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Introducing OSBA President Judge Linda Tucci Teodosio

Felony Sentencing
Data Collection in Ohio:
*Developing an
Intentional Approach*

Meaningful Law
Enforcement Reform

Networking During
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Introducing your new Ohio Lawyer Greenbook feature



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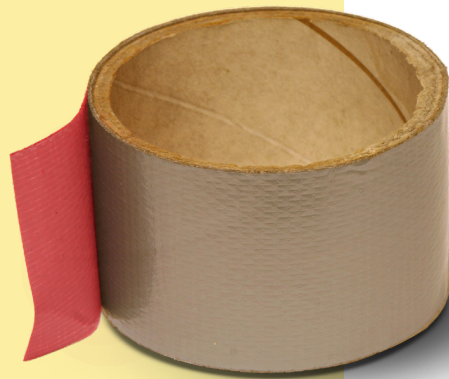
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Meet Judge Linda Tucci Teodosio

2020-2021 OSBA President

The new OSBA President reflects on taking office
in unusual times and meeting the challenges of 2020



When Judge Linda Tucci Teodosio ran for the office of Ohio State Bar Association (OSBA) President back in 2018, there was no predicting the state of the world when she would inherit the reins on July 1, 2020. A pandemic, a nationwide reckoning with racial justice, court closures and tolling provisions, drama in the state legislature, and the list goes on.

It is remarkable then, that the platform on which the judge ran now seems especially prescient. It addressed some of the major issues that the legal profession is facing today: wellness, collaboration and innovation, and inclusion and diversity. But the Summit County Juvenile Court judge also understands that those same obstacles will define her year at the helm.

“When I think about how my year as president is going to be remembered, I think it won’t be remembered for me,” Teodosio said. “I think it’s going to be remembered for the year of 2020, which brought us so many things that we couldn’t predict.”

Though she is now several months into her presidential term, Judge Teodosio is no stranger to association leadership, having been involved with numerous OSBA committees and sections, serving on the OSBA Board of Governors as the representative for District 11 and, for the 2019-20 term, serving on the OSBA officer panel in partnership with immediate past-President Eleana Drakatos, whose term had its own share of unforeseen curveballs, and who officially passed the gavel to Judge Teodosio at the OSBA’s first-ever, virtual annual meeting on July 24, 2020.

This is in keeping with Judge Teodosio’s general history of serving the legal profession and her community. She first became involved with the OSBA

right out of law school but, at the time, focused her efforts on local bar association work, eventually making her way to President of the Akron Bar Association.

In her community, she has served on the Summit County Alcohol, Drug Addiction and Mental Health Services Board, the board of United Way for Summit County, and on the boards of both the Boys and Girls Club and Girls on the Run – positions that demonstrate her passion for helping young people.

Her family also established the Andrea Rose Teodosio Foundation in memory of her youngest daughter, who passed away in 2011. The foundation focuses its work on supporting the community in ways that Andrea would have appreciated: providing respite for youth with disabilities through the Rotary Camp, providing rooms for elderly victims of abuse through the Battered Women’s Shelter, and helping cancer survivors and victims through Stewart’s Caring Place.

“I really love the Summit County community,” Teodosio said. “There are a lot of ways to become involved.”

Early Life and Career

Though the judge now dedicates herself to the Akron and Summit County communities, she grew up in Canton, “about 20 miles down the road.” She first moved to Akron when she went to school at the University of Akron in 1976 for her undergraduate education. This marked the beginning of her work with children, but the legal profession was always the end goal.

“For as long as I can remember, I wanted to be a lawyer,” Teodosio said.

She grew up in a working-class family with a stay-at-home mother and a father who worked as a brick layer. Without a professional example in her own family, she recalls befriending young girl who lived across the street – the girl’s father was studying to become an attorney.

“I remember her talking about him going to law school, so I decided early on that was something I wanted to do,” she said.

For her undergraduate degree, Teodosio majored in education under the guidance of a counselor who advised that her major be something she would enjoy if she needed a backup career, and knowing that she liked working with children.

After continuing on to take the LSAT and being accepted to the University of Akron School of Law, Teodosio found her dream of becoming an attorney affirmed by her law school experience.

“I learned a lot and met a lot of wonderful people and really found that that was something I wanted to do for the rest of my life,” she said. “I think that law school really prepares us well to be lawyers, it really teaches us to think like lawyers, to look at all sides of a question and to really understand the law, be able to argue the law, without taking different positions personally.”

Following law school, Teodosio started her career as a law clerk and later as an associate. But running for a judicial seat was never part of the plan.

“I never planned on a career as a judge, that was not something that I ever even thought about, I always wanted to be litigator,” she said.



Meet the President

Working in private practice, Teodosio gained courtroom experience and argued cases in front of the Ohio Supreme Court. But when she and husband, now Judge Thomas Teodosio (of the 9th District Court of Appeals) decided to start their family, she chose to roll back her career to part-time work in order to spend more time with her two young children, Andrea and Christopher. At the Akron Municipal Court, she was able to obtain a position as a part-time magistrate and get her first taste of life on the other side of the bench.

“I heard small claims, evictions, traffic cases, collections cases – and it was really wonderful because I worked sometimes in the evenings, sometimes on the weekends and it freed up time for me to be with my children but still allowed me to stay active in the practice of law,” she said. “I used some of my extra time to become very active in the Akron Bar Association and I think that was one of the things that really kept me up to date and kept me in contact with other lawyers during that period of time.”

The magistrate experience, paired with the encouragement of colleagues, inspired Teodosio to her first judicial run in 1995 for the Cuyahoga Falls Municipal Court. The run was unsuccessful but in 1997, she prevailed and took her seat as a judge.

“The one thing I discovered when I was in municipal court is that I got the most satisfaction out of working with the younger offenders,” she said. “If you’re working with a person who’s 45 years old and on their 12th shoplifting charge, the chances of you really making a difference and impacting their life are probably not that great. But with the younger offenders, you could see the hope and the fact that they could change the way they’re doing things and really have an impact.”

In 2002, again with the encouragement of her colleagues, Teodosio ran for a seat on the Summit County Juvenile Court.

“It seemed like the perfect step for me to really work with the younger offenders, with people who still have the opportunity to change and do positive things in their life,” she said. “And I’ll tell you, it’s the best thing I ever did. I really enjoy working with children and families and watching them progress and make their own success – it’s really been a rewarding and wonderful experience.”

The rest, as they say, is history. Judge Teodosio has made a name for herself on the juvenile court with her progressive approach to juvenile justice and her commitment to creating and utilizing innovative programs for the rehabilitation of youth and families.

“I’ve got a wonderful staff,” she said. “They’re very creative, they’re very dedicated to youth and we’re very lucky that I think we’ve been able to have an impact on a lot of young lives.”



A legal family:

Husband: Judge Thomas Teodosio, 9th District Court of Appeals

Son: Christopher Teodosio, attorney at Brouse McDowell

Two granddaughters and a daughter in law

“It’s interesting to have two judges in the household. I received a summons for jury duty ... I end up down in the courthouse waiting for my turn and who comes down to announce that I had been chosen for his jury panel but my husband. Fortunately, the case settled, otherwise it would have been a real struggle when the lawyers asked me if I could follow the law the way the judge tells me. We’ve been married for a long time, I don’t know that I’ve ever taken Tom’s say so on anything, or he my say so.”



OSBA Presidency

A pattern emerges when you ask Judge Teodosio about the reasons for her decisions to run for any office. The consistent encouragement of her colleagues is a testament, not only to the many relationships that she has built over the course of an already distinguished career, but also to the strong faith that her peers have in her ability to lead – whether it be a court or an association.

Her decision to run for the leadership position of the OSBA is no different. It came, in keeping with the pattern, at the urging of friends and colleagues.

“They thought it was something that I would enjoy and be good at,” she said. “And I really believe that the bar association is one of the most important things we can do as lawyers. As a professional and as a person who has been a leader in my own field, I had something to give back to my profession and it seemed like the Ohio State Bar Association and running for president would be a good way to do that.”

An active runner, Judge Teodosio has long advocated for wellness within the legal community, both mental and physical. It was a strong part of her platform in 2018.

“Wellness was really important to me when I ran for president of the state bar association,” she said. “Little did I know, back at that time, that we would be in the midst of a pandemic by the time I took office as president. I think that just emphasizes the importance of wellness being at the top of the list for lawyers.”

But she also ran on a platform of innovation and collaboration. At the time, it was focused on an effort to unify the state and metro bars as well as

various state and local agencies. Now, bringing the legal profession together has taken on new meaning for the judge.

Following the killing of George Floyd and the numerous peaceful protests in Ohio and across the nation, Teodosio sees the need for an increased awareness on the part of lawyers that they have a responsibility to protect the rule of law and ensure that it is applied equally.

“When you look at the protests ... I think it becomes abundantly clear that a lot of our citizens do not feel that the law is equal and protects all of them,” she said. “So we have started a process of creating a collaborative across the metro bars, the affinity bars [and] other interested organizations in trying to think about how we, as an organization and we, as a collaborative, can work to restore the public’s faith in our judicial system, faith in our system of government.

“I think that as lawyers, we are uniquely positioned to be able to carry that message and, as the bar association, we are uniquely positioned to bring people together to make sure that we speak with a unified voice and provide guidance, education, information and advocacy.”

Looking Forward

In addressing some of the unique challenges of our time during her year as president, Judge Teodosio hopes to set the stage for some systemic change. When it comes to topics like inclusion and diversity, access to justice and wellness, the collaborative work that has already begun this year will lay the groundwork for OSBA priorities in years to come. The OSBA Wellness Advisory Committee, for example, kicks off this year and promises to create a focus on wellness content and programming for attorneys.

Additionally, the pandemic has presented the association with a prime opportunity to advocate for increased access to justice.

“We’ve already learned that people don’t need to be in the same room or even the same town to conduct a hearing, so can we use that technology to provide legal services to people in places where maybe there aren’t a lot of lawyers?” Teodosio asked. “Can we use this as an opportunity to help people understand the law better? Can we provide Zoom meetings or Zoom roundtables, Zoom town halls, to help people understand what their legal rights are as part of our work in the area of racial justice?”

And speaking of the area of racial justice, Judge Teodosio is hopeful that a profession known for a historic lack of diversity, will finally use this moment to recruit young people of color to its ranks and expand the definition of “justice for all.”

“I think one thing that we as lawyers have not done a good job of is making sure that our numbers are more diverse,” she said. “So I’m really hopeful that by some of the efforts that we make in addressing racial justice, that young people of color will see that they have the opportunity to become spokespeople, to be lawyers, and to further the fight for justice through their own profession.”

The obstacles may seem daunting but Teodosio is confident that the bar association can meet the demands of this year and come out successful. If anything, she is hopeful that her year will be remembered as one in which the OSBA made new strides during a difficult time.



Favorite hobby:
Running



Fun fact:
Judge Teodosio took up running in her 50s and has since run six marathons.



Favorite quarantine hobby:
Backyard bocce ball



Favorite law related movie:
“And Justice For All” starring Al Pacino



Favorite law related book:
“My Sister’s Keeper” by Jodi Picoult



View a video profile and learn more about Judge Teodosio at OhioBar.org/LindaTucciTeodosio

“I hope one of the things that comes out of this is recognizing that, when there are challenges, such as the challenge that COVID-19 presents or the challenges of the fight for racial equity, inclusion and racial justice, is that the state bar association took those challenges and used them as opportunities to move the profession forward,” she said. “I’m hoping that we come out on the other side having met those challenges and from them, created ways of doing things that will further the practice of law, access to justice and understanding of law.”

And if there is one word of advice that she can offer to young people entering the profession, especially during these trying times, Teodosio said she hopes they take advantage of their association memberships and all that the profession has to offer.

“I can honestly say that I would not be where I am in my career and experiencing the career satisfaction that I am without the support of my fellow lawyers through work in the bar association,” she said. “The law provides us with so many ways to expand our career, so many ways to use our careers to give back to the communities that we belong to, that I would advise them to take advantage of those opportunities and make sure they make the most of their career because it offers us so very much.

“I can't imagine doing anything else.”





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FELONY SENTENCING DATA COLLECTION IN OHIO

DEVELOPING AN INTENTIONAL APPROACH FOR THE EQUAL APPLICATION OF JUSTICE

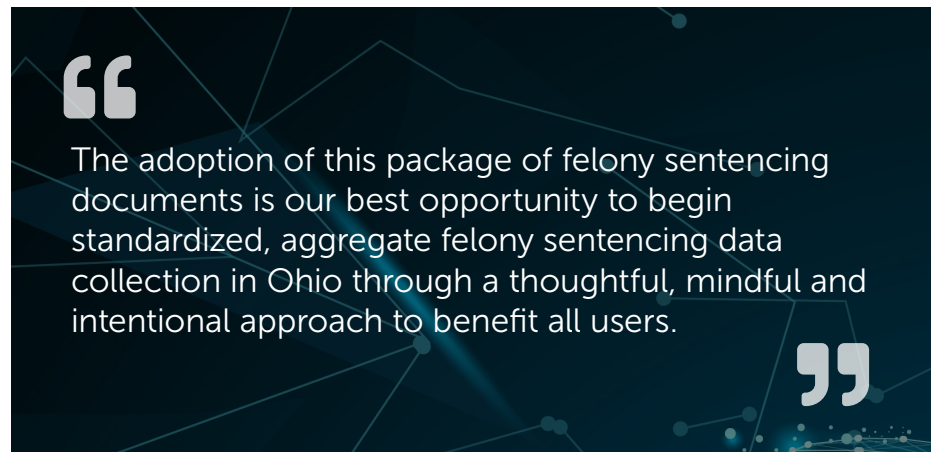
BY SARA ANDREWS
DIRECTOR, OHIO CRIMINAL SENTENCING COMMISSION



Felony sentencing data in Ohio is a complicated web of independent state and local systems with their own structure, organization, data and sharing protocols and we can't produce statewide or aggregate data statistics on adult felony sentencing, procedures and outcomes. Data is collected by a variety of practitioners for the purpose of conducting their respective work. This diminishes the ability to use data for case-level decisions, for policy analysis to improve sentencing and criminal justice processes, to optimize workflow or to evaluate whether criminal justice policy and sentencing are achieving their intended outcomes.¹

The complex process of felony sentencing in Ohio makes clear, comprehensible sentences incredibly important for the administration of justice and promoting confidence in the system. As such, Ohio Supreme Court Chief Justice Maureen O'Connor asked the Ohio Criminal Sentencing Commission² to convene the Uniform Sentencing Entry Ad Hoc Committee. The ad hoc committee developed a uniform sentencing entry that prescribes the most clear and concise minimum language required to comply with Criminal Rule 32 and existing case law and establishes standardized, common data essential for identifying relationships and trends common to all felony courts.³

Further, there are certain, important elements that precede sentencing but, that are not essential to the minimum language required for a uniform sentencing entry – especially in light of recent Supreme Court of Ohio decisions and the ever-changing statutory provisions regarding sentencing. Thus, the committee also developed companion “method of conviction” (plea) entries, as well as entries memorializing the other manners in which a felony criminal case may be disposed.



The adoption of this package of felony sentencing documents is our best opportunity to begin standardized, aggregate felony sentencing data collection in Ohio through a thoughtful, mindful and intentional approach to benefit all users.

Additionally, throughout the work of the ad hoc committee, there was a common thread to the discussion centered squarely on the notion of what the committee coined “good civics.” In other words, there are a number of standardized documents and notices that are used with regularity and recommended for use but, not required by law for sentence or other disposition. The committee agreed that the commission should obtain these documents from individual jurisdictions and serve as a repository to make them available.

It is important to highlight that the uniform sentencing entry, method of conviction entries and good civics index of forms and notices will evolve as they are implemented and as such, are living documents. Throughout the process administrative judges, court administrators and clerks were asked to help guide the work of the committee by providing detail on their respective courts' approach to the use of a method of conviction (plea or trial) form or entry and the sentencing entry in felony cases. The iterative process will continue as the documents will be widely shared among judicial associations, court personnel and practitioners and posted on the commission's website.

The commission will monitor legislation and Supreme Court case law

to keep the documents current with any necessary changes, notify practitioners of those changes and work with jurisdictions to provide implementation and ongoing training as the entry is adopted.

The adoption of this package of felony sentencing documents is our best opportunity to begin standardized, aggregate felony sentencing data collection in Ohio through a thoughtful, mindful and intentional approach to benefit all users. Its development includes mapping of case flow processes to confirm all points are appropriately and accurately identified and included.

The commission has long contemplated the collection of sentencing data and this is a pivotal time in Ohio and across the country. There is a reckoning to confront systemic inequities and to achieve social and racial justice. The near three-decade-long sentencing data deficit must be addressed, as demonstrated by the still unrealized recommendations on data collection from the Ohio Commission on Racial Fairness Report.⁴

We are positioned to create a felony sentencing database – the Ohio Sentencing Data Platform – which can and will enhance public confidence



Felony Sentencing

and trust in the system by making information accessible, consumable and reportable. It will help inform decision-making and give judges the tools and information needed to do their job in accordance with the purposes and principles of felony sentencing. We believe we can do this in a way that is efficient, reduces duplication and does not fiscally burden local government.


Essential to the effort will be the modernization of the commission's statutory authority and transition to the Ohio Criminal Justice Commission.⁵ The modernization of the enabling statutes of the commission includes changes in membership and duties. Importantly, the changes in duties for the commission are robust and support the indispensable role for sentencing commissions to assemble and analyze all the data about the inflows and outflows of the criminal justice system needed to make sensible cost-benefit decisions and promote smart, effective use of resources and ensure measured, proportional responses.

The change in duties, among other things, will codify the commission as a criminal justice agency and obligate it to develop and maintain a statewide criminal sentencing database. The commission is accountable for proposing, vetting and advancing the best and most impactful interests for fair sentencing and sound public policy. The expectation is, simply stated, proactive recommendations that change

lives and deliver on the fundamental purposes and principles of sentencing – creating a felony sentencing database in Ohio delivers on that expectation.

The Ohio Sentencing Data Platform will give us the ability to tell the comprehensive story and illustrate the deep intricacies of felony sentencing. It will move us toward a data-informed environment that allows for the thorough understanding and analysis of the criminal justice system by its own actors and those making policy decisions while increasing transparency to the public. It allows for examination of sentencing patterns and trends, yet realizes that we are talking about case and people-specific fact patterns, weaving them together to inform and engage others in development of sound state policy, enhanced public safety, reduced recidivism and an equalized application of justice.

The commission continues to champion the effort to advance agency and governmental branch partner connectivity for felony sentencing data collection, use and sharing to promote smart, effective use of resources and ensure measured, proportional responses. As a part of this effort, the commission is partnering with Case Western Reserve University School of Law Social Justice Institute and recently submitted a grant application to collaborate with the University of Cincinnati and The Ohio State University Moritz College of Law Drug

Enforcement and Policy Center in the development and creation of the Ohio Sentencing Data Platform. If awarded, the grant period begins January 2021. Furthermore, we continue to broker partnerships, seek opportunities to pool resources, leverage relationships and build capacity to move the project forward. 

About the Author



Sara Andrews is the executive director of the Ohio Criminal Sentencing Commission. She previously served the Ohio Department of Rehabilitation and Correction for 20 years as deputy director of the Division of Parole and Community Services and chief of the Adult Parole Authority. The Ohio Criminal Sentencing Commission is an affiliated office of the Supreme Court of Ohio that seeks to enhance justice and ensure fair sentencing in the State of Ohio.

Endnotes

¹<http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/general/dataBrief.pdf>

²<http://www.supremecourt.ohio.gov/Boards/Sentencing/default.asp>

³For details email sara.andrews@sc.ohio.gov

⁴<http://www.supremecourt.ohio.gov/Publications/fairness/fairness.pdf>

⁵For details email sara.andrews@sc.ohio.gov

“

The Ohio Sentencing Data Platform will give us the ability to tell the comprehensive story and illustrate the deep intricacies of felony sentencing.

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Fall OSBA District Meetings Are Going Virtual!

Don't miss out on:

- The latest news from OSBA President Linda Tucci Teodosio
- Special remarks from Ohio Supreme Court Chief Justice Maureen O'Connor
- Election of district representatives
- A celebration of your colleagues who have achieved 50- and 65-years of practice

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District Meeting Schedule:

October 13 | District 4
October 14 | District 3
October 28 | District 8

October 29 | District 16
October 30 | District 6
November 9 | District 5

November 12 | District 13
November 16 | District 14
November 17 | District 18

All meetings begin at noon. For more details, visit ohiobar.org/districtmeetings.



Following each district meeting, join us for a live interactive webinar on **Ethics in the Remote Era**, which provides one hour of professional conduct credit.



Your Foundation's Racial Justice Initiative

*By Mark Kitrick
President Ohio State Bar Foundation*



*"If you don't like something, change it. If you can't change it, change your attitude."
-Maya Angelou*

The recent demonstrations and protests throughout the U.S. have ushered in a collective scrutiny and spawned new conversations around racial justice. These conversations are re-examining out-of-date attitudes and encouraging new perspectives, all while allowing room for freedom of expression and first amendment rights. We are seeing these discussions in television commentaries, watercooler debates, dining room discourse and book club exchanges. In fact, several of the most recent New York Times bestsellers in nonfiction include titles such as "How To Be an Antiracist," "Me and White Supremacy," "The Beauty in Breaking," "White Fragility" and "Between the World and Me."

But we need more than mere discussion to cause positive social growth. Without action, education and financial support, discussions can often cause us to be trapped in our own confirmation bias, which is counterproductive. We then become complacent and resist change.

The Ohio State Bar Foundation (OSBF) has long been committed to racial justice and racial diversity. As we state, "Our OSBF Fellows are a diverse group of lawyers. They represent the entire state of Ohio and justice system. From rural towns to big cities, large law firms to sole proprietors, judges to prosecutors, the OSBF Fellows program brings them together under one common mission – bettering the justice system."

As part of our ongoing self-reflection, we continuously look inside at our organization. Yes, we are committed to racial justice, diversity and inclusion. We have a renewed focus on diversity that is an integral part of our three-year strategic plan, and we have a strong commitment to diversity and inclusion when selecting fellows, board trustees and staff. According to demographics from the Ohio Supreme Court (of attorneys who self-identify their race on their attorney registration form), only 3.6 percent of Ohio attorneys are African American. Of our last six fellows classes, totaling 193 fellows, nine (about 4.6 percent) are African American. This is arguably a good start, and we continue to strive to seriously increase this number. We are mindful that studies demonstrate that the most diverse groups make the best decisions, even though the conversations leading to these decisions may be more challenging.




Moreover, minority voices are only heard fully and freely when that minority comprises at least 30 percent of its members. Eighteen percent of our board of trustees are minorities, however, we can and will do better.

In our continuing quest to uphold the foundations of racial inclusion and diversity, the OSBF is providing up to \$500,000 in grant funding exclusively to support initiatives focused on long-lasting impact and institutional change for racial justice. The hope is that this grant money will inspire creativity, encourage collaboration and provide new approaches that will educate our citizens and move our society forward to an improved justice system.

This grant funding continues the foundation's push for inclusion and

diversity in both its grant making and hiring practices. Moreover, since 1992, the OSBF has granted more than \$12.5 million to more than 100 independent projects that have benefitted minorities, people of color and the disenfranchised in Ohio. For years, we have supported the Law and Leadership Institute, which serves African American and disenfranchised students, using law as the subject of study to develop leadership skills, encourage active citizenship, and foster the confidence that leads to college success and beyond. We also have supported organizations that provide legal assistance for vulnerable populations and translation services for Spanish and Somali communities, provided legal education programs for Latino families, helped veterans in crisis, supported legal aid and have served so many other underserved people across the state of Ohio.

We hope that our new Racial Justice Initiative will impact these constituents and more in an even greater fashion. Of course, we can't do it alone. If you are aware of a diverse attorney who might be a candidate for our fellows program, please visit our website at OSBF.org, review our criteria list and talk with the attorney you would like to nominate. If you are not yet a fellow and want to contribute to our cause, we encourage you to self-nominate. And if you know any nonprofits that are addressing minority inequalities in our justice system, encourage them to go to our website (OSBF.org/RacialJustice) to apply for our grant. Our next deadline will occur on Oct. 15, 2020.

By collaborating and sharing our knowledge and resources, we can build a more equitable justice system. We can and will make a positive difference. 



Meaningful Law Enforcement Reform

The Ohio Attorney General and Governor team up to offer their roadmap for change



By Attorney General
Dave Yost

Our society asks a lot of police officers. In many ways, the social ills that we have failed to address in our society often end up in the lap of law enforcement. We expect officers to combine the roles of doctor, soldier, youth mentor, body guard, psychiatrist, crime-solver and marriage counselor. We also demand that police always make the right decision in situations where even a second of hesitation could mean life or death.

In some cases, the small number of officers who should never have been allowed to don the uniform commit crimes and engage in brutality.

In June, Governor Mike DeWine and I unveiled our plan for meaningful law enforcement reform. We believe that the answer is not to demonize and defund all police. It is to give them better training to deal with the incredible demands we make of them, and to weed out those people who have shown themselves to be unfit to wear the uniform.

Establish Ethics Guidelines

In Ohio, after cadets graduate from a police academy and pass the exam, they become certified officers; there is no mechanism to revoke certification. Further, civil service laws and collective bargaining agreements can take the decision of whether to fire a bad officer out of a department's hands.

To change that, Gov. DeWine and I propose creating a licensing board similar to the one Ohio has for lawyers. The board would:

- Include active-duty law enforcement officers and members of the public.
- Work with police veterans and experts to set professional standards and a code of ethics.
- Ensure that law enforcement officers adhere to the standards.
- Be housed at the Ohio Peace Officer Training Commission (OPOTC), a division of my office that sets basic training standards and certifies police officers.

Violations of the professional standards could result in the suspension or revocation of an officer's license. The process would disqualify bad actors from policing in Ohio, prohibiting bad cops from taking a job at another agency.

Coupled with that proposal is an effort to ensure that only those with the appropriate character and temperament become officers in Ohio.

The governor and I propose that applicants be required to pass a psychological exam to enter a police academy. After a cadet graduates, OPOTC would check references and take other steps to ensure that the graduate possesses the appropriate character to be certified as a peace officer.

Ensure Fair Investigations

Objectivity and independence are crucial to investigations.

When police officers are accused of wrongdoing, however, they often are investigated by their own department. The case also might go to a prosecutor who regularly works with that same police department.

So no matter the integrity and professionalism of the investigation, it is impossible to dispel the appearance of a conflict of interest.

This is why the Governor and I have asked the General Assembly to mandate neutral third-party investigations of officer-involved shootings and in-custody deaths.

Investigations are available through the Ohio Bureau of Criminal Investigation (BCI), a division of my office that has a respected record of independence and objectivity. The city of Columbus and the State Highway Patrol already have committed to using BCI for such investigations.

Other accountability plans that Gov. DeWine and I have put forward would:

- Help fund body cameras and video storage for police departments.
- Ban chokeholds, allowing the potentially dangerous tactic only when an officer's life is in danger.
- Gather reliable data on use of force by police and help departments recruit minority officers.

Increase Support

One of the best things the General Assembly could do to improve police practice is to permanently fund continuing education for officers.

By law, Ohio cannot mandate training beyond basic academies and firearm competency without paying for it. There has been no statewide funding allocated for training in de-escalation, bias awareness and use of force since 2017.

Training in these areas has occurred only at those agencies that have the money to pay for it.

That's unfair. Officers should have training in best practices regardless of the community they serve, and all communities deserve to benefit from officers with advanced training.

Improve the Academy

Three days before George Floyd died in Minneapolis, I enacted major reforms at the Ohio Peace Officer Training Academy (OPOTA), an arm of OPOTC. That action fulfilled a campaign promise to investigate the fate of casino proceeds earmarked for police training.

I found out that those funds might not have been used in the spirit of the law.

OPOTA once ran a basic police academy from its location in London, about 30 miles west of Columbus. By the time I took office, though, it was offering advanced training only.


In theory, departments would pay to send officers to London and then pay to cover that officer's shifts. Because of that financial burden, attendance in some classes had dwindled to as few as five people. Many local agencies prefer training closer to home and on issues more relevant than those offered by OPOTA.

When OPOTA reopens after the pandemic-forced break, the academy will focus on the subjects it does best, including teaching police trainers and improving firearms and driving skills. Classes will be offered in London but also in locations statewide, reducing the travel burden on local agencies.

Our training curriculum will be based on suggestions from police chiefs and sheriffs around Ohio.

The Goal

Preserving public safety is the most fundamental responsibility of government. And the people who put their reputations and lives on the line to accomplish that task are our law enforcement officers.

Every day, thousands of them do that job with decency, professionalism and success. They deserve all the help the rest of us can provide. 



10 TIPS FOR TALKING ABOUT RACE



Attorneys often find themselves at the center of difficult and emotionally charged conversations. Still, it can be hard to prepare for the difficult conversations demanded of us in this current national moment – those about racial justice. Here, Director of the American Negotiation Institute and Of Counsel at Carlile Patchen & Murphy, Kwame Christian outlines some tips to help tackle those conversations in a productive way, whether you're speaking to a client, a family member or an online acquaintance.

SET A GOAL.

Attorneys are no strangers to outlining possible outcomes. Ask yourself what problems you're trying to solve and what you want from the other party. Possible outcomes include:

- Behavior change
- Perspective change
- Commitment to action

ASSESS YOUR AUDIENCE.

Conversations with family online may be very different than conversations with colleagues or clients. Do you already know how they feel about the situation? You may be familiar with a family member's stance, but a colleague may not be coming from the same place.

USE THE "COMPASSIONATE CURIOSITY FRAMEWORK."

From "Finding Confidence in Conflict," by Kwame Christian, the compassionate curiosity framework requires you to:

- Acknowledge and validate emotions
- Ask questions, but remain compassionate
- Use joint problem solving

ASK YOURSELF: ARE YOU CALLING IN OR CALLING OUT?

When having difficult conversations about race, especially online, do you call out? Calling someone out in the comments section has a performative aspect and doesn't offer an opportunity for adjustment without saving face.

Calling out happens when we attack someone in a way that's likely to trigger shame and cause defensiveness. Calling in invites someone to have a personal conversation and creates meaningful dialogue.

THERE IS A DIFFERENCE BETWEEN ACCOUNTABILITY AND SHAME.

Hold people accountable for what they say and do, but don't attack someone with the intent to cause them to feel shame. When attacked, people focus on themselves instead of the issue and ultimately, disengage. These conversations feel bad and usually, no meaningful dialogue comes from them.

DON'T FEEL BAD ABOUT FOCUSING ON YOURSELF.

Being an ally is emotionally draining and you're going to get frustrated. It's not being selfish – sometimes we focus so much on the problems we're trying to solve and the people we're trying to help, that we get burned out.

You won't be a valuable advocate if you're too emotionally burned out.



🕒 DON'T BE AFRAID TO TAKE BREAKS.

We all have cognitive limits. If someone is too emotional to have a productive conversation, make a commitment to have a second conversation. If you are too emotional and say something that you regret, you can't undo that mistake. The damage has been done.

You can't put the toothpaste back in the tube.

≠ EMPATHY IS NOT AGREEMENT.

When you empathize, you gain an understanding of how the other person sees, thinks and feels and you reflect that understanding back to them. Don't be unwilling to empathize because you think it might be a concession – it's not.

🗨️ COMMIT TO KEEP LEARNING AND IMPROVING.

You may not walk away from a conversation with concrete solutions – but commit to keep the momentum going. Difficult conversations are meant to lead to improvement. You should walk away feeling that you have accomplished something, even if it's just putting a follow-up conversation on your calendar.

Keep engaging and, with practice, these conversations will get easier.



Find more resources and learn more about Kwame's work at AmericanNegotiationInstitute.com and CPMlaw.com.

💬 THE BEST THINGS IN LIFE ARE ON THE OTHER SIDE OF DIFFICULT CONVERSATIONS.

The guiding principle of the American Negotiation Institute urges us to lean in to the tough talks. When we start having difficult conversations, it puts us in the best position to live the best version of our lives.



