-Ohio-4703 | 11th Appellate District | 12/27/2023 Court of appeals' decision affirming award of permanent custody of dependent and neglected child to agency, using the abuse of discretion standard to review trial court's judgment, is reversed since the proper appellate standard of review of a juvenile court's decision under R.C. 2151.414 to award permanent custody and to terminate parental rights is the sufficiency-of-the-evidence and/or manifest-weight-of-the-evidence; this ruling resolves the certified conflict question regarding the proper appellate standard of review.

Delinquency/Adult dispositional sentence. State v. Williams | 2023-Ohio-4505 | 7th Appellate District | 12/12/2023 After an adjudication by admission of juvenile as delinquent of adult kidnapping and designation as a serious youthful offender, R.C. 2152.11, with commitment to the department of youth services, appellant was subsequently released to parole supervision and was thereafter charged with violating his parole terms after a warrant was issued by an out-of-state police department

Juvenile (Continued)

for kidnapping and, following a hearing, imposition of the suspended portion of the adult dispositional sentence pursuant to R.C. 2152.14(E) was not error where the out-of-state victim testified appellant took him by gunpoint and threatened to shoot him, establishing that appellant's conduct constituted a substantial risk to the safety or the security of the community or the victim, R.C. 2152.14.

Custody/Abuse. In re T.M. | 2023-Ohio-4475 | 3rd Appellate District | 12/11/2023
Award of permanent custody of abused and dependent child to agency is affirmed since, even if father's attorney's performance fell below the objective standard of reasonable representation, father could not establish that his motion for legal custody would have been granted because neither parent identified the perpetrator of child's physical abuse while child was in their care, and forensic-parenting evaluation showed that neither parent could provide a safe and secure environment for child, Juv.R. 34(J), R.C. 2151.414.

Bindover/Confrontation Clause/Due Process. State v. Grim | 2023-Ohio-4474 | 3rd Appellate District | 12/11/2023
In convictions of, inter alia, two counts of complicity to murder, kidnapping, aggravated burglary, aggravated robbery, kidnapping and felonious assault, following juvenile's bindover, juvenile was not denied due process and his rights under the Confrontation Clause when a detective was permitted to testify regarding statements made by co-defendants at the joint probable cause hearing because in a probable cause hearing, the Confrontation Clause does not apply because confrontation is a "trial right" and, since a probable cause hearing does not constitute a trial, the Confrontation Clause does not warrant reversal, and there was no due process violation because defendant was provided all proper procedures in the juvenile proceedings pursuant to statute.

Delinquency/Rape/Position of authority. In re J.A. | 2023-Ohio-4388 | 1st Appellate District | 12/06/2023
Adjudication of juvenile as delinquent of adult rape, R.C. 2907.02(A)(2), was not supported by sufficient evidence since the juvenile and the alleged victim were under the age of 13, and pursuant to the holding in In re D.B. that R.C. 2907.02(A)(1)(b) cannot be constitutionally applied to a juvenile in the absence of evidence that "the offender compelled the

other person to submit by force or threat of force," and in this case both juveniles were under the age of 13 and no evidence was presented that the charged juvenile was in a position of authority over the other juvenile.

Custody/Magistrate's decision/Dissent. In re K.M. | 2023-Ohio-4349 | 9th Appellate District | 12/04/2023
In custody dispute in which magistrate recommended that awarding legal custody to mother would be in the child's best interest and ordered father to pay child support to mother, trial court erred in sustaining father's objections, in awarding sole legal custody of child to father and in ordering mother to pay child support to father where the court, inter alia, incorrectly concluded that father was the primary caretaker of the child, ignored the magistrate's concerns regarding sleeping arrangements, ignored father's own testimony regarding aggressive behavior, and emphasized father's support system without acknowledging mother's support system, Juv.R. 40(D); there is a dissenting opinion in this case.

Bindover/Probable cause. In re E.S. | 2023-Ohio-4273 | Supreme Court of Ohio | 12/01/2023
Juvenile court erred by denying the state's notice of mandatory bindover to the adult court and a motion requesting that the juvenile court relinquish jurisdiction, R.C. 2152.10(B) and Juv.R. 30(A), on charges of, inter alia, involuntary manslaughter, reckless homicide and weapon offenses that was affirmed by the court of appeals since the facts alleged supported a finding of probable cause that the juvenile committed the offenses charged, R.C. 2152.12 and Juv.R. 30(A), because in determining whether there was probable cause at that stage of the proceedings, the state need not prove a juvenile's delinquency beyond a reasonable doubt but to produce evidence that " 'raises more than a mere suspicion of guilt,' " Martin, and it was not required to disprove alternate theories of the case, A.J.S.

Delinquency/Confinement credit. In re A.U. | 2023-Ohio-4341 | 6th Appellate District | 12/01/2023
Following an adjudication of delinquency, the juvenile court did not err in finding that juvenile was not entitled to credit for time spent at a facility for residential treatment of juveniles in a family-oriented setting, focused on behavioral treatment, not punishment or security, and thus not a secure facility since its lack of barriers

and restrictive measures do not ensure the safety of the surrounding community because the juveniles' liberties are not controlled to the extent that they cannot leave the premises as they please.

Labor and Employment

Overpayment deductions/Collective bargaining agreement. Cuyahoga Cty. v. Ohio Patrolmen's Benevolent Assn. | 2024-Ohio-1055 | 8th Appellate District | 03/21/2024
Arbitrator's determination that county's unilateral recoupment of its earlier overpayments to officers by deducting overpayments with little notice and without giving officers an opportunity to develop a repayment plan violated the parties collective bargaining agreement (CBA), affirmed by trial court, is affirmed since the arbitrator did not exceed his authority, R.C. 2711.10(D), where, inter alia, the CBA does not contain a provision for recoupment, the deductions were not authorized by the CBA, the officers were paid less than the amounts they were entitled to under the CBA for the pay periods at issue, and the unilateral deductions violated the officers' due process rights.

Discrimination/Job performance/Replacement. Kelley v. Dayton Pub. Schools Bd. of Edn. | 2024-Ohio-979 | 2nd Appellate District | 03/15/2024
In terminated employee's race and sex discrimination action against school board, trial court did not err in granting summary judgment to board, R.C. 4112.02, where employee did not provide any direct evidence of discrimination in her supervisor's personnel decisions, the board provided legitimate non-discriminatory reasons for the non-renewal of employee's contract with evidence of her ongoing job performance deficiencies, employee was not replaced by someone outside her protected class since she was not replaced, and her job responsibilities were absorbed by an existing employee in her protected class.

Compensation/Contractor status. Coleman v. Big Truck Rehab Center, Inc. | 2024-Ohio-957 | 8th Appellate District | 03/14/2024
In plaintiff's action asserting that he was entitled to unpaid overtime compensation pursuant to federal law and to R.C. 4111.01 et seq., trial court did not err in classifying plaintiff as an independent contractor rather than an employee where plaintiff executed an independent contractor agreement with defendant-purported employer to

provide detailing services, plaintiff was a sole proprietor and had a separate EIN number, plaintiff worked for other businesses that provided him 1099 tax forms for contractors, rather than W-2 tax forms for employees, and defendant did not tell plaintiff how to do his work, Bostic.

Grievance/Arbitration. Youngstown Professional Firefighters v. Youngstown | 2024-Ohio-940 | 7th Appellate District | 03/13/2024 In firefighters' union's action against city, alleging violations of the parties' collective bargaining agreement (CBA) for refusing to reinstate battalion chief positions, trial court did not err in compelling arbitration of union's grievance where the timeliness of the grievance is a procedural issue requiring interpretation of the CBA by arbitrator, and city failed to overcome the presumption in favor of arbitration.

Contract/Termination/Emergency ordinance. King v. Newton Falls | 2024-Ohio-782 | 11th Appellate District | 03/04/2024 In city clerk's breach of contract action against city for terminating her employment without notice, summary judgment in favor of clerk is affirmed where city ordinance approving clerk's employment was properly enacted as an emergency ordinance pursuant to R.C. 731.30 and its validity was not challenged by referendum, a second ordinance which revoked the emergency ordinance substantially impaired the parties' employment agreement and was void ab initio, and the terms of the employment contract were unambiguous.

Discrimination/Arbitration/Enforceability. Grimm v. Professional Dental Alliance, L.L.C. | 2024-Ohio-637 | 11th Appellate District | 02/20/2024 In terminated dentist's age discrimination case against dental practice, trial court erred in ordering the parties to resolve their dispute through binding arbitration pursuant to their professional services agreement where dentist argues that the arbitration provision in the parties' agreement is unenforceable because it contains a "loser pays" clause, which is unconscionable and contrary to public policy, but the court did not address dentist's allegations or determine whether dentist's argument had merit; the case is remanded to address dentist's argument and to make factual findings supporting its determinations.

Discrimination/Amended complaint. Fiani v. Worldpay, L.L.C. | 2024-Ohio-304 | 1st Appellate District | 01/31/2024 In employee's national-origin discrimination and related claims action against former employer after employee was terminated, judgment in favor of employer is affirmed since, although the court did not provide an explanation for its denial of employee's Civ.R. 15(A) motion to amend his complaint, the motion was not timely filed where, before his employment was terminated, employee was aware of the identity of the person hired to perform the duties previously performed by employee, and employee's additional claim of gender discrimination as set forth in the proposed amended complaint did not concern or relate to employee's ultimate termination.

Unfair labor practice/Dismissal/Statute. State ex rel. Staple v. State Emp. Relations Bd. | 2024-Ohio-140 | 10th Appellate District | 01/16/2024 Relator-employee's petition for a writ of mandamus to compel respondent-employment relations board to vacate orders dismissing his unfair labor practice claims against respondents-city and union is granted where relator had recourse against city for violations of R.C. 4117.11(A)(1), even if he had no independent right under the parties' collective bargaining agreement to pursue arbitration of his grievance, and evidence showed that respondents violated the statute by refusing to submit relator's grievance to arbitration based on respondents-city's unilateral determination that the grievance was untimely.

Unemployment benefits/Just cause/Scam. Petry v. Ohio Dept. of Job & Family Servs. | 2023-Ohio-4350 | 9th Appellate District | 12/04/2023 Denial of employee's application for unemployment benefits on the basis that employee was terminated for just cause is affirmed, even though employee was the target of a telephone scam involving prepaid gift cards and an individual impersonating a fellow employee, since employer's rules prohibited employees from attempting to activate or provide a prepaid card account number or PIN if being instructed to do so by an incoming phone call.

Discharging employees/Arbitration award/Compensation. Amalgamated Transit Union, Local 1385 v. Greater Dayton Regional Transit Auth. | 2023-Ohio-4330 | 2nd Appellate District | 12/01/2023 In union's action against transit authority for improperly discharging employees-union members, resulting in arbitration awards to employees, who were reinstated and received some payment, trial court erred in denying union's motion to enforce the judgment confirming arbitration awards where, although individual employees accepted some payment from transit authority, employees were not parties to the action, their acceptance of payments did not bind the union through the doctrine of ratification, and union was not involved in calculating the amount of payments made to employees, R.C. 2711.10.

Discharging employee/Arbitration award/Compensation. Amalgamated Transit Union, Local 1385 v. Greater Dayton Regional Transit Auth. | 2023-Ohio-4331 | 2nd Appellate District | 12/01/2023 In union's action against transit authority for improperly discharging an employee-union member, resulting in judgment confirming the arbitration award to individual employee, trial court erred in denying union's motion to enforce the judgment where employee was reinstated but was not paid back pay, as required by the arbitration award, and although employee received some payment from transit authority, he was not a party to the action and therefore acceptance of payment did not bind the union through the doctrine of ratification, R.C. 2711.10.

Procedure

Jury demand/Deposit/Withdrawal. Estate of Tomlinson v. Mega Pool Warehouse, Inc. | 2024-Ohio-1065 | Supreme Court of Ohio | 03/26/2024 In plaintiff-homeowner's action for breach of contract and related claims involving construction of a swimming pool where plaintiff included with her complaint a jury demand and later paid a jury deposit but subsequently withdrew her request for a jury trial, prompting defendant to file a motion to maintain the jury trial, the court of appeals erred in affirming trial court's ruling that defendant had waived its right to a jury trial for failure to pay a jury deposit under local rule since the local rule does not require each party

Procedure (Continued)

seeking a jury trial to pay a jury deposit, and under Civ.R. 38(D), once a jury demand has been perfected, it cannot be withdrawn without the consent of all the parties, and defendant did not consent to the withdrawal of the jury demand.

Default judgment/Service. Universal Acceptance Corp. v. Olivarez | 2024-Ohio-1069 | 6th Appellate District | 03/22/2024 In plaintiff-lender's breach of contract action against defendant-vehicle purchaser for default on loan contract, resulting in default judgment, trial court erred in denying defendant's motion to vacate default judgment where, although plaintiff complied with Civ.R. 4.1(A) rules to create the presumption of service, the question remains whether defendant rebutted the presumption of service by testifying that he did not receive notice of the proceeding until sometime after default judgment.

Consumer debt/Municipal court/Jurisdiction. State of Ohio Ex Rel. Mendy Schwarzmer v. Hon. Judge Janet Burnside | 2024-Ohio-1050 | 8th Appellate District | 03/15/2024

In credit card collection case in which relator sought a declaratory judgment that consumer debt collectors filed cases in disregard of municipal court's subject-matter jurisdiction, rendering void the court's judgments against debtors who did not reside within the court's territorial jurisdiction, relator's petition for writs of mandamus and prohibition against respondent-common pleas court judge is granted since the common pleas judge is without jurisdiction to adjudicate the declaratory judgment claim, and the judge is ordered to return the entire case to municipal court.

Sovereign immunity/Discretionary/Jurisdiction/Court of Claims. Smith v. Ohio State Univ. | 2024-Ohio-764 | Supreme Court of Ohio | 03/06/2024 In student's claims to recover a prorated portion of tuition and fees and seeking a class action against state university, asserting breach of implied contract to hold in-person classes, arising from closure of campus due to pandemic, where court of appeals ruled that the class was improperly certified, but declined to rule that university's discretionary immunity, R.C. 2743.02, was a jurisdictional bar to actions in the Court of Claims, holding instead that discretionary immunity is an affirmative defense, court of appeals' judgment is reversed on reasoning that the Court of

Claims does not have jurisdiction when the state makes highly discretionary decisions pursuant to its legislative, judicial, executive, or planning functions, because the state has not waived its sovereign immunity for those decisions; the case is remanded for the court of appeals to determine whether discretionary immunity applies as a jurisdictional bar in the instant case; there is a dissenting opinion.

Appeal/Mootness. State ex rel. Right to Life Action Coalition of Ohio v. Capital Care of Toledo, L.L.C. | 2024-Ohio-609 | 6th Appellate District | 02/16/2024 In action in which appellants-citizens group sought an injunction, asserting that non-physicians' advertisement of clinic's services by defendants-clinic and owner constituted practicing medicine without a license, where the case was appealed and remanded, trial court's dismissal on the basis of mootness is affirmed since appellees ceased operation, no actual legal controversy existed between the parties, and appellants did not demonstrate that appellees' conduct could reasonably be expected to recur.

Judgment/Jurisdiction/Nonparties. N. Side Bank & Trust Co. v. Trinity Aviation, L.L.C. | 2024-Ohio-590 | 1st Appellate District | 02/16/2024 In plaintiff-bank's action to liquidate assets of aviation company following loan default in which third-party defendant-airplane parts recycling company was awarded judgment on its claim, ruled to be a breach of contract claim, trial court erred in also rendering judgment to two nonparties involved in transporting and storing airplane parts for defendant where the nonparties did not allege the existence of a contract with plaintiff and had previously dismissed claims pursuant to Civ.R. 41(A)(1), so trial court lacked jurisdiction over the nonparties; however, the substance of the award stands, and the cause is remanded to modify the entry to reflect that only defendant prevailed.

Satisfaction of judgment/Motion to vacate/Timeliness/Release. Platinum Real Estate Holdings, Inc. v. Slabakis | 2024-Ohio-537 | 1st Appellate District | 02/14/2024 In plaintiff-real estate company's cognovit action against defendant where the parties entered into a mutual release, followed by trial court's order granting plaintiff's motion for satisfaction of judgment, the court erred in granting plaintiff's subsequent motion to vacate the entry of satisfaction, treated as a Civ.R. 60(B)(4) motion, which plaintiff

filed to protect its affiliates in defendant's separate out-of-state action against affiliates, since plaintiff failed to timely file the motion to vacate and also failed to show that the parties' enforcement of the satisfaction of judgment in the underlying case was inequitable, Civ.R. 60(B)(4), because the out-of-state court may determine that the parties' mutual release does not apply to the litigation in that court.

Service/Statutory agent/Individual defendant. Continuum Transp. Servs., Ltd. v. Elite Internatl. Corp., L.L.C. | 2024-Ohio-340 | 8th Appellate District | 02/01/2024 In plaintiff-transportation service's fraud and breach of contract action against defendants-client company and purported owner, individually, resulting in default judgment against owner, trial court erred in denying owner's Civ.R. 60(B) motion for relief from default judgment where plaintiff attempted to serve defendant by directing service to be made to defendant-client's statutory agent, and service upon the statutory agent of a corporate entity is not an authorized method of service as it relates to an individual defendant, pursuant to Civ.R. 4.2(A).

Attorney disqualification/Witness/Recording. Goebel v. Hopkins | 2024-Ohio-194 | 12th Appellate District | 01/22/2024 In plaintiffs' action against defendant-neighbor, claiming that construction of driveway violated restrictive covenant in defendant's deed, trial court erred in granting defendant's motion to disqualify plaintiffs' counsel as a necessary witness without conducting an evidentiary hearing where defendant asserts that plaintiffs' attorney interacted with defendant during negotiations in an earlier action between the parties, the conversations between defendant and plaintiffs' counsel were recorded and transcribed, and a hearing would have reflected the relevance of conversations, demonstrated whether the recordings obviated the need for counsel's testimony, and clarified whether defendant was represented by an attorney at the time of negotiations.

Pre-judgment attachment of property/Ex parte order/Hearing. State ex rel. Yost v. FirstEnergy Corp. | 2024-Ohio-101 | Supreme Court of Ohio | 01/16/2024 In state's civil action against former commission chairman and his company to recover proceeds of an alleged bribe where the state filed a motion for attachment orders to prevent

chairman from draining his accounts, R.C. 2715.045, resulting in ex parte orders and chairman's motion to vacate, which trial court denied after a hearing with both parties, the court of appeals erred in reversing trial court's judgment on reasoning that the state failed to demonstrate "irreparable injury" if the orders were delayed since an ex parte order is not subject to appeal and is not independently reviewable; the irreparable injury requirement is only relevant to whether a plaintiff may obtain an ex parte attachment without notifying the other side, and a hearing with both parties to decide whether to vacate such an order is limited to determining if there was probable cause to support the motion for attachment and if any of the property was exempt from attachment, rather than to determine if the irreparable injury requirement was met for an ex parte order, R.C. 2715.043(B).

Class action/Mootness/Individual relief. Wilson v. Directions Credit Union | 2024-Ohio-105 | 6th Appellate District | 01/12/2024 In plaintiff's class action against defendant-credit union for charging overdraft fees on checking account transactions for which adequate funds existed at the time of authorization, trial court erred in granting defendant's Civ.R. 12(B)(6) motion to dismiss where defendant's unilateral transfer of funds into plaintiff's account did not render the claims moot because plaintiff played no role and had no agency over a decision to accept that value in satisfaction of her claims; in situations where a pending motion for class certification is pursued with reasonable diligence, the class action will not be mooted by a defendant's efforts to "pick off" claims of the named plaintiffs by tendering the relief sought.

Eviction/Magistrate's decision/Judgment/Transcript. Ashtabula Metro. Hous. Auth. v. Alexander | 2023-Ohio-4607 | 11th Appellate District | 12/18/2023 In housing authority's forcible entry and detainer action against tenant for allegedly engaging in illegal drug activity in public housing complex, judgment in favor of authority is reversed where magistrate's decision was adopted and tenant's objections overruled without benefit of a transcript, there was no indication that the court engaged in independent review, even though it knew the transcript had been requested, and the court's failure to allow prescribed time period to file a transcript pursuant to Civ.R. 53(D)(3) was plain error.