Equity **Education** Series

View the FREE OnDemand CLE “How to Have Difficult Conversations About Race” with Kwame Christian, an hour-long interview and Q&A on practical skills when it comes to tough talks.

Part of the new OSBA Equity Education Series.

The Equity Education Series is an ongoing conversation that highlights issues of inclusion and diversity in modern society, from racial justice to gender equality. To learn more about the complimentary CLEs, visit OhioBar.org/EquitySeries.



Networking During a Pandemic

By Jedidiah I. Bressman



If you ask someone about networking, their answer will usually be “It is important, but it is also easy.” Then why is it so hard during a pandemic? A question I frequently get from fellow lawyers is, “How can I network during COVID-19?” My reply, although basic, may not be the first idea that comes to mind. Your networking should only have moved to doing so remotely, but the core of it should have stayed the same.

First, focus on building relationships instead of finding a job or trying to procure business. I would rather make new friends through networking than build business. Why? Because you ultimately do the same thing without even thinking about it. Before this pandemic, I spent much of my free time meeting with other lawyers who had careers or jobs I was interested in or just had interesting stories that were worth hearing. Rather than approaching them and asking them, “How do I get your job?” or “Do you know of any openings?” I focused on finding out why they loved their jobs and, in the process, I found out more about them as people. Although subtle, the difference is that you get the person talking about themselves rather than their jobs.

For example, when I worked at the Ohio Attorney General’s office I saw a job posting for a position I thought I

would be interested in. I cold-emailed the lawyer who used to hold that position and he agreed to have lunch with me. Ultimately, he suggested that I not apply for the job, but we ended up becoming close friends, from a cold-email!

This brings me to my next piece of advice: Stop viewing email as purely transactional. How many emails do you send each day to opposing counsels, court personnel, or even your own staff? Have you taken the time to get to know them? Even if you have never met the person, you should send them an email introducing yourself or ask if they have a moment to chat. The worst that person can say is nothing or no. Then you can move on to the rest.

The internet makes us forget that there are real people on the other side of that email who have something to offer. From a business perspective, many of us cannot handle every case that walks through our (virtual) doors nor should we, but we still want a place to send those cases. When I moved to private practice, I reached out to lawyers who I respected and asked about sending cases their way if I got a call about a matter I do not handle. Many of them were more than happy to say yes and appreciated that I thought of them. This mode of networking continues today.

We may be living in the age of Zoom (yes, the dreaded video call) but networking never stops. If you are not a virtual happy hour person, there is a lot to say for reaching out to other people simply to find out how they’re doing. This is an easy, thoughtful way to network. I reached to people I met pre-pandemic just to ask how they were doing. Again, think about colleagues as fellow human beings rather than just business connections. We’re all looking for meaningful connections in these tough times.

To conclude, continue to network during a pandemic. Reach out to people you have met with before and check in on them. Talk to new people and develop new relationships by focusing on the person rather than the business. And remember that emailing someone with a personal touch can be an effective way to begin, or to continue, a networking connection. There are only two ways to fail at networking: (1) to not network at all; (2) to view networking as a getting a job opportunity rather than a chance to build a relationship. 🍷

About the Author



Jedidiah Bressman is an attorney at Bressman Law in Dublin, Ohio where he focuses his practice on personal injury.

Before Bressman Law, he worked at the Ohio Attorney General’s office in the Health and Human Services division and for the 10th District Court of Appeals as a judicial staff attorney for Judge Frederick D. Nelson. Bressman is the author of “The Purely Practical Guide to Networking for Today and Tomorrow,” which can be found on Amazon.



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Book Review:

“The Watergate Girl: My Fight for Truth and Justice Against a Criminal President” by Jill Wine-Banks

By Bradley S. Le Boeuf

Writing an autobiography is a long project, particularly for someone who has been in the public eye for decades. The massive first volume of the “Autobiography of Mark Twain” was published in 2010, a full century after Twain’s death. Twain wrote, “The usual, conventional autobiographer seems to particularly hunt out those occasions in his career when he came into contact with celebrated persons, whereas his contacts with the uncelebrated were just as interesting to him, and would be to his reader, and were vastly more numerous than his collisions with the famous.”

In “The Watergate Girl: My Fight for Truth and Justice Against a Criminal President” Jill Wine-Banks follows Twain’s path of the “conventional biographer” relating her encounters with celebrities. Famous personalities such as Dustin Hoffman, Dan Rather, Gerald Ford, Mary Travers and Philip Roth make cameo appearances, but it is also Wine-Banks who stars in the role as a young attorney prosecuting the intricacies of the Watergate scandal of the Richard Nixon administration.

The autobiography largely focuses on her time working on the Watergate special prosecutor’s trial team. On her first day on the job as an assistant special prosecutor, she met Jeb Stuart Magruder, who arrived at her office with his lawyer to discuss a plea deal. Magruder, a former Nixon White House aide, was involved in the planning for the break-in of the Democratic headquarters at the Watergate complex and the subsequent coverup efforts. “No witness in my

experience had affected me the way Magruder did,” she writes. She was appalled by his “utter amorality” and how he “had lied and lied and lied. To the FBI, to Justice Department investigators, to a federal grand jury, to Judge Sirica.” (Magruder, after serving time in prison, eventually became a Presbyterian Church minister in Columbus, Ohio and died in 2014.)

Wine-Banks was tasked with the cross-examination of Rose Mary Woods, Nixon’s longtime secretary. “I was about to violate the first rule a prosecutor learns: Never ask a witness a question unless you already know the answer,” Wine-Banks writes. Her skillful interrogation led to one of the most famous photographs of the era: Woods demonstrating her awkward pose in order to explain how she inadvertently erased the 18.5-minute gap of a crucial White House recording. “Secretaries across America wrote me letters pointing out there was no way the tape could have been erased in the matter Rose described.” Subsequent testing of the tape showed deliberate erasures and the gap “remains the most enduring mystery of Watergate.”

One faction in the prosecutor’s office wanted to indict Nixon. “I fervently believed it was wrong to prosecute Nixon’s subordinates while letting Le Grand Fromage, as Rick [Ben-Veniste, her trial partner] called the president, go free.”


Her boss, Archibald Cox, who had argued scores of cases before the Supreme Court, admitted to a colleague, “But every time I had to go to the Supreme Court I’d wake up in the morning, go to the bathroom, and throw up.”

One common theme that surfaces is Wine-Banks recalling her experiences dealing with sexist attitudes in the

legal profession after graduating from law school in 1968. She was one of 15 females in her Columbia Law School class of three hundred students. Despite her major role in the courtroom dramas of Watergate, “most journalists writing about me focused on my appearance.” A headline in the “Cincinnati Enquirer” reported she was “The Leggiest Watergate Lawyer” and she took offense at being referred to as a “lady lawyer” and the “miniskirted lawyer.”

Several years after the Watergate trials, while walking around Georgetown with Ben-Veniste, she admitted to him that she “often felt like a fraud.” He agreed that he also had the same sense of imposter syndrome. “At a very young age, we’d been thrown into a role with enormous responsibility, and though everyone around us assured us we were doing excellent work, we both wondered, am I good enough?”

Now retired from practicing law, Wine-Banks works as a MSNBC legal analyst. “Perhaps my most unlikely post-Watergate friendship is with John Dean.” She was impressed by the former White House counsel’s “astonishing memory for the smallest details” and “remarkable recall.”

The book is a quick and engaging read, told in a conversational manner and devoid of footnotes. Anyone with an interest in Watergate will find “The Watergate Girl” to be a fascinating, first-hand account. The parallels she makes between the Nixon and Trump administrations in the epilogue could be another book by itself. 

“The Watergate Girl: My Fight for Truth and Justice Against a Criminal President” by Jill Wine-Banks. 258 pages. New York, NY: Henry Holt and Company. 2020. Illus. \$27.99.



James Hux

Solo Practitioner,
Hux Law Firm LLC

YEARS IN PRACTICE:

3

CITY/COUNTY:

Cleveland Heights

How did you take an interest in the law?

I developed an interest in the law in my junior year of college, so I was kind of a late bloomer compared to other people. My junior year of college I took a couple electives because I thought they sounded interesting and one of them was economics and the law. That class really peaked my interest. Then I had a class on race and the law and that was actually the first time that I met a Black attorney, and he was civil attorney. Just meeting him and being in that class, I thought to myself, "I think I could really do this." That took me on my path to pursuing a legal career.

My 1L year, we might have been the only section that had all minority professors. I had either minority or women professors for all of my classes, which I think is pretty rare in the law in general. I don't know how many other schools would have been able to offer that type of experience to law students.

Why did you decide to start a virtual law practice?

Initially, I started a virtual law practice out of necessity. I didn't have the money or capital to be able to afford rent for an office space just to meet clients. When I started offering telephone and virtual consultations, people started showing up. Once you realize that works, it's pretty hard to go back to a traditional practice.

The best advice I would have [for attorneys developing their virtual practice right now] is that it's impossible to get it one hundred percent perfect out of the gate. The best thing you can do for right now is just start. I'm still tweaking my systems even though I've been virtual for three years now. You have to make sure that things work right with your system, your firm and your clients so that everyone is satisfied in the end.

How did you get involved with the OSBA? What are the programs you take advantage of?

I got involved with the OSBA through law school, I grabbed a pamphlet and signed up as a student.

More recently, I've gotten more involved as an attorney because I liked some of the initiatives the OSBA is working on, like the Advisory Council on Diversity, and I'm trying to get more involved with policy.

The Leadership Academy was something I always wanted to do. I always thought of myself as leading by example and I'm trying to develop my speaking and voice. As I develop that, as my practice gets older and I gain experience, I wanted the Leadership Academy to help fine tune some of these skills. We had to do the academy virtually this year, that wasn't planned. We were able to pivot and I think that's because the people in the academy and the people running it are leaders themselves, they were able to change and pivot like that, and that's the quality of a leader that's especially important right now.

What are your goals for the future?

I want to expand my practice. I've been working on doing different things with automations and using technology to help with that. I use a couple different practice management tools and some things to automate processes or communicate with clients so they can stay up to date on what's going on with their case, because not everything requires a phone call. Eventually I want to hire on an associate, probably a paralegal to help expand. For now, I'm working on fine-tuning my practice. 



Watch video and learn more about James at OhioBar.org/JamesHux



Do you know an attorney who's doing great things? Nominate them for a Member Spotlight! Send an email to Editor@OhioBar.org



Statehouse Connection: Restoring Public Confidence in Our Government

Scott Lundregan
OSBA Chief Legislative
Counsel



“Man is conceived in sin and born in corruption and he passeth from the stink of the didie to the stench of the shroud. There is always something.” -Robert Penn Warren, “All the King’s Men”

In the midst of a global health pandemic and a racial justice awakening, the alleged sins of ex House Speaker Larry Householder were exposed as he, along with three others, have been charged with creating an enterprise that engaged in a pattern of racketeering behavior. The long and short of it, the complaint alleges, is that over \$60 million from First Energy was funneled through a 501(C)(4) to make sure that Larry Householder became Speaker of the House and secured passage of a nuclear power plant bailout bill that benefited First Energy.

We still don’t know all the details and, as of this writing, all those charged in the complaint have yet to be brought to trial. But we do


know that the allegations of the complaint were enough for the Ohio House of Representatives to remove Larry Householder from his Speaker position, and elect former Supreme Court Justice and longtime OSBA member Bob Cupp. We also know from the allegations that irrespective of what happens in the criminal trial, the conduct that led to the election of Larry Householder as Speaker and the eventual passage of House Bill 6 was both corrupt and wrong, and it will cause significant damage to the relationship of the citizens of Ohio to their government.

“All the Kings Men” would not have won the Pulitzer Prize if it was just about “the boss” Willie Stark. It is considered transformational and exceptional because it forces us to consider the culture that produced the actions, instead of just focusing on the sins of one actor. If Ohio is to restore the public’s trust in government, we need to focus on the culture that made this enterprise a possibility instead of the isolated wrongdoings of the group. Sure, it’s fun to go through the complaint and place blame and fault but the sad truth is this: As long as this culture continues, there will always be something.

If we want to work towards restoring the public’s trust in government we need to ask ourselves: Why isn’t this complaint shocking?

Whether or not Householder is innocent, the fact that these allegations were not surprising to the people who work around Capital Square is sign enough that the culture needs to change to one where power is concentrated in those that have the respect and trust of our citizens. Respect flows to power when power should flow to respect.

I, for one, think the Ohio State Bar Association and our profession is well-equipped to help restore trust and change the culture. After all, lawyers know a thing or two about trust. In fact, one could argue that being a lawyer is all about trust.

Our government has had a great fall. As we try and build Ohio back together again, let’s help restore our citizen’s trust in politicians and make them start treating their constituents like we treat our clients. 

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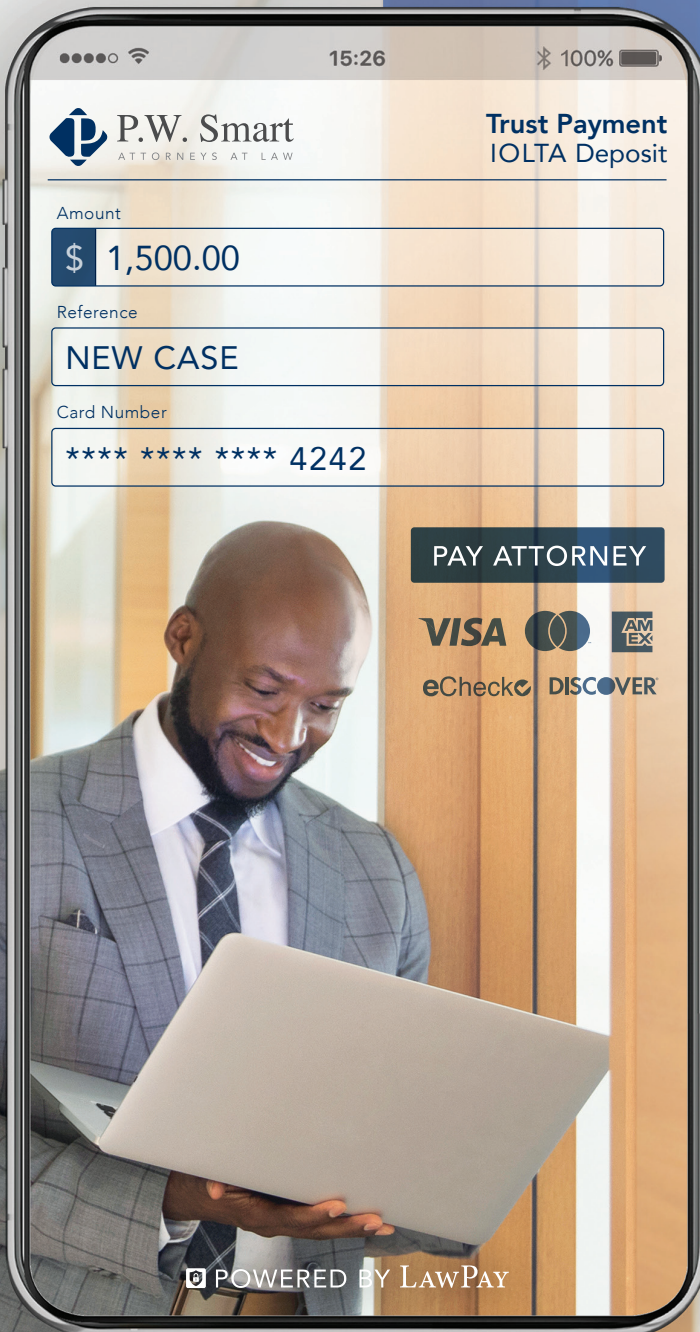
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OHIO STATE BAR FOUNDATION
PRESENTS
On the Margin
FOSTER YOUTH AT RISK FOR HUMAN TRAFFICKING

Coming this fall, join the Ohio State Bar Foundation's 2019 Fellows Class for *On the Margin: Foster Youth at Risk for Human Trafficking*, a virtual educational symposium highlighting the alarming number of Ohio kids in foster care who fall victim to human trafficking.

During this virtual symposium, attendees will hear from Ohio Attorney General Dave Yost, human trafficking survivors, and other experts who are fighting to address this concerning issue. Discussions will be led by former Ohio Supreme Court Justice Yvette McGee Brown and will focus on educating and, more importantly, action.

Throughout this virtual event, we will highlight organizations who are on the frontlines. Find out what they are already doing to help foster youth and those in human trafficking and how you can get more involved.

Let's learn, educate, and work together to protect Ohio's vulnerable youth.

JOIN US ON OCTOBER 20 AT 4 PM TO BE A PART OF THE VIRTUAL SYMPOSIUM. FOLLOW THE OSBF WEBSITE AND SOCIAL MEDIA CHANNELS TO FIND OUT HOW TO REGISTER.

▶ GET TO KNOW THE OHIO ATTORNEY GENERAL



Ohio Attorney General Dave Yost

After two terms as Auditor of the State, Ohio Attorney General Dave Yost was elected in 2018, assuming office in January 2019. In his position, Attorney General Yost has launched scientific initiatives to curb the number of Ohioans succumbing to substance abuse disorder and has also increased human trafficking enforcement while pushing for legislation that will allow more effective prosecutions of buyers and sellers in trafficking transactions.

▶ GET TO KNOW THE MODERATOR



Yvette McGee Brown

A common theme in Former Justice Yvette McGee Brown's professional and community work is her advocacy for children and families. After joining the Ohio Supreme Court, she became chair of an interagency taskforce focused on improving the educational outcomes for children in foster care. She has served on numerous boards, including the Dave Thomas Foundation for Adoption, the United Way of Central Ohio, the YWCA Columbus, and the Law and Leadership Institute.

After leaving the Supreme Court, Former Justice McGee Brown joined the Columbus office of Jones Day.





GET TO KNOW THE PANELISTS

Jason Beever

As a Special Agent for Homeland Security Investigations (HSI), Jason Beever has worked on numerous child exploitation investigations. Leading a team of approximately 20 agents, he and his team investigate national security threats, human trafficking, child exploitation, narcotics trafficking, financial crimes, and other violations of federal law in Central Ohio.

Hollie Daniels and Stephanie Rollins

Hollie Daniels and Stephanie Rollins are human trafficking survivors who have escaped the lifestyle and created new and inspirational lives for themselves.

Bhumika Patel

Since 2018, Bhumika Patel has been working at the Public Children Services Association of Ohio (PCSAO) as the Anti-Human Trafficking Coordinator. In this grant-funded role, she provides training and technical assistance to those working with trafficked children involved in child welfare and juvenile justice and is making a difference in the lives of society's most vulnerable children.

Judge Linda Tucci Teodosio

Judge Teodosio has been serving as a judge for the Summit County Juvenile Court since her election in 2003. She is recognized for her innovative programming and progressive approach to juvenile dispositions and rehabilitation. In the Summit County Juvenile Court, she has developed Restore Court, a program that addresses youth who become court-involved but who have been identified as victims of human trafficking. Judge Teodosio is also President of the Ohio State Bar Association.



A very special component of this symposium will be giving back to organizations that are working with foster youth and victims of human trafficking. Donations and sponsorship will go directly to helping these organizations continue their work impacting lives.



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Join the OSBF this October to Celebrate the Foundation's 2020 Awardees!

Throughout the month of October, we will be celebrating the recipients of our four major awards – The Ritter Award, the Ramey Award for Distinguished Community Service, the Outstanding Program or Organization Award, and the Statewide Community Service Award for Attorneys 40 and Under.

Follow the OSBF on social media, or visit our website at OSBF.org and sign up to receive email updates at the bottom of the page, to find out who this year's awardees are.

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OSBF's tribute gifts are an easy way for you to support OSBF grantmaking initiatives and ensure special colleagues, friends, and family members receive the statewide recognition they deserve. To dedicate your gift, call 614-487-4477 or visit OSBF.org/Donate.

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Join the movement!



INNOVATE.

The **Hamilton County Juvenile Court School-Based Threat Assessments** program, led by **Judge John M. Williams** is the recipient of the **2020 Judicial Administration and Legal Reform Committee Innovative Court Practices Award**. The award was presented at the Ohio Judicial Conference virtual annual meeting on Sept. 10 by former committee chair Angie Lloyd.

The Innovative Court Practices Award is designed to bring greater visibility to exemplary programs in Ohio's courts and facilitate the transfer of those programs to other courts in the state. Award submissions are evaluated on criteria including creativity, the newness of the program, its effectiveness and whether it addresses significant issues that are regional in scope.

Judge John Williams directed the Hamilton County Juvenile Court to begin tracking school violence, and to work with a clinical psychologist to develop new protocols for responding, assessing and intervening when juveniles are charged with an offense that involves targeted threats of violence at school. These threat assessments, completed by the court's chief clinical psychologist Dr. Nicole Leisgang, considers a wide variety of issues, from family functioning to social media activity, to customize an intervention plan.



LEAD.

Judge James D. Jensen is the posthumous recipient of the **2020 Thomas J. Moyer Award for Judicial Excellence**. Jensen, a prominent and deeply involved member of the Ohio legal community, passed away in August 2020. The award was presented at the Ohio Judicial Conference virtual annual meeting on Sept. 10 by OSBA President Linda Tucci Teodosio.

The Moyer Award recognizes a current or former Ohio state or federal judge who displays outstanding qualities of judicial excellence including integrity, fairness, open-mindedness, knowledge of the law, professionalism, ethics, creativity, sound judgment, courage and decisiveness.

Judge Jensen was elected to the Ohio Sixth District Court of Appeals in 2013, where he served until his retirement in 2019. He was also a longtime judge of the Lucas County Court of Common Pleas, a position to which he was appointed in 1995 and subsequently re-elected until 2013. He served on the OSBA's Board of Governors and as a past president of the Toledo Bar Association.



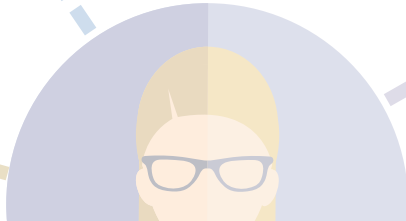
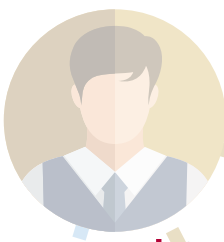
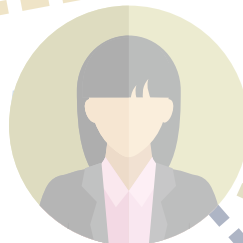
EDUCATE.

This summer, the OSBA launched **#WebWatercooler**, a new web series for young lawyers. Every third Wednesday of the month, attorneys are invited to a virtual meetup and discussion with experts on a variety of current topics.

Summer discussions have included why it's okay to not be productive in a pandemic, travel and road trips, being a female litigator and hobbies (including wine) with speakers from the Ohio Public Defender's office and solo practices.

Coming this fall are discussions on work flow with Samuel M. Goodwater from Huntington Bank and positivity in the practice of law with Gina Piacentino, managing partner at the Weldele & Piacentino Law Group Co., LPA.

Learn more and join us at the virtual watercooler at OhioBar.org/WebWatercooler.





Here's how the OSBA and our members help improve and advance the legal profession.



ADVOCATE.

The OSBA's **Inclusion and Diversity Resource Page** contains tools and information for legal professionals who want to make a difference as part of our commitment to advancing diversity, inclusion and equity in the legal profession.

The page includes details on the OSBA's work, self-check resources on topics like acknowledging bias and creating accountability, and curated news from external sources, along with a variety of other resources. Stay tuned for additional educational resources.

Visit OhioBar.org/Diversity to learn more.



COLLABORATE.

The OSBA is the recipient of an **Ohio Supreme Court civil justice grant** for its **Rural Practice Clerkship Program**. The program is an educational experience for law students aimed at increasing access to justice in Ohio's 65 rural counties. In the spring, up to eight second year law students will be selected for 10-week clerkships where they will be placed with OSBA members who practice in a rural county. Participants must have an interest in practicing in a rural area after graduating.

The Supreme Court's civil justice grants provide funding to courts and court-related associations to help low-income, underserved and disadvantaged Ohioans who need legal assistance.

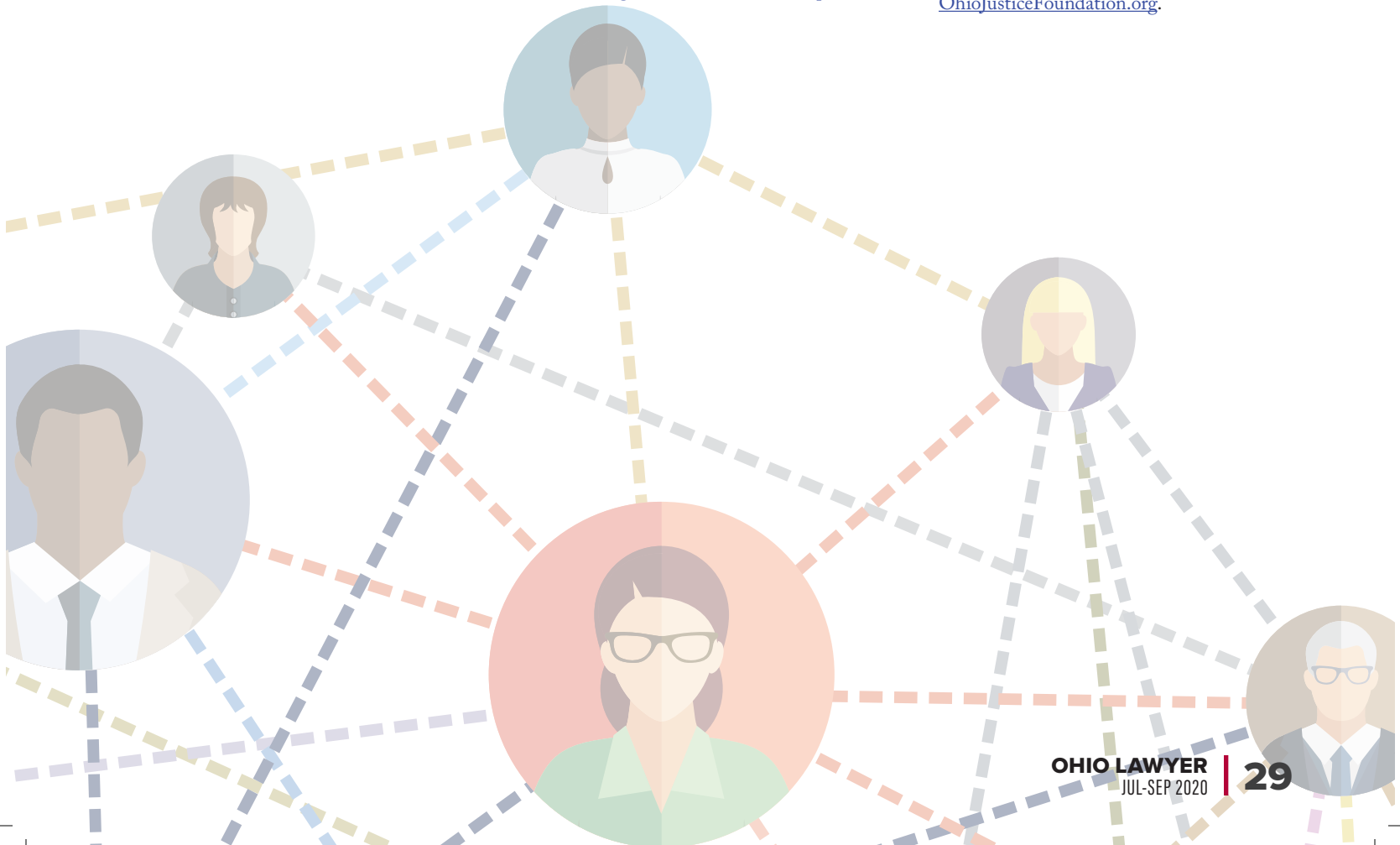
Learn more about the Rural Practice Clerkship at OhioBar.org/RuralPracticeClerkship.



VOLUNTEER.

The **Ohio Access to Justice Foundation's 2019 Pro Bono Report** provides a thorough look into the volunteer work completed by attorneys across the state. In 2019, 3,710 Ohio attorneys completed 105,547 hours of pro bono service statewide, providing more than \$26 million worth of free legal aid.

The foundation works with the Supreme Court of Ohio's Attorney Services Division to gather information about pro bono volunteerism in Ohio and financial contributions to legal services organizations around the state. Though the pro bono reporting period was cut short this year due to COVID-19, the report still shows the value Ohio attorneys have created through pro bono services. View more details, including a breakdown by county, at OhioJusticeFoundation.org.





LiveCLE

Oct. 5 - 6

35th Annual Ohio Environment, Energy and Resources Law Seminar
Live Interactive Webinar

Oct. 5

Professionalism: Reflecting on the Ideals - Quick Webcast
Live Interactive Webinar

Oct. 8

Ohio Cannabis Law Conference
Live Interactive Webinar

Oct. 8

Dashboard Warning Lights: Mental Health in Lawyers in the Time of COVID-19
Live Interactive Webinar

Oct. 15 - 16

57th Annual Midwest Labor and Employment Law Seminar
Live Interactive Webinar

Oct. 20

Litigation Section Conference
Live Interactive Webinar

Oct. 21

Juvenile Law
Live Interactive Webinar

Oct. 22.

Contract Law: 12 Rookie Blunders Good Lawyers Often Make
Live Interactive Webinar

Oct. 27

Advanced Workers' Compensation
Live Interactive Webinar

Nov. 4

Eighth Annual Family Law Institute
Live Interactive Webinar

Nov. 5

Taking and Defending Effective Depositions
Live Interactive Webinar

Nov. 6

Corporate Counsel Section Institute
Live Interactive Webinar

Nov. 12

Antitrust Law: Big Data
Live Interactive Webinar



Become a poll worker, earn CLE.

ELECTION DAY – Nov. 3

Ohio attorneys who complete training and serve as volunteer poll workers for a day at general election sites on Nov. 3 will earn credit toward their continuing legal education requirements.

The novel order from the Ohio Supreme Court makes Ohio the first in the nation to take this innovative approach to strengthening elections.

Get involved and sign up at VoteOhio.gov/DefendDemocracy.



Retiring? Contemplating Retirement? Winding Down Slowly?

Growing Ohio personal injury practice is looking to team up with personal injury lawyers/firms throughout Ohio that are looking for a practical way to ride off into the sunset.

Our goal is to team up with successful lawyers seeking to have their legacies preserved through ethical and responsible representation.

We will compensate for established good will and are open to various transitions.

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Find expert services, office spaces for sale, referral ads, and other listings. This is an easy and affordable way to reach the OSBA Members on a quarterly basis.

Contact **Amanda Morrow** for more information at (614) 487-4453 or email at AMorrow@ohiobar.org.

In Memoriam

2019

William Walder Jacobs; 67, Cleveland, Sept. 12, 2019

Branco Urbancic; 91, Cleveland, Nov. 18, 2019

Prof. David N. Mayer; 63, Columbus, Nov. 23, 2019

2020

Charles W. Wilburn; 90, Columbus, Jan. 20, 2020

Thomas C. Nurre; 89, Cincinnati, Feb. 2, 2020

Robert D. Holland; 84, Upper Arlington, Feb. 10, 2020

Harry L. Riggs, Jr.; 89, McKinney, TX, Feb. 16, 2020

Julie Davis; 59, Columbus, March 26, 2020

John J. Gill; 88, Rocky River, March 31, 2020

Paul Wesley Hertrick; 70, Medina, May 6, 2020

Richard Bingham Meyers; 79, Chesapeake, May 6, 2020

Judge Thomas "Thom" Henry Gerken; 67, Logan, May 10, 2020

Scot Evan Dewhirst; 67, Columbus, May 21, 2020

Shale S. Sonkin; 92, Cleveland Heights, June 8, 2020

Judge James D. Jensen; 77, Toledo, Aug. 6, 2020

Judge H. William Pollitt; 72, Columbus, Aug. 13, 2020



Introducing the Greenbook Companion

You may notice that your "Ohio Lawyer" magazine is a little thicker this quarter. We are pleased to introduce our new companion to the "Ohio State Bar Association Report" or Greenbook.