Class action/Civ.R. 23(B) analysis. Williams v. Kisling, Nestico, & Redick, L.L.C. | 2023-Ohio-4510 | 9th Appellate District | 12/13/2023 In plaintiffs-clients' class action suit against defendants-law firm and physicians, alleging fraudulent price-gouging scheme, trial court erred on remand in recertifying the class since the court did not engage in the rigorous analysis of the requirements of Civ.R. 23(B) where, inter alia, the court created vague subclasses but did not discuss whether any named plaintiff actually qualified as a class representative for each subclass, and the court did not conduct analysis regarding whether overcharge could be established by common evidence in a single adjudication.

Relief from judgment/Withdrawal of counsel/Inexcusable neglect/Reconsideration. Platinum Restoration Contrs., Inc. v. Salti | 2023-Ohio-4426 | 8th Appellate District | 12/07/2023 In sua sponte reconsideration of its decision in contractor's breach of contract action against property owner seeking to recover amounts owed for work performed, resulting in judgment for contractor, where the instant court affirmed denial of owner's Civ.R. 60(B) motion for relief from judgment on reasoning that owner's failure to timely file his motion for relief, after consenting to his counsel's withdrawal, did not constitute excusable neglect, the instant court now finds that there are distinguishing circumstances demonstrating that relief from judgment should have been granted under Civ.R. 60(B)(5) for "inexcusable neglect," which is a distinct concept from "excusable neglect" where it does not appear that the trial court confirmed whether the withdrawing attorney did anything to protect owner's interests in the litigation or that the court inquired whether owner desired new counsel or was insulated from foreseeable prejudice.

Judge disqualification. In re Disqualification of Leuthold | 2023-Ohio-4775 | Supreme Court of Ohio | 12/05/2023 Affiant-prosecutor's affidavit of disqualification, R.C. 2701.03, seeking to disqualify judge from presiding over underlying criminal case is denied where judge's prior friendship with martial arts instructor, who is a potential witness, ended eight years previously, and regarding potential witness' wife's position as an employee of the court, judge has no relationship with the employee outside the office and the court has "walled off" employee from the

matter; the record does not support a finding that judge's relationships would cause an objective observer who is fully informed of all the relevant facts to harbor serious doubts about the judge's impartiality.

Judge disqualification/Standing. In re Disqualification of Leach | 2023-Ohio-4776 | Supreme Court of Ohio | 12/01/2023 Affiant-guardian ad litem's affidavit of disqualification and supplemental affidavit of disqualification, R.C. 2701.03, seeking to disqualify judge from presiding over underlying divorce case involving the allocation of parental rights and responsibilities, is dismissed for lack of standing since only a "party to the proceeding or the party's counsel" may file an affidavit of disqualification.

Professional Responsibility

Suspension/Dissent. Disciplinary Counsel v. Taylor | 2024-Ohio-1082 | Supreme Court of Ohio | 03/27/2024 Attorney is suspended from the practice of law for six months, fully stayed on condition; there are dissenting opinions in this case.

Suspension. Cincinnati Bar Assn. v. Stenson | 2024-Ohio-995 | Supreme Court of Ohio | 03/20/2024 Attorney is suspended from the practice of law for one year, with six months stayed and with reinstatement on conditions.

Suspension. Columbus Bar Assn. v. O'Brien | 2024-Ohio-1014 | Supreme Court of Ohio | 03/19/2024 Attorney is issued a temporary interim remedial suspension from the practice of law, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Alexander | 2024-Ohio-900 | Supreme Court of Ohio | 03/14/2024 Attorney is suspended from the practice of law for one year, fully stayed on conditions.

Suspension. Disciplinary Counsel v. Bell | 2024-Ohio-876 | Supreme Court of Ohio | 03/13/2024 Attorney is issued an indefinite suspension from the practice of law, with no credit for time served under interim suspension.

Disbarment. Disciplinary Counsel v. Goodman | 2024-Ohio-852 | Supreme Court of Ohio | 03/12/2024 Attorney is permanently disbarred from the practice of law.

Professional Responsibility (Continued)

Suspension/Reinstatement. Disciplinary Counsel v. Cooms | 2024-Ohio-795 | Supreme Court of Ohio | 03/06/2024 Attorney is suspended from the practice of law for a period of 45 days, and attorney will not be reinstated to the practice of law in Ohio until reinstated to the practice of law in neighboring state.

Resignation. In re Resignation of Iqbal | 2024-Ohio-760 | Supreme Court of Ohio | 03/04/2024 Attorney resigned from the practice of law with disciplinary action pending.

Resignation. In re Resignation of George | 2024-Ohio-765 | Supreme Court of Ohio | 03/04/2024 Attorney resigned from the practice of law with disciplinary action pending.

Disbarment. Disciplinary Counsel v. Adams | 2024-Ohio-559 | Supreme Court of Ohio | 02/20/2024 Attorney is permanently disbarred from the practice of law.

Disbarment. Disciplinary Counsel v. Vick | 2024-Ohio-557 | Supreme Court of Ohio | 02/20/2024 Attorney is permanently disbarred from the practice of law.

Suspension. Disciplinary Counsel v. Warner | 2024-Ohio-551 | Supreme Court of Ohio | 02/16/2024 Attorney is indefinitely suspended from the practice of law, with no credit for time served under interim felony suspension.

Suspension. Toledo Bar Assn. v. Driftmyer | 2024-Ohio-540 | Supreme Court of Ohio | 02/15/2024 Attorney is suspended from the practice of law for one year and is ordered to pay restitution in one matter.

Resignation. In re Resignation of Leon | 2024-Ohio-496 | Supreme Court of Ohio | 02/13/2024 Attorney resigned from the practice of law with disciplinary action pending.

Resignation. In re Resignation of Boyuk | 2024-Ohio-494 | Supreme Court of Ohio | 02/13/2024 Attorney resigned from the practice of law with disciplinary action pending.

Resignation. In re Resignation of Crossin | 2024-Ohio-495 | Supreme Court of Ohio | 02/13/2024 Attorney resigned from the practice of law with disciplinary action pending.

Reinstatement. Disciplinary Counsel v. Estadt | 2024-Ohio-273 | Supreme Court of Ohio | 01/26/2024 Attorney is reinstated to the practice of law.

Reinstatement. Disciplinary Counsel v. Estadt | 2024-Ohio-273 | Supreme Court of Ohio | 01/26/2024 Attorney is reinstated to the practice of law.

Reprimand. Disciplinary Counsel v. Billingsley | 2024-Ohio-222 | Supreme Court of Ohio | 01/25/2024 Attorney is issued a public reprimand.

Suspension. Disciplinary Counsel v. Andrews | 2024-Ohio-87 | Supreme Court of Ohio | 01/12/2024 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Resignation. In re Resignation of Kingsbury | 2024-Ohio-90 | Supreme Court of Ohio | 01/12/2024 Attorney's resignation as an attorney and counselor at law is accepted as a resignation with disciplinary action pending.

Suspension. Cleveland Metro. Bar Assn. v. Brooks | 2024-Ohio-88 | Supreme Court of Ohio | 01/12/2024 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Reinstatement. Ohio State Bar Assn. v. Bruner | 2024-Ohio-85 | Supreme Court of Ohio | 01/12/2024 Attorney is reinstated to the practice of law.

Suspension. Disciplinary Counsel v. Gaul | 2023-Ohio-4751 | Supreme Court of Ohio | 12/29/2023 Attorney is suspended from the practice of law for one year and is immediately suspended from judicial office without pay for the duration of the suspension.

Suspension. Disciplinary Counsel v. Bennett | 2023-Ohio-4752 | Supreme Court of Ohio | 12/29/2023 Attorney is suspended from the practice of law for two years, with the entire suspension stayed on conditions.

Suspension. Disciplinary Counsel v. Port | 2023-Ohio-4668 | Supreme Court of Ohio | 12/22/2023 Attorney is issued an interim default suspension from the practice of law, with reinstatement on conditions.

Suspension. In re Kohler | 2023-Ohio-4460 | Supreme Court of Ohio | 12/13/2023 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Withdrawal of counsel/Adversarial relationship. Geis v. Markling | 2023-Ohio-4506 | 9th Appellate District | 12/13/2023 In plaintiff's breach of trust action against defendants-trustee and beneficiaries of uncle's trust, trial court did not err in granting trustee's counsel's expedited motion to withdraw where trustee would not agree to terminate the attorney-client relationship, trustee had created an adversarial relationship with counsel, allegations against counsel could not be reconciled with ongoing representation, counsel's withdrawal did not have a material adverse effect on trustee, and trustee's new counsel filed a notice of appearance the same day the motion to withdraw was granted, Prof. Cond.R. 1.16.

Suspension. Disciplinary Counsel v. Fannin | 2023-Ohio-4334 | Supreme Court of Ohio | 12/04/2023 Attorney is issued an interim default suspension from the practice of law, with reinstatement on conditions.

Public and Public Finance

Public records/Formal request/Disclosure exemption/Damages/Dissent. State ex rel. Ware v. Dept. of Rehab. & Corr. | 2024-Ohio-1015 | Supreme Court of Ohio | 03/21/2024 Public records requester's petition for a writ of mandamus to compel production of records is granted in part and denied in part where, inter alia, respondents' assertion that requests were not formal public records requests but informal requests for information is without merit since not supported by any authority, and master file record is not exempt from disclosure under Mobley, decided several days before requester's request, so even if respondents believed that requester's master file was exempt from disclosure, they were required to provide requester with an explanation for denial of the request, R.C. 149.43(B)(3); as well, requester was entitled to statutory damages even if he was motivated to file public records requests by the possibility of being awarded statutory damages, he filed an affidavit of indigency so he was not entitled to court costs, and he was not a vexatious litigator where he was granted relief in several public records cases; there is a dissenting opinion in this case.

Coroner's verdict/Change/Procedure. Clay v. Galita | 2024-Ohio-833 | 8th Appellate District | 03/07/2024 In plaintiff's action against defendants-coroner and deputy coroner seeking

a declaration that infant child's cause of death was inaccurately described in autopsy report, coroner's verdict, and death certificate, trial court erred in granting defendants' motion for judgment on the pleadings where deputy coroner was properly dismissed from the case because he was not a proper party and could not amend the cause of death on documents, R.C. 313.19, which governs the procedure for amending a coroner's verdict, information outside the pleadings may not be considered, and the question remained whether coroner named as defendant was serving as the county coroner.

Crime victim compensation/Economic loss calculations. In re Erdman | 2024-Ohio-706 | Court of Claims | 02/21/2024 In determining applicant's economic loss as a victim of criminally injurious conduct that occurred while applicant was working, magistrate recommends the court to rule that Attorney General's (AG) original economic loss calculations contained errors in federal tax calculations, that the AG did correctly consider applicant's net income when making economic loss calculations, taking into consideration workers' compensation award, and that the AG correctly declined to award attorney fees as not constituting an allowable expense, R.C. 2743.51(F)(5)(b).

Demolition/Judgment/Liens. Carlson v. Cincinnati | 2024-Ohio-591 | 1st Appellate District | 02/16/2024 In property owner's action against city seeking to enjoin demolition of vacant building on property, summary judgment in favor of city on counterclaim for unpaid fines and fees was error where the judgment should have been reduced to credit voluntary payment made by owner, and nuisance-abatement costs were barred by the statute of limitations and should not have been included as damages; city's argument that the fines and fees issues were not ripe for appellate review on the basis that owner's notice of appeal was filed before the city could file a corrected judgment amount is without merit since liens placed on the property were live legal issues solved by judicial action.

Crime victim compensation/Drug overdose. In re Thornton | 2024-Ohio-705 | Court of Claims | 02/02/2024 Administrative denial of mother's application for crime victim compensation, asserting that her son, who died from a drug overdose, was a victim of corrupting another with drugs

committed by drug dealers when they sold the drugs to her son, is affirmed on reasoning that voluntary ingestion of a lethal dose of drugs does not constitute criminally injurious conduct where there is no evidence that someone coerced or tricked son into consuming the drugs that he purchased, and when someone purchases illegal drugs, they assume a risk that the drugs may not be what they intended to purchase, R.C. 2743.51(C)(1).

Public records/Ticket holders/Address/Email/Telephone. Doe v. Ohio State Univ. | 2024-Ohio-565 | Court of Claims | 01/30/2024 In public records request action, R.C. 2743.75, by ticket reseller for names and related records of season ticket holders at state university's football and basketball games, special master correctly concluded that the university identification number and physical address for each ticketholder are not public records since they are kept for administrative convenience and do not document the functions, operations, or other activities of university; also, special master correctly concluded that faculty and staff cell phone numbers and email addresses are public records on the basis that ticket buyers are engaged in financial transactions with university, selling tickets is a function of university's athletic department, and university's practice of sharing its list of season ticket holders with ticket-selling company deprives university of trade secret protection.

Public records/Inspection/Delay/Damages. State ex rel. Gilreath v. Cuyahoga Job & Family Servs. | 2024-Ohio-103 | Supreme Court of Ohio | 01/17/2024 Public records requester's petition for a writ of mandamus, filed almost five months after request, to compel respondent-state department to provide records is denied where requester provides no legal support for his claim that respondent is required to allow him direct access to its computer system to inspect case files, particularly when other files within the same system are confidential by law, R.C. 5101.27 and 7 C.F.R. 272, records of requester's alleged overpayments do not exist, other requested records are not kept by respondents, and new records request is denied since it was not made in requester's petition; however, statutory damages are awarded to requester since respondents were obligated under the Public Records Act to promptly provide access to the requested records, R.C. 149.43(B)(1), and they concede that the nearly five-month delay in doing so was not a prompt response.

Public records/Rebuttal evidence/Mootness. State ex rel. Mobley v. Powers | 2024-Ohio-104 | Supreme Court of Ohio | 01/17/2024 Public records requester's petition for a writ of mandamus to compel respondent to provide public records is granted in part and requester's motion for leave to file rebuttal evidence, S.Ct.Prac.R. 12.06(B), in response to respondent's claim that she provided all the requested records, is granted where, inter alia, the request was for "certified statements" created under former R.C. 309.16(A), but the records provided by respondent differed from the records requested and tend to refute respondent's claim that she provided all the records, so the rebuttal evidence is admitted; as well, requester's use of differing terminology regarding the records he requested does not render his request impermissibly vague, and the request is not moot since requester's rebuttal evidence creates a genuine question of fact whether respondent provided requester all the records to meet the requirements of former R.C. 309.16(A)(1).

Public records/Administrator's notes/Videotapes/Costs. Evans v. Etna Twp. | 2024-Ohio-566 | Court of Claims | 01/10/2024 In public records requester-township trustee's action challenging denial of his request for copies of notes the township administrator used when delivering remarks to township's trustees, dismissal of request is recommended where evidence shows that administrator used the notes to personally gather her thoughts, that she shared them with no one else, and that they were destroyed after she delivered her remarks, excluding the notes from record status, R.C. 149.43(A)(1), and judgment for respondent is recommended regarding request for videotapes of administrator's remarks since respondent offered access to the requested videotapes, but requester failed to accept; as well, special master recommends that requester pay costs, R.C. 2743.09(F) and 2303.20, because requester implicitly agreed to pay those costs by filing these cases.

Public records/Privilege/FERPA. Maleky v. Ohio State Univ., Office of Compliment & Integrity | 2024-Ohio-568 | Court of Claims | 01/05/2024 In public records requester-faculty member's action seeking to compel respondent-university to produce unredacted copies of records related to accusation of misconduct, special master recommends that the court order respondent to produce

Public and Public Finance (Continued)

unredacted copies or to certify that records do not exist where respondent failed to show that the attorney-client privilege applied to the requested records, and although some records were education records subject to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and were appropriately redacted, most records were outside FERPA's scope and should be produced.

Public records/Contempt. LeRussi v. Calcutta Volunteer Fire Dept. | 2024-Ohio-564 | Court of Claims | 01/03/2024

In public records requester's motion for contempt of court, R.C. 2705.02, against fire department for failing to comply with a court order to produce credit card statements and cancelled checks for a specified period, magistrate recommends granting the motion where evidence shows that the requested records have not been provided to requester, and magistrate further recommends that department be given an opportunity to purge the contempt, to provide an explanatory affidavit regarding any records that do not exist, and to hold requester's claim for attorney fees in abeyance until final decision.

Traffic violation/Cameras/Unjust enrichment/Res judicata. Jodka v. Toledo | 2023-Ohio-4796 | 6th Appellate District | 12/27/2023

In driver's complaint against city, alleging unjust enrichment for retaining civil penalties from invalid traffic camera citations, summary judgment for city was not error where the doctrine of res judicata applied because driver admitted liability by paying the traffic citation and took no further action until filing the complaint for unjust enrichment; the defense of failure to exhaust administrative remedies does not apply since the nominal "administrative remedy" that the city relies upon here is invalid where R.C. 1901.20(A)(1) expressly vests exclusive jurisdiction over noncriminal traffic-law adjudications in the municipal courts, so city has no jurisdiction to conduct its own quasi-judicial proceedings.

Public records/Functional equivalent of public institution/Dissent. State ex rel. WTOL Television, L.L.C. v. Cedar Fair, L.P. | 2023-Ohio-4593 | Supreme Court of Ohio | 12/20/2023 Media companies' petition for a writ of mandamus to compel respondents, particularly police department that provides security personnel to amusement park, to

provide records related to alleged sexual misconduct and injury to park guest is granted in part and denied in part where police department qualified as the functional equivalent of a public institution and was required to respond to valid public-records requests, R.C. 149.43(B)(1), and respondents have not demonstrated entitlement to exemptions for privileged records or confidential law-enforcement investigatory records, but the court does not order production of incident or investigative reports created by emergency-medical-services personnel or related to their services, and court costs are awarded but not statutory damages or attorney fees since a well-informed person could have reasonably believed that respondent-amusement park is not the equivalent of a public institution subject to the Public Records Act; there is a dissenting opinion in this case.

Open Meetings Act/Minutes. State ex rel. Ames v. Mahoning Cty. Bd. of Elections | 2023-Ohio-4747 | 7th Appellate District | 12/20/2023

In taxpayer's action alleging that board of elections failed to comply with the Open Meetings Act by not preparing full and accurate meeting minutes, trial court erred, in part, in granting board's motion to dismiss where R.C. 121.22(C) requires minutes to contain sufficient facts and information to permit the public to understand the rationale behind relevant decisions, and most of the board's minutes were either incomplete or not included in attachments, and minutes attached to taxpayer's complaint do not appear to sufficiently state the reason for entering executive session, R.C. 121.22(G) (3) or (5), so these minutes may fully support taxpayer's contentions.

Public records/Privilege. Reigert v. Ohio Med. Bd. | 2023-Ohio-4557 | 10th Appellate District | 12/14/2023 In public records requester's action seeking to compel respondent-medical board to produce investigative records, trial court erred in ordering production of records identifying certain board employees where, although personnel records of public employees are generally regarded as public records, the requested records concerned board employees who contributed to a particular investigation, and disclosure of records would confirm the existence of the case and thereby impact the privilege of confidentiality extended to physician under investigation, so the medical board's investigative records are not public records within the meaning of R.C. 149.43 and 4731.22(F)(5).

Public records/Definition/Child support enforcement. Graham v. Lake Cty. Jobs & Family Servs. & Child Support Enforcement Agency | 2023-Ohio-4366 | 11th Appellate District | 12/04/2023 In public records requester's action seeking to compel respondent-child support agency to produce copies of emails concerning garnishment of wages for enforcement of child support obligation, trial court did not err in finding that disputed emails were public records where the emails were received or created by a public office and documented functioning of the office, and the exception to non-disclosure of protected health information applied because requester sought records about himself which directly related to child support enforcement, O.A.C. 5101:12-1-20.1(C)(2).

Public records/Definition/Dissent. State ex rel. Ames v. Crestwood Local School Dist. Bd. of Edn. | 2023-Ohio-4371 | 11th Appellate District | 12/04/2023

Public records requester's petition for a writ of mandamus to compel respondents-school board and treasurer to provide copies of results of mental health survey issued to school district staff is denied where plain language of R.C. 149.011(G) requires more than possession of a document for it to be a public record pursuant to R.C. 149.43, and survey results did not serve to document functions of an office and were not used to implement a new policy, and therefore the survey results did not qualify as public records; there is a dissenting opinion in this case.

Real Property

Lease/Breach/Settlement/Fraud.