At the OSBA, one of our commitments is to keep our busy membership current on the caselaw changes, legislation and legal news pertinent to your practice.

Here's how you can continue to stay current on caselaw:

- We'll be providing caselaw highlights from the previous quarter right here, with your "Ohio Lawyer" magazine. You'll see summaries of pertinent cases decided by practice area in the pages to follow.
- We're also looking to the future: In 2021 we'll be rolling out an enhanced version of the electronic "OSBA Report" (or online Greenbook), which is the email you receive from us either daily or weekly, depending on your preference.
- Speaking of preference, you can customize your electronic "OSBA Report" not only by frequency but by practice area and/or court, depending on what is most helpful to you.

Customize Your Online Greenbook

If you have not already done so, we highly encourage you to take the time to customize your online Greenbook. The electronic version of the Greenbook also includes legal and legislative news, including our Weekly Legislative Report every Thursday and the latest postings from our job board.



1. Visit ebar.ohioabar.org



2. Enter your **OSBA website login credentials**




3. In the navigation tab, **follow the red arrow.** Select "**Customize**" and choose your practice areas and the frequency of your updates



4. After you select your preferences, click "**Save**" at the bottom of the screen



5. Make sure to add osba@ohioabar.org to your email "safe senders" list so that you never miss an update to your spam folder.

The Greenbook has been a large part of our organization's identity for many years. As the practice of law and the needs of our membership have evolved, so must the ways we deliver the most timely and relevant content to you. While this is certainly a big change for us, what has not (and will never) change is our commitment to being a reliable source of information for Ohio attorneys and legal professionals. We hope you enjoy this new "Ohio Lawyer" feature! 

We Invite Your Feedback

If you have thoughts about how to improve upon our print and electronic offerings to make the Greenbook most helpful to you, please send your feedback to osba@ohioabar.org. Put "Greenbook feedback" in the subject line.

Ohio caselaw summaries from July 1 – August 31, 2020

In Case You Missed It – The following are summaries of cases decided by Ohio Courts between July 1 - August 31, 2020.

To read the decisions in their entirety, please visit www.ebar.ohioabar.org and enter the case name in the “keyword” search field.

Administrative Law

Appeal. State ex rel. Hodkinson v. Ohio State Racing Comm., 2020-Ohio-4073 | 10th Appellate District | 8/11/20 Petition for writ of mandamus seeking to order respondent-state racing commission to hear petitioner-licensee's appeal challenging track judges' no-call decision during a horserace, writ is denied since Ohio Adm. Code 3769-17-41 authorizes licensees aggrieved by judges' ruling to appeal to the commission, but even if track judges' decision finding no merit to licensee's interference complaint is construed as a ruling, licensee was not aggrieved because there was no punitive action taken against him.

Liquor permit. Floyd's Legacy, L.L.C. v. Ohio Liquor Control Comm., 2020-Ohio-4074 | 10th Appellate District | 8/11/20 Denial of renewal of club's liquor permit after two shootings occurred at the club is affirmed since notice and hearing requirements in R.C. 119.07 satisfy procedural due process requirements and is an alternative to Ohio Adm. Code 4301:1-1-65, and the club was consistently apprised of the status of the investigation of alleged liquor control violations since its inception.

Appeal. Rosa v. Willoughby Zoning Dept., 2020-Ohio-4270 | 11th Appellate District | 8/31/20 Appeal of board of zoning appeals' denial of appellant-property owner's administrative appeal of notice of zoning violation is dismissed for procedural errors where appellant appealed to court of appeals rather than common pleas court and also listed zoning department as the appellee instead of the board of zoning appeals, R.C. 2505.02.

Banking & Finance

Appeal. Patel v. Huntington Banc Shares Fin. Corp., 2020-Ohio-3937 | 11th Appellate District | 8/3/20 In plaintiff's action against defendant-bank claiming unauthorized electronic transfers to accounts of others, appeal of summary judgment in favor of defendant is dismissed for lack of a final appealable order where plaintiff's action includes multiple claims and parties, some of which are still pending, there was no Civ.R. 54(B) determination of no just reason for delay, and therefore no final order exists.

Electronic funds transfer. Tennant v. Huntington Natl. Bank, 2020-Ohio-4063 | 8th Appellate District | 8/13/20 In plaintiffs' small claims action against defendant-bank asserting that funds were electronically stolen from their bank account, trial court committed plain error in granting defendant's motion to dismiss based on the Electronic Funds Transfer Act (EFTA) statute of limitations where plaintiffs' allegations support state-law contract and tort claims that are not pre-empted by EFTA, and they were not required to plead their legal theory of recovery.

Bankruptcy

Creditor's Application for Examination. Gracotech, Inc. v. Perez, 2020-Ohio-3595 | 8th Appellate District | 7/1/20 In bankruptcy proceeding initiated by defendant after extensive tort litigation between parties, trial court erred in denying Creditor's Statutory Application for Examination, R.C. 2735.05, filed by law firm that had represented defendant, which owed legal fees to firm, since firm is a creditor of defendant within common, everyday meaning of creditor, and court applied wrong legal standard in interpreting "creditor."

Business Law

Records request. Bodenstein v. Richard Aloisio Trucking, Inc., 2020-Ohio-376 | 12th Appellate District | 7/20/20 In plaintiff-trustee's action for accounting and breach of fiduciary duty against defendants-trucking companies, denial of plaintiff's request for attorney fees was not error where plaintiff previously had control of at least some requested documents and failed to retain copies, her improper actions created an environment of distrust which justified defendants' reluctance to share records, her request for records was made under R.C. 1701.37, which provides no attorney fee-shifting provision, and defendants did not act in bad faith in refusing her request for records.

Fiduciary duty. Tuttle v. Collins, 2020-Ohio-4062 | 8th Appellate District | 8/13/20 In plaintiffs' derivative action seeking declaration that letter of intent and purchase agreement to sell property owned by not-for-profit cultural museum corporation to foundation were breaches of defendants' fiduciary duties as directors, trial court did not err in granting Civ.R. 12(C) motion to dismiss where plaintiffs failed to allege material facts stating that defendants personally benefited from sale of property.

Construction Law

Arbitration. Contract Supply, Inc. v. T.H. Marsh Constr. Co., 2020-Ohio-392 | 12th Appellate District | 8/3/20 In action for breach of contract where plaintiff sought foreclosure on mechanic's lien for unpaid work after defendant-developer terminated its subcontract, trial court erred in granting defendants' motions to dismiss and in refusing to stay litigation pending arbitration where court has subject matter jurisdiction pursuant to R.C. 2305.01, even though dispute is subject to arbitration agreement, and plaintiff's subcontract specifically reserved the right to file a lien, although it arises from claim subject to arbitration, and therefore plaintiff was not in default of arbitration.

Contract. Jindal Builders & Restoration Corp. v. Cincinnati Metro. Hous. Auth., 2020-Ohio-4043 | 1st Appellate District | 8/12/20 In plaintiff-builder's breach of contract action against defendant-housing authority for damages suffered due to delays, partly caused by defendant, in starting a housing rehabilitation project, judgment in favor of defendant was error where, under the contract, certain overhead expenses from delay were recoverable, but overhead expenses may not be recovered for plaintiff's own delay in obtaining permits.

Consumer Law

Standing. Torrance v. Rom, 2020-Ohio-3971 | 8th Appellate District | 8/6/20 Dismissal, Civ.R. 12(C), of plaintiff-property owner's action against defendant-property managers for violation of Deceptive Trade Practices Act, on reasoning that plaintiff lacked standing, was error since, although plaintiff was not a party to property-management agreements between defendants and plaintiff's previously owned business, a contractual relationship is not a prerequisite to recovery, and plaintiff has standing to pursue consumer claim based on alleged deceptive trade practices which influenced plaintiff's decision to invest in properties, R.C. 4165.01 to 4165.04.

Contracts

Unjust enrichment. Longmire v. Danaci, 2020-Ohio-3704 | 10th Appellate District | 7/14/20 In action for unjust enrichment where plaintiffs sought repayment of loan to defendant-nephew for his educational expenses, judgment in favor of plaintiffs was not error where there was an oral contract between the parties for repayment of money advanced by plaintiffs on behalf of defendant and, although plaintiffs' breach of contract claim was barred by statute of frauds, consideration of emails to show loan was not a gift did not violate law of the case doctrine for the quasi-contract claim of unjust enrichment.

Damages. Bank of Am., N.A. v. Goetz, 2020-Ohio-3751 | 6th Appellate District | 7/17/20 In complaint alleging default on credit card account, trial court erred in concluding that bank failed to establish damages related to cardholder's obligation to repay charges, and cause is remanded to determine a damages award consisting of credit card charges that cardholder must pay and statutory interest pursuant to R.C. 1343.03(A).

Breach. Greer v. Finest Auto Wholesale, Inc., 2020-Ohio-3951 | 9th Appellate District | 8/5/20 In action for breach of contract against defendant-vehicle company for its assurances following inspection that vehicle subsequently

Contracts (continued)

purchased by plaintiff had not been in an accident, trial court erred in granting defendant's motion for judgment on the pleadings where defendant's service agreement with vehicle seller did not negate the possibility of service contract with plaintiffs, and plaintiffs pled with particularity operative facts in support of claim.

Attorney fees. John D. Smith Co., LPA v. Lipsky, 2020-Ohio-3985 | 2nd Appellate District | 8/7/20 In plaintiff-attorney's action for unpaid professional services fees, judgment in favor of plaintiff was not error where defendant signed engagement letter with no indication that he was signing only in corporate capacity, plaintiff's firm represented both defendant and his company, agreement did not expressly provide that defendant's company would be solely responsible for payment, and defendant used personal assets to fund the litigation for both himself and his company.

Breach. Ada Exempted Village School Dist. Bd. of Edn. v. Ada Wind, L.L.C., 2020-Ohio-4017 | 3rd Appellate District | 8/10/20 In plaintiff-school district's breach of contract action against defendants who refused to remove wind turbine from plaintiff's property after it was made inoperable by lightning, trial court erred in granting defendants' motion to dismiss since the parties' agreement to mediate constituted initiation of an action under terms of renewable energy service agreement, the action for mediation was brought within the contractual period of limitations, and the statute of limitations in R.C. 2305.06 did not apply.

Representative's liability. Village at the Greene v. Smith, 2020-Ohio-4088 | 2nd Appellate District | 8/14/20 In action by nursing facility to recover resident's unpaid bill from resident's son, allegedly as power of attorney, but then facility asserted that it was bringing action against son in his individual capacity, summary judgment for son was not error where son signed contract with facility as resident's representative but resigned as resident's attorney-in-fact prior to judgment, and son expressly declined to voluntarily assume personal responsibility for resident's charges.

Attorney fees. Rengel v. Yeager, 2020-Ohio-4166 | 6th Appellate District | 8/21/20 In plaintiff's action to recover unpaid attorney fees, summary judgment in favor of plaintiff was not error where, although plaintiff attached retention agreement to his exhibit rather than billing statement as identified in the complaint, the mistake was harmless because he provided evidence showing there was a written contract signed by the parties with a fee schedule and a set interest rate, and defendant failed to show that the plaintiff was purposely deceptive or had an improper motive in the document misidentification.

Attorney fees. Cruz v. English Nanny & Governess School, 2020-Ohio-4216 | 8th Appellate District | 8/27/20 In action for, inter alia, breach of contract against defendant-nanny school and placement service that severed its relationship with plaintiffs following their complaint against one of defendant's clients, trial court erred in its award of attorney fees to plaintiffs since the court failed to explain why the hours billed by secondary law firm

were necessary and reasonable and, with limited exception, a trial court lacks jurisdiction to award attorney fees expended on appeal while defending a judgment; case is remanded for recalculation of fees.

Corporate Law

Derivative action. Zalvin v. Ayers, 2020-Ohio-4021 | 1st Appellate District | 8/10/20 In plaintiff's shareholder derivative class action against defendants-corporation and directors for breach of fiduciary duty in sale of corporation, trial court did not err in granting defendants' motion to dismiss with prejudice under Civ.R. 12(B)(6) where plaintiff's complaint contained conflicting allegations concerning defendants' actions in merger, including claiming that pursuit of a merger was done in secret, but then admitting in later paragraphs that proxy statement disclosed initial meetings regarding a possible merger.

Criminal Law

Reopening. State v. Baldwin, 2020-Ohio-3895 | 6th Appellate District | 7/1/20 Application to re-open appeal, App.R. 26(B), is granted where appellate counsel failed to assign as error trial court's denial of objection to testimony of state's witness that defendant's brother threatened him since testimony had no probative value to offense charged; appellate counsel also failed to assign as error appellant's conviction of first-degree engaging in a pattern of corrupt activity since appellant was not charged with any corresponding criminal count that was a first, second or third-degree felony, R.C. 2923.32(B)(1).

Habeas corpus. McIntyre v. Hooks, 2020-Ohio-3529 | Supreme Court of Ohio | 7/2/20 In inmate's pro se habeas corpus action asserting that he has served his sentence where relator was sentenced in 1991 for several felonies and he was re-sentenced in 2016 because of an error in the sentencing entry and a new entry was issued, writ is denied since his claim that he should have been re-sentenced according to the statutes in effect in 2016 is without merit and, moreover, sentencing errors are not jurisdictional, and thus are not cognizable in habeas corpus.

Prohibition. State ex rel. Neguse v. McIntosh, 2020-Ohio-3533 | Supreme Court of Ohio | 7/2/20 In inmate's pro se prohibition action to invalidate a 1995 nunc pro tunc order in which the trial judge denied his petition for post-conviction relief, writ is denied where relator failed to comply with R.C. 2969.25(A) since his affidavit did not fully comply with the statutory requirements, and relator also had an adequate remedy at law by way of appeal from the denial of his petition for post-conviction relief.

Court costs. State v. Taylor, 2020-Ohio-3514 | Supreme Court of Ohio | 7/2/20 Although imposition of court costs on a convicted defendant is mandatory regardless of a defendant's indigency, R.C. 2947.23(A)(1)(a), a trial court has discretion to waive, suspend or modify those costs pursuant to R.C. 2947.23(C), but the court is not required to consider a defendant's present or future ability to pay in assessing a motion under R.C. 2947.23(C).

Reopening. State v. Cunningham, 2020-Ohio-3586 | 8th Appellate District | 7/2/20

Application for re-opening appeal, App.R. 26(B), is denied since claim that appellate counsel's failure to argue that the second-degree felony corrupting another with drugs conviction should be reduced to a fourth-degree felony because the verdict form returned by the jury was defective under R.C. 2945.75(A)(2) is without merit because appellant was not prejudiced since he was convicted of the lowest degree of the offense.

Evidence. State v. Boyce, 2020-Ohio-3573 | 2nd Appellate District | 7/2/20 In conviction of, inter alia, engaging in a pattern of corrupt activity, trial court did not err in allowing state to introduce evidence about specific facts regarding defendant's prior burglary conviction that was an underlying predicate act for the count of engaging in a pattern of corrupt activity and permissible under Evid.R. 404(B).

Sentencing. State v. Hereford, 2020-Ohio-3587 | 8th Appellate District | 7/2/20 Following conviction of attempted receiving stolen property and multiple hearings for subsequent violations of community control (CC), challenge to prison sentence imposed is without merit since court was not required to re-notify defendant of sentence at an intervening hearing for a CC violation since defendant received sufficient notice of the potential prison term for violating CC at the initial sentencing, R.C. 2929.15(B)(3) and 2929.19 (B)(2), Howard.

Right to counsel. State v. Williams, 2020-Ohio-3588 | 8th Appellate District | 7/2/20 On reconsideration in conviction of drug offenses, claim that trial court had a duty to inquire whether defense attorney had a conflict of interest in dual representation of defendant and his wife is without merit since an attorney representing multiple defendants is in the best position to determine whether a conflict of interest exists or might develop, and it is reasonable for a court to assume, in the absence of special circumstances, that no conflict exists or defendants knowingly accepted any risk of conflict.

Court costs. State v. Donaldson, 2020-Ohio-3591 | 8th Appellate District | 7/2/20 In conviction by plea of, inter alia, forgery, trial court did not abuse its discretion by ordering defendant to pay court costs after finding defendant indigent since a trial court is not required to consider a defendant's present or future ability to pay court costs, regardless of whether defendant must also serve a prison sentence.

Indictment. State v. Eatmon, 2020-Ohio-3592 | 8th Appellate District | 7/2/20 In prosecution of, inter alia, attempted murder, trial court did not err in denying state's material witness warrant and dismissing indictment without prejudice under Crim.R. 48(B) since dismissal was not based on witnesses' apparent wish to not prosecute or failure to appear, but rather was based on state's failure to sufficiently demonstrate that the witnesses would not appear at trial and its representation that it was not able to proceed without those witnesses.

Jury instruction. State v. Stevenson, 2020-Ohio-3593 | 8th Appellate District | 7/2/20 In conviction of felonious assault, trial court did not err by denying defendant's request for an accident instruction where there was no evidence to support the instruction, and

defendant made statements that never asserted that she did not shoot the victim, and she denied that she was even present when victim was shot.

Harassment with a bodily substance. State v. Gulley, 2020-Ohio-3597 | 8th Appellate District | 7/2/20 In conviction of, inter alia, harassment with a bodily substance, R.C. 2903.13(A), claim that R.C. 2903.13(F) is an element of the crime is without merit since it sets forth an exception to the crime of harassment by a bodily substance and does not constitute an additional element of the offense that the state must prove, Flucas.

New trial. State v. Reed, 2020-Ohio-3574 | 2nd Appellate District | 7/2/20 Following 2002 conviction of murder and evidence tampering that was affirmed, denial of successive motion for leave to file a delayed new-trial motion was not error where the arguments appellants makes are the same that he previously made, the documents attached to his motion fail to demonstrate any substantive document that is new, and there is no demonstration that he was unavoidably prevented from discovering any of them.

Speedy trial. State v. Davis, 2020-Ohio-3617 | 5th Appellate District | 7/2/20 In conviction by plea of domestic violence, trial court did not err by not conducting a timely preliminary hearing since issuance of subsequent indictment rendered any defects in the preliminary hearing moot, Pugh, and subsequent continuance of trial did not violate R.C. 2945.71 speedy trial right because court's reason of a crowded criminal docket was a sufficient justification.

Plea. State v. Sutton, 2020-Ohio-3604 | 12th Appellate District | 7/6/20 In conviction by plea of drug offenses, denial of pro se motion to vacate conviction and set aside guilty plea was not error since appellant's claim that plea was not valid and that trial counsel provided ineffective assistance are barred by res judicata because claims could have been raised on direct appeal, and challenge to agreed-upon consecutive sentences based on court not making statutory findings is without merit since the sentence is not subject to review, Porterfield.

Evidence. State v. Brown, 2020-Ohio-3614 | 3rd Appellate District | 7/6/20 In conviction of domestic violence, trial court did not err in admission of officer's testimony of victim's statements to him where officer responded to a motor vehicle accident the victim was involved in shortly after the incident between her and defendant since victim's traffic incident while pursuing defendant was minor and not an intervening circumstance that influenced her statements to officer, Evid.R. 803(2).

Murder. State v. Williams, 2020-Ohio-3616 | 3rd Appellate District | 7/6/20 Bench conviction of murder, R.C. 2903.02(B), met the sufficiency and weight of evidence standards where there was expert testimony that victim died of strangulation, not a seizure, cell-phone data placed defendant in the area at the time of victim's death, defendant's statements concerning his actions during this time were not truthful and, despite his claim that he was physically incapable of strangling victim, there was expert testimony provided that he was physically capable to do so.

Speedy trial. State v. Carlidge, 2020-Ohio-3615 | 3rd Appellate District | 7/6/20 In conviction of drug trafficking, defendant's speedy trial right was not violated since he was already imprisoned in an Ohio correctional institution for offenses unrelated to those in this action, and he failed to provide written notice of the place of his imprisonment and a request for a final disposition to causes to the prosecuting attorney and the court in this action, R.C. 2941.401.

Theft. State v. Smith, 2020-Ohio-3618 | 5th Appellate District | 7/6/20 Conviction of theft, R.C. 2913.02 (A)(1), met the sufficiency and weight of evidence standards since there was ample circumstantial evidence to allow jury to conclude that defendant was the person who stole property from victim where defendant was wearing distinctive clothing seen on a surveillance camera at the scene of the crime and the investigating officer's body cam recorded defendant wearing the same clothing the day following the theft.

Fair trial. State v. Fortune, 2020-Ohio-3606 | 9th Appellate District | 7/6/20 In bench conviction of sex offenses against defendant's minor adopted step-daughter, defendant was not deprived of a fair trial by claim that trial judge considered prior pre-sentence investigation reports involving defendant since defendant failed to ensure that the appellate record contained the reports, and defendant did not object to the judge's statements, his consideration of the reports, or his alleged bias or claim of plain error on appeal.

Impaired driving. State v. Thomason, 2020-Ohio-3654 | 5th Appellate District | 7/7/20 In conviction by plea of OVI, trial court did not err in finding substantial compliance with field testing where experienced trooper had been trained in accordance with the NHTSA manual, he substantially complied with the NHTSA manual in conducting the standard field sobriety tests and observed clues of impairment and sufficient other evidence of intoxication in record, including defendant's erratic driving, her eyes were glassy and she had an odor of alcohol.

Search. State v. French, 2020-Ohio-3653 | 5th Appellate District | 7/8/20 In appeal by state of grant of motion to suppress in a prosecution of defendant for drug offenses, grant of motion was not error since defendant's father did not have authority to consent to search house that defendant lived in that his father owned, but did not reside in since father did not have common authority in the residence.

Search. State v. Gordon, 2020-Ohio-3655 | 5th Appellate District | 7/8/20 In conviction by plea of, inter alia, weapon offenses, denial of motion to suppress was not error where officer's investigatory stop of defendant was supported by officer's reasonable, articulable suspicion since he found defendant at the location that an assault was reported and that assaulter had a gun, defendant was identified as the perpetrator by a passerby at the scene, and defendant fled when he saw officer.

Plea. Cleveland v. Jones-McFarlane, 2020-Ohio-3662 | 8th Appellate District | 7/9/20 In conviction by plea of first-degree misdemeanor OVI, R.C. 4511.194, trial court erred by failing to comply with Crim.R. 11(E) by not informing

defendant that the effect of her plea was a complete admission of guilt as required by Crim.R. 11(B), Jones.

Competency. State v. Smith, 2020-Ohio-3666 | 8th Appellate District | 7/9/20 In conviction by plea of, inter alia, murder, trial court did not err in finding defendant competent to stand trial without a hearing where defense counsel reviewed the competency report, parties stipulated to the psychiatrist's finding of competency of defendant to stand trial, and thus no R.C. 2945.37(B) competency hearing was required.

Preindictment delay. State v. McKinley, 2020-Ohio-3664 | 8th Appellate District | 7/9/20 In prosecution of, inter alia, a 1999 rape, grant of motion to dismiss for pre-indictment delay was error where state established that it had a justifiable reason for delay in prosecuting defendant since it was a cold case until a 2012 DNA match and state attempted to, but could not, locate victim until 2019, and defendant failed to meet his burden of establishing that he was actually prejudiced by the delay.

New trial. State v. Mock, 2020-Ohio-3667 | 8th Appellate District | 7/9/20 Following conviction of offenses relating to check fraud that was affirmed, denial of motion for leave to file a delayed motion for a new trial was not error where jury questions and trial court's answers were part of court's file sent to the court of appeals in 2016, records were not examined by defendant's attorney or assistant until 2018, and defendant was also not unavoidably delayed in discovering evidence of alleged Brady violations.

Search. State v. Carson, 2020-Ohio-3669 | 8th Appellate District | 7/9/20 In conviction by plea of drug and weapon offenses, denial of motion to suppress was error where officers had no reasonable suspicion that defendant was involved in illegal activity since body cam showed defendant-passenger in a parked car smoking a cigarette and looking at his cell phone and did not appear incapacitated as officer testified, and officer stated he was checking on defendant's well-being, but never asked him if he needed help.

Plea withdrawal. State v. Mason, 2020-Ohio-3671 | 8th Appellate District | 7/9/20 Following conviction by plea of drug and related offenses and affirmance of conviction and sentence, but with post-release control corrected from five years to three years, denial of post-sentence motion to withdraw plea without a hearing was not error since re-sentencing issue was not related to appeal of motion to withdraw plea, and failure to impose correct post-release term did not void entire sentence, only the post-release term.

Ineffective assistance. S. Euclid v. Schutt, 2020-Ohio-3661 | 8th Appellate District | 7/9/20 In conviction of first-degree misdemeanor theft, defense counsel provided ineffective assistance by not filing a motion to dismiss for a speedy trial violation where continuance of trial date beyond the applicable statutory time limits of R.C. 2945.71 was made without any reason provided for a delay of more than six months and without defendant's acquiescence, R.C. 2945.73(B).

Criminal Law (continued)

Sex offenses. State v. Stansell, 2020-Ohio-3674 | 8th Appellate District | 7/9/20 Following 1998 conviction by plea of sex offenses, denial of motion to vacate sexually violent predator specifications was error since appellant did not qualify as a sexually violent predator when he was sentenced where he did not have any prior convictions for sexually-oriented offenses, and thus his "life tail" sentence was unlawful and res judicata does not apply because the indicted offenses could not be used to qualify a defendant for a sexually violent offender specification, Frierson.

Appeal. State v. Scott, 2020-Ohio-3676 | 8th Appellate District | 7/9/20 Following 2017 conviction of, inter alia, felonious assault that was affirmed on appeal, denial of 2019 motion for a final appealable order was not error since challenge to imposition of post-release control may only be challenged on direct appeal, Harper, and since appellant could have raised his argument on direct appeal but did not, his argument is barred by res judicata.

Self-defense. State v. Wallace-Lee, 2020-Ohio-3681 | 2nd Appellate District | 7/10/20 In conviction of murder, trial court did not commit plain error in not instructing the jury that defendant had no right not to retreat involving her self-defense claim since victim came to defendant's property for an agreed upon fight and defendant stabbed the victim in defendant's back yard and not in her home or on porch; trial court did err by imposing post-release control for murder, an unclassified offense, since parole applies to a murder conviction.

Aggravated menacing. State v. Tipton, 2020-Ohio-3680 | 2nd Appellate District | 7/10/20 Conviction of aggravated menacing, R.C. 2903.21, was not against the weight of evidence where defendant made threats of harm to victim to victim's fiancé, and it could be inferred that the defendant "knew or reasonably should have known" the third-party would tell the victim about threats and, moreover, defendant called victim's fiancé while they were together and victim heard the threats over the speakerphone.

Domestic violence. State v. Fritts, 2020-Ohio-3692 | 12th Appellate District | 7/13/20 Bench conviction of domestic violence, R.C. 2919.25(A), was supported by the weight of evidence where trial judge found victim-wife's testimony credible that defendant attacked her after she informed him that she desired a divorce and court found defendant's account not credible and state established that defendant did not act in self-defense where he was the aggressor and at fault in creating the situation giving rise to the affray.

Post-conviction relief. State v. Borecky, 2020-Ohio-3697 | 11th Appellate District | 7/13/20 Following 2006 conviction by plea of rape that was affirmed on appeal, denial of pro se petition for post-conviction relief is denied where claim that trial court lacked subject-matter jurisdiction because an indictment had not been filed is without merit since appellant was charged under R.C. 2907.02(A)(2) and was not subject to life imprisonment, and thus neither R.C. 2941.021 nor Crim.R. 7(A) were violated; petition was also untimely under R.C. 2953.21(A)(2) and barred by res judicata.

Plea withdrawal. State v. Torres, 2020-Ohio-3691 | 9th Appellate District | 7/13/20 Following conviction by plea of a drug offense that was affirmed, denial of post-appeal motion to withdraw plea was not error since trial court lacked jurisdiction following the affirmation by the court of appeals, Special Prosecutors, and since claims of ineffective assistance of counsel could have been raised on direct appeal, they are also barred by res judicata.

Administrative license suspension. State v. Leitwein, 2020-Ohio-3698 | 5th Appellate District | 7/13/20 After arrest for, inter alia, OVI in which administrative license suspension (ALS) was imposed for refusal to submit to a chemical test, trial court did not err in denying appeal of the ALS since defendant did not suffer an unreasonable restraint on his personal liberty or suffer a prolonged or unjustified suspension of his driver's license due to the delay in holding his initial appearance.

Domestic violence. State v. Bollar, 2020-Ohio-3811 | 5th Appellate District | 7/14/20 Conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of evidence standards where victim's testimony of defendant's conduct that resulted in injuries to victim and physical evidence found by responding officers supported victim's testimony, and fact that defendant was found not guilty of unlawful restraint did not create an inconsistency in the verdicts.

Plea withdrawal. State v. Burrows, 2020-Ohio-3646 | 1st Appellate District | 7/14/20 Conviction in conviction by plea of, inter alia, aggravated robbery, denial of motion to withdraw plea was not error where motion was untimely, defendant's claim that he had agreed to plead guilty based on his counsel's promise of a six-year sentence, but counsel denied making any such promise, and his denial was corroborated by defendant's responses during the comprehensive change-of-plea hearing, and state would have been prejudiced by the granting of motion.

Jail-time credit. State v. Williams, 2020-Ohio-3706 | 1st Appellate District | 7/15/20 Following conviction of, inter alia, aggravated vehicular homicide, denial of pro se motion for additional jail-time credit was not error where appellant failed to establish that jail-time spent in another state was based on the warrant issued in the present case or was not based on separate charges in the other state, R.C. 2967.191.

Weapon offense. State v. Griffin, 2020-Ohio-3707 | 1st Appellate District | 7/15/20 Conviction of improperly handling a firearm in a motor vehicle, R.C. 2923.16(E)(1), met the sufficiency and weight of evidence standards since defendant failed to "promptly inform" officer during a traffic stop of his concealed handgun license (CHL) since it is a strict liability offense and defendant merely stated that he "forgot" about informing officer of the weapons until after officer observed the CHL in defendant's wallet as defendant was showing him his driver's license over two minutes after the stop.

Complicity. State v. Moore, 2020-Ohio-3708 | 9th Appellate District | 7/15/20 Conviction of complicity to commit felonious assault was supported by sufficient evidence where store security video showed that defendant worked cooperatively with his co-defendant in the

moments leading up to the shooting of the victim and that defendant followed the victim as victim left store with co-defendant following and 20 seconds later gunshots are heard and victim was found shot.

Traffic violation. State v. Atwood, 2020-Ohio-3732 | 5th Appellate District | 7/15/20 Conviction of, inter alia, leaving the scene, R.C. 4549.03, met the sufficiency and weight of evidence standards where defendant was in a single car accident late at night resulting in damage to a neighbor's property and left without notifying neighbor, regardless of the late hour and no houses in vicinity, and the statutory 24-hour notification allowance is not applicable since he did not take immediate steps to notify landowner of accident.

Domestic violence. State v. Sanders, 2020-Ohio-3733 | 5th Appellate District | 7/16/20 Conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of evidence standards where a physical altercation with defendant left victim with minor injuries since record contains sufficient testimony for jury to find that defendant was aware his conduct would probably cause victim to fall down a flight of stairs and suffer injury, and jury did not lose its way in making its credibility determinations.

Post-conviction relief. State v. Barrow, 2020-Ohio-3719 | 8th Appellate District | 7/16/20 Following conviction of, inter alia, attempted murder that was affirmed, denial of petition for post-conviction relief was not error where petition was successive and untimely and did not meet the requirements for the exception in R.C. 2953.23(A)(1) for consideration where petitioner failed to demonstrate that he was unavoidably prevented from discovering an alleged alibi witness' testimony, and he failed to establish any constitutional error since his claim is only actual innocence.

DNA testing. State v. Conner, 2020-Ohio-3720 | 8th Appellate District | 7/16/20 Following 2013 conviction of, inter alia, aggravated murder that was affirmed, appeal of denial of 2019 application for DNA testing is dismissed for lack of a final appealable order since trial court did not provide any explanation in denying the application as required by R.C. 2953.73(D) and R.C. 2505.02.