Besancon v. Cedar Lane Farms, Corp. | 2024-Ohio-996 | 9th Appellate District | 03/18/2024 In plaintiffs-landowners' breach of contract action against defendant-lessee farm for failure to use proceeds from its insurance claim for damage to greenhouses to repair the greenhouses, as required by the parties' lease, trial court erred in granting defendant's Civ.R. 12(B)(6) motion to dismiss where the parties entered into a settlement agreement releasing all claims made prior to settlement date, but the question remains whether a breach occurred after the settlement agreement was signed while the lease was still in effect and whether a claim for fraud in the inducement, attacking the validity of the settlement agreement, would undo any bar to litigation.

Foreclosure/Limitations/Other state law. Hahn v. Farmakis-King | 2024-Ohio-786 | 11th Appellate District | 03/04/2024 In wife's foreclosure action against deceased husband's daughters for amount due on promissory note on loan of wife's separate property to husband, trial court erred in granting daughters' motion to dismiss where, although the statute of limitations barred enforcement of the note under Ohio law, the law of neighboring state applied to permit wife and husband to enter into the contract at issue in that state, mortgage of the Ohio property was merely accessory to the debt, and the question remains as to whether the statute of limitations of the neighboring state would bar the claim.

Foreclosure/Advances/Confirmation of sale/Relief from judgment. Wells Fargo Bank, N.A. v. Greene | 2024-Ohio-667 | 8th Appellate District | 02/22/2024 In banks' separate foreclosure actions against homeowners for default on notes, resulting in judgments for banks, prompting them to file Civ.R. 60(B) motions for relief from the confirmations of sale in order to obtain reimbursement of advances they had made for taxes, insurance and property preservation, trial court did not err in denying banks' Civ.R. 60(B) motions since banks failed to timely file motions for reimbursement of advances, as ordered in the decrees of foreclosure, orders of confirmation of sale were final appealable orders, and banks could not use Civ.R. 60(B) as a substitute for timely appeal.

Contract/Lease termination/Damages/Setoff. Calabrese Law Firm v. Christie | 2024-Ohio-579 | 8th Appellate District | 02/15/2024 In plaintiff-law firm's breach of contract action against defendant-sublessee for early termination of sublease, resulting in judgment for plaintiff, trial court erred in denying defendant's motion for setoff to jury award where, although R.C. 2307.28 did not apply because the instant claim was for breach of contract and did not relate to setoffs among tortfeasors, plaintiff acknowledged that defendant was entitled to setoff for amount of damages paid by defendant's partner to settle claims related to breach of the sublease.

Leases/Substantial compliance/Certify conflict. Quest Wellness Ohio, L.L.C. v. Samuels | 2024-Ohio-556 | 7th Appellate District | 02/14/2024 Plaintiff's motion to certify a conflict and application for reconsideration under App.R. 25, 26(A)(1) are denied where plaintiff asserts that the instant court held

that the equitable doctrine of substantial compliance is not the appropriate standard to apply to commercial leases, but the court actually held that the trial court based its determination on incorrect legal stipulations of the parties and failed to determine if substantial compliance or other equitable measures should even apply, bypassing the issue whether the commercial lease was clear and unambiguous and therefore requiring strict compliance, and the cases cited by plaintiff are not in conflict with the present case.

Easement/Interpretations/Ambiguity. Prince v. Harper | 2024-Ohio-521 | 4th Appellate District | 02/08/2024 In plaintiff-property owner's action seeking a declaration regarding an easement on defendant-neighbor's property, summary judgment in favor of defendant was error where the language of the easement was clear and unambiguous and granted plaintiff an easement; the language of an easement does not become ambiguous simply because litigants propose competing interpretations.

Sale/Sewer line/Disclosure. Ashmus v. Coughlin | 2024-Ohio-341 | 8th Appellate District | 02/01/2024 In home seller's breach of contract action against buyers for refusing to purchase property after identifying existence of sewer line on property on which buyers intended to undertake new construction, summary judgment in favor of seller was error where the question remains whether seller had a duty to disclose information about sewer line on disclosure form, R.C. 5302.30, and whether sewer line running across an important area of the property was a non-observable physical condition that could inhibit buyers' building of new structure.

Landlord-tenant/Eviction/Lease. Iron Horse Bar & Grill, L.L.C. v. GGJ Triune, PLL | 2024-Ohio-284 | 6th Appellate District | 01/26/2024 In business tenant's breach of contract action against landlord for eviction from premises, judgment in favor of landlord was error where landlord waived tenant's obligation to pay rent as long as tenant was working towards opening business, landlord did not request rent payments and no payments were due when landlord attempted to lock tenant out of premises, and landlord breached terms of the lease agreement by attempting to lock out tenant.

Eviction/Lease/Extension. Slak v. Strozier | 2024-Ohio-286 | 6th Appellate District | 01/26/2024 In landlord's forcible entry and detainer action against tenant for failure to leave premises after termination of lease, judgment in favor of tenant is affirmed where a document the parties signed after the lease expired was ambiguous and was not clearly an option contract or a lease agreement, and intrinsic evidence did not clarify the intent, so the document was construed against drafter-landlord and was found to extend the term of the lease and allow eviction only if tenant failed to pay rent, and tenant was current with financial obligations under terms of document so was entitled to possession of the property.

Regulatory taking/Appropriation. State ex rel. AWMS Water Solutions, L.L.C. v. Mertz | 2024-Ohio-200 | Supreme Court of Ohio | 01/24/2024 In case in which the state suspended relators' operation of saltwater-injection oil well, prompting relators to file a petition for a writ of mandamus to compel respondents to initiate property appropriation proceedings, asserting a regulatory taking of relators' property, denied by the court of appeals, which the instant court reversed and remanded, directing the court of appeals to weigh the parties' evidence in deciding total- and partial-takings claims, the judgment of the court of appeals again denying the writ is reversed and the case is remanded for the court of appeals to weigh the parties' evidence to determine whether relators suffered a total-taking and to weigh the parties' evidence and balance all three Penn Cent. factors to determine whether relators suffered a partial-taking.

Zoning/Variance/Appeal. Calista Ents. v. Oxford Bd. of Zoning Appeals | 2024-Ohio-34 | 12th Appellate District | 01/08/2024 In petitioner-property owner's action requesting a variance to allow three-family dwelling on property which had excess footage overall but lacked a small amount in width requirement, trial court erred in affirming the decision of the board of zoning appeals denying the variance where the board's decision letter did not address why the variance would not support the spirit and intent behind the zoning requirement or why substantial justice would not be done by granting the variance, and trial court affirmed board's decision without sufficient detail to allow review pursuant to R.C. 2506.04.

Real Property (Continued)

Zoning/Non-conforming use. Cook v. Lockland | 2024-Ohio-9 | 1st Appellate District | 01/05/2024 In auto service station business owner's action seeking a zoning variance to use property to store vehicles after the state had taken business' original property by eminent domain, trial court erred in affirming board's denial of a variance where, although the intended use of the property did not conform to the current zoning ordinance, the use existed and was lawful before the ordinance was enacted, business owner submitted evidence showing the historical use of the property and the intent to continue such use, and the burden to disprove village's claim of abandonment of the legal non-conforming use was incorrectly placed on business owner.

Lease/Extension/Substantial compliance. Quest Wellness Ohio, L.L.C. v. Samuels | 2023-Ohio-4450 | 7th Appellate District | 12/08/2023 In business tenant's action against landlord seeking a declaration that the parties' lease was in full force and effect in extension period after landlord threatened eviction for failure to give required written notice to extend, judgment for tenant is reversed and remanded where the trial court did not consider whether the commercial lease was clear and unambiguous, requiring strict compliance, but did accept the parties' incorrect legal stipulations regarding the applicable law, incorrectly applying substantial compliance analysis to an unambiguous commercial contract.

Listing agreement/Oral modification/Commission. Elevation Ents., Ltd. v. NMRD, Ltd. | 2023-Ohio-4433 | 10th Appellate District | 12/07/2023 In plaintiff-commercial realty firm's action against defendant-property owner, alleging breach of listing agreement for failure to pay commission, trial court erred in finding that the listing agreement was orally amended where, although plaintiff orally agreed to modify the listing agreement to forfeit part of its commission related to a use restriction on the property, defendant was already bound to pay the commission, there was no new and distinct consideration for modification of the listing agreement, and on remand the amount of the commission must be recalculated to include the forfeited portion.

Taxation

Income/Non-residents/Due process/Dissent. Schaad v. Alder | 2024-Ohio-525 | Supreme Court of Ohio | 02/14/2024 In taxpayer's action against city, seeking a refund of municipal income tax for days that he worked from home outside the city due to pandemic stay-at-home order, trial court's dismissal on reasoning that the temporary law did not violate due process, affirmed by the court of appeals, is affirmed since there was plainly a rational basis for the enactment, federal authority on due-process limits on interstate taxation does not apply to intrastate taxation, and the temporary law which empowers a municipality not where the employee is working to tax that employee and at the same time prevents the municipality where the employee is actually working from taxing that employee, is a law consistent with the Ohio Constitution; there are dissenting opinions in this case.

Real property/Sale of property. MP 11868 Clifton, L.L.C. v. Cuyahoga Cty. Bd. of Revision | 2023-Ohio-4647 | 8th Appellate District | 12/21/2023 In taxpayer's action challenging the tax valuation of property, the decision of the board of tax appeals retaining the value assessed by the county fiscal officer is affirmed where sale of the property in an arm's-length transaction was not used for valuation because it was found to be remote for purposes of valuation, significant improvements had been made to the property between the date of sale and the tax-lien date, and taxpayer's opinion of property value was not a substitute for appraisal by a market expert.

Torts

Malicious civil prosecution/Immunity. Dismukes v. Ashtabula Cty. Children Servs. Bd. | 2024-Ohio-1111 | 11th Appellate District | 03/25/2024 In parents' malicious civil prosecution action against county agency, seeking damages for removing adopted child from their custody for concern about failure to administer medicine, trial court erred in denying agency's motion to dismiss where agency was entitled to the same immunity enjoyed by prosecutors because the agency was alleged to have engaged in conduct functionally equivalent to legal advocacy, the agency also had political subdivision immunity pursuant to R.C. 2744.02 because it was engaged in a governmental function, and no exception applied.

Negligence/Discovery/Evidence.

Nuckols v. Consolidated Rail Corp. | 2024-Ohio-1070 | 6th Appellate District | 03/22/2024 In plaintiff-employee's negligence action against defendants-railroad employers, asserting injuries caused by toxic materials to which he was exposed while employed, summary judgment in favor of defendants is affirmed where plaintiff disclosed the identity of expert witnesses after discovery deadline and did not timely provide experts' reports, and even if filings had been timely, plaintiff failed to present admissible evidence pursuant to Civ.R. 56(C) because experts' reports were unauthenticated, as required under the Federal Employers' Liability Act, 45 U.S.C. 51.

Medical malpractice/Vicarious liability/Statute of repose/Tolling. Dumais v. Cincinnati Children's Hosp. Med. Ctr. | 2024-Ohio-1022 | 1st Appellate District | 03/20/2024 In plaintiff's vicarious liability action against defendant-hospital for injury sustained from performance of allegedly unnecessary surgery where plaintiffs asserted that defendant was aware of issues related to surgeon at the time of surgery, trial court did not err in granting defendant's motion to dismiss since the complaint was filed outside the medical statute of repose, R.C. 2305.113(E)(3), and the tolling statute, R.C. 2305.15, did not apply because, although the surgeon who performed the surgery absconded, defendant was never out of state or concealed at any point, and any claim tolled against surgeon was not automatically tolled against employer.

Medical negligence/Limitations/Savings statute. Norris v. Basden | 2024-Ohio-1019 | 10th Appellate District | 03/19/2024 In plaintiff's negligence action against emergency medical defendants for injuries sustained as she was being transferred from wheelchair to car, summary judgment in favor of defendants is affirmed where the claim was a medical claim, rather than a claim for ordinary negligence, because it arose out of medical treatment, R.C. 2305.113(E), so the cause of action accrued on the date of injury, the complaint was filed outside the statute of limitations for medical claims, and the savings statute under R.C. 2305.19 could not apply to this claim that was refiled.

Negligence/Strict liability/Dog bite. Anderson v. Centrone | 2024-Ohio-1021 | 5th Appellate District | 03/18/2024 In plaintiff's negligence and strict liability action against defendant-registered

dog owner for injuries sustained when plaintiff was attacked by the dog while plaintiff and defendant were living together with the dog, summary judgment in favor of defendant is affirmed where strict liability under R.C. 955.28 and negligence did not apply because plaintiff was a harbinger and keeper of the dog, he was in possession and control of the premises where the dog lived and acquiesced in the dog being kept there, he knew of the dog's viciousness at the time of the incident, and he was physically in control of the dog at the time of the incident.

Discovery/Supplement/Sanctions.

Mundy v. Centrome, Inc. | 2024-Ohio-1001 | 12th Appellate District | 03/18/2024 In employees' intentional tort and negligence action against employer, alleging exposure on the job to a substance that caused illness, where employees claimed that during discovery employer had intentionally withheld relevant documents, trial court found that employer provided incomplete and evasive responses but erred in finding that employer violated its duty to supplement discovery responses since the duty to supplement, Civ.R. 26(E), did not apply because the documents employer failed to produce were not newly acquired, and there was no direct contradiction between them and employer's initial responses, so the court could not impose sanctions under Civ.R. 37(C).

Fraudulent conveyance/JNOV/New trial/Review. Gallagher v. Fast | 2024-Ohio-1003 | 9th Appellate District | 03/18/2024 In plaintiff's fraudulent conveyance and civil conspiracy action against defendants seeking joint and several liability for repayment of plaintiff's loan to former co-worker, resulting in a limited judgment for plaintiff for the fraudulent conveyance claim involving change in ownership of an LLC, trial court's denial of plaintiff's motion for JNOV and/or motion for a new trial is reversed and the case is remanded where the judgment entry does not include analysis of arguments presented in the motion or sufficient detail to allow appellate review of the trial court's exercise of discretion, and the question remains whether there were irregularities in jury instructions or answers to jury's questions, Civ.R. 59(A).

Wrongful death/Pleading. Hill-Lewis v. Clifton Healthcare Ctr. | 2024-Ohio-846 | 1st Appellate District | 03/08/2024 In plaintiffs' wrongful death action against

defendants-rehabilitation providers for mother's death while she was a resident at care facility, trial court did not err in granting defendants' motion to dismiss where plaintiffs' refiled complaint made no mention of defendants outside of the caption and explicitly excluded them from the definition of "Defendants," against whom plaintiffs presented their substantive claims, plaintiffs offered no specifics as to how defendants were associated with the care center or how they may have been involved in the death of mother, and plaintiffs did not explain how an amended complaint would fix the complaint's shortcomings.

Conversion/Replevin/Motor vehicles.

Pond v. E & E Towing & Recovery, L.L.C. | 2024-Ohio-800 | 10th Appellate District | 03/05/2024 In plaintiffs' conversion and replevin action against defendant-towing company for towing cars from parent's property, granting defendant's motion to dismiss was error where trial court reasoned that plaintiffs did not adequately allege ownership of the property on the basis of discrepancies between the list of vehicles attached to complaint and support documents, but since some vehicle titles corresponded with the list of vehicles, plaintiffs' allegation satisfied the requirement that plaintiffs had ownership or right of possession of the property at the time of conversion; regarding replevin, plaintiffs' allegations provided probable cause to support a motion for possession of property pursuant to R.C. 2737.07, and defendant's refusal to return the property was sufficient to put it on notice of the replevin claim.

Medical malpractice/Discovery/Privileged health information.

Loparo v. Univ. Hosps. Health Sys., Inc. | 2024-Ohio-663 | 8th Appellate District | 02/22/2024 In medical malpractice and wrongful death action, alleging that patient was not timely treated, where plaintiff filed discovery interrogatories, trial court erred in granting plaintiff's motion to compel production of personal medical information of non-party patients, in violation of R.C. 2317.02(B) (1), for sex, race, reason for visit/chief complaint, patient complaint, treating complaint, diagnosis, and disposition, but trial court did not err in granting motion to compel production of encounter start date and time, encounter stop date and time, arrival date and time, discharge date and time, triage start time, and triage end time; the conclusion that protected health information is privileged depends on whether the information

is a communication between a patient and healthcare provider and whether the purpose of the communication is for diagnosis or treatment.

Negligence/Interrogatories/

Inconsistency/Plain error. Brown v. Kozak | 2024-Ohio-670 | 7th Appellate District | 02/21/2024 In plaintiff-insured's personal injury action against defendant-driver for injuries sustained in vehicle accident, judgment in favor of defendant was error where the jury's interrogatory answers were inconsistent with each other and with the general verdict, apportioning partial fault to third-party who caused defendant to take evasive action but at the same time finding that the third-party was not the proximate cause of injuries, Civ.R. 49(B); as well, the jury interrogatories were not signed and the jury was not polled at the time they were read, and although objection to the inconsistent interrogatory answers should have been made, the errors made at trial seriously affected the basic fairness and integrity of the judicial process and constituted plain error.

Legal malpractice/Limitations/

Cognizable event. Roe v. Connolly, Hillyer & Ong | 2024-Ohio-553 | 5th Appellate District | 02/13/2024 In client's legal malpractice action against law firm, alleging that incorrect advice led to criminal charges for operating an unlicensed casino, summary judgment in favor of law firm is affirmed since client's complaint was barred by the one-year statute of limitations in R.C. 2305.11(A) where, even though client claimed that he did not discover alleged malpractice injury until his conviction, police raid on casino or indictment were cognizable events that put client on notice of a potential issue with attorney's advice.

Slip and fall/Statutory claim/Pleading.

Rader v. RLJ Mgt. Co., Inc. | 2024-Ohio-391 | 3rd Appellate District | 02/05/2024 In tenant's slip and fall negligence action against management company, arising from injuries sustained from stepping into a pothole, resulting in summary judgment for company on reasoning that the pothole was open and obvious and that tenant failed to specifically claim a violation of the Landlord-Tenant Act, R.C. 5321.04, the judgment is reversed in part since tenant explicitly mentioned that she was a tenant of the property that was managed by company, and regarding similar complaints in other cases, courts have determined that a tenant sufficiently raised a claim under R.C. 5321.04 without mentioning the statute in the complaint.

Product liability/Federal pre-emption. Einbecker v. Gates Corp. | 2024-Ohio-385 | 3rd Appellate District | 02/05/2024 In claimant's action under the Ohio Product Liability Act (OPLA), R.C. 2307.71, et. seq., arising from injury he sustained when a transfer-hose assembly that was designed and manufactured by defendant burst, resulting in sulfuric acid being sprayed on him, trial court erred in reasoning that the federal Hazardous Materials Transportation Act (HMTA) pre-empted claimant's action and in granting defendant's Civ.R. 12(C) motion for judgment on the pleadings where claimant's complaint is against the manufacturer of the hose rather than the shipper of the hazardous material, the trial court's only reference to the HMTA is a section concerning transporting and handling hazardous material, and the duties that defendant allegedly violated under the OPLA are substantively the same as those in the Hazardous Materials Regulations (HMR) and which would not require pre-emption.

Harassment/Judgment on pleadings/Opposition. Fabian v. Kettering | 2024-Ohio-360 | 2nd Appellate District | 02/02/2024 In homeowner's action against city alleging that city had engaged in a pattern of harassment by sending regular notices of abatement to homeowner after his house was condemned, trial court did not err in granting city's motion for judgment on the pleadings where res judicata barred homeowner's constitutional claims because they were previously adjudicated and dismissed in federal court; although homeowner's claim that city employee acted in bad faith could have survived city's motion for judgment on the pleadings, homeowner did not file a memorandum in opposition to city's motion, so homeowner did not raise issues for trial court to consider and waived any potential errors on appeal that could have been brought to trial court's attention.

Legal malpractice/Limitations/Conflict. Cain Ridge Beef Farm, L.L.C. v. Stubbins, Watson, Bryan & Witucky, LPA | 2024-Ohio-359 | 7th Appellate District | 02/01/2024 Plaintiffs' motion to certify a conflict to the Ohio Supreme Court, asserting that there is a conflict between the instant court and the court of another district on the issue of when the statute of limitations for legal malpractice begins to run is denied where the instant court may disagree with the court in the

other district on the application of the cognizable event test, but both courts applied the same standard, which is: When should a reasonable person have realized that an injury may result from attorney's conduct?