Self-defense. State v. Jacinto, 2020-Ohio-3722 | 8th Appellate District | 7/16/20 In conviction of felonious assault, trial court did not err in not giving requested self-defense jury instruction since, even assuming a reasonable juror could find that defendant was not at fault in creating the altercation, no evidence was presented tending to support that defendant believed he was in imminent danger of bodily harm prior to striking the victim where defendant stated in police interview that he did not feel threatened by victim poking him in the chest with his finger, R.C. 2901.05(B)(1).

Appeal. State v. Goodson, 2020-Ohio-3723 | 8th Appellate District | 7/16/20 In appeal of conviction of drug possession and possessing criminal tools, appeal is dismissed for lack of a final appealable order where trial court imposed a blanket sentence of time served covering both counts rather than a separate sentence for each offense, Saxon.

Plea withdrawal. State v. Mitchell, 2020-Ohio-3726 | 8th Appellate District | 7/16/20 Following conviction by plea of, inter alia, multiple pandering counts that was affirmed, denial of pro se motion to withdraw plea was not error since trial court had no jurisdiction to consider the motion to withdraw the guilty plea after the judgment had been affirmed, Special Prosecutors.

Appeal. Garfield Hts. v. Salvatore, 2020-Ohio-3728 | 8th Appellate District | 7/16/20 In conviction of minor misdemeanor disorderly conduct, appeal is dismissed as moot since defendant paid the imposed fine and court costs, did not seek a stay of execution of his sentence that he served and did not claim any collateral disability resulted from his conviction, Lewis.

Sealing. State v. W.H., 2020-Ohio-3737 | 10th Appellate District | 7/16/20 Grant of application to seal records of attempted aggravated trafficking conviction was error since applicant's 1991 conviction of first-degree misdemeanor assault constitutes an "offense of violence" under R.C. 2901.01(A)(9)(a), and thus applicant was not an "eligible offender" under R.C. 2953.31(A)(1)(a), precluding grant of application.

Plea withdrawal. State v. Smith, 2020-Ohio-3717 | 8th Appellate District | 7/16/20 Following conviction by plea of aggravated murder, original sentence was vacated on appeal and trial court re-sentenced defendant in accordance with R.C. 2929.03(A), denial of motion to withdraw guilty plea was not error where claim concerning parole eligibility should have been raised in earlier motion to withdraw plea and thus is barred by res judicata.

Counsel disqualification. State v. Nikolic, 2020-Ohio-3718 | 8th Appellate District | 7/16/20 In conviction by plea of, inter alia, attempted abduction, denial of pretrial motion to disqualify counsel was not error where defendant filed motion eight months before his plea, in colloquy he affirmed satisfaction with counsel's representation, and there is no indication he believed at time of plea that his only options were to plead guilty or proceed without effective assistance of counsel.

Burglary/Vandalism. State v. Tate, 2020-Ohio-3721 | 8th Appellate District | 7/16/20 Conviction of burglary and vandalism met the sufficiency and weight of evidence standards where defendant entered premises to retrieve his possessions without renter's or owner's permission, defendant caused property damage to premises that were unrelated to his entry and his intent in entering home was criminal by damaging premises.

Dismissal. Cleveland v. Pinner, 2020-Ohio-3725 | 8th Appellate District | 7/16/20 In prosecution of traffic violation which led to three-vehicle accident, trial court erred in dismissing charge sue sponte before trial where, although drivers of other vehicles had not been subpoenaed, officer was present at trial and could have testified as to elements of charge based on defendant's admission, Crim.R. 48(B).

Traffic violation. Lakewood v. Mitchell, 2020-Ohio-3727 | 8th Appellate District | 7/16/20 Conviction by plea of violation of full-time-and-

attention ordinance met the sufficiency and weight of evidence standards where officer observed defendant's distracted response at two traffic lights, evidence showed defendant's driving behavior was negatively affected by cell phone use, her erratic behavior caused confusion with other drivers, and conviction was not based on presumption that cell phone use was distracting per se.

Sealing. State v. Bell, 2020-Ohio-3750 | 6th Appellate District | 7/17/20 Denial of application for sealing was error where trial court did not comply with R.C. 2953.32 by not scheduling a hearing, not determining whether applicant was an eligible offender, and failing to make the required findings on the record for review, R.C. 2953.31.

Weapons offense. State v. T.J.D., 2020-Ohio-3745 | 2nd Appellate District | 7/17/20 In conviction by plea of having weapons while under disability, trial court erred in denying motion to dismiss indictment since defendant was not under a R.C. 2923.13(A)(3) weapons disability when officers discovered firearms in his residence because the weapons disability was relieved in 1994 when the conviction from which the disability arose was sealed pursuant to R.C. 2953.32.

Plea withdrawal. State v. Myers, 2020-Ohio-3752 | 6th Appellate District | 7/17/20 In conviction by plea of, inter alia, menacing by stalking, denial of post-sentencing motion to withdraw plea was not error where record reflects that defendant did not lack adequate cognitive functioning due to an alleged sleep deprivation to engage in resolving case by plea where he actively engaged in the plea negotiations and received a full Crim.R. 11 hearing.

Animal cruelty. State v. Cooper, 2020-Ohio-3748 | 5th Appellate District | 7/17/20 In conviction of violation of companion animal ordinance where defendant killed dog after it bit his child, ordinance was not unconstitutionally vague where term "negligently" is defined by R.C. 2901.22(D) and term "needlessly" is to be interpreted as a reasonable person of common intelligence would understand term, and an ordinary person would understand killing a dog before exhausting options, such as contacting a veterinarian or humane society, as needlessly killing the animal.

Double jeopardy. State v. Arnold, 2020-Ohio-3749 | 6th Appellate District | 7/17/20 In conviction of interference with custody rights, R.C. 2919.23(A)(1), trial court did not err by denying motion to dismiss on double jeopardy grounds since actions taken by juvenile court in sanctioning appellant's conduct in a custody action did not constitute a new contempt proceeding because the contempt sanction was conditional and aimed at coercing compliance with court-ordered obligations and arose from civil contempt proceedings.

Impaired driving. State v. McCarty, 2020-Ohio-3743 | 2nd Appellate District | 7/17/20 Conviction of OVI met sufficiency and manifest weight of evidence standards where witness observed defendant's erratic driving and yelling in drive-through restaurant line, restaurant worker testified defendant acted very intoxicated and had admitted to being drunk, officer noticed strong odor of alcohol

and slurred speech, and defendant refused to perform field-sobriety tests.

Plea. State v. Qualls, 2020-Ohio-3753 | 6th Appellate District | 7/17/20 In conviction by plea of, inter alia, drug offenses, trial court's acceptance of plea changes and entry of nunc pro tunc judgment was not error where defendant rejected two guilty plea offers before changing his plea, jail videos that defendant claims counsel failed to thoroughly view were not available when first plea was rejected, defendant knew of his own incriminating statements in video when he rejected the second plea offer, and jail videos were not sole evidence of statements.

Receiving stolen property. State v. Funderburke, 2020-Ohio-3847 | 4th Appellate District | 7/17/20 Conviction of receiving stolen property, R.C. 2913.51(A), was not against the weight of evidence where defendant was found driving a stolen automobile with stolen temporary tags and his possession of recently stolen property was not satisfactorily explained in light of surrounding circumstances developed from the evidence, including defendant's evasive actions and walking away from officer while being questioned.

Right to counsel. State v. Doogs, 2020-Ohio-3769 | 3rd Appellate District | 7/20/20 In conviction of weapon offense, trial court did not err in considering represented defendant's pro se motion for acquittal and new trial where defendant's attorney had made the same motions at trial, and also defendant's argument that his attempt to engage in a scheme of hybrid representation is the trial court's error amounts to invited error and defendant sustained no prejudice.

DNA testing. State v. Lemons, 2020-Ohio-3772 | 11th Appellate District | 7/20/20 Following conviction of multiple crimes, denial of successive pro se petition for DNA testing and claim of a Brady violation was not error since the issues could have been raised by appellant on direct appeal from conviction and applies to successive applications for DNA testing of the same items and other items that could have been included in the first application.

Mootness. State v. T.F., 2020-Ohio-3766 | 9th Appellate District | 7/20/20 In appeal of trial court's holding juror in contempt for juror's conduct of informing jury of a newspaper article concerning the case in direct contravention of court's instructions to jury, appeal is dismissed as moot since appellant did not request a stay of his sentence, he has completed all sentencing requirements imposed and he has not shown that he will incur any collateral disability or loss of civil rights from his conviction.

Aggravated murder. State v. Cannon, 2020-Ohio-3765 | 9th Appellate District | 7/20/20 Conviction of, inter alia, aggravated murder, met the sufficiency and weight of evidence standards where state produced evidence that two men broke into the murder victim's apartment while defendant's brother was there, one of those men was shot before he fled, and that man was defendant who later went to a hospital and he could not be excluded by a DNA analysis of the blood found at the apartment, and defendant's attempts to escape from police demonstrated a consciousness of guilt.

Criminal Law (continued)

New trial. State v. Houdeshell, 2020-Ohio-3768 | 3rd Appellate District | 7/20/20 In conviction of, inter alia, murder, arising out of death of infant that was affirmed, denial of Crim.R. 33(b) motion for leave to file a motion for new trial was not error where appellant would have had knowledge of person claiming to have killed infant since that person states in her affidavit that defendant was present and aware of her alleged conduct toward the infant, and thus her confession is not newly discovered evidence.

Citizen's action. State v. Fraley, 2020-Ohio-3763 | 12th Appellate District | 7/20/20 In successive citizen's action filed pursuant to R.C. 2935.09(D) for issuance of an arrest warrant or summons, trial court did not err in not charging county auditor with violating R.C. 102.03(D) where there was no evidence that auditor personally conducted employment performance evaluations of a former county deputy auditor who was auditor's stepson; award of sanctions under R.C. 2323.51 and Civ.R. 11 against citizen was error since those provisions apply only to civil actions.

Self-defense. State v. Lewis, 2020-Ohio-3762 | 12th Appellate District | 7/20/20 Bench conviction of assault, R.C. 2903.13(A), was not against the weight of evidence where, although the burden-shifting changes made by the legislature to the self-defense statute, R.C. 2901.05, applies to all trials held on or after the effective date of the statute, defendant's brother, who defendant claimed to be protecting, was the aggressor and voluntarily entered into the physical altercation with the victim.

Aggravated murder. State v. Madison, 2020-Ohio-3735 | Supreme Court of Ohio | 7/21/20 In appeal of conviction of, inter alia, three counts of aggravated murder with prior calculation and design and with death penalty specifications, imposition of death sentence is affirmed, but convictions of two counts of kidnapping and the related felony-murder specifications are reversed and dismissed; other issues include jury issues, compelled psychiatric examination, evidentiary issues, sentencing issues, prosecutorial misconduct, ineffective assistance and independent sentence review.

Aggravated murder. State v. Hundley, 2020-Ohio-3775 | Supreme Court of Ohio | 7/22/20 Conviction of, inter alia, aggravated murder with prior calculation and design, R.C. 2903.01(A), and imposition of death penalty met the sufficiency and weight of evidence standards, and trial court did not err by allowing appellant to represent himself at the mitigation hearing.

Contempt. In re Feagan, 2020-Ohio-3788 | 1st Appellate District | 7/22/20 Conviction of indirect criminal contempt was not supported by sufficient evidence since designation of appellant as designated trial attorney for a civil action in which a paralegal of appellant's law firm was convicted of indirect criminal contempt cannot impose vicarious liability on appellant since contempt statute, R.C. 2705.02, requires an affirmative act of disobedience of, or resistance to, a court order, and record contains no evidence that appellant initiated or encouraged paralegal to violate court's order.

Sentencing. State v. Criswell, 2020-Ohio-3793 | 1st Appellate District | 7/22/20 Following conviction of drug offenses that was affirmed, appeal of subsequent denial of "Motion for Summary Judgment and to Set Resentencing Date," challenging imposition of post-release control as not in conformity with statutes is dismissed since neither trial court nor court of appeals had jurisdiction because any error in imposition of post-release control is voidable, not void, Harper.

Plea. State v. Grimes, 2020-Ohio-3795 | 1st Appellate District | 7/22/20 In conviction by plea of a weapons offense, plea was validly made where trial court complied with Crim.R. 11 during the plea hearing concerning the nature of the charges, and defendant stated during the plea colloquy that he understood the nature of his disability arising out of a prior juvenile adjudication of delinquency for a firearms offense.

Appeal. State v. Sibert, 2020-Ohio-3786 | 9th Appellate District | 7/22/20 In conviction by plea of misdemeanor domestic violence, claim of plain error in sentencing defendant without an explanation of the circumstances or an express waiver by defendant is dismissed for lack of jurisdiction since defendant failed to timely appeal from his sentencing entry.

DNA testing. State v. Daniels, 2020-Ohio-3810 | 5th Appellate District | 7/22/20 Following 2014 conviction of drug offenses, denial of 2019 application for DNA testing was not error since appellant failed to demonstrate that he satisfied the requirements of R.C. 2953.74(B) (1) that at the time of his trial, DNA testing was not generally accepted, that the results of DNA testing were not generally admissible in evidence, or that DNA testing was not yet available or that there were subsequent advances in DNA technology.

Plea. Cleveland v. Clifford, 2020-Ohio-3803 | 8th Appellate District | 7/23/20 In conviction by plea of first-degree misdemeanor aggravated trespass, plea was validly made where trial court substantially complied with Crim.R. 11(E), even though the court did not fully inform defendant of the effect of his plea since defendant never asserted actual innocence at the plea hearing, and it is presumed he understood that he has completely admitted his guilt, Griggs.

Ineffective assistance. State v. Bozso, 2020-Ohio-3779 | Supreme Court of Ohio | 7/23/20 In non-citizen-defendant's 2016 conviction by plea of sexual battery and attempted abduction, court of appeals erred in reversing trial court's denial of motion to withdraw plea based on trial counsel's alleged failure to inform defendant whether a plea carried a risk of deportation where defendant failed to demonstrate prejudice since defense counsel had warned defendant that his guilty plea would place him into deportation proceedings with limited options for relief, Romero.

Aggravated robbery. State v. Fuller, 2020-Ohio-3804 | 8th Appellate District | 7/23/20 Conviction of aggravated robbery and related offenses in committing the robbery met the sufficiency and weight of evidence standards where the state produced overwhelming evidence to allow the jury to infer that defendant was the individual who

approached the stolen car and robbed the victim at gunpoint, including text messages exchanged between defendant's phone and co-defendant's phone revealing the planning and execution of the robbery by them.

Violation of protection order. State v. Moore, 2020-Ohio-3805 | 8th Appellate District | 7/23/20 Bench conviction of misdemeanor violation of a protection order met the sufficiency and weight of evidence standards where defendant claimed that he did not receive service of the protection order, but officer testified that based on his records, he personally served defendant with the order and defendant signed the service slip and, on the merits, defendant was identified by an employee of a store where the protected party was employed, and protected party identified defendant on the store's surveillance video.

Appeal. State v. Taylor, 2020-Ohio-3806 | 8th Appellate District | 7/23/20 Following 2009 conviction of aggravated murder and attempted murder that was remanded for nunc pro tunc entry to eliminate post-release control for the aggravated murder conviction and a subsequent nunc pro tunc entry to impose post-release control for the attempted murder conviction, appellant's appeal is dismissed since a nunc pro tunc entry is not a new final appealable order.

Witnesses. State v. Trout, 2020-Ohio-3940 | 4th Appellate District | 7/23/20 In conviction of, inter alia, rape of defendant's four year-old granddaughter, trial court did not err in finding minor child victim, six years-old at the time of trial, competent to testify where court considered the Frazier factors and defense counsel was not ineffective in not submitting proposed questions prior to the child-victim's competency hearing, nor was counsel ineffective in not cross-examining 8 of the state's 16 witnesses.

Discovery. State v. Harrison, 2020-Ohio-3817 | 8th Appellate District | 7/24/20 In conviction of minor misdemeanor speeding and a window tint violation, trial court did not err in not dismissing action for failure of state to turn over discovery before trial where the items were immediately provided when objection was raised, and defendant declined court's offer of a continuance to review the material, Crim.R. 16(L).

Post-conviction relief. State v. Hill, 2020-Ohio-3824 | 6th Appellate District | 7/24/20 Following conviction of, inter alia, seven counts of felonious assault that was affirmed, denial of petition for post-conviction relief was not error since claim that petitioner was denied his right to the effective assistance of counsel by counsel not challenging the imposition of separate, consecutive sentences on alleged allied offenses and by counsel not challenging the validity of the no-knock warrant could have been raised on direct appeal, and is thus barred by res judicata.

Sentencing. State v. Christian, 2020-Ohio-3816 | 2nd Appellate District | 7/24/20 On remand from Ohio Supreme Court for re-sentencing, trial court erred by imposing consecutive sentences for insurance fraud and engaging in a pattern of corrupt activity since the court had previously ordered the sentences to be served concurrently, and legislature's

decision to change the penalties with respect to the charged offenses did not constitute a change in circumstances for the imposition of consecutive sentences where there were no changes in appellant's factual circumstances since imposition of the original sentence.

Confrontation Clause. State v. Howard, 2020-Ohio-3819 | 2nd Appellate District | 7/24/20 In conviction of, inter alia, two unclassified felony counts of murder, R.C. 2903.02(B), defendant's Sixth Amendment confrontation clause right to confront witnesses was not violated by a witness testifying remotely via a two-way closed-circuit television system due to the witness' medical condition, Marcinick; on state's cross appeal, trial court erred in merging certain firearm specifications.

Search. State v. Blumensaadt, 2020-Ohio-3823 | 6th Appellate District | 7/24/20 In conviction by plea of various weapons offenses, denial of motion to suppress is affirmed since defendant's guilty plea precluded appellate review of any claimed error arising from the trial court's ruling on the motion to suppress.

Disorderly conduct. State v. Merillat, 2020-Ohio-3825 | 6th Appellate District | 7/24/20 In conviction by plea of marijuana possession, denial of motion to suppress was not error where detention during a traffic stop did not exceed a reasonable time period to complete the stop where 13 minutes elapsed due to dispatch's processing of trooper's request to check for outstanding warrants and during that time a canine search resulted in an alert and trooper found 14 pounds of marijuana in trunk of car.

Search. State v. Redway, 2020-Ohio-3826 | 6th Appellate District | 7/24/20 In conviction by plea of marijuana possession, denial of motion to suppress was not error where detention during a traffic stop did not exceed a reasonable time period to complete the stop where 13 minutes elapsed due to dispatch's processing of trooper's request to check for outstanding warrants and during that time a canine search resulted in an alert and trooper found 14 pounds of marijuana in trunk of car.

Prosecutorial misconduct. State v. Kaufhold, 2020-Ohio-3835 | 12th Appellate District | 7/27/20 In conviction of rape, prosecutor did not engage in misconduct by, inter alia, inferring that defendant may have given victim a "date rape drug" since there was nothing improper about commenting on "what the evidence has shown and what reasonable inferences may be drawn therefrom" during closing argument, including the possibility that defendant may have given victim a "date rape drug."

Sentencing. State v. Guyton, 2020-Ohio-3837 | 12th Appellate District | 7/27/20 In conviction by plea of drug and weapon offenses, trial court did not presume the Reagan Tokes Law, R.C. 2967.271, is constitutional since due process does not require the sentencing court to conduct a hearing under R.C. 2967.271(C) to determine whether the corrections department has rebutted the presumption set forth in R.C. 2967.271(B) in its determination of the imposition of additional time of incarceration after a defendant has served the minimum prison term or after the presumptive earned early release date.

Sentencing. State v. Alexander, 2020-Ohio-3838 | 12th Appellate District | 7/27/20 In conviction by plea of aggravated robbery in which defendant was sentenced to an indefinite term of eight to 12 years, appeal is dismissed where challenge to the constitutionality of the Reagan Tokes Law, R.C. 2967.271, was not raised in trial court, and thus the issue is forfeited on appeal.

Sex offender classification. State v. Simon, 2020-Ohio-3841 | 3rd Appellate District | 7/27/20 Following 1997 conviction of felonious sexual penetration, R.C. 2907.12(A)(1)(b), with a sex offender classification determination postponed until further order, 2019 designation of defendant as a sexual predator under Megan's Law, R.C. 2950.09(B), was not error where trial court considered the R.C. 2950.09(B)(2) factors, including defendant's sexual abuse of the minor victim while victim's primary caretaker/daycare provider and his failure to accept responsibility.

Evidence. State v. Kammeyer, 2020-Ohio-3842 | 3rd Appellate District | 7/27/20 In conviction of drug offenses, trial court did not err by admitting a disc containing a copy of the audio-video recording of a controlled drug purchase since it was admissible under the silent-witness theory of authentication, and officer testified that the disc contained a true and accurate representation of the recording, Evid.R. 901; trial court did err in imposing consecutive sentences where it failed to make the findings required by R.C. 2929.14(C)(4).

Evidence. State v. Speicher, 2020-Ohio-3845 | 3rd Appellate District | 7/27/20 In convictions of sex offenses of a child under age ten, denial of motion to suppress child's statements at a hospital was not error since the statements to licensed social worker and observed by a physician were made for the purpose of medical diagnosis and non-testimonial, and a recording was also admissible, Evid.R. 803(4).

Child pornography. State v. Mattocks, 2020-Ohio-3858 | 11th Appellate District | 7/27/20 Bench conviction of child pornography-related offenses was supported by sufficient evidence that defendant transferred and reproduced images of child pornography where he purchased the computer for his own use, computer was username and password protected and it was seized at his residence; searches were conducted using terms likely to locate child pornography and files were downloaded with titles indicative of child pornography.

Confrontation Clause. State v. Miller, 2020-Ohio-3854 | 11th Appellate District | 7/27/20 In conviction of felonious assault and weapon offense arising out of a shooting, trial court violated defendant's right to confront witnesses by allowing state to play a recorded interview with a person who was present at shooting during officer's testimony to refresh officer's memory since person interviewed did not testify.

Joinder. State v. Jones, 2020-Ohio-3852 | 11th Appellate District | 7/27/20 In conviction of, inter alia, aggravated robbery, joinder of offenses was not error in light of the common features of the crimes since other acts evidence was admissible to prove defendant's identity under Evid.R. 404(B), and evidence

of each offense was simple and direct since each robbery involved different witnesses who independently testified to the facts of the crimes that were of a similar character, and facts of each offense were uncomplicated and straightforward, Crim.R. 8(A).

Self-incrimination. State v. Colston, 2020-Ohio-3879 | 5th Appellate District | 7/27/20 In conviction of drug-related offenses, trial court did not violate defendant's right against self-incrimination by requiring him to show the tattoos on his arm and hand to the jury during the testimony of a state witness since that right does not protect a defendant from being compelled to exhibit physical characteristics for inspection solely for the purpose of identification.

Self-defense. State v. Petway, 2020-Ohio-348 | 11th Appellate District | 7/27/20 In conviction of a misdemeanor assault, trial court did not err in denying defendant's request for a jury instruction on self-defense where video admitted into evidence did not "tend to support" that defendant used the force in self-defense and demonstrates he was at fault in creating the situation leading to the physical altercation, R.C. 2901.05(B)(1).

Reopening. State v. Meadows, 2020-Ohio-3888 | 8th Appellate District | 7/28/20 Pro se application to re-open appeal, App.R. 26(B), is denied where no ineffectiveness of appellate counsel is shown by counsel not raising assignments of error on, inter alia, trial judge's alleged vindictiveness in imposing a harsher sentence after successful appeal and retrial since judge sentenced appellant after additional facts and considerations were presented at trial, including specifications and charges that were dismissed under the former plea agreement.

Medicaid fraud. State v. Kpoto, 2020-Ohio-3866 | 10th Appellate District | 7/28/20 Convictions of Medicaid fraud, R.C. 2913.40(B), of health care company and its principal owner and president met the sufficiency and weight of evidence standards where evidence showed that defendant-individual knew that he was required to transport his passengers in a wheelchair, knew that he was not doing so, and either actually knew that the company was billing these trips to Medicaid or at least believed that was so and failed to carry out his responsibilities under the law.

Reopening. State v. Powell, 2020-Ohio-3887 | 8th Appellate District | 7/29/20 Pro se application to re-open appeal, App.R. 26(B), is denied where claim that appellate counsel was ineffective is without merit because, inter alia, the mere fact that there were inconsistencies between a witness' statements and the witness' sworn testimony did not establish perjury since inconsistencies go to the weight of the evidence, and counsel was not ineffective for not calling an expert to challenge state's DNA evidence where an independent expert found the DNA results satisfactory.

Reopening. State v. McDaniel, 2020-Ohio-3893 | 8th Appellate District | 7/29/20 Pro se application to reopen appeal, App.R. 26(B), is denied where appeal of denial of pro se petition for post-conviction relief had been dismissed for lack of a final appealable order since the appeal was premature, and there is nothing

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to re-open since appeal of petition is still pending in the court of appeals; also, a claim of ineffective assistance of appellate counsel cannot be maintained since no right to counsel exists in a petition for post-conviction relief and none was provided.

Plea withdrawal. State v. Johnson, 2020-Ohio-3892 | 8th Appellate District | 7/30/20 In conviction by plea of, inter alia, drug offenses, denial of pro se post-judgment motion to withdraw plea was not error where motion is based on a claim of ineffective assistance of counsel that could have been, but was not, raised on direct appeal, and thus claim is barred by res judicata.

Impaired driving. State v. Ellis, 2020-Ohio-3910 | 5th Appellate District | 7/30/20 In conviction by plea of OVI, denial of motion to suppress was not error where officer had reasonable suspicion of a traffic violation and on approaching defendant, officer noticed a strong alcohol odor, defendant had glassy, bloodshot eyes and slurred or thick tongue speech and upon exiting vehicle to take field tests had balancing issues and refused to take tests.

Drug offense. State v. Marr, 2020-Ohio-3898 | 2nd Appellate District | 7/31/20 Conviction of drug and related offenses was not against the weight of evidence where defendant had constructive possession of drugs and weapon found during a traffic stop in vehicle he was driving since he owned the vehicle, he had dominion and control over the truck's contents, he was aware of the contraband's presence and jury was not required to believe testimony of passenger who had pled guilty in a separate action who testified that drugs and weapon were his.

Search. State v. Moody, 2020-Ohio-3899 | 2nd Appellate District | 7/31/20 In conviction by plea of drug offense, denial of motion to suppress was not error where drugs were found in defendant's vehicle following a safety check on defendant who was in his car at a traffic light and failed to proceed when the light was in his favor, even though officer in cruiser behind defendant's vehicle sounded her horn, he was initially unresponsive to officer and, since defendant did not have a valid driver's license, drugs found in his vehicle pursuant to valid city tow policy were not subject to suppression.

Appeal. State v. Smith, 2020-Ohio-3901 | 2nd Appellate District | 7/31/20 In conviction by plea of rape and felonious assault, defendant's guilty plea waived his right to appeal trial court's denial of his motion to inspect the grand jury testimony and to obtain the victim's medical records and, pursuant to Crim.R. 11(C)(2)(b), the court was not required to advise defendant that his guilty pleas waived his right to appeal any pretrial rulings.

Search. State v. Williams, 2020-Ohio-3903 | 2nd Appellate District | 7/31/20 In conviction by plea of drug offense, denial of motion to suppress was not error since defendant's consent to the search of her residence was voluntary where there was no evidence that defendant was in a custodial situation when police talked to her, and she gave permission to search without subsequently revoking her consent.

Plea. State v. Dornoff, 2020-Ohio-3909 | 6th Appellate District | 7/31/20 On remand from the Ohio Supreme Court, in conviction by plea of rape, felonious assault and kidnapping, trial court's failure to inform defendant of all of the details of the sex-offender classification scheme did not constitute a complete failure to comply with Crim.R. 11(C) and, since defendant has not established prejudice, he is not entitled to have his plea vacated, Dangler.

Plea withdrawal. State v. Smith, 2020-Ohio-3902 | 2nd Appellate District | 7/31/20 Following 2010 conviction by plea of drug and related offenses, denial of 2018 motion to journalize a judgment of appellant's pre-sentence motion to withdraw his no contest pleas was not error since motion to vacate plea was implicitly overruled when trial court sentenced him, and he failed to raise any issues in his direct appeal concerning his motion to withdraw no contest plea.

Voluntary manslaughter. State v. Ramirez, 2020-Ohio-3905 | 6th Appellate District | 7/31/20 In conviction of, inter alia, voluntary manslaughter, R.C. 2903.03(A), trial court erred by granting post-verdict motion for new trial by concluding state's evidence was insufficient on the mitigating element of sudden passion or fit of rage to support a charge of voluntary manslaughter since it is not an element of voluntary manslaughter; remanded for sentencing.

Plea. State v. Dehart, 2020-Ohio-3897 | 2nd Appellate District | 7/31/20 In conviction by plea of domestic violence, R.C. 2919.25(A), plea was valid where trial court complied with Crim.R. 11(C) and defendant's argument that he stated during the plea colloquy that he did not hurt his mother did not contradict his guilty plea to that offense since an attempt to commit is sufficient to constitute the offense, and the purpose of his statement was not to deny that he had committed domestic violence, but to request leniency at sentencing.

Evidence. State v. Duncan, 2020-Ohio-3916 | 3rd Appellate District | 8/3/20 In conviction of domestic violence, any error by trial court in admitting officer's testimony concerning the progression of bruising in domestic violence victims' injuries was harmless since the victim testified that photos admitted showed the injury on the day of the incident and on the day after the incident and no objection was made, nor did court err in admission of other acts evidence where victim's testimony demonstrated motive and intent admissible under Evid.R. 404(B).

Evidence. State v. Zimmerer, 2020-Ohio-3921 | 12th Appellate District | 8/3/20 Conviction of voyeurism, R.C. 2907.08(D), was supported by sufficient evidence where victim testified that defendant was using, or had used, his phone as a camera to secretly or surreptitiously photograph and/or video record the victim under her clothing for the purpose of viewing her body or her undergarments, even if no photo was found on defendant's phone, based on the circumstantial evidence that he may have deleted any photo when confronted by victim.

Plea. State v. Jones, 2020-Ohio-3919 | 3rd Appellate District | 8/3/20 In conviction by plea of rape and importuning, plea was valid since

trial court was not required to strictly comply with the non-constitutional notifications in Crim.R. 11(C)(2)(b) and the trial court during its Crim.R. 11 colloquy notified defendant that his guilty pleas constituted a complete admission of guilt and that the trial court could proceed to judgment and sentence after accepting his guilty plea in the written-plea agreement.

Appeal. State v. Schrader, 2020-Ohio-3925 | 12th Appellate District | 8/3/20 In conviction of non-support of dependents and subsequent violation of community control and later conviction of non-support of dependents in a separate action and imposition of concurrent sentences at sentencing, trial court erred in its sentencing entry by imposing consecutive sentences and trial court lacked jurisdiction to issue a nunc pro tunc order stating that sentences were concurrent following defendant's notice of appeal.

Confrontation Clause. State v. Shepherd, 2020-Ohio-3915 | 3rd Appellate District | 8/3/20 In conviction of, inter alia, tampering with evidence, admission of testimony of a probation officer, who was not defendant's right under the Confrontation Clause to confront witnesses against him since the drug test report and the ankle monitor contract are non-testimonial business records, and testimony on the ankle monitor installation did not reference an oral or written assertion or nonverbal conduct intended to be an assertion.

Post-conviction relief. State v. Parsons, 2020-Ohio-3917 | 3rd Appellate District | 8/3/20 Following conviction of, inter alia, attempted murder, denial of petition for post-conviction relief was not error where change in law occurred subsequent to conviction and, moreover, res judicata applied since claim was raised previously and decided adversely to petitioner, officers were following law in good faith as it existed at the time of the search and evidence was in plain view.

Search. State v. Harrison, 2020-Ohio-3920 | 3rd Appellate District | 8/3/20 In state's appeal of grant of motion to suppress in a prosecution for, inter alia, drug and weapons offenses, trial court erred since, even if the arrest warrant failed to comply with Crim.R. 4(A), officer's reliance on the municipal court judge's initials and stamp indicating that there was probable cause for defendant's arrest was in good faith and was objectively reasonable.

Plea. State v. Fabian, 2020-Ohio-3926 | 3rd Appellate District | 8/3/20 In conviction by plea to drug trafficking, plea was not valid since trial court's failure to advise defendant of post-release control until after he pled guilty did not comply with the Crim.R. 11(C)(2)(a) requirement that a trial court first determine defendant's understanding of the maximum penalty before accepting the plea, Dangler.

Competency. State v. Dooley, 2020-Ohio-3947 | 5th Appellate District | 8/3/20 In conviction by plea of escape, plea was valid where trial court adequately inquired into the effect that defendant's psychiatric medication had on his ability to understand the proceedings by asking defendant if the medications affected his ability to understand the change of plea proceedings and defendant answered "No, sir" and specifically informed court of his remaining post-release control, Back.

Reopening. State v. Rosa, 2020-Ohio-3964 | 8th Appellate District | 8/4/20 Pro se application to re-open appeal, App.R. 26(B), is denied where appellate counsel did not provide ineffective assistance since trial counsel's not objecting to state's leading questions to its own witness was not improper since questions were necessary to establish the elements of the crime, and trial counsel did object to another witness' testimony and, moreover, since the evidence was admissible and presented for a legitimate purpose, appellant cannot demonstrate prejudice.

Search. State v. Gates, 2020-Ohio-4027 | 5th Appellate District | 8/4/20 In conviction by plea of weapons offenses, denial of motion to suppress was error since the stop of defendant was not supported by a reasonable suspicion of criminal activity where citizen's call expressing concern that someone may rob a store did not support the stop where defendant was not trying to conceal himself, he was not committing an illegal act by openly carrying a weapon, and discovery of another firearm on him during a subsequent search cannot be used as grounds to support the initial stop or seizure.

Sexual predator classification. State v. Wallace, 2020-Ohio-3959 | 1st Appellate District | 8/5/20 Following 1997 conviction of, inter alia, rape and adjudication of appellant as a sexual predator under the former Megan's Law and trial court's 2010 re-sentencing of appellant to correctly notify appellant of post-release control, subsequent 2019 nunc pro tunc entry, stating that appellant had been adjudicated a sexual predator in the 1997 judgment, had no effect on defendant's sexual predator classification since the classification is a civil, remedial consequence of conviction and was a final appealable order in 1997.

Violent offender. State v. Morgan, 2020-Ohio-3955 | 9th Appellate District | 8/5/20 In conviction by plea of murder, the statutes implementing the violent offender database, R.C. 2903.41-.44, are constitutional in their retrospective application since the provisions are remedial, and defendant failed to meet his burden to establish that he was not the principal offender.

Aggravated burglary. State v. Brooks, 2020-Ohio-3997 | 5th Appellate District | 8/5/20 Conviction of aggravated burglary, R.C. 2911.11(A)(1), met the sufficiency and weight of evidence standards where a witness-resident who lived in the apartment with the victim testified that defendant entered the apartment and inflicted injuries on victim, and witness' testimony was buttressed by an audio recording from witness' phone and, although there were minor inconsistencies in witness' testimony, credibility issues were for trier of fact.

Reopening. State v. Stafford, 2020-Ohio-3993 | 5th Appellate District | 8/5/20 Application for re-opening appeal, App.R. 26(B), is denied since claim of ineffective assistance of counsel due to defense counsel not objecting to jury instruction on aggravated vehicular homicide where it included the term "recklessly" since court was not required to define the terms "purposeful" and "knowing" for the jury because those terms are not required in the determination of the culpable mental state for the offense of aggravated vehicular homicide.

Jail-time credit. State v. Ladow, 2020-Ohio-3954 | 9th Appellate District | 8/5/20 In conviction by plea of, inter alia, robbery, trial court did not err in denying motion for jail-time credit where defendant failed to show that his time in community-based correctional facility was sufficiently restrictive to constitute confinement, R.C. 2929.19.

Evidence. State v. Smith, 2020-Ohio-3994 | 5th Appellate District | 8/6/20 In conviction of domestic violence and aggravated menacing, trial court did not err by not allowing officer to testify about victim's statements to officer since there was not a showing that the statements were made under any type of stress, excitement or fear, Evid.R. 803(2); however, imposition of consecutive sentences was error since the trial court failed to make the findings required by R.C. 2929.14(C)(4) at the sentencing hearing; remanded for consecutive sentencing rehearing.

Drug offense. State v. Garza, 2020-Ohio-4001 | 5th Appellate District | 8/6/20 Conviction of aggravated possession of drugs, R.C. 2925.11(A)(C)(1)(c), met the sufficiency and weight of evidence standards since defendant had constructive possession of drugs where officer found defendant hiding in a closet in very close proximity to drugs found under a floorboard.

Jail-time credit. Cleveland v. Palmer, 2020-Ohio-3975 | 8th Appellate District | 8/6/20 In conviction of aggravated menacing, trial court erred in its calculation of jail-time credit where it failed to include time defendant spent in jail immediately following arrest for conduct underlying his charges, and there is no evidence suggesting his time in jail was related to a separate case.

Search. State v. Deuble, 2020-Ohio-3970 | 8th Appellate District | 8/6/20 In conviction of, inter alia, attempted unlawful sexual conduct with a minor where defendant was arrested as part of an undercover operation, trial court erred in denying motion to suppress where officers had no warrant to search defendant's phone, they arrested him before using his phone to verify his identity with a text message, and thus probable cause did not occur until after the arrest.

Trespass. State v. Jones, 2020-Ohio-3986 | 2nd Appellate District | 8/7/20 Conviction of trespass, R.C. 2911.21(A)(3), met the sufficiency and weight of evidence standards where trial judge, as trier of fact, found victim's testimony credible that she told defendant to leave her premises and the statute does not require a defendant be given prior notice that his invitation to use the premises may be revoked, making his continued presence unauthorized, and defendant admitted he had previously been trespassed to the property.

Right to counsel. State v. Lee, 2020-Ohio-3987 | 2nd Appellate District | 8/7/20 In conviction of, inter alia, murder, trial court committed structural error in its determination that defendant's waiver of his right to counsel was valid since his waiver was equivocal and unclear where he asserted his right to self-representation, but he also stated he was unprepared to proceed to trial due to his inability to obtain discovery and conditioned his waiver on a continuance.

Evidence. State v. Ruf, 2020-Ohio-3988 | 2nd Appellate District | 8/7/20 In conviction of sexual battery, trial court did not err in overruling motion in limine to exclude evidence that defendant was victim's former step-father where consent to sexual activity is an issue and relationship between parties is a relevant factor, victim viewed defendant as father figure her entire life, and defendant knew victim's ability to resist or consent was substantially impaired, R.C. 2907.03(A)(2).

Unauthorized use of vehicle. State v. Almeyda, 2020-Ohio-3982 | 2nd Appellate District | 8/7/20 Conviction of unauthorized use of vehicle is not against the weight of evidence where defendant borrowed vehicle from employer, but did not return it as agreed since defendant used vehicle without consent for 11 days, employer reported vehicle as stolen, and text messages do not establish affirmative defense pursuant to R.C. 2913.03 that employer gave consent for defendant to use vehicle during time period in question.

Mootness. State v. Jones, 2020-Ohio-4033 | 7th Appellate District | 8/7/20 In conviction of drug offense in one case and stipulation to violation of community control in another case, appeal challenging imposition of jail sentences is dismissed as moot since appellant has already served his sentence.

Reopening. State v. Hennings, 2020-Ohio-4055 | 8th Appellate District | 8/7/20 Application to re-open appeal, App.R. 26(B), is denied since by pleading guilty, appellant waived all appealable errors since he does not claim that there were any jurisdictional defects or that his trial counsel caused plea to be not knowing, intelligent and voluntary, and trial transcript demonstrates the trial court complied with Crim.R. 11 and that appellant entered a valid guilty plea.

Evidence. State v. Smith, 2020-Ohio-4008 | 12th Appellate District | 8/10/20 In conviction of sex offenses of a minor, admission of testimony of uncharged alleged sexual abuse was not inadmissible under Evid.R. 404(B) since the acts were not extrinsic to the crimes charged and were part of the events forming part of the immediate background of the alleged acts that were the basis for the crimes charged, constituting a part of a course of conduct related to the grooming and sexual abuse of the victim.

Plea. State v. Cox, 2020-Ohio-4011 | 9th Appellate District | 8/10/20 In conviction by plea of, inter alia, aggravated vehicular assault, resulting in imposition of five-year prison sentence, plea was valid, even though trial court departed from two-year term in plea agreement since the court complied with Crim.R. 11 by informing defendant that state's sentencing recommendation was not binding on court, and court relied on information in pre-sentence investigation report, including defendant's driving under suspension on three occasions after her plea and her social media comments demonstrating a lack of remorse.

Appeal. State v. Higdon, 2020-Ohio-4012 | 9th Appellate District | 8/10/20 Following 2015 conviction of rape that was affirmed, denial of pro se motion for leave to file motion for new trial on the basis of newly discovered evidence, Crim.R. 33(B), is affirmed since appellant's merit

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brief does not raise an argument as to how court erred by denying his motion claiming the U.S. government had concealed, suppressed or withheld a report on DNA evidence, App.R. 12(A)(2) and 16(A)(7).

Plea withdrawal. State v. Artis, 2020-Ohio-4018 | 3rd Appellate District | 8/10/20 Following 2011 convictions of domestic violence in two cases used to enhance a 2018 domestic violence conviction that was affirmed on appeal, trial court did not err in denying a 2019 motion to withdraw 2011 pleas since appellant could have challenged on direct appeal the validity of his 2011 pleas for lack of counsel, and thus he is barred by res judicata from raising the issue in his 2019 motion.

Impaired driving. State v. Henson, 2020-Ohio-4019 | 3rd Appellate District | 8/10/20 In OVI conviction, R.C. 4511.19(A)(2), denial of motion to suppress the HGN field sobriety test was not error where the officer's conducting of test while defendant was in a seated position was in substantial compliance with NHTSA standards, and there was no reversible error by the officer reading the breathalyzer 2255 form to the defendant after the defendant requested to speak to his attorney.

Competency. State v. Rulong, 2020-Ohio-4022 | 11th Appellate District | 8/10/20 In conviction of, inter alia, attempted murder, trial court did not err in finding defendant competent to stand trial where, although the court acknowledged defendant's mental illness diagnosis, it did not hear anything during the colloquy giving any indication that defendant was incompetent to stand trial, and court found defendant was able to understand and said he would cooperate with his attorney, R.C. 2945.371(A).

Post-conviction relief. State v. Jackson, 2020-Ohio-4015 | 3rd Appellate District | 8/10/20 Following 2002 conviction of, inter alia, capital aggravated murder that was affirmed, denial of successive, untimely petition for post-conviction relief was not error where trial court lacked jurisdiction to consider petition since petitioner did not make the requisite showing of constitutional error under R.C. 2953.23(A)(1), failed to raise an Atkins claim of intellectual disability during his initial post-conviction proceedings, and Hall and Moore decisions do not apply retroactively.

New trial. State v. Hill, 2020-Ohio-4050 | 5th Appellate District | 8/11/20 Following 2017 conviction of drug and weapon offenses that was affirmed, denial of motion for leave to file delayed motion for new trial, Crim.R. 33(B), was not error where appellant failed to demonstrate he was unavoidably prevented from discovering the evidence in a timely manner since he had the documents ten months prior to filing his motion and, moreover, he was aware of the facts in the documents from the date of his arrest, Crim.R. 33(B) and R.C. 2953.23.

Right to counsel. State v. Bristow, 2020-Ohio-3999 | 5th Appellate District | 8/12/20 In conviction by plea of trespassing, R.C. 2911.21, defendant's right to counsel was violated since trial court failed to conduct a sufficient pretrial inquiry, the limited colloquy occurred subsequent to defendant's change in plea, the finding of guilt and oral pronouncement of

sentence and defendant's ability to engage in plea negotiations on his own behalf did not relieve the court of its obligation.

Impaired driving. State v. White, 2020-Ohio-4041 | 9th Appellate District | 8/12/20 In conviction by plea of two counts of OVI and specifications, merged for sentencing, denial of motion to strike a prior conviction as uncounseled was not error where appellant had signed a written waiver of counsel in the prior conviction, and claim that he could not remember whether he was informed of his right to counsel because he was intoxicated when he signed the waiver is insufficient to establish constitutional infirmity in a prior conviction.

Evidence. State v. Smith, 2020-Ohio-4048 | 5th Appellate District | 8/12/20 In conviction of, inter alia, domestic violence, trial court did not err by disallowing a recording of a victim's conversation with an officer since it was not admissible under Evid.R. 803(2) where defendant failed to demonstrate the statements were made while he was still under the stress of the startling occurrence, rather than a narrative based on reflective thought, Evid.R. 803(2), nor were recordings admissible as to how the officer investigated the case.

Plea withdrawal. State v. Ahmed, 2020-Ohio-4057 | 8th Appellate District | 8/13/20 Following 2012 conviction by plea of a drug offense and denial of post-sentence motion to withdraw plea that was affirmed on App.R. 26 application for reconsideration, prior opinion is vacated and trial court's decision is reversed and remanded where, although defense counsel informed trial court of defendant's immigration status, a hearing is required to determine if trial counsel misadvised defendant as to how his guilty plea would affect his immigration status and to assess whether defendant was prejudiced, Ayesta.

Sentencing. State v. Bragg, 2020-Ohio-4059 | 8th Appellate District | 8/13/20 On reconsideration, following 1989 conviction of, inter alia, two counts of aggravated murder, denial of 2019 "Motion to Correct a Facially Illegal Sentence" was error since trial court's judgment imposing concurrent prison terms on the two counts was void, and claim is not barred by res judicata since trial court had determined that defendant's multiple offenses were allied offenses; sentence is modified to merge the murder counts and impose a single term of life imprisonment with parole eligibility after 30 years.

Menacing by stalking. State v. Calliens, 2020-Ohio-4064 | 8th Appellate District | 8/13/20 Conviction of three counts of menacing by stalking met the sufficiency and weight of evidence standards where victim's testimony concerning her mental distress as a result of defendant's conduct and that she altered her behavior towards him was credible, defendant admitted that the victim did not respond to his messages and locked her door to keep him out, victim made a 9-1-1 call in an attempt to avoid defendant, and defendant threatened victim in a video recording.

Complaint. Cleveland v. Wilson, 2020-Ohio-4066 | 8th Appellate District | 8/13/20 Trial court's sua sponte dismissal before trial of prosecution for city transit fare evasion was not error where the complaint was deficient on

its face, Crim.R. 48(B), since failing to possess proof of payment is not the same as evasion of payment, and the citation did not indicate any conduct by defendant that constituted evading, Crim.R. 3.

Plea. State v. Gary, 2020-Ohio-4069 | 8th Appellate District | 8/13/20 In conviction by plea of rape, R.C. 2907.02(A)(2), plea was validly made, even though trial court never specifically advised defendant that prison was mandatory or that he was ineligible for community control since record reflects that defendant was subjectively aware where court substantially complied with Crim.R. 11(C)(2)(a), including the colloquy in which the court informed the defendant that prison was mandatory and he would be subject to post-release control "upon completion of your prison term."

Plea. State v. Coleman, 2020-Ohio-4071 | 8th Appellate District | 8/13/20 In conviction by plea of multiple offenses, conviction is vacated and action is remanded where trial court failed to advise defendant at the plea hearing of his constitutional right to confront and cross-examine his accusers or his constitutional right to compulsory process, and court did not determine that defendant understood he was waiving those constitutional rights by pleading guilty, Crim.R. 11.

Receiving stolen property. State v. Johnson, 2020-Ohio-4077 | 10th Appellate District | 8/13/20 Conviction of receiving stolen property, R.C. 2913.51, met the sufficiency and weight of evidence standards where defendant had knowledge or reasonable cause to believe vehicle was stolen, R.C. 2901.22(B), since he did not provide a satisfactory explanation for his possession of the vehicle, vehicle's owner had reported vehicle stolen, and defendant's explanation that a wallet found in the vehicle belonged to a deceased friend was rebutted by the person whose driver's license was in the wallet and testified that it was stolen.

Search. State v. Stanton, 2020-Ohio-4087 | 2nd Appellate District | 8/14/20 In conviction of a weapons offense, officers had a reasonable and articulable suspicion of criminal activity to justify stopping and detaining defendant where officers observed an unattended parked car that appeared to be the same distinctive one that they had seen previously that had fled from them, defendant walked up to car door, but stopped and attempted to leave on seeing officers, officer verified that license plate was same, officers saw gun in car in plain view and, after defendant was given Miranda warnings, he admitted to driving the car.

Plea withdrawal. Oregon v. Gaughan, 2020-Ohio-4092 | 6th Appellate District | 8/14/20 In conviction by plea of domestic violence, denial of pre-sentence motion to withdraw plea was error since defendant had a legitimate basis for withdrawing plea where alleged victim admitted making inconsistent statements to police and in the pre-sentence investigation report concerning defendant's actions, but trial court improperly determined whether defendant's claimed defense would ultimately be successful.

Competency. State v. Richey, 2020-Ohio-4089 | 6th Appellate District | 8/14/20 In conviction of drug offenses, trial court's competency hearing complied with the timing requirements of R.C.

2945.37(C), permitting a continuance of the 10-day period for good cause where defendant failed to file transcripts of the competency hearing and failed to argue the absence of good cause for exceeding the 10-day period.

Search. [State v. Long, 2020-Ohio-4090 | 6th Appellate District | 8/14/20](#) In conviction of child pornography-related charges, denial of motion to suppress was not error where although an informant was described as a "confidential informant" in the warrant, the individual, who was defendant's neighbor, was a citizen informant who was an eyewitness to the alleged offenses and whose report to the police is presumptively credible and reliable.

Reopening. [State v. Phillips, 2020-Ohio-4130 | 8th Appellate District | 8/14/20](#) Pro se application to re-open appeal, App.R. 26(B), is denied since appellant pled guilty and the record demonstrates that the plea was made knowingly, intelligently and voluntarily where the trial court complied with the mandates of Crim.R. 11, and appellant also failed to file the App.R. 26(B)(2)(d) mandatory sworn statement.

Impaired driving. [State v. Little, 2020-Ohio-4097 | 3rd Appellate District | 8/17/20](#) In conviction of OVI, R.C. 4511.19(A)(1)(b), denial of motion to suppress was not error where officer had reasonable suspicion to make a traffic stop where officer observed defendant commit traffic violations of failure to stop at a stop sign and, even though the cam video did not verify the officer's observations, it also did not contradict the officer's independent observations.

Post-conviction relief. [State v. Harris, 2020-Ohio-4101 | 12th Appellate District | 8/17/20](#) Following conviction by plea of a weapons offense that was affirmed, denial of pro se petition for post-conviction relief was not error where claim that trial counsel had failed to investigate and misinformed him of judicial release and of the potential penalty he faced was without merit since the trial court found affidavits of defendant and his wife were self-serving and not credible, and claims of innocence were not supported by the record.

Traffic violation. [State v. Upchurch, 2020-Ohio-4095 | 9th Appellate District | 8/17/20](#) In conviction of failing to yield and failing to use a turn signal, trial court did not err by not advising defendant of certain rights at an arraignment under Traffic Rule 8(D) prior to the defendant entering a plea since the defendant sent a letter to the court waiving arraignment and pleading not guilty.

Evidence. [State v. Aldrich, 2020-Ohio-4104 | 12th Appellate District | 8/17/20](#) In conviction of failure to comply with an order or signal of a police officer, R.C. 2921.331(B), admission of evidence that defendant had stolen fishing equipment and had a suspended driver's license in his abandoned vehicle following officer's termination of a high-speed chase for safety reasons was not error since the evidence was relevant to, and presented for, the legitimate purpose of showing defendant's motive and intent in fleeing from the officer, Evid.R. 404(B).

Search. [State v. Ross, 2020-Ohio-4109 | 11th Appellate District | 8/17/20](#) In conviction of four counts of voyeurism, denial of motion to

suppress was not error since the evidence was submitted to authorities by private parties not acting as agents or extensions of the government and the pre-warrant evidence viewed by police did not exceed that viewed by the private parties, and thus there was no reasonable expectation of privacy in that evidence.

Transcript. [State v. Lusane, 2020-Ohio-4106 | 11th Appellate District | 8/17/20](#) Following 2005 conviction by plea of misdemeanor OVI, R.C. 4511.19(A)(1), claim that trial court failed to comply with Traf.R. 10(C) in accepting plea cannot be considered on appeal since appellant failed to provide a transcript of the 2005 plea hearing or an App.R. 9(C) statement of the proceedings, and thus the regularity of the proceedings must be presumed and the judgment is affirmed.

Aggravated murder. [State v. Kirkland, 2020-Ohio-4079 | Supreme Court of Ohio | 8/18/20](#) On re-sentencing following conviction of aggravated murder counts in two deaths, imposition of the death penalty on all counts was not error; issues discussed are voir dire, ineffective assistance of counsel, evidentiary issues, including Evid.R 404(B) and 403(A), gruesome autopsy and crime scene photographs, prosecutorial misconduct, jury instructions and verdict forms, requiring defendant to wear stun cuff, cumulative error and independent sentence evaluation.

Search. [State v. Campbell, 2020-Ohio-4119 | 5th Appellate District | 8/18/20](#) In conviction by plea of offenses involving child pornography, trial court erred in denying motion to suppress materials found during a warrantless search to verify defendant's compliance with community control in a prior conviction since the inclusion of a provision in community control obligating defendant to consent to warrantless searches exceeded the court's sentencing authority by omitting the required notice and reasonable grounds to support the search, R.C. 2951.02(A).

Violent offender registration. [State v. Jackson, 2020-Ohio-4115 | 10th Appellate District | 8/18/20](#) Following a 1989 conviction of, inter alia, multiple sex offenses that was affirmed on appeal after re-sentencing, denial of pro se challenge to the violent-offender registration requirements in "Sierah's Law," R.C. 2903.41-.44, was not error since the case is not ripe for review because the appellant remains incarcerated pursuant to his sentence and, moreover, his requested relief of de novo sentencing is unavailable since the appropriate remedy would be to reinstate the original order and sentence.

Jail-time credit. [State v. Peoples, 2020-Ohio-4116 | 10th Appellate District | 8/18/20](#) Following a 2004 conviction by plea of involuntary manslaughter, denial of 2019 motion for correction of jail-time credit was not error since appellant failed to demonstrate that he was incarcerated solely for the current offense where he was detained on unrelated federal and state charges during the entire time this case was pending in the trial court.

Self-defense. [State v. Brooks, 2020-Ohio-4123 | 5th Appellate District | 8/18/20](#) In conviction of, inter alia, aggravated burglary, trial court did not err in holding that defendant was

not entitled to retroactive application of the burden-shifting change in the self-defense statute, R.C. 2901.05.

Prosecutorial misconduct. [State v. Eberhardt, 2020-Ohio-4124 | 5th Appellate District | 8/18/20](#) In conviction of burglary, prosecutorial misconduct was not demonstrated by prosecutor's comments in the closing argument where comments focused on what was presented in evidence and pointed out the lack of evidence to support defendant's claims, not on the fact that the defendant had not testified.

Search. [State v. Waiters, 2020-Ohio-4126 | 5th Appellate District | 8/19/20](#) In conviction by plea of drug and weapons offenses, denial of motion to suppress was not error where there was probable cause for issuance of search warrant since the claim that information was stale is without merit because there were multiple buys involving ongoing criminal activity close in time to the issuance of the warrant and the affidavit was submitted to the issuing judge just four days after the last buy.

Post-conviction relief. [State v. Clifford, 2020-Ohio-4129 | 1st Appellate District | 8/19/20](#) Following conviction of drug and weapons offenses that was affirmed on appeal, denial of post-conviction petition without a hearing was not error since the self-serving declarations contained in the petitioner's affidavit disavowing his possession of the drugs and weapons were insufficient to rebut record evidence to the contrary, and he did not offer outside evidence that trial counsel had known of, but did not conduct a reasonable investigation into outcome-determinative evidence.

Plea. [State v. Rogers, 2020-Ohio-4102 | 12th Appellate District | 8/20/20](#) In conviction by plea of drug and weapon offenses, plea was not valid where the court failed to comply with Crim.R. 11(C)(2)(a) by not advising defendant of the mandatory fine on the aggravated drug trafficking count during the plea colloquy since the mandatory fine is a distinct component of the maximum penalty, notwithstanding its mention in the signed plea agreement, Dangler.

Jury instruction. [State v. Mitchell, 2020-Ohio-4132 | 8th Appellate District | 8/20/20](#) In conviction of, inter alia, aggravated murder, trial court committed plain error in instructing the jury on aggravated murder by failing to correctly instruct the jury by permitting the jury to convict defendant of aggravated murder if they found defendant "intended to cause the death of or injury to [another person]," and thus eliminated the state's statutory burden of proving specific intention to cause the death of the person killed; remanded for new trial.

Robbery. [State v. Claggett, 2020-Ohio-4133 | 8th Appellate District | 8/20/20](#) Conviction of, inter alia, robbery, R.C. 2911.02(A)(2) met the sufficiency and weight of evidence standards where defendant's DNA was found on the bag and contents were taken into the bank and left after the robbery, defendant matched robber's profile on bank security video who pepper sprayed security guard, defendant's cell phone location record placed him near the bank the night before the robbery and was turned off on the day of the robbery, and defendant fled after interviews with law enforcement.

Criminal Law (continued)

Insanity. State v. Young, 2020-Ohio-4135 | 8th Appellate District | 8/20/20 In appeal by state of trial court's determination of its jurisdiction of defendant who was found not guilty by reason of insanity of aggravated burglary, court committed plain error by determining its jurisdiction over defendant terminated after 11 years since R.C. 2929.14(A) in conjunction with R.C. 2929.144 required court to find that defendant's maximum term of imprisonment would have been 11 to 16.5 years.

Fifth Amendment. State v. Collins, 2020-Ohio-4136 | 8th Appellate District | 8/20/20 In conviction of felonious assault and firearm offenses, trial court did not err by denying motion for a mistrial based on defendant's Fifth Amendment right to remain silent where officer testified about his course of investigation when he stated he was unable to set up an interview with the defendant and made no mention of the defendant refusing and invoking his right to counsel.

Drug possession. State v. Harris, 2020-Ohio-4138 | 8th Appellate District | 8/20/20 Conviction of drug possession met the sufficiency and weight of evidence standards where, during the execution of a search warrant of the house that defendant was residing in, officers found a plastic baggie with cocaine residue and two digital scales with cocaine residue in defendant's bedroom, and officers also found a utility bill and mail from the probate court addressed to the defendant at his home address in the bedroom that defendant admitted to police was his room.

Plea withdrawal. State v. Buggs, 2020-Ohio-4143 | 7th Appellate District | 8/20/20 In conviction by plea of drug and weapon offenses, denial of pro se post-sentence motion to withdraw plea was not error where the trial court strictly complied with the constitutional requirements and substantially complied with the non-constitutional requirements in Crim.R. 11(C), plea was knowingly, voluntarily and intelligently made, and appellant received effective assistance of counsel.

Evidence. State v. Schulman, 2020-Ohio-4146 | 10th Appellate District | 8/20/20 In conviction of illegal voting, R.C. 3599.12, claim that two board of elections' employees lacked personal knowledge of the original documents and did not work at the board in 2012 when the alleged illegal voting occurred is without merit where both witnesses testified to their working knowledge of the board's record-keeping system in their divisions and testified the documents were true and accurate copies of the records that were created and maintained by the board of elections.

New trial. State v. Breneman, 2020-Ohio-4151 | 2nd Appellate District | 8/21/20 In conviction of, inter alia, drug offenses, trial court did not err in denying defendant's motion for a new trial where prosecutor informed jury during opening statement of defendant's three prior drug convictions since defense counsel had agreed to a stipulation on those convictions prior to trial, and thus any error was invited, the offenses were predicate offenses for the theft of drug allegation and the trial court gave a curative instruction to the jury.

Search. State v. Johnson, 2020-Ohio-4159 | 2nd Appellate District | 8/21/20 In conviction by plea of attempted manufacturing of fireworks, R.C. 3743.60(A), denial of motions to suppress search warrants for two residential properties was not error since the suppression motions failed to identify with particularity the asserted grounds for suppressing evidence and, moreover, the warrant was not defective where it contained an obvious typographical error, but specifically identified the places to be searched.

Plea. State v. Barnes, 2020-Ohio-4150 | 2nd Appellate District | 8/21/20 In conviction by plea of two counts of aggravated robbery, trial court did not err by not informing defendant during Crim.R. 11 plea hearing that the offenses would not merge as allied offenses for sentencing since during the hearing the prosecutor explicitly stated that the two charges of aggravated robbery involved separate victims, and thus under Ruff the offenses did not merge for sentencing, R.C. 2941.25.

Nonsupport of dependents. State v. Curtis, 2020-Ohio-4152 | 2nd Appellate District | 8/21/20 Conviction by plea of two counts of nonsupport of dependents, R.C. 2919.21(B), met the sufficiency and weight of evidence standards since the defendant failed to prove her affirmative defense under R.C. 2919.21(D) of the inability to pay support where her medical records did not support her claim that she could not work and, although there was evidence of her on and off dependency on opioids, addiction does not excuse failure to pay support.

Search. State v. Ferguson, 2020-Ohio-4153 | 2nd Appellate District | 8/21/20 In conviction of drug and weapon offenses, denial of motion to suppress was not error since encounter of officers with the defendant after a vehicle accident was consensual where there was no coercion by officers, and once defendant voluntarily answered officer's question, admitting he was armed and he did not have a concealed-carry permit, officers had probable cause to search defendant, leading to the discovery of drugs.

Plea. State v. Harrison, 2020-Ohio-4154 | 2nd Appellate District | 8/21/20 In convictions by plea in two cases of, inter alia, felonious assault and weapon offenses, plea was validly made where the claim that the trial court improperly interjected itself into the plea negotiations and deprived defendant of a fair trial is without merit since court's participation merely emphasized its option not to accept a proposed agreed sentence and its general inclination of an appropriate aggregate sentence for both cases.

Delinquency. In re D.K., 2020-Ohio-4156 | 2nd Appellate District | 8/21/20 In adjudication of juvenile as a delinquent for adult illegal use of a minor in nudity-oriented material or performance, denial of motion to suppress was not error since juvenile's claim that he was subjected to a custodial interrogation without a Miranda warning is without merit because the officers would inevitably have discovered his telephone in his clothing once they transported him to the city safety building and completed a routine search of his person incident to his arrest.

Evidence. State v. Sepeda, 2020-Ohio-4167 | 6th Appellate District | 8/21/20 In conviction of a felonious assault, trial court erred by excluding other-acts evidence of the victim under Evid.R. 403(A) and 404(B) where the probative value of the alleged victim's prior similar confrontation with another person was not substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury since the prior confrontation would serve as an aid to the jury's determination of the alleged victim's credibility; remanded for a new trial.

Search. State v. Dockum, 2020-Ohio-4163 | 6th Appellate District | 8/21/20 In conviction by plea of, inter alia, offenses relating to marijuana possession and cultivation, denial of motion to suppress was error where, although officers recognized an odor of raw marijuana in the general vicinity of a home, the evidence confirming the source of the marijuana odor was obtained by officers' illegal entry to the curtilage and inside the home since there were a number of adjacent structures the marijuana odor could have been coming from.

Search. State v. Wallace, 2020-Ohio-4168 | 6th Appellate District | 8/21/20 In conviction by plea of, inter alia, offenses relating to marijuana possession and cultivation, denial of motion to suppress was error where, although officers recognized an odor of raw marijuana in the general vicinity of a home, the evidence confirming the source of the marijuana odor was obtained by officers' illegal entry to the curtilage and inside the home since there were a number of adjacent structures the marijuana odor could have been coming from.