Negligence/Failure of security/Immunity. Blackmon v. Akron School Dist. | 2024-Ohio-318 | 9th Appellate District | 01/31/2024 In plaintiff-football game spectator's action alleging that defendants-school officials created unsafe conditions within stadium, arising from injuries to plaintiff from being shot by an unknown assailant, trial court did not err in denying defendants' governmental immunity-based Civ.R. 12(C) motion for judgment on the pleadings where trial court found that defendants acted in a negligent, willful, wanton, and intentional way when they participated in the decision to decline to provide security measures, such as having a metal detector and bag checks at the football game, which are security measures that had previously been provided at other football games.

Negligent hiring/Discovery. A.A. v. Ohio Univ. | 2024-Ohio-313 | 10th Appellate District | 01/30/2024 In plaintiff-minor's action against defendant-university for negligence, negligent hiring, and related claims, arising from alleged sexual assault by a university police officer, trial court erred in granting defendant's motion to quash a subpoena for disclosure of confidential documents seeking any information of officer's similar misconduct to support claim that defendant provided officer with an opportunity to abuse plaintiff, the documents were the best available evidence of prior conduct, and plaintiff showed good cause for in camera review.

Unjust enrichment/Summary judgment. Timmons v. Hull | 2024-Ohio-178 | 2nd Appellate District | 01/19/2024 In plaintiffs-farm owners' unjust enrichment action against defendant-livestock buyer for failure to make payment for cattle pursuant to the parties' oral agreement, summary judgment in favor of plaintiffs was error where defendant admitted that he received cattle by making payments with holder checks to be replaced with later payment or third-party payment, and based on defendant's affidavit and deposition testimony, a question remains as to whether he ever made full payment for the cattle purchased.

Medical malpractice/Affidavits of merit/Sanctions/Dissent. Feagan v. Bethesda N. Hosp. | 2024-Ohio-166 | 1st Appellate District | 01/19/2024 In various medical malpractice actions filed against medical defendants by appellant-counsel, resulting in dismissals, where appellant did not file Civ.R. 10(D)(2)(a) affidavits of merit or motions to extend with any of the complaints, trial court erred in issuing R.C. 2323.51 and Civ.R. 11 sanctions against appellant for frivolous conduct since there was no evidence that appellant failed to investigate underlying claims or that the claims were merely based on suspicion, and although appellant provided no affidavits of merit, the missing procedural prerequisite did not affect the merits of the cases and did not support a finding that the complaints were not warranted under law; there is a dissenting opinion in this case.

Fraudulent misrepresentation/Necessity of surgery/Evidence. Densler v. Durrani | 2024-Ohio-14 | 1st Appellate District | 01/05/2024 In plaintiff's fraudulent misrepresentation action against defendant-physician, who allegedly improperly informed plaintiff that surgery was necessary, resulting in a jury verdict in favor of plaintiff, trial court erred in denying defendant's motion for JNOV where plaintiff's expert physician's testimony was improperly admitted as habit evidence, Evid.R. 406, because a sufficient foundation was not established for the testimony to be admissible as habit evidence regarding defendant's statements about the consequences of not having surgery, and the record shows that the jury relied on improperly admitted testimony.

Negligence/Jurisdictional priority. McCloud v. Payne | 2023-Ohio-4850 | 9th Appellate District | 12/29/2023 In negligence action, arising from auto accidents, instant trial court's judgment for plaintiff is reversed for lack of jurisdiction pursuant to the jurisdictional priority rule where a related case was filed first in a different common pleas court, substantially similar parties were involved in both cases, and the nature of the claims in both cases were part of the same "whole issue," so the first court acquired jurisdiction over the matter "to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties."

Medical malpractice/Expert witness. M.F. v. Ohio State Univ. Med. Ctr. | 2023-Ohio-4799 | 10th Appellate District | 12/28/2023 In plaintiff-parent's medical

malpractice action against defendant-university medical center for negligent delivery of child where the trial court rendered judgment for defendant followed by instant court's reversal and remand, trial court erred on remand in failing to properly review plaintiff's expert physician's testimony where trial court disregarded the directive on remand and reviewed the expert's discovery deposition testimony rather than the video-recorded trial testimony, so the instant court is not able to determine whether expert's trial testimony altered the trial court's previous disposition on the liability issue, and the case is remanded again.

Medical malpractice/Statute of repose/Derivative claims/Dissent. McCarthy v. Lee | 2023-Ohio-4696 | Supreme Court of Ohio | 12/28/2023 Dismissal for failure to state a claim, Civ.R. 12(B)(6), of loss of consortium complaint filed on behalf of children of patient, affirmed by the court of appeals, is affirmed since the derivative loss of consortium claims were based on an underlying medical malpractice action in which judgment was rendered for medical defendants due to the expiration of the medical-claim statute of repose, R.C. 2305.113(C), derivative claims cannot exist without an underlying principal claim, and the principal claim itself was barred by the statute of repose; there is a dissenting opinion in this case.

Wrongful death/Medical claim/Statute of repose/Dissent. Everhart v. Coshocton Cty. Mem. Hosp. | 2023-Ohio-4670 | Supreme Court of Ohio | 12/28/2023 In wrongful death action in which wife/administrator of decedent's estate asserted failure to diagnose decedent's cancer to allow for timely medical treatment, where the complaint was filed outside the medical-claim statute of repose, court of appeals' ruling that the medical-claim statute of repose does not apply to wrongful-death claims is reversed since wrongful-death claims based on medical care are clearly and unambiguously included in the broad definition of "medical claim" that applies to the statute of repose, R.C. 2305.113(C), and nothing in R.C. Ch. 2125 removes wrongful-death claims from the scope of R.C. 2305.113(C)'s statute of repose, answering the conflict question certified by the court of appeals; there are dissenting opinions in this case.

Negligence/Immunity/Collateral estoppel. Wilson v. Gregory | 2023-Ohio-4782 | 12th Appellate District | 12/28/2023 In decedent's estate's state and federal negligence, wrongful death and related claims actions against deputies, arising from decedent's death from a self-inflicted gunshot wound after sheriff's deputies decided not to transport decedent to a hospital in response to family's emergency call where federal appeals court determined that there were genuine issues of material fact regarding whether the deputies acted recklessly, the state trial court did not err in declining to apply collateral estoppel as to the federal court ruling since the federal court left adjudication of the state law claims to the state court, and the issues of recklessness and statutory immunity were not conclusively determined in the federal litigation, R.C. 2744.03(A) (6)(b).

Defamation/Meaning of statements/Lack of precision. Olthaus v. Niesen | 2023-Ohio-4710 | 1st Appellate District | 12/27/2023 In plaintiff-police officer's defamation and related claims action against defendants for making accusations about him in response to a gesture he made while providing security at a demonstration, trial court did not err in granting defendants' motion to dismiss where the meaning of defendants' allegedly defamatory statements and plaintiff's gesture were not precise and were not capable of proof or disproof, plaintiff failed to show that defendants acted with actual malice, and defendants' assertions and interpretation of plaintiff's gesture were statements of opinion.

Immunity/Governmental/Analysis. M.J. v. Akron City School Dist. | 2023-Ohio-4764 | 9th Appellate District | 12/27/2023 In action on behalf of plaintiffs-students asserting negligence and statutory violations against defendants-school district and related officials, arising from allowing armed individual unfettered access to the school, trial court's ruling denying full sovereign immunity to defendants is reversed since the court failed to conduct all three parts of the political-subdivision immunity analysis before ruling on defendants' motions for summary judgment where the trial court ended its analysis at the second tier and, in so doing, did not analyze whether any R.C. 2744.03

defenses applied to restore immunity to defendants.

Conversion/Election of remedies. Scioto Land Co. v. Knauff | 2023-Ohio-4821 | 4th Appellate District | 12/26/2023 In plaintiff-property owner's action alleging that defendant had stolen timber from property, trial court erred in not requiring plaintiff to apply the doctrine of election of remedies where the complaint sought treble damages under R.C. 901.51 as well as common law punitive damages, but treble damages served the same purpose as punitive damages to punish and deter theft of vegetation, and award of both types of damages was impermissible double recovery of damages for the same injury.

Wrongful death/Immunity/Pleading/Dissent. Durig v. Youngstown | 2023-Ohio-4446 | 7th Appellate District | 12/07/2023 In estate's action against city alleging, inter alia, wrongful death arising from injuries decedent sustained when city-owned tree fell on him as he was driving motorcycle, trial court did not err in denying city's Civ.R. 15(A) motion for leave to amend its answer to assert the defense of political subdivision immunity where the case had moved well past the dispositive motion stage and was set for trial at the time of city's motion, and there was no indication the court acted arbitrarily or unreasonably in denying the motion, Civ.R. 8(C); there is a dissenting opinion in this case.

Traffic and OVI

Aggravated vehicular assault/Motor vehicle/Utility vehicle. State v. Fork | 2023-Ohio-242 | 6th Appellate District | 03/21/2024 Conviction of, inter alia, two counts of aggravated vehicular assault, R.C. 2903.08(A)(1)(a), was not supported by sufficient evidence that defendant was operating a "motor vehicle" in an accident resulting in injuries sustained by two persons in a vehicle because R.C. 4501.01(B) contains an exception for utility vehicles from the definition of "motor vehicle" and, since the vehicle involved in this proceeding meets the definition of "utility vehicle" in R.C. 4501.01(VV), the principal purpose of the vehicle was as a "utility vehicle," its actual use at the time of the incident is irrelevant, and thus the evidence admitted at trial was insufficient to support defendant's conviction.

Traffic and OVI (Continued)

Driving under OVI suspension/Suppression/Crim.R. 47. State v. Watts | 2024-Ohio-635 | 1st Appellate District | 02/21/2024 In a conviction of driving under an OVI suspension, R.C. 4510.14, the trial court erred by denying defendant's motion to suppress since officer lacked reasonable suspicion to initiate the traffic stop on the basis that defendant had been driving a vehicle registered to her daughter since officer did not cite defendant with any other violations, and thus defendant met her burden under Crim.R. 47 to show that her seizure was warrantless or that her statements were the result of a custodial interrogation, and the officer did not provide any reason for conducting the traffic stop.