Search. State v. Harbin, 2020-Ohio-4187 | 5th Appellate District | 8/21/20 In conviction by plea of drug and related offenses, denial of motion to suppress was not error where stop of defendant was supported by a reasonable, articulable suspicion that defendant had engaged in criminal activity since officers' belief that defendant matched the description of a person accused of a nearby home invasion they were investigating was reasonable, he was arrested when officer discovered he was subject to an arrest warrant, and inventory search of vehicle uncovered drugs and drug paraphernalia.

Impaired driving. State v. Pallo, 2020-Ohio-4182 | 12th Appellate District | 8/24/20 In state's appeal of grant of motion to suppress following remand, trial court erred by failing to identify or address the lawfulness of the traffic stop, defendant's detention, whether his statements to trooper were elicited in violation of the Fifth, Sixth and Fourteenth Amendments, and court failed to identify what evidence was suppressed; remanded for further proceedings.

Joinder. State v. Pate, 2020-Ohio-4190 | 11th Appellate District | 8/24/20 In conviction of two counts of receiving stolen property involving two motor vehicles at separate locations, denial of motion to sever was not error where evidence would have been admissible as "other acts" evidence, Evid.R. 404(B), even if counts had been severed since the similarities and proximity of the incidents tend to show defendant knew or should have known that vehicles in which he or his DNA was found were stolen, and evidence of each crime was simple and direct, Crim.R. 8(A).

Post-conviction relief. State v. Roberts, 2020-Ohio-4188 | 11th Appellate District | 8/24/20

Following conviction of, inter alia, aggravated murder, trial court did not err in granting state's motion for summary judgment in petition for post-conviction relief where claims of ineffective assistance of trial counsel were matters of trial strategy or inadmissible matters, petitioner's affidavit provides no support either for counsel's deficiency or prejudice resulting from counsel's performance, and claims are barred by res judicata since they could have been made on direct appeal.

New trial. State v. Jalowiec, 2020-Ohio-4177 | 9th Appellate District | 8/24/20

Following a 1996 conviction of aggravated murder that was affirmed, trial court's denial of 2017 Crim.R. 33(A) motion for a new mitigation trial was not error where the appellant relies on the Hurst decision, but the Ohio Supreme Court has ruled that aspects of the Florida capital sentencing statute ruled unconstitutional in Hurst are not present in the Ohio statute, Belton and Mason.

Grand jury. State v. Johnson, 2020-Ohio-4178 | 9th Appellate District | 8/24/20

In conviction of, inter alia, aggravated murder, trial court did not err in denying defendant's request for a transcript of the grand jury proceedings since claim that he had a particularized need to review the transcripts to see if the grand jury testimony might have contained material evidence or might have aided his cross-examination of witnesses does not establish a particularized need, and thus he was not denied a fair trial.

Resisting arrest. State v. Curtin, 2020-Ohio-4189 | 11th Appellate District | 8/24/20

Conviction of resisting arrest, R.C. 2921.33(A), met the sufficiency and weight of evidence standards where defendant's claim that his resistance occurred prior to or contemporaneous with his arrest that he contends was completed once he was in handcuffs, is without merit since the arrest procedure was not complete on his being handcuffed because he had not been patted down, placed in the patrol car or transported to jail.

Search. State v. Sexton, 2020-Ohio-4179 | 12th Appellate District | 8/24/20

In appeal by state of grant of motion to suppress in a drug prosecution, trial court erred since defendant was legally detained pursuant to a traffic stop at the time the officer requested a consent to search within the time reasonably necessary to process a traffic citation that officer testified was five to seven minutes, and defendant also consented to a search of his person after the officer searched his vehicle, and the search was also justified by tips from identified citizen informants.

Traffic violation. State v. Gathright, 2020-Ohio-4200 | 5th Appellate District | 8/25/20

Conviction of failure to control vehicle, R.C. 4511.202, met the sufficiency and weight of evidence standards where trooper's testimony, the photographs and the video from defendant's truck support the conviction since defendant clearly went off the roadway into a ditch that was obscured by vegetation, causing his trailer to tip over onto its side, and there was no evidence to support defendant's claim that a defect in the road caused him to go off the road.

Plea. State v. Baker, 2020-Ohio-4199 | 5th Appellate District | 8/25/20

Plea to complicity to aggravated burglary and complicity to aggravated robbery plea was not validly made since the trial court did not inform defendant prior to accepting his guilty plea that pursuant to R.C. 2929.141(A)(1), a sentence for a violation of a previously imposed post-release control sanction is required to be served consecutively to the sentence imposed for the new felony, Crim.R. 11.

Jury. State v. Noriega, 2020-Ohio-4201 | 10th Appellate District | 8/25/20

In conviction of drug offenses, trial court did not commit plain error by not conducting an individual examination of a juror, who expressed safety concerns during the trial, to determine whether juror would be able to fairly and impartially consider the case because there was no reasonable probability that the court's failure to individually examine the juror about her safety concerns affected the outcome of the trial since all jurors voted to convict the defendant.

Sentencing. State v. Manion, 2020-Ohio-4230 | 5th Appellate District | 8/25/20

In conviction by plea of, inter alia, aggravated burglary, in which defendant was sentenced to an aggregate sentence of eight to ten and one-half years' incarceration, appeal is dismissed since constitutional challenges to the presumptive release feature of the Reagan Tokes Act, R.C. 2967.271, is not yet ripe for review since the defendant has not yet served his minimum term, and thus he has not been denied release at the expiration of his minimum term of incarceration.

Protection order violation. State v. Manion, 2020-Ohio-4231 | 5th Appellate District | 8/25/20

Conviction of violating a protection order, R.C. 2919.27, is supported by sufficient evidence where reference to the nickname of the protected party in defendant's note to his parents to contact the protected person in order to aid him in a burglary prosecution against him in which the protected person was the alleged victim since defendant only claimed his belief that his mother would not contact the protected person, and parole officer testified that the nickname referred to the protected person.

Sentencing. State v. Downard, 2020-Ohio-4227 | 5th Appellate District | 8/26/20

In conviction by plea of robbery and assault on an officer in which defendant was sentenced to an aggregate minimum prison term of nine years and an aggregate indefinite maximum prison term of 13 years, appeal is dismissed since constitutional challenges to the presumptive release feature of the Reagan Tokes Act, R.C. 2967.271, is not yet ripe for review because he has not yet served his minimum term, and thus has not been denied release at the expiration of his minimum term of incarceration.

New trial. State v. Apanovitch, 2020-Ohio-4217 | 8th Appellate District | 8/27/20

Following 1984 conviction of, inter alia, capital aggravated murder that was affirmed, in subsequent trial court denial of post-conviction relief challenge raising DNA issue, trial court erred on remand from the Ohio Supreme Court in denying a separate motion for a new trial, but the court of appeals affirms on the separate ground raised by the state during the trial court proceedings that defendant failed to file a motion for leave

to file a motion for new trial that was fatal to his Crim.R. 33(B) claim.

Sealing. State v. B.K., 2020-Ohio-4219 | 8th Appellate District | 8/27/20

Denial of application to seal records involving felony convictions for various offenses arising out of a scheme to manufacture an illegal drug was not error since appellant was not an eligible offender because his offenses were not part of the "same act," requirement of R.C. 2953.31(A)(1)(b) where his four convictions were based on different acts on three different dates over the span of five months at several different locations.

Evidence. State v. Cottingham, 2020-Ohio-4220 | 8th Appellate District | 8/27/20

In conviction of, inter alia, aggravated burglary, trial court did not admit improper Crim.R. 404(C) other acts evidence since state's evidence of the separate criminal acts was not "other acts" evidence, but evidence of the very crimes defendant was charged with committing, and defendant failed to identify any specific evidence that was allegedly improperly admitted.

Jury instruction. State v. Godsey, 2020-Ohio-4223 | 5th Appellate District | 8/27/20

In conviction of, inter alia, robbery, trial court did not err in not instructing jury on the lesser-included offense of theft where no evidence was presented for the jury to reasonably reject the greater offense since the evidence of the struggle between victim and defendant was sufficient to demonstrate that defendant inflicted or attempted to inflict physical harm in attempting to or committing a theft offense or in fleeing immediately after the attempt or offense.

Plea withdrawal. State v. Dull, 2020-Ohio-4229 | 5th Appellate District | 8/27/20

Following a 1994 conviction by plea of, inter alia, aggravated murder, trial court did not err by denying 2018 motion to withdraw plea for ineffective assistance of counsel since counsel was not deficient in not advising appellant of his right to have his plea taken by a three-judge panel where, based on case law at the time of the plea and at the time appellant would have appealed his sentence, the failure to convene a three-judge panel was not reversible error and was required to be raised on direct appeal, Mitchell.

Felonious assault. State v. Garner, 2020-Ohio-4234 | 2nd Appellate District | 8/28/20

Conviction of, inter alia, three felonious assaults and one assault met the sufficiency and weight of evidence standards where the defendant caused serious physical harm to three officers who suffered methamphetamine exposure by defendant's action of throwing baggies of methamphetamine at officers, resulting in their inability to continue work and their need for medical treatment, three of whom incurred temporary, substantial incapacity, R.C. 2901.01(A)(5)(c).

Certificate of employment qualification. In re Buzzell, 2020-Ohio-4242 | 6th Appellate District | 8/28/20

Following a 2012 conviction of, inter alia, pandering sexually-oriented material involving a minor and completion of sentence, 2019 denial of a certificate of employment qualification (CQE) was not an abuse of discretion since, even though the certificate may assist an applicant in receiving

Criminal Law (continued)

employment as a social worker, he does not currently possess a bachelor's degree in social work to obtain that position, and thus he did not meet the CQE threshold finding of collateral sanction, R.C. 2953.25(A)(1).

Sentencing. State v. Kellar, 2020-Ohio-4247 | 6th Appellate District | 8/28/20 In conviction by plea of three counts of gross sexual imposition, R.C. 2907.05(A)(5) and (C)(1), imposition of consecutive prison sentences totaling 51 months was not error where trial court considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12, and court made the necessary R.C. 2929.14 findings for consecutive sentences in view of defendant grandfather's sexual abuse of his autistic granddaughter over a period of ten years beginning when she was five years-old.

Search. State v. Warnick, 2020-Ohio-4240 | 2nd Appellate District | 8/28/20 In conviction by plea of drug and weapons offenses, denial of motion to suppress was not error where troopers responded to a citizen phone call of a possibly impaired motorist at a rest stop, they found defendant slumped over the steering wheel with a substantially damaged windshield and their observations reasonably led them to believe defendant was impaired and in control of an unsafe vehicle, warranting the welfare and investigatory stop, and ammunition and drugs in the car were in plain view.

Disability Law

Appeal. Saber Health Care v. Ohio Dept. of Job & Family Servs., 2020-Ohio-4044 | 4th Appellate District | 8/4/20 In nursing home-decedent's authorized representative's appeal of state department's administrative decision denying Medicaid benefits to decedent, trial court did not err in dismissing appeal for lack of standing since nursing home was not the applicant for Medicaid and did not qualify as an "appellant" under R.C. 5101.35, its designation as authorized representative lapsed upon decedent's death, and administrator of estate, who would have standing to appeal, was not designated as representative at the time notice of appeal was filed. Saber Health Care v. Ohio Dept. of Job & Family Servs. 2020-Ohio-4044

Medicaid eligibility. Poindexter v. Ohio Dept. of Job & Family Servs., 2020-Ohio-4081 | 5th Appellate District | 8/11/20 In administrative appeal of denial of appellant's long-term Medicaid benefits, trial court did not err in affirming appellee-agency's decision where agency determined that appellant's home was a countable resource and that she failed to provide verification of mortgage balance despite two requests from agency to do so.

Education Law

Public money. State ex rel. Ohio Atty. Gen. v. Burns, 2020-Ohio-3820 | 2nd Appellate District | 7/24/20 In state's action against CEO of school for loss of public money allotted to school, summary judgment in favor of the state was error where, although R.C. 9.39 imposes strict liability on public officials for loss of public funds with which they have been entrusted, the funds received by the school were not subject

to CEO's control, and controller of funds acted independently without oversight from CEO.

Employment. Fiedeldey v. Finneytown Local School Dist. Bd. of Edn., 2020-Ohio-3960 | 1st Appellate District | 8/5/20

In teacher's appeal of school board's termination following an incident with student, trial court did not err in overruling board's decision and in reinstating teacher where R.C. 3319.16 prevents a teacher's contract from being terminated for other than good and just cause, and in this case teacher intended no harm to student, did not place him in harm's way, student was not harmed, and the school acknowledged its confidence in the teacher by placing the difficult student in her classroom for two consecutive years.

Disability benefits. State ex rel. Ewart v. State Teachers Ret. Sys. Bd. of Ohio, 2020-Ohio-4147 | 10th Appellate District | 8/20/20 Denial of teacher's petition for writ of mandamus to reinstate disability retirement benefits she received for a voice disorder was not error since one physician's report stating that teacher's impairment did not preclude her from working was not equivocal, and also it constituted new evidence within the meaning of instant court's previous decision in the case and within the meaning of former R.C. 3307.48(C), so the administrative board had some evidence to support its decision to terminate teacher's disability retirement benefits.

Election Law

Certify candidacy. State ex rel. Bobovnyik v. Mahoning Cty. Bd. of Elections, 2020-Ohio-4003 | Supreme Court of Ohio | 8/7/20 Petition for writ of mandamus to compel board of elections to certify petitioner's name to ballot for county sheriff in upcoming election is denied since the board did not abuse its discretion or disregard applicable law in determining that petitioner did not satisfy the residency requirement in R.C. 311.01(B)(2).

Referendum petition. State ex rel. Nauth v. Dirham, 2020-Ohio-4208 | Supreme Court of Ohio | 8/26/20 In relators-citizens group's petition for writs of mandamus to compel board of elections to certify as valid a number of signatures needed to qualify referendum petition for upcoming election, asserting that the board improperly invalidated the signatures as not genuine, writs are denied since relators failed to prove by clear and convincing evidence that the signatures at issue were invalidated in the first place.

Violation hearing. State ex rel. Frenchko v. Trumbull Cty. Bd. of Elections, 2020-Ohio-4253 | Supreme Court of Ohio | 8/28/20 Candidate's petition for writ of prohibition seeking to prevent county board of elections from holding a hearing under R.C. 3501.11(J), (Q) concerning alleged violation of election law is denied since candidate did not show that the board was about to take quasi-judicial action where the board's hearing notice did not invoke the statutory provisions relevant to removing candidate from the ballot or to canceling her voter registration, and candidate did not demonstrate that she lacked an adequate remedy in the ordinary course of law.

Employment Law

Arbitration. Crider v. GMRI, Inc., 2020-Ohio-3668 | 8th Appellate District | 7/9/20 In plaintiff's sexual harassment action against her former employer, denial of defendants' motion to dismiss or stay proceedings pending arbitration was not error where plaintiff's claims relating to and arising from sexual assault were independent of the employment relationship and not a foreseeable result of employment, defendants never produced a copy of arbitration agreement with plaintiff's signature, and defendants proceeded directly to termination without invoking any steps in the arbitration provision, thereby waiving it, R.C. 2711.02(B).

Arbitration. Cuyahoga Cty. v. United Autoworkers Region 2-B, Local 70, Corr. Officer Corporals' Bargaining Unit, 2020-Ohio-3965 | 8th Appellate District | 8/6/20 In county's appeal of arbitrator's award in favor of corrections officers union following termination of officer, trial court erred in vacating arbitrator's award of suspension and reinstatement where, even if officer's conduct of using excessive force violated public policy, the arbitrator's award based on officer's exemplary record and lack of malicious intent did not ignore the seriousness of his conduct because it imposed suspension, and it promoted the public policy of keeping inmates safe by requiring officer's retraining, R.C. 341.01.

Unemployment compensation. Ohio Assn. of Pub. School Emps. v. Unemp. Comp. Rev. Comm., 2020-Ohio-4028 | 5th Appellate District | 8/10/20 In public school employees association's action seeking unemployment compensation benefits during strike, trial court did not err in adopting unemployment compensation review commission's determination that employees were not entitled to benefits since board of education did not withhold work from employees and was willing to continue under terms of prior contract until new agreement was reached, and therefore employees' strike was a labor dispute rather than a lockout, R.C. 4141.29.

Invasion of privacy. Lunsford v. Sterilite of Ohio, L.L.C., 2020-Ohio-4193 | Supreme Court of Ohio | 8/26/20 In invasion of privacy action in which current and former at-will employees were required to produce urine samples under the direct-observation method, it was error to reverse trial court's dismissal of complaint since when an at-will employee consents, without objection, to the collection of the employee's urine sample, the at-will employee has no cause of action for common-law invasion of privacy, even though the consent form did not specify that direct-observation would be used.

Discrimination. McGuire v. Newark, 2020-Ohio-4226 | 5th Appellate District | 8/26/20 In police officer's gender discrimination and retaliation action against city, summary judgment for city was error regarding claim of hostile work environment since male officers, including plaintiff's training officer, made unwelcome comments based on her gender, her superiors did not investigate her claims of sexual harassment, and there was a genuine issue of material fact whether the cumulative comments towards the plaintiff were sufficiently severe or pervasive to affect conditions of her employment, R.C. 4112.99 and 4112.02.

Estate Planning, Trust and Probate

Payable on death. Hillier v. Fifth Third Bank, 2020-Ohio-3679 | 2nd Appellate District | 7/10/20 In executor-brother's breach of contract action to recover funds distributed to sister by defendant-bank pursuant to alleged payable on death account, summary judgment for defendant was error where the last bank signature card that decedent signed had no POD beneficiaries, defendant's internal records alleged to contain POD beneficiaries did not substitute for a written contract, and plaintiff's power of attorney did not expressly give him the right to designate beneficiaries on decedent's accounts, R.C. 1109.07(B), 2131.10 and 1337.42.

Trust. Johnson v. Kuehn, 2020-Ohio-3757 | 7th Appellate District | 7/10/20 In sister's action against brother, asserting that either an express or implied trust was created regarding non-probate assets of deceased father's estate, summary judgment for brother, finding that there was no evidence of an express or implied trust, was not error since real estate transferred to brother by virtue of transfer on death deed, investment accounts passed to brother by virtue of brother being sole beneficiary under policies, and there was no evidence that an implied constructive trust was created based on fraud, mistake or breach of duty.

Appeal. In re Estate of Clonch, 2020-Ohio-3938 | 11th Appellate District | 8/3/20 In probate action where appellant filed exceptions to inventory and estate administrator issued an entry ordering amendment of inventory, appeal is dismissed for lack of final appealable order where neither the inventory nor the amended inventory was approved by probate court, and ruling on exceptions alone does not preclude review of exceptions during hearing to settle account, R.C. 2505.02(A)(1).

Will contest. Yurkovich v. Kessler, 2020-Ohio-4169 | 6th Appellate District | 8/21/20 In plaintiffs' action against defendant-sister contesting their mother's will, judgment in favor of plaintiffs was not error where they introduced evidence that mother was susceptible to influence due to dementia and that defendant exerted undue influence over their mother by moving in with her and taking control of her financial affairs, and thus jury's verdict was not against the manifest weight of evidence.

Adoption. In re Adoption of O.J.B., 2020-Ohio-4184 | 12th Appellate District | 8/24/20 In grandparents' petition to adopt child, trial court did not err in finding that consent of mother was not required where mother failed to have more than de minimis contact with child or provide maintenance or support in the year preceding adoption petition, grandparents did not significantly interfere with mother's ability to contact child, mother did not engage in indirect forms of communication with child, and her lack of support was an intentional decision to withhold funds and supplies, R.C. 3107.07 and 3103.03.

Sanctions. In re Guardianship of Calvey, 2020-Ohio-4221 | 8th Appellate District | 8/27/20 In guardianship action where respondent sought

sanctions against applicant, trial court did not err in adopting magistrate's decision which dismissed respondent's motion for sanctions where there was no corroborating evidence supporting respondent's claim as to applicant's motive in seeking guardianship, and applicant was not required to submit with his application an expert statement as to respondent's mental state, R.C. 2323.51 and Civ.R. 11.

Exceptions to final account. In re Estate of Abraitis, 2020-Ohio-4222 | 8th Appellate District | 8/27/20 Denial of appellant-former executor of decedent's estate's exceptions to administrator's final account of the estate was not error since appellant did not have standing where she did not have a direct pecuniary interest in the estate pursuant to R.C. 2109.33, and the court had subject matter jurisdiction to address all matters at issue, even though the final accounting paid claims that appellant had rejected prior to her removal as executor, R.C. 2101.24.

Adoption. In re N.R.H.N., 2020-Ohio-4266 | 12th Appellate District | 8/31/20 In stepfather's petition to adopt children, trial court did not err in finding that father's consent was required where, although father failed to have more than de minimis contact with the children, his failure to communicate was justified because there was no visitation order and mother had indicated he would not be able to see the children if he did not provide money, mother moved without giving father her new address, she did not respond to father's attempts to contact her through social media and father took a decisive move in filing for visitation rights.

Family Law

Civil protection order. B.M. v. G.H., 2020-Ohio-3629 | 7th Appellate District | 7/2/20 Appeal from issuance of a civil protection order is moot and the judgment of the trial court is affirmed since the protection order expired and respondent did not raise the issue of collateral consequences as an exception to mootness and, even if appeal were not moot, petitioner's testimony sufficiently established a pattern of conduct and there is ample evidence to support a finding of substantial mental distress, R.C. 2903.211.

Custody. Saylor v. Lewis, 2020-Ohio-3647 | 1st Appellate District | 7/8/20 In divorce action where parties entered into an agreed entry resolving post-decree issues, denial of husband's motion for change of parental rights and responsibilities was not error where, even though wife was designated as temporary custodial parent, this designation was not premised on a future review hearing and was not clearly temporary, issues raised in husband's motion were decided by the agreed entry, and husband failed to present evidence of wife's failure to monitor sons' social media and internet usage prior to signing the agreed entry resolving the issues, R.C. 3109.04.

Child support. Swanson v. Swanson, 2020-Ohio-3754 | 6th Appellate District | 7/17/20 In divorce action where husband's child support payments for disabled child were reduced, trial court's adoption of magistrate's decision dismissing wife's motion to show cause is affirmed where hearing transcript was not provided to demonstrate wife's claims that

judgment contained factual errors, previous consent order specified that child support would be reviewed on a regular basis and, because there was a change in child's circumstances, husband's motion to terminate or review child support was not frivolous.

Appeal. T.H. v. Villoni, 2020-Ohio-3767 | 9th Appellate District | 7/20/20 In petitioner's action for civil stalking protection order following a confrontation with respondent, trial court's judgment issuing order is affirmed where respondent failed to file a transcript or affidavit regarding evidence, he did not seek leave to supplement his objections, he did not challenge denial of his request to reconsider his objections, and his arguments are based entirely on transcript, which was not timely filed, Civ.R. 65.1, R.C. 2903.214.

Standing. Borden v. Borden, 2020-Ohio-3773 | 11th Appellate District | 7/20/20 In divorce action where wife sought modification of spousal support commencement date in order to correct allegedly improper past-due processing fees, county department's appeal of trial court's nunc pro tunc order eradicating fees is dismissed since department lacks standing where, although it was engaged to process spousal support payments and may be aggrieved by judgment, it did not attempt to intervene in the legal proceeding after receiving notice of the order.

Custody. S.S. v. F.M., 2020-Ohio-3827 | 6th Appellate District | 7/24/20 In divorce action where husband sought modification of parental rights and responsibilities based on change of circumstances, trial court did not err in vacating magistrate's decision and in denying modification of pre-existing custody arrangement where wife resolved alleged issues of homelessness, unemployment and drug abuse, concerns which prompted husband's action, and husband failed to establish change of circumstances justifying modification of custody, R.C. 3109.04.

Custody. Armbruster v. Armbruster, 2020-Ohio-3833 | 9th Appellate District | 7/27/20 In divorce action where wife appealed designation of husband as legal custodian and residential parent, judgment is affirmed since there is evidence that wife abandoned child as shown by her abrupt departure on two occasions and her lack of communication with child during her long absences, child is adjusted to her home with husband and his mother, and husband facilitated child's visitation with wife's estranged parents and is willing to accommodate wife's reasonable requests for additional parenting time, R.C. 3109.04.

Attorney fees. Coomes v. Coomes, 2020-Ohio-3839 | 12th Appellate District | 7/27/20 In divorce action where both parties sought modification of spousal support, trial court did not err in ordering husband to pay a portion of wife's attorney fees since R.C. 3105.73 does not require consideration of wife's income, husband's testimony of his income was not credible or supported by evidence, and husband's conduct throughout the case resulted in unnecessary fees.

Spousal support. Siferd v. Siferd, 2020-Ohio-3846 | 3rd Appellate District | 7/27/20 In divorce action in which husband appealed award of spousal support to wife and case

Family Law (continued)

was remanded, trial court did not err in ruling, on remand, that the spousal support award was appropriate since the court complied with directives in clarifying its rationale for award and its consideration of mandatory factors set forth in R.C. 3105.18.

Property division. Kalbaugh v. Kalbaugh, 2020-Ohio-3873 | 9th Appellate District | 7/29/20 In divorce action where wife sought enforcement of divorce decree with respect to husband's pension, trial court erred in entering amended division of property order since husband had filed and perfected an appeal of the original division of property order, depriving the trial court of jurisdiction, and the pension fund's rejection of the original order does not render the order moot and not appealable.

Property division. Ostaneck v. Ostaneck, 2020-Ohio-3930 | 11th Appellate District | 8/3/20 In divorce action where husband disputed amount wife was receiving from his federal retirement plan, trial court erred in approving a Court Order Acceptable for Processing (COAP) granting wife a survivor annuity and apportioning half the cost to husband where there was no evidence that the parties intended the wife to receive survivorship benefits from husband's pension, the COAP expanded and modified the divorce decree, and court was without jurisdiction to approve it.

Attorney fees. Hurst v. Hurst, 2020-Ohio-4006 | 12th Appellate District | 8/10/20 In divorce action, trial court did not err in awarding attorney fees to wife where husband's actions delayed the case when he repeatedly claimed he had financing in place to take on marital home debt, but never did, he used pension assets for personal reasons rather than to assist with refinancing as parties had agreed, and his assertions regarding refinancing delayed resolution of the case in spite of the fact that wife had made a significant offer to try to reach a settlement.

Appeal. Jose v. Jose, 2020-Ohio-3953 | 9th Appellate District | 8/5/20 In divorce action in which wife sought re-characterization of husband's pension, prior order is vacated where trial court's purported nunc pro tunc amendment changed the substance of an earlier order by remanding it to magistrate for recalculation of spousal support, not within the limits of Civ.R. 60(A), and husband's instant appeal from original final appealable orders, unchanged by vacated order, is dismissed as untimely.

Child support. Dobbins v. Dobbins, 2020-Ohio-4000 | 5th Appellate District | 8/5/20 In divorce action, trial court did not err in granting husband's motion to reduce his child support obligation by the amount children received in Social Security derivative benefits, even though wife argued that separation agreement did not provide for that deduction, since Social Security payments made to a minor because of a parent's disability should be set off from the disabled parent's child-support obligation, Williams and R.C. 3119.05(O).

Property division. Caleshu v. Caleshu, 2020-Ohio-4075 | 10th Appellate District | 8/11/20 In divorce action, trial court did not err in its unequal allocation of marital debt where

both parties used respective credit cards as if accounts were their own, equal division of credit card debt would result in one party paying temporary order obligations and attorney fees that were ordered to be paid individually, credit cards were used to pay for separate living expenses, and R.C. 3105.171 provides for equitable division of marital property and debt without regard to spousal support awarded.

Seek-work order. Johnson v. Johnson, 2020-Ohio-4085 | 2nd Appellate District | 8/14/20 In divorce action, trial court erred on remand in issuing to husband a seek-work order where R.C. 3141.03(D)(1) allows a seek-work order only when the obligor under a support order is unemployed or has no income or bank account and, in this case, husband is underemployed rather than unemployed, and he is not an obligor because he was not required to pay support.

Guardian ad litem fees. Thomasson v. Thomasson, 2020-Ohio-3890 | 8th Appellate District | 7/30/20 In divorce action in which initial guardian ad litem appointment for wife was later vacated, trial court erred in crediting all of the guardian ad litem's (GAL's) fees towards husband's spousal support arrearages without first finding that the presumption that the parties would contribute equally to the cost of the GAL had been rebutted by good cause.

Property division. Zhuravlyov v. Bun, 2020-Ohio-4108 | 11th Appellate District | 8/17/20 In divorce action, trial court's judgment is modified to reflect husband's separate-property investment in his vehicle where his previous vehicle, which was traceable, separate property, was used in trade for his current vehicle, and pro-rata remaining value of trade-in vehicle is subtracted from fair-market value of husband's current vehicle, R.C. 3105.171.

Relief from judgment. Bloom v. Bloom, 2020-Ohio-4107 | 11th Appellate District | 8/17/20 In divorce action, trial court did not err in denying husband's Civ.R. 60(A) motion for relief from judgment asserting that there was a clerical mistake in the divorce decree where conflicting evidence was presented at trial regarding the loans in question and the court made its determination without citing evidence on which it was based and without referencing testimony regarding alleged double-counting, and husband's motion may not be used to change something which appears to be deliberately done.

Spousal support. Branden v. Branden, 2020-Ohio-4134 | 8th Appellate District | 8/20/20 In divorce action, termination of husband's spousal support obligation was not error where wife's cohabitation in a romantic relationship, including the sharing of significant financial expenses, significantly enhanced her economic situation and constituted a change in circumstances that warranted termination of spousal support, R.C. 3105.18.

Visitation. Green v. Quint-Green, 2020-Ohio-4141 | 7th Appellate District | 8/20/20 In divorce action, trial court did not err in granting husband's motion to require wife's visitation with child to be supervised where there was evidence that wife behaved erratically and subjected the child to unnecessary medical testing in violation of court orders and, although

the court did not make reference to each R.C. 3109.51(D) best interest factor, it specifically stated it considered the factors along with all testimony in determining that supervised visitation would be necessary.

Disqualification of counsel. Ceccoli v. Budd, 2020-Ohio-4176 | 9th Appellate District | 8/24/20 In divorce action, trial court erred in granting husband's motion to disqualify wife's counsel since the court did not demonstrate that there was a substantial risk that wife's counsel's ability to consider, recommend or carry out an appropriate course of action for wife would be materially limited by her counsel's responsibilities in representing the parties' child in juvenile court case, Prof. Cond.R. 1.7(a)(2), and therefore the court did not engage in the appropriate analysis.

Gov't/Administrative

Legal representation. State ex rel. O'Diam v. Greene Cty. Bd. of Commrs., 2020-Ohio-3503 | Supreme Court of Ohio | 7/1/20 Judge's petition for writ of mandamus to compel county to pay for outside legal counsel engaged by judge to secure a suitable and sufficient courtroom and related facilities is denied since he did not use the process set forth in R.C. 309.09(A), 305.14(A) and 305.17 for county officials to procure outside representation.

Property demolition. Cleveland v. Whitmore, 2020-Ohio-3670 | 8th Appellate District | 7/9/20 In city's action to recover costs of demolition of and asbestos abatement for prior owner's condemned property, summary judgment in favor of city was not error where prior owner's argument that he did not own property because property was forfeited before demolition is irrelevant since city may recoup costs related to abatement of nuisance or demolition of condemned structure from any and all owners who appear in chain of title, and new owner following forfeiture took title after demolition, R.C. 715.261.

Small business certification. B&J Elec. Co. v. Cincinnati, 2020-Ohio-3869 | 1st Appellate District | 7/29/20 In action where plaintiff-electrical company's renewal application for small business certification was denied because one of its owners' personal net worth with spouse exceeded the caps set by municipal code, trial court did not err in adopting magistrate's decision denying certification since nothing in the ordinance implicates an individual's right to marry, classification based on marital status does not impact a fundamental interest or involve a suspect class, and plaintiff failed to show city lacked rational basis to support ordinance.

Immunity. Georgantonis v. Reading, 2020-Ohio-3961 | 1st Appellate District | 8/5/20 In negligence action against city by worker who was injured when the cover of a city-installed service box on which worker's scissor lift was positioned fractured, causing his scissor lift to collapse, trial court did not err in granting city's Civ. R. 12 (C) motion for judgment on the pleadings on reasoning that city was entitled to governmental immunity since amended complaint related to sidewalk maintenance or to the operation and maintenance of a street-lighting system, which were governmental functions.

Immunity. [Bieber v. Perry Cty. Bd. of Commrs., 2020-Ohio-3996 | 5th Appellate District | 8/5/20](#) In negligence action arising from plaintiff sustaining injuries when hitting a pothole while driving a motorcycle, trial court did not err in denying defendant-county's motion for summary judgment claiming statutory immunity where procedures for filling a pothole did not demonstrate weighing alternatives or making decisions requiring official judgment, and there was a genuine issue of material fact whether R.C. 2744.03(A)(5) revived governmental immunity.

Immunity. [Tufts Carter v. Hymes, 2020-Ohio-3967 | 8th Appellate District | 8/6/20](#) In estate's negligence action against police officers for pursuing vehicle that collided with decedent's vehicle, resulting in his death, trial court erred in denying summary judgment in favor of officer who was the passenger where, although he did not inform dispatch that pursuit was underway, he was waiting for information about plate number from dispatch, the collision occurred within 20 seconds of broadcast of plate number, and the delay did not rise to the level of conscious disregard of known risk, so officer-passenger was entitled to immunity under R.C. 2744.03.

Immunity. [Black v. Hicks, 2020-Ohio-3976 | 8th Appellate District | 8/6/20](#) In various claims against police chief and police department arising from plaintiff being struck by an officer and detained, resulting in jury verdicts in favor of plaintiff, imposition of joint and several liability for compensatory damages against police chief is affirmed on reasoning that he did not litigate the issue of governmental immunity at trial, R.C. 2744.07(B)(1).

County commissioners. [State ex rel. Drouhard v. Morrow Cty. Bd. of Commrs. 2020-Ohio-4160 | Supreme Court of Ohio | 8/25/20](#) Petition for writ of prohibition to prevent three members of board of county commissioners from going forward with show-cause hearing to consider removal of trustee of county hospital is denied since the commissioners do not patently and unambiguously lack jurisdiction to proceed with the hearing where they constitute the majority of the appointing authority, empowered by law to remove county hospital trustees, and also where the trustee in question has an adequate remedy at law by way of appeal if he is removed as a result of the hearing.

Zoning. [Benton Twp. v. Rocky Ridge Dev., L.L.C., 2020-Ohio-4162 | 6th Appellate District | 8/21/20](#) In action to prevent defendant-developer from violating a township zoning ordinance, trial court did not err in granting an injunction to stop defendant from conducting its blending operation and removal of topsoil in a certain zoned area to be altered, amended and reburied in another area since the developer was using the property for the blending operation and disposal of industrial waste, which did not qualify as an agricultural use, and the township was not restricted by R.C. 519.21(A) from prohibiting topsoil from being removed.

Immunity. [Fried, Admin. v. Friends of Breakthrough Schools, 2020-Ohio-4215 | 8th Appellate District | 8/27/20](#) In intentional tort and negligence action against school for failure to notify parents when student was

abducted and murdered on her way to school, trial court erred in denying school's motion to dismiss that asserted governmental immunity since immunity exceptions do not apply to intentional conduct, school's responsibility to notify parents of decedent's absence was a governmental function mandated by statute, and a malfunctioning parental notification system is not a physical defect to school property which would be an exception to immunity, R.C. 2744.02.

Insurance

Fire. [Stamper v. Polley, 2020-Ohio-3709 | 4th Appellate District | 7/2/20](#) In plaintiffs' action to recover insurance proceeds after fire destroyed property they were purchasing from defendants pursuant to a land contract, trial court erred in reducing judgment in favor of plaintiffs where defendants were entitled only to proceeds to the extent of unpaid purchase price remaining on land contract and plaintiffs were entitled to any excess, less valid offsets and, although defendants used home equity loan on another property for original purchase of property in question, payments on loan are not in evidence and are not relevant to distribution of insurance proceeds, R.C. 5313.01.

Motor vehicle. [Williams-Diggins v. Permanent Gen. Assur. Corp., 2020-Ohio-3973 | 8th Appellate District | 8/6/20](#) In insured's action against insurer, disputing the value of his totaled vehicle, trial court did not err in granting insurer's motion to dismiss where, under the policy, insurer promised to pay actual cash value of damaged vehicle, defined as fair market value at the time of loss, and the sales tax and fees sought by the insured are associated with a replacement vehicle, not a damaged vehicle.

Title. [Johnson v. U.S. Title Agency, Inc., 2020-Ohio-4056 | 8th Appellate District | 8/13/20](#) In insured's negligence action against title insurer for failure to cover losses stemming from mechanic's lien, trial court did not err in granting directed verdict in favor of insurer where, although insurer failed to issue a policy without exclusion from coverage for mechanic's liens as instructed by the insured, the lien in question did not exist on the date the policy was issued, and therefore the insured would not have been covered for losses resulting from the lien even if the exclusion had been removed from the policy.

Juvenile

Custody. [In re A.B.M., 2020-Ohio-3590 | 8th Appellate District | 7/2/20](#) In custody action, trial court did not err in granting mother's notice of intent to relocate where court's jurisdiction to enforce parenting order was established in father's parentage action, the court previously established in the parenting order child's best interests regarding relocation, sua sponte restraining order was issued to maintain status quo pending expiration of relocation period, and trial court had authority to enforce its judgments in absence of an order staying execution, R.C. 3109.051.

Delinquency. [In re E.S., 2020-Ohio-3598 | 8th Appellate District | 7/2/20](#) In delinquency action for, inter alia, adult assault, grant of juvenile's motion to dismiss was not error

where dismissal with prejudice for state's failure to produce a recording of alleged victim's 9-1-1 call was warranted since juvenile is entitled to discovery of evidence that is favorable to him and is material either to guilt or punishment, and the 9-1-1 call was material and potentially exculpatory, Juv.R. 24(A)(6) and Iacona.

Custody. [In re K.M., 2020-Ohio-3602 | 12th Appellate District | 7/6/20](#) Award of permanent custody of abused and dependent children to agency was not error where, inter alia, mother had no consistent contact with children and she continued to abuse drugs, children were not bonded to mother but were bonded to each other and foster family, and older children desired adoption by foster family, R.C. 2151.414.

Custody. [In re M.R., 2020-Ohio-3648 | 1st Appellate District | 7/8/20](#) In custody action, trial court erred with respect to four of five children in adjudicating them dependent where agency presented no evidence demonstrating how mother's incidences of violence were harmful to children, there was no clear and convincing evidence that mother left children alone and, while medical records provided support to establish dependency of one child, records were inadmissible hearsay with regard to other children, R.C. 2151.04(C).

Custody. [In re G. Children, 2020-Ohio-3649 | 1st Appellate District | 7/8/20](#) Award of permanent custody of children to agency was in children's best interest where, inter alia, there were allegations of sexual abuse against father and expert testified about child's description of father's behavior, and child acted out as a result, leading to suspension of visitation, while the children are doing well in foster care, and their foster parents want to adopt them, R.C. 2151.414(D).

Custody. [In re J.B., 2020-Ohio-3675 | 8th Appellate District | 7/9/20](#) Award of legal custody of child to grandfather was not error where child had been in custody of grandfather for over two years, grandfather supports child financially and provides a stable home, child's brother is also in grandfather's custody, mother was welcome in home for visitation, and mother failed to consistently comply with her medications for mental health issues, R.C. 2151.353(A)(3).

Delinquency. [In re T.A., 2020-Ohio-3613 | 9th Appellate District | 7/6/20](#) Adjudication of juvenile as delinquent for adult gross sexual imposition met the sufficiency and weight of evidence standards where nine-year victim's testimony was sufficient to establish juvenile had engaged in sexual conduct with her, and trier of fact did not lose its way in making credibility determinations in resolving conflicts in testimony.

Delinquency. [In re D.Y., 2020-Ohio-3758 | 7th Appellate District | 7/10/20](#) Adjudication of juvenile as delinquent for adult burglary was not error where claim that confession was coerced and his Miranda rights were not properly waived was not preserved because juvenile admitted to the burglary and, moreover, his confession was not coerced, nor were his Miranda rights violated under the facts.

Custody. [In re B.P., 2020-Ohio-3734 | 5th Appellate District | 7/15/20](#) Award of permanent custody of child to agency was not error where,

Juvenile (continued)

although child expressed desire to return to mother's care, mother had not obtained employment and housing for a sufficient time to demonstrate she had remedied problems, she was in a relationship with a man convicted of a criminal offense, and she failed to address pattern of domestic violence in her life, while foster family and siblings provided stability in child's life for three years, R.C. 2151.414.

Custody. In re A.A.V., 2020-Ohio-3741 | 2nd Appellate District | 7/17/20 In father's challenge to validity of shared parenting decree, trial court's approval of the agreed decree is affirmed where father failed to provide a transcript in compliance with App.R. 16(A)(3), there is no evidence that court forced father to agree to the order, the agreed entry states that parties agreed to dismiss all pending motions for contempt, and email from trial counsel verifying claims as to statements of trial court are not part of the record.

Custody. In re C.N.L., 2020-Ohio-3771 | 11th Appellate District | 7/20/20 Award of permanent custody of child to agency was not error where, inter alia, child has ongoing behavioral issues that likely stem from a brain injury he suffered in an accident and mother is not in a position to provide one-to-one care that child requires; as well, mother has no income, lacks stable housing, is not compliant with mental health services and did not make sufficient progress on her case plan to warrant extension of temporary custody, R.C. 2151.414.

Custody. In re D.T., 2020-Ohio-3808 | 5th Appellate District | 7/20/20 Award of permanent custody of children to agency was not error where mother and grandmother failed to remedy problems that caused initial removal of children, mother failed to complete her case plan or finish treatment for substance abuse, and both children have bonded significantly with foster families where their medical and emotional needs are being met, R.C. 2151.414.

Custody. In re S. Children, 2020-Ohio-3791 | 1st Appellate District | 7/22/20 Award of permanent custody of children to agency was error where father visited children regularly, if granted custody he would use current relative caregivers for child care, he is employed and can financially support children, and he complied with all drug screens and with all recommended services, with the exception of completing a program which he is scheduled to restart, R.C. 2151.414.

Custody. In re E.C., 2020-Ohio-3807 | 8th Appellate District | 7/23/20 Award of permanent custody of children to agency was not error where mother failed to comply with case plan regarding mental health and substance abuse, children had strong bond with aunt and her husband who are prepared to adopt children, and mother's claim that children have Native American ancestry is not sufficient to show that children meet statutory definition of Indian children under ICWA for intervention by tribe in custody proceeding, 25 C.F.R. 23.107 and R.C. 2151.414.

Custody. In re L.B., 2020-Ohio-3834 | 9th Appellate District | 7/27/20 Award of permanent custody of delinquent and dependent child to agency was not error where, while in legal

custody of grandmother, child assaulted both grandmother and mother, grandmother allowed child to be in contact with mother in violation of a no contact order, grandmother did not appreciate severity of child's problems and enabled her self-destructive behavior, and child's mental health was improving at residential treatment facility, R.C. 2151.414.

Custody. Depinet v. Norville, 2020-Ohio-3843 | 3rd Appellate District | 7/27/20 Award of legal custody of children to non-relative custodian was not error where mother was found to be unsuitable because she neglected care of her children and her living conditions were unclean and unsafe, she did not support her children financially while they resided in custodian's home with their adult sister, children were doing well in current situation with custodian, and mother failed to show that court engaged in gender bias by removing daughters and not son from her care, R.C. 2151.23.

Custody. In re L.G., 2020-Ohio-3844 | 3rd Appellate District | 7/27/20 In custody action in which father was awarded legal custody of dependent children and mother was allowed supervised visitation, trial court did not err in dismissing mother's motions to modify visitation since mother failed to comply with discovery order, her progress reports included no updated information, and she failed to comply with her treatment plan as a condition to modify visitation.

Custody. In re M.G., 2020-Ohio-3872 | 9th Appellate District | 7/29/20 Award of temporary custody of abused and dependent child to father was not error where child was removed from home in which he lived with both parents and, because he was reunited with father, he was returned to his home and trial court was not required by R.C. 2151.419(A) or R.C. 2151.353(I) to make reasonable efforts to reunite child with mother.

Custody. In re X.H., 2020-Ohio-3907 | 6th Appellate District | 7/31/20 In legal custody dispute, trial court did not err in adopting magistrate's decision and in awarding limited visitation to father where magistrate ordered father to have supervised visitation at least once per week until attaining sobriety, trial court continued to provide that father's visitation should be for time and frequency as he and custodian agree, and magistrate's decision and trial court's judgment can be read consistently.

Delinquency. In re A.B., 2020-Ohio-3904 | 1st Appellate District | 7/31/20 In adjudication of delinquency and finding of subsequent violation of a probation rule and engaging in conduct constituting adult grand theft, appeal is dismissed as moot where claim regarding juvenile's court denial of request for a copy of the psychological evaluation fails to allege a justiciable controversy since it does not challenge the delinquency adjudications or the disposition by the court.

Dependent children. In re K.J., 2020-Ohio-3918 | 3rd Appellate District | 8/4/20 Adjudication of children as dependent and neglected was error where mother's home was clean and safe and had sufficient food, there was no sign of drug usage in home nor lack of parental care, and under R.C. 3796.24 mother's medical marijuana card may not be used as primary basis for

adjudication determining child is abused, neglected or dependent, R.C. 2151.28.

Bindover. State v. Burns, 2020-Ohio-3966 | 8th Appellate District | 8/5/20 In conviction of juvenile of, inter alia, attempted murder, juvenile court's probable cause determinations on charges in the complaint were supported by sufficient credible evidence, juvenile court did not err by denying motion to sever counts for the probable cause hearing, and state did not violate juvenile's constitutional rights by indicting him in adult court on counts juvenile court found that state failed to establish probable cause.

Custody. In re A.B., 2020-Ohio-3990 | 6th Appellate District | 8/7/20 Denial of mother's motion for reunification and award of legal custody of children to stepfather was not error where, although mother completed her case plan services, she continued to suffer mental health issues and was unable to provide a safe and stable home for children, R.C. 2151.353, 3109.04.

Delinquency. In re S.N., 2020-Ohio-3958 | 1st Appellate District | 8/10/20 In a combined appeal, juvenile court erred in accepting juvenile's admission to a probation violation where juvenile was not represented by counsel and matter was remanded for further proceedings; in other case, adjudication of delinquency for adult rape was not plain error where juvenile failed to demonstrate prejudice by counsel's failure to file objections since magistrate acknowledged victim's testimonial inconsistencies, but found victim credible on the material issue of whether rape occurred.

Custody. In re E.J., 2020-Ohio-4010 | 12th Appellate District | 8/10/20 In action where agency was granted permanent custody of dependent child, trial court did not err in denying child's motion to be present at custody hearing where child's mental health was the underlying reason for her dependency case, her age of 14 years implies greater ability to comprehend testimony and potentially increase mental health trauma that might occur if she were present to hear testimony discussing her parents' shortcomings, and child had the opportunity to be heard through an in camera interview, R.C. 2151.35(A)(1).

Custody. In re B.B., 2020-Ohio-4007 | 12th Appellate District | 8/10/20 In parents' continued dispute about their child's upbringing, trial court did not err in dismissing father's motion for contempt, claiming that mother refused to allow child to talk with him on the telephone in contravention of court order, where mother had a civil protection order against father issued primarily for telephone harassment, his pre-textual excuse for repeatedly calling mother's phone when child was in her care justified her blocking his number, and the court's subsequent sua sponte deletion of paragraph in previous order allowing telephone contact with child while in care of other parent was in the best interest of the child.

Custody. In re T.B., 2020-Ohio-4040 | 9th Appellate District | 8/12/20 Award of permanent custody of dependent children to agency was in children's best interest where, inter alia, parents demonstrated a lack of commitment toward the children by failing to regularly

support, visit or communicate with the children and showed an unwillingness to provide an adequate permanent home, food, clothing, shelter or other basic necessities for the children, R.C. 2151.414(D).

Custody. In re C.R., 2020-Ohio-4082 | 5th Appellate District | 8/12/20 Award of permanent custody of children to agency was not error where, inter alia, mother struggled with maintaining stable employment throughout course of proceedings, she indicated that she struggled with methamphetamine use for at least eight years, she failed to complete case plan, and she was inconsistent in attending counseling for mental health issues.

Delinquency. In re A.L., 2020-Ohio-4061 | 8th Appellate District | 8/13/20 In adjudication of juvenile as delinquent for adult murder, denial of motion to suppress was error where 10 year-old boy's confession was involuntary because he did not have an opportunity to consult with an adult interested in his welfare prior to the interrogation and police coerced his confession; juvenile's Miranda rights were also violated by police coercion and he did not have the "requisite level of comprehension" to properly waive his Miranda rights.

Delinquency. In re J.W., 2020-Ohio-4065 | 8th Appellate District | 8/13/20 Adjudication of juvenile as delinquent of three adult gross sexual imposition offenses is modified in part to the lesser offense of gross sexual imposition as to two of the three counts where there was a lack of showing of use of force in two of the counts; also, the juvenile court did not err by classifying juvenile as a juvenile sexual offender pursuant to R.C. 2152.82(A) since all the conditions of the classification were met.

Custody. In re A.P., 2020-Ohio-4122 | 5th Appellate District | 8/18/20 Award of permanent custody of adjudicated dependent and/or abused children to agency was not error where father completed his case plan, but failed to address his anger issues, one of the children witnessed him attempt suicide, his commitment to mental health treatment was inconsistent and he achieved housing appropriate for children only a few months before hearing, while children are bonded with their foster family, R.C. 2151.414.

Custody. In re B.P., 2020-Ohio-4121 | 5th Appellate District | 8/18/20 Award of permanent custody of adjudicated dependent and/or abused children to agency was not error since three weeks after the children were returned to parents they were again removed following parents' argument where mother was knocked to ground with car that father had put in reverse, and father failed to address his mental health and anger issues, while the children are in the same foster home and are bonded with their foster family, R.C. 2151.414.

Custody. In re B.P., 2020-Ohio-4120 | 5th Appellate District | 8/18/20 Award of permanent custody of adjudicated dependent and/or abused children to agency was not error where father continued to struggle with mental health issues and discontinued his medication, he acted in an abusive manner towards mother and children in the past, he failed to address his anger issues, and children were removed from parents a second time following a violent argument and drug use, while children are

settled with their foster family and have received mental health counseling, R.C. 2151.414.

Custody. In re B.D., 2020-Ohio-4128 | 1st Appellate District | 8/19/20 In action in which juvenile was charged as delinquent for solicitation or prostitution, appeal of denial of "Motion to Divert Pursuant to Safe Harbor," in which juvenile court declined to find juvenile a victim of human trafficking and denied diversion under R.C. 2152.02(F) is dismissed for lack of a final appealable order since no final order exists pursuant to R.C. 2505.02 because it is not an ancillary proceeding constituting a provisional remedy.

Custody. In re K.G., 2020-Ohio-4117 | 9th Appellate District | 8/20/20 Award of legal custody of dependent child to grandfather was not error where neither grandfather nor grandmother was willing to enter joint custody agreement, grandfather facilitated contact between child and others outside his home during his extended visit with child, he remained in contact with father and repeatedly attempted to communicate with mother and, although grandmother was approved and equally capable of caring for child, the court's award of legal custody to grandfather was not against the manifest weight of evidence, R.C. 2151.414.

Custody/Dependent or abused child. In re E.B., 2020-Ohio-4139 | 8th Appellate District | 8/20/20 Adjudication finding children dependent or abused and issuance of order modifying shared-parenting plan to name father the residential parent of the children for school purposes was not error where both children alleged that mother's husband inappropriately touched them, mother refused to believe them, and mother permitted her husband to live in the household, R.C. 3109.04(F)(1), 2151.35(A).

Visitation. In re K.Y., 2020-Ohio-4140 | 8th Appellate District | 8/20/20 In parties' custody and visitation dispute, trial court's adoption of mother's proposed agreed judgment entry is affirmed where father failed to challenge alleged settlement, he did not file his own proposed agreed judgment entry with the court, and an independent review is not required pursuant to R.C. 3109.04 because shared parenting was previously terminated and issue on appeal was a visitation dispute.

Appeal. In re A.T., 2020-Ohio-4155 | 2nd Appellate District | 8/21/20 Father's appeal of trial court's award of custody of children to relatives is dismissed for lack of jurisdiction on reasoning that there was no final appealable order where, although judge signed magistrate's decision, the document did not state that judge adopted magistrate's decision as an order of the court or enter court's order resolving the case, it failed to conspicuously indicate requirement for timely objection, and no adoption of magistrate's decision was journalized.

Custody. In re J.N., 2020-Ohio-4157 | 2nd Appellate District | 8/21/20 Award of permanent custody of child to agency was not error where father had only sporadic contact with child following father's hospitalization for mental health issues and had no contact for seven months preceding custody trial, he was previously engaged in drug use and refused

to sign releases to confirm current sobriety or to participate in domestic violence classes, and child's need for legally secure permanent placement could not be achieved without grant of custody to agency, R.C. 2151.414.

Custody. In re N.J., 2020-Ohio-4158 | 2nd Appellate District | 8/21/20 Award of permanent custody of child to agency was not error since child is well-bonded to foster parents and has been in their care most of her life, mother failed to demonstrate learned parenting skills despite completing two parenting classes, child regressed during the period when she was reunited with mother, and a legally secure placement cannot be achieved without a grant of permanent custody to the agency, R.C. 2151.414.

Custody. In re A.M., 2020-Ohio-4186 | 5th Appellate District | 8/21/20 Award of permanent custody of children to agency was in children's best interest where, inter alia, there were concerns about alleged sexual abuse by grandfather who continued to have contact with child, and there were concerns about untreated mental health issues in both parents and lack of appropriate supervision of the children, while all of the children were placed together at a foster home, they had lived in foster home for the last two years, they bonded to the foster parents and were getting appropriate help in school and with medical issues, R.C. 2151.414(D).

Custody. In re C & M Children, 2020-Ohio-4206 | 1st Appellate District | 8/26/20 Award of permanent custody of abused, neglected and dependent children to agency was not error where children were removed from the home for suspected abuse and medical neglect, mother did not appreciate the danger father posed to children and planned to continue her relationship with him, mother had issues with substance abuse, and children needed a legally secure placement, R.C. 2151.414.

Custody. In re J.T., 2020-Ohio-4246 | 6th Appellate District | 8/28/20 Award of legal custody of children to woman who had a longstanding relationship with the paternal grandfather of the children was in children's best interest since, inter alia, father was incarcerated, mother was involved in drug use and her home was infested with cockroaches, while legal custodian was a grandmother figure to the children, she was the main person to transport the children to doctor's appointments, she went on vacations with the children, and she often had them for weekend visits, R.C. 2151.415(B).

Landlord and Tenant

Security deposit. Christen v. Continental Ents., Ltd., 2020-Ohio-3665 | 8th Appellate District | 7/9/20 In tenant's action to recover security deposit, trial court did not err in awarding attorney fees to tenant where claims against landlord and landlord's managing member were substantially similar, all attorney fees were incurred to recover tenant's security deposit pursuant to R.C. 5321.16, and tenant's expert witness testified that attorney's rate and hours were reasonable and necessary and were incurred largely as the result of landlord's contentious behavior throughout proceedings.

Landlord and Tenant (continued)

Forcible entry and detainer. Realty Trust Servs., L.L.C. v. Mohammad, 2020-Ohio-3736 | 8th Appellate District | 7/16/20 In forcible entry and detainer action where landlord did not accommodate tenant's request to extend lease, judgment in favor of landlord was not error since emails concerning extension of the lease did not offer definite terms so no offer was made, and there is no evidence that tenant was a holdover tenant because landlord did not accept rent payments after term of lease expired.

Security deposit. Trimble v. Rossi, 2020-Ohio-3801 | 8th Appellate District | 7/23/20 In tenant's action to recover her security deposit from landlord, trial court's adoption of magistrate's decision in favor of landlord is affirmed where tenant failed to provide transcript of magistrate's hearing pursuant to Civ.R. 53(D)(3), her dissatisfaction with magistrate's credibility determinations are not grounds for additional hearing, and there was no plain error regarding deductions from tenant's deposit.

Custody. In re D.R., 2020-Ohio-4025 | 5th Appellate District | 8/6/20 Award of permanent custody of children to agency was not error where father failed to complete his case plan services, failed to undergo mental health counseling for his un-medicated conditions, regularly prevented home inspections and had no furniture or clothing for children, while children bonded with foster parents in same home and were receiving services for developmental delays, R.C. 2151.414.

Delinquency. In re H.P.P., 2020-Ohio-3974 | 8th Appellate District | 8/6/20 In adjudication of juvenile as delinquent for, inter alia, adult grand theft, trial court did not err in allowing state's witness to testify by Skype where case was transferred to another city on defendant's motion on day of scheduled trial, and witness was working that day, the court took precautions to ensure remote testimony did not violate right to confrontation, and any error was harmless beyond a reasonable doubt.

Custody. In re J.H., 2020-Ohio-4026 | 5th Appellate District | 8/10/20 Award of permanent custody of children to agency was not error where mother failed to complete her case plan, she admitted that she was not ready to have children with her full-time, she failed to visit children, and children suffered from mental health issues resulting from conduct of parents, while children bonded with their foster parents, R.C. 2151.414.

Choice of law. Woodside Mgt. Co. v. Bruex, 2020-Ohio-4039 | 9th Appellate District | 8/12/20 In property management company's action for breach of lease on business which was relocated to another state after property was found to contain hazardous substances, trial court erred in ruling that lease is not governed by Ohio law where the lease agreement is incorporated into the stock purchase agreement which is unambiguous as to choice-of-law, the choice-of-law provision in purchase agreement expressly excludes principles of conflicts of law, and therefore intent of parties was for lease to be governed solely by Ohio substantive law.

Forcible entry and detainer. Kassem v. Barnes, 2020-Ohio-4046 | 1st Appellate District | 8/12/20 In landlord's forcible entry and detainer action against tenant for unpaid rent, trial court erred in prohibiting tenant from presenting evidence of retaliation at trial where tenant had been depositing rent with clerk of court since beginning of eviction action, and therefore a retaliation defense is permitted pursuant to R.C. 5321.02 regardless of whether tenant asserted retaliation as a defense in his answer or in a counterclaim for damages.

Natural Resources

Mineral interests. Fonzi v. Brown, 2020-Ohio-3631 | 7th Appellate District | 7/1/20 In dormant mineral act action where defendant sought to have plaintiffs' royalty interests abandoned and trial court ruled that plaintiffs lacked standing to contest the abandonment process at issue, summary judgment in favor of defendants is reversed and summary judgment is granted to plaintiffs since they timely submitted an affidavit demonstrating they are lineal descendants of original owners of mineral rights, and because defendant searched for heirs only in county where property is located despite having last known address of owner in another state, he failed to conduct a reasonable, diligent search, R.C. 5301.56(E)(1).

Appeal. Shamrock v. Cobra Resources, L.L.C., 2020-Ohio-3856 | 11th Appellate District | 7/27/20 In mineral lease dispute where defendant was granted summary judgment on all claims and on counterclaims pertaining to one plaintiff, appeal is sua sponte dismissed due to lack of a final appealable order where, although court used Civ.R. 54(B) language that there was no just reason for delay, the language did not render the judgment final since counterclaims raised against the separate parties arising from same facts and involving joint pleadings and arguments were not resolved.

Procedure

Judge disqualification. In re Disqualification of Mayberry, 2020-Ohio-4203 | Supreme Court of Ohio | 7/1/20 Affidavits of disqualification of judge are dismissed where affiants-plaintiff and his attorney failed to identify any matter currently pending before judge, and the possibility of post-trial motions is not a statutory basis to order judge's removal, R.C. 2701.03.

Appeal. Hoffman v. Michael Cheselka Jr., L.L.C., 2020-Ohio-3594 | 8th Appellate District | 7/2/20 In motion to enforce settlement agreement for worker's compensation claim in which trial court held that defendant-appellant breached the settlement agreement and awarded plaintiff liquidated damages and attorney fees, defendant's assignments of error on appeal are waived because defendant failed to raise those arguments with the trial court.

Class certification. Lindsay v. Garfield Hts., 2020-Ohio-3672 | 8th Appellate District | 7/9/20 In plaintiff's renewed motion for class certification in challenging city's use of an automated traffic photo enforcement system, trial court erred in finding plaintiff had standing for due process and equal protection claims which directly challenged the appeals process provided by city ordinance because plaintiff

paid her own citation without challenging it with an appeal; however, plaintiff did have standing to bring claims asserting unlawful and void notices of liability and unjust enrichment.

Class action. McAdams v. Mercedes-Benz, USA, L.L.C., 2020-Ohio-3702 | Supreme Court of Ohio | 7/16/20 In plaintiff-vehicle purchaser's action asserting claim that was covered by a federal class action case, it was error to reverse trial court's judgment in favor of defendants on reasoning that plaintiff had effectively opted out of class by pursuing her case since plaintiff was not excluded from class action by federal court that certified the class, and the issue of whether she opted out is barred by res judicata.

Appeal. Zhong v. Liang, 2020-Ohio-3724 | 8th Appellate District | 7/16/20 In plaintiff's action for breach of fiduciary duty and related claims arising from plaintiff's alleged investment in pharmacy business and failure of defendants to reimburse her after defendants forced her out of business, appeal and cross-appeal of sanctions order are dismissed for lack of jurisdiction pursuant to Civ.R. 54(B) where the action had not been adjudicated for all claims and all parties, and the jury verdict was not yet a final judgment because a motion for prejudgment interest was still pending, R.C. 2505.02.

Appeal. Casto v. Lehr, 2020-Ohio-3777 | 5th Appellate District | 7/17/20 In action where petitioner was granted domestic violence civil protection order against respondent-her former boyfriend, respondent's appeal is dismissed because he failed to timely file objections to the trial court's adoption of the magistrate's decision and may not challenge decision on appeal pursuant to Civ.R. 65.1(G).

Contempt. In re Feagan, 2020-Ohio-3788 | 1st Appellate District | 7/22/20 In plaintiff's attorney's conviction of indirect contempt for paralegal's violation of gag order in underlying medical malpractice actions, judgment is reversed for insufficient evidence since finding was based solely on attorney's status as designated trial attorney responsible for firm's personnel's actions, the record contains no evidence that attorney initiated or encouraged violation of gag order, but rather took steps to ensure there would be no violation, and there is no evidence that attorney ratified paralegal's conduct or did any affirmative act to justify finding of contempt, R.C. 2705.02.

Jury evidence/charge. Jones v. Cleveland Clinic Found., 2020-Ohio-3780 | Supreme Court of Ohio | 7/23/20 In medical malpractice action, appeals court erred in reversing denial of plaintiff's motion for a new trial after verdict for defendant on reasoning that trial court failed to consider juror's letter expressing regret for her vote and failed to give a Howard jury charge; Evid.R. 606(B) prohibits juror's testimony to impeach verdict, and exceptions under aliunde rule did not apply here, and Howard charge was not required following third communication of deadlock because a replacement juror had necessitated restart of deliberations an hour before, and Howard charge was being discussed when verdict was reached.

Appeal. Grande Voiture D'Ohio La Societe Des 40 Hommes Et 8 Chevaux v. Montgomery Cty. Voiture No. 34 La Societe Des 40

Hommes Et 8 Chevaux 2020-Ohio-3821 | [2nd Appellate District](#) | 7/24/20 In plaintiff-military membership organization's action to prohibit defendant-local chapter's issue of auxiliary memberships in violation of plaintiff's constitution, summary judgment in favor of plaintiff was not error where defendant-local chapter filed notice of appeal during pendency of its bankruptcy petition, therefore being a nullity, the automatic stay makes the trial court's decision *res judicata*, and defendant-former member lacks third-party standing to appeal on behalf of local chapter.