Impaired driving/Motion to suppress. State v. Hill | 2024-Ohio-522 | 5th Appellate District | 02/12/2024 In a conviction by plea to OVI, R.C. 4511.19(A)(1)(a), the trial court did not err in denying motion to suppress since defendant's failure to proceed on a green traffic signal, in the absence of any traffic restriction in so doing, provided trooper a reasonable and articulable suspicion that defendant disobeyed a traffic control device for the trooper to make a valid traffic stop, and probable cause is not required to make the stop. Please note, this corrects the summary in the OSBA Daily Report for Feb. 27, 2024, incorrectly stating that there was a dissenting opinion.

Impaired driving/Motion to suppress/Field sobriety tests. State v. Adams | 2024-Ohio-376 | 4th Appellate District | 01/24/2024 In a conviction of possession of fentanyl, the trial court did not err in denying a motion to suppress since trooper had probable cause to arrest defendant for impaired driving where, although defendant did not exhibit signs of impairment on most of the field sobriety tests, on the modified Romberg test, defendant demonstrated leg tremors that can be indicative of impairment, and trooper observed that defendant was "very restless" and "very talkative," his mouth was dry and his pupils were dilated, and were all "signs of impairment based on officer's training and experience," and the emergency medical technicians and sheriff's deputy responding to the accident suspected that defendant was impaired.

Impaired driving/Marked lanes violation. State v. Youngblood | 2023-Ohio-4861 | 11th Appellate District | 12/29/2023 In a prosecution for OVI and a marked lanes violation, the trial court did not err in granting motion to suppress since trooper lacked reasonable suspicion to stop defendant and conduct an investigative search based on an alleged "wide right turn" that officer did not observe, but instead based it on tire marks on wet pavement and inferred that defendant made the marks, and also trooper stated that defendant waited until a red light turned green before making a right turn, but it is not illegal to do so, and defendant did not violate the marked lanes statute by momentarily crossing the center line on a narrow county road when driving a large truck that barely fit within the lane of travel.

Failure to stop/Reckless homicide. State v. Murphy | 2023-Ohio-4825 | 2nd Appellate District | 12/29/2023 Conviction of failure to stop after an accident, R.C. 4549.02, did not meet the sufficiency and weight of evidence standards since the accident did not involve a collision with either a pedestrian or another motor vehicle since the driver left the road and hit a utility pole and did not contain any evidence that defendant's accident occurred "on a public road or highway" as required by the "first prong" of R.C. 4549.02, Teeple and Ragonesi.

Impaired driving/Plea. State v. Nunley | 2023-Ohio-4577 | 6th Appellate District | 12/15/2023 In a conviction by plea to OVI, R.C. 4511.19(A)(1)(a), the trial court erred in accepting defendant's no contest plea since the plea was not made knowingly, intelligently or voluntarily because the trial court failed to comply with Traf.R. 10 when it accepted the no contest plea where the court did not engage in any of the plea colloquy required under Traf.R. 10(D), and thus it failed to inform defendant of the effect of his plea as described in Traf.R. 10(B).

Impaired driving. State v. Jackson | 2023-Ohio-4467 | 9th Appellate District | 12/11/2023 In convictions of R.C. 4511.19(A)(1)(a), (A)(2), (A)(1)(j)(vii) and (A)(1)(j)(viii)(l), the state concedes that it failed to prove defendant had a prior conviction as required under R.C. 4511.19(A)(2), but the state demonstrated that defendant had the required amount of marijuana or marijuana metabolite in his blood since defendant failed to object to the officer's testimony and the laboratory results were admitted as an exhibit, and defendant waived his challenge to the field sobriety tests as not conducted

in substantial compliance with NHTSA standards since he failed to file a motion to suppress, Beavers.

Vehicular manslaughter/Complaint/Predicate offense/Waiver. State v. Six | 2023-Ohio-4361 | 3rd Appellate District | 12/04/2023 In a conviction of vehicular manslaughter, R.C. 2903.06(A)(4), although the complaint is lacking because it did not identify the predicate offense by reference to its statute number nor contain words sufficient to give defendant notice of the predicate offense, defendant waived issue by failing to challenge the error in the trial court since she did not request a bill of particulars or otherwise challenge the sufficiency of the complaint, nor did defendant establish plain error since she does not show that the failure to charge a specific predicate offense in the complaint impeded her ability to defend against the charge and, moreover, argued the state could not and did not prove the predicate offense of failure-to-yield.

Workers' Compensation

Specific safety requirement/Gas concentration. State ex rel. Culver v. Indus. Comm. | 2024-Ohio-1138 | 10th Appellate District | 03/26/2024 In action by wife of decedent-claimant seeking to compel industrial commission to vacate its order finding that employer did not violate a specific safety requirement (VSSR) at the time of husband's death, which was caused by high levels of nitrogen gas in his work area, a limited writ of mandamus is granted where evidence showed the safe levels of nitrogen and oxygen under normal conditions and their unsafe concentrations at the time of decedent's death, but neither the magistrate nor the commission completed the VSSR analysis after concluding that nitrogen was not an air contaminant, and the case is remanded to the commission with instructions to engage in the remainder of the VSSR analysis.

Permanent total disability/Second application/Changed circumstances. State ex rel. Prinkey v. Emerine's Towing, Inc. | 2024-Ohio-1137 | 10th Appellate District | 03/26/2024 In claimant's action seeking to compel industrial commission to amend its order finding that it had no jurisdiction to address claimant's second application for permanent total disability compensation, a limited writ of mandamus is granted where claimant submitted evidence of new and changed

circumstances, as required by R.C. 4123.58(G), by supporting his application with new reports from physicians and psychological evaluations, and enacting language of the legislation showed that the statute was intended to be applied retroactively.

Temporary total disability/Maximum medical improvement/Recoupment/Dissent. State ex rel. Dillon v. Indus. Comm. | 2024-Ohio-744 | Supreme Court of Ohio | 03/05/2024 Denial of claimant's petition for a writ of mandamus to compel commission to vacate its order that declared an overpayment of temporary total disability compensation (TTD) is affirmed on reasoning that after reversing an order awarding claimant TTD compensation because the commission determined that claimant had reached maximum medical improvement and was no longer temporarily disabled, R.C. 4123.51(K) required the bureau to recoup the overpayment of compensation that claimant received between the time she reached maximum medical improvement and the time her TTD compensation was terminated; also, the court overrules its holding in Russell that R.C. 4123.51(K) does not permit recoupment of payments made under an order before its reversal; there is a dissenting opinion in this case.

Loss of use/Anoxic brain injury. State ex rel. Walters v. Indus. Comm. | 2024-Ohio-552 | Supreme Court of Ohio | 02/16/2024 After worker sustained blunt trauma to his chest while on the job and died from traumatic asphyxiation that caused traumatic cardiac arrest, ultimately resulting in severe anoxic brain injury, denial of surviving spouse's petition for a writ of mandamus to compel industrial commission to vacate its order denying claim for decedent's scheduled loss of sight and hearing and loss of use of arms and legs prior to his death is affirmed since medical records reflect that worker's loss of function was due to anoxic brain injury and not injury to the body, and pursuant to Smith, R.C. 4123.57(B) does not authorize loss of use compensation when loss of hearing or vision is caused by loss of brain function, rather than by damage to the eye or ear structure itself, there is no evidence that the eyes and ears no longer functioned, and Smith also applies to a claim for compensation under the same statute for loss of use of limbs.

Specific safety requirement/Workshop. State ex rel. Cassens Corp. v. Indus. Comm. | 2024-Ohio-526 | Supreme Court of Ohio | 02/14/2024 Granting petition for a writ of mandamus to compel industrial commission to vacate its order finding that employer had violated a specific safety requirement relating to an injury employee sustained while working is affirmed since a specific safety requirement violation must occur within a workshop or factory and employer's outdoor storage lot did not constitute a workshop because the mere presence of a guarded and gated perimeter fence, in and of itself, is not sufficient to classify the enclosure as a workshop, no manufacturing occurred on the lot, and employee's role in driving vehicles on the lot was not part of the manufacturing process, Ohio Adm. Code 4123:1-5-13.

Rebate calculation/Unjust enrichment/Equal protection. CPC Parts Delivery, L.L.C. v. Ohio Bur. of Worker's Comp. | 2024-Ohio-18 | 10th Appellate District | 01/04/2024 In plaintiffs-businesses' actions against defendant-bureau of workers' compensation, claiming violation of equal protection by allegedly calculating rebates due to employers participating in the large deductible program differently from rebates due to employers participating in the individually retrospectively rated program, trial court erred in finding that it lacked subject matter jurisdiction over the equal protection claim where summary judgment in favor of defendant on unjust enrichment claims was not error, and equal protection claims were brought as an alternative basis for the same relief rather than as a private cause of action for relief for the violation itself, and the court retained jurisdiction over the ancillary constitutional claim.

Self-insured/Excess insurance/Reporting claim/Third-party Administrator. Harborside of Dayton Ltd. Partnership v. Safety Natl. Cas. Corp. | 2023-Ohio-4562 | 2nd Appellate District | 12/15/2023 In plaintiff-self-insured healthcare facility's breach of contract action against defendant-third-party claims administrator, asserting that defendant failed to obtain payment from plaintiff's excess insurer for employee's workers' compensation claim that exceeded plaintiff's self-insured retention amount, summary judgment in favor of defendant was not error where excess insurer was not timely notified of the claim, but defendant was not liable under the parties' contract since plaintiff

had the duty to report claims to the excess insurer, defendant's duty to assist plaintiff was specifically limited under the contract, and there was no evidence that it breached any of those duties.

Temporary total disability/Maximum medical improvement/Subsequent surgery. State ex rel. Presswood v. Indus. Comm. | 2023-Ohio-4392 | 10th Appellate District | 12/05/2023 In claimant's petition for a writ of mandamus to compel respondent-industrial commission to vacate its order denying his application for temporary total disability (TTD) compensation following approved surgery, a limited writ is granted where relator had reached maximum medical improvement (MMI) for two allowed conditions prior to surgery, but neither the district hearing officer nor the staff hearing officer addressed whether the subsequent approved surgery affected the prior the MMI findings or whether the prior MMI findings affected employee's eligibility for TTD compensation, R.C. 4123.56(A), (F).



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