Discovery. [Heimberger v. Heimberger, 2020-Ohio-3853](#) | [11th Appellate District](#) | 7/27/20 In action for tortious interference with expectancy of inheritance and causing plaintiff emotional distress, it was not error to grant defendants' motion to compel discovery and production of records since family dispute mediator's records requested were limited to the identity of plaintiff's legal counsel rather than any communication, and medical records requested were limited to the extent that they related causally or historically to the physical and/or mental injuries alleged by plaintiff, Civ.R. 26(B)(1), R.C. 2710.03(A) and 2317.02(B)(1).

Dismissal. [State ex rel. Ames v. Rootstown, 2020-Ohio-3855](#) | [11th Appellate District](#) | 7/27/20 In relator's action alleging violations of R.C. 121.22, Open Meetings Act, trial court did not err in dismissing complaints where the court issued a written order setting the matters for trial, relator attended the trial but was unprepared to go forward on his claims, court's failure to rule on relator's motion for a protective order and a preliminary hearing, Civ.R. 12(D), was harmless, and plaintiff did not obtain leave to file motion for summary judgment after the matter was set for trial.

Discovery. [Byrd v. Lindsay Corp., 2020-Ohio-3870](#) | [9th Appellate District](#) | 7/29/20 In action alleging defendants' negligence and products liability in connection with manufacture of guardrail systems, prompted by death of plaintiff's father in a vehicle accident, trial court did not err in granting motions to quash and for protective order prohibiting discovery sought by defendants' R.C. 2319.09 foreign subpoena duces tecum since material sought was not relevant to underlying action, and documents pertained to events that occurred after death of plaintiff's father, Civ.R. 45(C), 26(C).

Sanctions. [Griffin v. Churneys Bodyworks, Inc., 2020-Ohio-3889](#) | [8th Appellate District](#) | 7/30/20 In action in which plaintiff failed to respond to defendant-truck body shop's request for discovery materials, trial court did not err in granting defendant's motion for sanctions where plaintiff's Civ.R. 41(A) dismissal did not divest court of jurisdiction to impose sanctions, R.C. 2323.51 explicitly allows for filing motion for sanctions after a dismissal, and plaintiff agreed to imposition of fees and costs, thereby waiving the right to challenge the amount.

Joinder. [In re Estate of Zoltanski v. Zoltanski, 2020-Ohio-3908](#) | [6th Appellate District](#) | 7/31/20 In consolidated appeal from three judgments for separate aspects of decedent's estate, probate court erred in finding that sister was required to name bank as a necessary party in conversion action against brother for liquidating decedent's account since there is no evidence how parties would call upon bank

to satisfy judgment from a closed account and there is no evidence of what interest bank has in the litigation to a voluntarily closed account, Civ.R. 19(A).

Taxpayer action. [State ex rel. Perkins v. Medina Cty. Bd. of Commrs., 2020-Ohio-3913](#) | [9th Appellate District](#) | 8/3/20 In statutory taxpayer action alleging that county board illegally contracted for repair of county solid waste facility, judgment on the pleadings in favor of board was not error where taxpayer failed to provide security for costs of proceedings as required by R.C. 309.13, and his payment of the initial filing fee did not satisfy the security requirement.

Requirements for filing. [Webb v. Clipper, 2020-Ohio-3914](#) | [9th Appellate District](#) | 8/3/20 In plaintiff-inmate's action against defendant-warden for money damages for loss of eyeglasses, mandatory dismissal is required where plaintiff did not pay cost deposit required by local rules nor comply with specific requirements of R.C. 2969.25(C) to proceed without paying cost deposit, and he failed to file affidavit of prior civil actions pursuant to R.C. 2969.25(A).

Frivolous conduct. [F.D. Johnson Co. v. JC Mechanical Heating & Cooling, L.L.C., 2020-Ohio-3931](#) | [11th Appellate District](#) | 8/3/20 In plaintiff's action alleging intentional interference with business relationship against defendant-former subcontractor, trial court did not err in denying defendant's motion for attorney fees and sanctions which claimed that plaintiff engaged in frivolous conduct where plaintiff voluntarily dismissed case following a settlement conference and an undocketed denial of defendant's summary judgment, showing there was a genuine issue of fact to be resolved at trial, and plaintiff secured extensive evidence supporting its claim and in opposition to summary judgment, demonstrating suit was not frivolous, R.C. 2323.51.

Consent dismissal. [State ex rel. Ames v. Portage Cty. Bd. of Comms., 2020-Ohio-3932](#) | [11th Appellate District](#) | 8/3/20 In relator's action against county board of commissioners for, *inter alia*, mandamus and declaratory judgment, trial court did not err in granting consent dismissal where, although parties did not sign consent entry of dismissal following settlement discussions, Civ.R. 41(A)(2) has no signature requirement and there is no record supporting relator's argument that a settlement agreement was never reached.

Pleading. [State ex rel. Hendy v. Ohio Civ. Rights Comm., 2020-Ohio-3952](#) | [9th Appellate District](#) | 8/5/20 In relator's petition for writ of mandamus against respondent-civil rights commission for obstructing justice in its investigation of relator, trial court did not err in granting respondent's motion to dismiss where relator's complaint included a list of grievances against respondent and its investigative process, but failed to articulate his legal right to the relief he claimed or respondent's legal duties, and appeal was available as an adequate remedy.

Appeal. [Figetakis v. My Pillow, Inc., 2020-Ohio-3949](#) | [9th Appellate District](#) | 8/5/20 In action against defendant-pillow company seeking damages for alleged failure to honor guarantee, appeal is dismissed for lack of jurisdiction

where trial court adopted magistrate's decision but did not independently set forth its own judgment in favor of defendants, making the order not final and appealable.

Relief from judgment. [Younomics Private Student Loan Trust v. McKinley, 2020-Ohio-3989](#) | [2nd Appellate District](#) | 8/7/20 In student loan trust's action against student for nonpayment of loans, trial court did not err in granting student's motion for relief from prior default judgment in favor of trust where student had no knowledge of pending action until he received notice of default judgment, he had not resided at address used for service for many years, trust's claim was barred by statute of limitations and/or doctrines of laches, estoppel and waiver, and Civ.R. 60(B)(1) does not require a hearing prior to vacating the judgment.

Appeal. [Curry v. Mansfield, 2020-Ohio-4125](#) | [5th Appellate District](#) | 8/18/20 Appeal of plaintiff's discrimination and retaliation action which resulted in issuance of judgment on the pleadings and summary judgment in favor of defendant is dismissed for want of prosecution since plaintiff failed to comply with appellate rules or present a cogent argument on appeal, App.R. 16, and she made the same allegations in a prior case which was dismissed with prejudice, making the current claim barred by *res judicata*.

Savings statute. [Moore v. Mt. Carmel Health Sys., 2020-Ohio-4113](#) | [Supreme Court of Ohio](#) | 8/20/20 In medical malpractice action filed just prior to statute of limitations deadline where service was not perfected on defendant-physician within the Civ.R. 3(A) one-year period, appeals court erred in reversing summary judgment in favor of two of the defendants and applying the savings statute, R.C. 2305.19(A), since the savings statute applies when a claim fails otherwise than upon the merits and, in this case, plaintiff did not file a new claim, his claim had not failed or been dismissed, and if it had been dismissed, expiration of statute of limitations would have been considered a failure on the merits.

Dismissal. [Kalski v. Bartimole, 2020-Ohio-4137](#) | [8th Appellate District](#) | 8/20/20 In plaintiff's action asserting a claim for legal malpractice against defendant-attorney and also asserting a claim against defendant-attorney general to limit recovery of Medicaid debt from her deceased husband's successors, trial court erred in dismissing claim against attorney general when it granted judgment on the pleadings to the attorney on the malpractice claim since the two claims were unrelated and the claim against the attorney general remained pending.

Jurisdictional priority. [Kinzel v. Ebner, 2020-Ohio-4165](#) | [6th Appellate District](#) | 8/21/20 In plaintiff-property owner's common pleas action challenging defendant-neighbor's short term rentals of single-family homes, followed by the city's criminal complaint against the defendant in municipal court, common pleas court erred in dismissing the defendant's counterclaims seeking mainly equitable relief against the city under jurisdictional priority rule since the whole-issue rule does not apply where the municipal causes of action are criminal in nature and do not require resolution of validity of ordinances at issue, plaintiff was party to only civil claims, and the municipal court does not

Procedure (continued)

have jurisdiction over the counterclaim seeking equitable relief.

Dismissal. Hunt v. Dixon, 2020-Ohio-4164 | 6th Appellate District | 8/21/20 In plaintiff's small claims actions against neighbor and tree removal company seeking damages for removal of trees on her property, dismissal of the complaint against the tree removal company was error where the trial court made no determination as to whether trees were cut down recklessly and without privilege in violation of R.C. 901.51, and if they were, treble damages should be awarded subject to monetary jurisdiction limit.

Vexatious litigator. Watkins v. Hall, 2020-Ohio-4192 | 11th Appellate District | 8/24/20 Appeal from trial court's judgment declaring appellant to be a vexatious litigator is dismissed because appellant failed to obtain leave from the court of appeals to file an appeal, as required by R.C. 2323.52(F)(2).

Dismissal. Jochum v. State ex rel. Mentor, 2020-Ohio-4191 | 11th Appellate District | 8/24/20 In declaratory judgment action in which plaintiff claimed intentional interference with property rights and related claims, trial court did not err in granting defendants' motion to dismiss or for summary judgment since the complaint did not state any facts that would survive a challenge under Civ.R. 12(B)(6) where the allegations were unclear regarding the identity of individual defendants who made any alleged misrepresentations, alleged misrepresentations were not made to plaintiff, and plaintiff asserted no wrongdoing on the part of defendant-city.

Jurisdiction. ATA Logistics, Inc. v. Empire Container Freight Station, Inc., 2020-Ohio-4183 | 12th Appellate District | 8/24/20 In case in which judgment was issued in favor of Ohio freight broker against plaintiff-logistics company and plaintiff filed indemnification action against defendant-trucking company, resulting in a default judgment against defendant, trial court did not err in granting defendant's motion to vacate default judgment for lack of personal jurisdiction since plaintiff presented only a legal argument and failed to prove by a preponderance of evidence that defendant was transacting business in Ohio pursuant to R.C. 2307.382.

Attorney-client privilege. Yost v. Schaffner, 2020-Ohio-4225 | 5th Appellate District | 8/27/20 In investigation of alleged fraud relating to assets of a non-profit charitable corporation, trial court did not err in denying defendants' motion to quash subpoena and motion for protective order associated with defendants' IOLTA account since IOLTA banking transactions are not confidential communications between an attorney and his or her client, and the attorney-client privilege does not apply.

Discovery. Shamblin v. Bob Evans Farms, L.L.C., 2020-Ohio-4238 | 2nd Appellate District | 8/28/20 In employee's action challenging his termination during medical leave after suffering a work-related injury, summary judgment in favor of employer was error where the court did not rule on employee's Civ.R. 56(F) motion for continuance to conduct discovery until its

judgment, which rendered the motion moot, it failed to resolve pending discovery issues concerning employer's failure to answer discovery requests, and employee's affidavit was adequate for purposes of his motion.

Professional Responsibility

Reinstatement. Akron Bar Assn. v. Plesich, 2020-Ohio-3650 | Supreme Court of Ohio | 7/9/20 Attorney is reinstated to the practice of law.

Suspension. Trumbull Cty. Bar Assn. v. Lutseck, 2020-Ohio-3687 | Supreme Court of Ohio | 7/13/20 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Turner, 2020-Ohio-3688 | Supreme Court of Ohio | 7/13/20 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Suspension/Reprimand. Erie-Huron Cty. Bar Assn. v. Bailey and Bailey, 2020-Ohio-3701 | Supreme Court of Ohio | 7/16/20 One attorney is suspended from the practice of law for one year, with six months stayed on condition, and the other attorney is issued a public reprimand.

Suspension. Disciplinary Counsel v. Smith, 2020-Ohio-3830 | Supreme Court of Ohio | 7/27/20 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Suspension. Cleveland Metro. Bar Assn. v. Aten, 2020-Ohio-3831 | Supreme Court of Ohio | 7/27/20 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Dismissal. Disciplinary Counsel v. Reinheimer, 2020-Ohio-3941 | Supreme Court of Ohio | 8/6/20 Case is dismissed since attorney did not have fair notice of alleged ethical rule violations.

Suspension. Cincinnati Bar Assn. v. Turner, 2020-Ohio-4030 | Supreme Court of Ohio | 8/13/20 Attorney is suspended from the practice of law for one year, entirely stayed on condition.

Reprimand. Disciplinary Counsel v. Hawkins, 2020-Ohio-4023 | Supreme Court of Ohio | 8/12/20 Attorney is issued a public reprimand.

Suspension. Cincinnati Bar Assn. v. Mahin, 2020-Ohio-4098 | Supreme Court of Ohio | 8/19/20 Attorney is suspended from the practice of law for two years, with the second year stayed on conditions.

Suspension. Disciplinary Counsel v. Moorman, 2020-Ohio-4211 | Supreme Court of Ohio | 8/27/20 Attorney is issued an interim suspension from the practice of law, with reinstatement on conditions.

Suspension. Columbus Bar Assn. v. McNeal, 2020-Ohio-4210 | Supreme Court of Ohio | 8/27/20 Attorney is ordered to serve entire one-year suspension from the practice of law issued earlier, stay is revoked, and reinstatement is on conditions.

Public Records

Foster care records. State ex rel. Martin v. Tuscarawas Cty. Job & Family Servs., 2020-Ohio-3507 | Supreme Court of Ohio | 7/1/20 Petition for writ of mandamus to compel county job and family services agency to produce copies of, or permit relators to inspect, records pertaining to their childhood history with the agency is denied since R.C. 5153.17, public children services agencies' record-keeping statute, imposes no duty on the county agency to allow relators to inspect or copy the records they seek, and director's finding that there was "good cause" for the request as being in the best interest of one of the relators did not create any such duty or right.

Response time. State ex rel. Stuart v. Greene, 2020-Ohio-3685 | Supreme Court of Ohio | 7/14/20 In relator-inmate's mandamus action seeking damages for respondent-warden's administrative assistant's delay in providing requested public documents, claim for payment of statutory damages is denied since relator failed to show that respondent took an unreasonable amount of time to produce document with substantial redactions, relator is not entitled to attorney fees as a pro se litigant, and statutory damages for acting in bad faith are not allowed under R.C. 149.43.

Mootness. State ex rel. McDougald v. Greene, 2020-Ohio-3686 | Supreme Court of Ohio | 7/14/20 In relator-inmate's action to compel respondent-warden's administrative assistant to produce documents, writ of mandamus is denied for mootness where respondent attested in supplemental affidavit that document he initially thought did not exist was located and promptly turned over to relator, and statutory damages pursuant to R.C. 149.43 are denied where relator used prison kite system to request documents, and kite system closely resembled regular mail delivery, an insufficient form of delivery, and did not qualify relator for statutory damages.

Criminal prosecution. State ex rel. Ware v. Giavasis, 2020-Ohio-3700 | Supreme Court of Ohio | 7/16/20 In inmate's mandamus action seeking to compel clerk of courts to provide requested documents, summary judgment in favor of clerk was not error where the requested records concerned a criminal prosecution and inmate failed to obtain approval of sentencing judge for access to the records as required by R.C. 149.43(B)(8), and inmate is not entitled to statutory damages for clerk's delay in responding to the request because R.C. 149.43(B)(3) does not impose a timeliness requirement.

Non-existent documents. State ex rel. Hedenberg v. N. Cent. Corr. Complex, 2020-Ohio-3815 | Supreme Court of Ohio | 7/28/20 Relator-inmate's petition for writ of mandamus to compel production of public records is denied since corrections facility does not save or maintain requested documents, relator's unsworn declaration that documents exist is invalid as evidence and offers little to refute correctional facility's affidavit, and relator is not eligible for award of statutory damages because he delivered his requests through prison kite system rather than an approved method of delivery.

Inmate. *State ex rel. Ware v. Kurt*, 2020-Ohio-3874 | 9th Appellate District | 7/29/20 In relator-inmate's petition for writ of mandamus to compel respondent-clerk of courts to respond to public records request, case is dismissed because relator's affidavit did not comply with mandatory requirements of R.C. 2969.25 with regards to his affidavit of indigency; the portion of the form completed by cashier covered a six-month period, but reported only aggregate totals, which does not comply with the requirements of the statute.

Prerequisites. *State ex rel. Parker Bey v. Loomis*, 2020-Ohio-3933 | 11th Appellate District | 8/3/20 In relator-inmate's petition for writ of mandamus to compel respondents-correctional institution to produce public records, petition is dismissed because relator failed to strictly comply with the mandatory requirements of R.C. 2969.25(A) as to details of civil cases he cited.

Prerequisites. *State ex rel. Sands v. Kelly*, 2020-Ohio-3936 | 11th Appellate District | 8/3/20 In relator-inmate's petition for writ of mandamus to compel respondent-clerk of courts to provide requested documents, respondent's motion to dismiss is granted where relator's failure to include all required information concerning his civil actions in his affidavit mandates dismissal pursuant to R.C. 2969.25(A).

In-person inspection. *State ex rel. McDougald v. Sehlmeier*, 2020-Ohio-3927 | Supreme Court of Ohio | 8/5/20 In relator-inmate's petition for writ of mandamus to compel public records custodian to allow in-person records inspection, writ is denied since allowing relator to personally inspect records would violate prison rules and create security issues in maximum security prison, respondent offered to produce copies of the records, and inspection was not conditioned on payment of a fee, R.C. 149.43.

Prerequisites. *State ex rel. Ware v. Pureval*, 2020-Ohio-4024 | Supreme Court of Ohio | 8/12/20 In relator-inmate's petition for writ of mandamus to compel clerk of courts to produce requested public documents, trial court erred in granting respondent's motion to dismiss where relator complied with the required R.C. 2969.25(A) affidavit describing prior civil actions, and complaint should not have been dismissed based on a possible docketing error.

Public Utilities

Property damage. *Illum. Co. v. Bosemann*, 2020-Ohio-3663 | 8th Appellate District | 7/9/20 In plaintiff-electric company's action to recover for damage to utility pole sustained when struck by defendant in auto accident, trial court did not err in calculation of damages where plaintiff showed that the average life expectancy of a pole did not apply to the pole at issue, depreciation of pole should not be subtracted from replacement costs, and evidence provided was sufficient to prove indirect costs to a reasonable degree of certainty.

Real Property

Foreclosure. *PrimeLending, A PlainsCapital Co. v. Milhoan*, 2020-Ohio-3703 | 5th Appellate District | 7/14/20 In foreclosure action where default judgment was granted in favor of plaintiff-bank, trial court did not err in denying defendant's Civ.R. 60(B) motion to vacate judgment entry where defendant failed to obtain a stay of execution after decree in foreclosure was issued, she failed to request stay of distribution of proceeds, and she failed to appeal the confirmation entry or post an appeal bond, making the appeal moot because judgment was satisfied and no remedy could be legally ordered.

Foreclosure. *BankUnited, N.A. v. Lowe*, 2020-Ohio-3742 | 2nd Appellate District | 7/17/20 In plaintiff-bank's foreclosure action where defendant challenged validity of second mortgage benefiting the government, in rem judgment in favor of plaintiff is affirmed where defendant did not previously challenge validity of second mortgage and is precluded from doing so on appeal, and record contains nothing to substantiate defendant's contention because the copy of second mortgage attached to plaintiff's complaint appears to bear his signature.

Foreclosure. *Wells Fargo Bank, Natl. Assn. v. Riddle*, 2020-Ohio-3796 | 1st Appellate District | 7/22/20 In foreclosure action based on defendants' failure to pay on mortgage note, trial court did not err in confirming sheriff's sale of property since defendants failed to request a hearing prior to confirmation of sale and they failed to demonstrate error pertaining to sale itself, and trial court lacked jurisdiction to address merits of pending motions during proceedings confirming the sale.

Pleading. *ASE Invests., L.L.C. v. Smith*, 2020-Ohio-3822 | 6th Appellate District | 7/24/20 In plaintiff-trustee's action challenging validity of mortgage executed prior to divorce by defendant-decedent's ex-husband on property held in trust, denial of plaintiff's motion for leave to file amended complaint and reframe his claim as quiet title action was not error where defendant transferred his interest in the property to decedent at the time of divorce, and plaintiff failed to allege facts in support of quiet title against defendant, who no longer had any interest in subject property, R.C. 5303.01.

Deed restrictions. *Siltstone Servs., L.L.C. v. Guernsey Cty. Community Dev. Corp.*, 2020-Ohio-3877 | 5th Appellate District | 7/27/20 In action originally to declare a roadway right of way where Ohio Public Works Commission (OPWC) intervened to prevent land use in violation of deed restrictions protecting property as a green space park, trial court erred in granting summary judgment in favor of various property interest holders where deed restrictions were violated by allowing surface use to access subsurface minerals, allowing removal of pond water which entailed surface use and pond closure and allowing use of roadway for commercial purposes; final judgment is entered granting OPWC's motion for partial summary judgment.

Statutory powers. *Siltstone Servs., L.L.C. v. Guernsey Cty. Community Dev. Corp.*, 2020-Ohio-3878 | 5th Appellate District | 7/27/20 In plaintiff's breach of contract action

seeking damages from defendant-community development corporation for violation of right-of-way agreement, trial court erred in granting summary judgment in favor of defendant on reasoning that defendant's employee's act transferring the property interest was ultra vires and therefore not binding since the transfer was not a corporate act beyond statutory powers of defendant and therefore not ultra vires, and court failed to consider issue of employee's apparent authority.

Foreclosure. *Treasurer of Cuyahoga Cty. v. Frankovic*, 2020-Ohio-3894 | 8th Appellate District | 7/30/20 In foreclosure action for defendant's non-payment of real property taxes, judgment in favor of plaintiff-county treasurer was not error where defendant never filed an answer or asserted any defenses, he had over a year to appear before the county board of revision and failed to do so, he filed three continuances in less than two months, the court warned him that it would not continue the matter again and that he had to appear in person, which he failed to do, and there is nothing in the record to support his claim that the county had offered him a payment plan.

Standing. *Lakeview Holding, L.L.C. v. Farmer*, 2020-Ohio-3891 | 8th Appellate District | 7/30/20 In re-filed foreclosure action on property for which plaintiff-LLC had purchased tax certificates, trial court did not err in sua sponte dismissing complaint for lack of standing since complaint involved a tax certificate that was not part of original action, plaintiff was not holder of any of the tax certificates at the time of re-filing, and plaintiff's assignment of certificates to third party did not authorize it to institute proceedings on third party's behalf, R.C. 5721.36 and 5721.37.

Deed restrictions. *Ohio Pub. Works Comm. v. Barnesville*, 2020-Ohio-4034 | 7th Appellate District | 8/6/20 In plaintiff-state commission's action against multiple defendants involved in land use on property funded by grants from state conservation bond fund, trial court erred in granting defendant-energy company's motion for judgment on the pleadings where defendant's mineral and water leases violated the deed use and alienation restrictions which unambiguously restricted transfer of any interest in the properties, including subsurface leases.

Foreclosure. *Bank of New York Mellon v. Zayed*, 2020-Ohio-4058 | 8th Appellate District | 8/13/20 In plaintiff-bank's foreclosure action against defendants for default on mortgage note, summary judgment in favor of plaintiff was not error where defendants failed to present evidence challenging validity of assignments of the note and mortgage, plaintiff submitted a copy of the original promissory note which was endorsed in blank, plaintiff was in possession of the original note at the time the complaint was filed, and the affidavit authenticated documents requisite for foreclosure.

Contract. *Bechtel v. Turner*, 2020-Ohio-4078 | 10th Appellate District | 8/13/20 In claims arising from sale of home, summary judgment for defendants-sellers on issue of breached promises regarding specific basement repairs was error since defendants committed in addendum to pay contractor at closing to fund repairs and arrange for engineer to revisit property after repair and provide certification,

Public Utilities (continued)

and genuine issues of material fact exist as to whether defendants upheld these promises.

Deed. Olenchick v. Scramling, 2020-Ohio-4111 | 11th Appellate District | 8/17/20 In plaintiffs' action to correct deed following one of plaintiff's sale of condominium to defendant, resulting in a dispute because original deed did not reflect parties' agreement that no garage was included with the condominium sale, summary judgment in favor of plaintiffs was not error where the re-recorded deed with handwritten alterations concerning the garage was not signed nor authorized by plaintiff, and thus merger by deed doctrine does not apply because the re-recorded deed was invalid, conveyance of the garage was a mutual mistake, and reformation of the deed was appropriate.

Deed. Olenchick v. Scramling, 2020-Ohio-4110 | 11th Appellate District | 8/17/20 In plaintiffs' action to correct deed and for damages against, inter alia, county recorder, following one of plaintiff's sale of condominium, where plaintiffs claimed that original deed did not reflect parties' agreement that no garage was included with the condominium sale and the deed was re-recorded, summary judgment in favor of defendants was not error since plaintiffs provided no evidence that anyone in the county recorder's office made changes to the deed or violated any duty pursuant to R.C. 317.13 when it accepted and recorded the altered deed, and also plaintiffs suffered no damage from title company's failure to assure a clear title.

Tax lien. Zurmehly v. Burnett, 2020-Ohio-4181 | 12th Appellate District | 8/24/20 In appeal brought by individual lien holder on property sold pursuant to county treasurer's foreclosure action, trial court did not err in confirming the sale of property where R.C. 5721.10 provides that the state has a first and best lien on lands with taxes certified delinquent, the individual was properly served as a party to the action, the property was sold pursuant to R.C. 5721.19(A)(2) for minimum bid established by court, and the individual lien holder's lien was properly released from the property.

Foreclosure. Huntington Natl. Bank v. Anderson, 2020-Ohio-4174 | 9th Appellate District | 8/24/20 In plaintiff-bank's in rem foreclosure action against defendant for default on a mortgage note, denial of defendant's motion to dismiss was not error where, although original promissory note was missing when action was brought, plaintiff did not pursue action specific to a lost note under R.C. 1308.38, nor was it required to allege facts to demonstrate its ability to satisfy statute, and it sufficiently pleaded its right to enforce mortgage note.

Foreclosure. Wilmington Savs. Fund Soc. v. McHugh, 2020-Ohio-4250 | 6th Appellate District | 8/28/20 In foreclosure action, trial court did not err in granting summary judgment to plaintiff-trust since plaintiff had standing, even though it had transferred its interest in the note and mortgage shortly before the summary judgment was awarded, particularly where the trial court subsequently granted plaintiff's motion to substitute the party plaintiff.

Securities

Pleading. White v. Pitman, 2020-Ohio-3957 | 1st Appellate District | 8/5/20 In plaintiffs-investors' action claiming fraud against defendants for misrepresentations regarding purchase and sale of domain names, trial court erred in granting defendants' motion to dismiss where plaintiffs' averments of fraud were pled with particularity and, although buyback agreements contained releases barring later action, plaintiffs met Civ.R. 9(B) requirement in asserting that the releases were obtained by fraud in the inducement.

Tax

Real property. Hersh v. Cuyahoga Cty. Bd. of Revision, 2020-Ohio-3596 | 8th Appellate District | 7/2/20 In taxpayer's challenge to the tax valuation of his residential property, BTA did not err in affirming decision of BOR, finding that the sale price of the residence was not the best evidence of its value since the sale of the property was a HUD sale, with the presumption that the sale was not arm's length, and taxpayer did not overcome the presumption.

Real property. Musial Offices, Ltd. v. Cuyahoga Cty., 2020-Ohio-3660 | 8th Appellate District | 7/9/20 In class action brought by plaintiffs to recover overpayment of real property taxes due to a clerical error, trial court erred in dismissing plaintiffs' claim on reasoning that the treasurer was unaware that he overcharged plaintiffs in reliance on auditor's outdated property values in database since R.C. 723.01 does not require mens rea and allows recovery of refunds for overpayment of taxes collected and retained in violation of law.

Appeal. Ohio Dept. of Taxation v. Gingrich, 2020-Ohio-379 | 1st Appellate District | 7/22/20 In state department of taxation's successful action to recover back taxes from taxpayer, taxpayer's appeal is dismissed as moot where she did not request or obtain a stay of execution or post a supersedeas bond, and judgments against her were satisfied from department's garnishment of her wages.

Real property. Corex Partners, L.L.C. v. Franklin Cty. Bd. of Revision, 2020-Ohio-3865 | 10th Appellate District | 7/28/20 In taxpayers' challenge to tax valuation of property in which the Board of Revision (BOR) denied taxpayers' request for a continuing-complaint hearing, the Board of Tax Appeals (BTA) erred in ordering the BOR to revalue property since the tax liability had been finally determined where taxpayers could have appealed court of appeals' previous dismissal of taxpayers' appeal from the BTA, but instead they attempted to re-litigate under R.C. 5715.19(D), which is barred by both res judicata and law-of-the-case doctrine.

Real property. Literary Club v. McClain, 2020-Ohio-3956 | 1st Appellate District | 8/5/20 In taxpayer-private literary club's action seeking real property tax exemption, BTA's decision in favor of tax commissioner is affirmed on reasoning that taxpayer is not an educational or a charitable institution since its events are not open to the public, its primary function is not the presentation of formal instruction, the dominant purpose of its work is to benefit its members, and the property is not used exclusively for charitable purposes where

it is also used as a residence, R.C. 5709.12, 5709.121.

Consolidated returns. Time Warner Cable, Inc. v. Cincinnati, 2020-Ohio-4207 | 1st Appellate District | 8/26/20 In taxpayer-cable company's action disputing city's tax assessment which resulted from city's denial of taxpayer's ability to file consolidated tax returns with affiliated groups not doing business in the city, the Board of Tax Appeals' (BTA's) decision in favor of the taxpayer was not error where former R.C. 718.06 provides for consolidated tax returns, including affiliated groups, if a consolidated return was also filed for federal income tax purposes, and the statute pre-empts municipal code's requirement that affiliated groups must do business in the city.

Real property. Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision, 2020-Ohio-4214 | 8th Appellate District | 8/27/20 In dispute about the tax valuation of taxpayer's horse racing facility, board of tax appeals (BTA) did not err in adopting the value set forth by taxpayer's appraiser since taxpayer's income-capitalization approach to valuation was found to be more reliable and probative than school board's proposed valuation, which would vary depending on the success of the business located on the property; BTA fulfilled its mandate on remand to meaningfully consider board of education's approach to valuation.

Torts

Wrongful death. Chan v. Buckeye Nails, 2020-Ohio-3710 | 5th Appellate District | 7/7/20 In plaintiff-husband's wrongful death action claiming his wife's death was caused by defendant-nail salon's negligence, summary judgment in favor of defendant was not error where decedent's case was not referred to coroner, death certificate was insufficient to establish a causal link between the manicure injury and development of fatal conditions, and the time period between manicure and death was much longer than the interval between onset of conditions and decedent's death as indicated on the death certificate.

Legal malpractice. Tye v. Beausay, 2020-Ohio-3746 | 2nd Appellate District | 7/17/20 In plaintiffs-sons' legal malpractice action against defendants who represented their father in underlying medical malpractice action and involved plaintiffs without their knowledge and then dismissed their claims to reach a settlement, requiring them to sign releases at their father's request, summary judgment in favor of defendants as to disabled plaintiff who was incompetent to sign release was error since court's reliance on testimony of his brother as proof of family's intent concerning settlement was unwarranted, and if mother-guardian of disabled plaintiff was aware of his claim, she may have taken action to protect his interests, an issue which must be resolved by jury.

Medical malpractice. Burfit v. Ohio Dept. of Rehab. & Corr., 2020-Ohio-3863 | Court of Claims | 7/17/20 Plaintiff's medical malpractice complaint is dismissed since he failed to disclose an expert and provide a report by the deadline set by the court.

Medical malpractice. Jonas v. Durrani, 2020-Ohio-3787 | 1st Appellate District | 7/22/20

In action for medical malpractice relating to plaintiff's final of several surgeries performed by defendant where surgery failed to alleviate plaintiff's pain, trial court erred in granting judgment on the pleadings in favor of two defendants on reasoning that complaint was filed outside statute of repose since plaintiff filed initial complaint within the four-year repose period allowed under R.C. 2305.113(C), then subsequently voluntarily dismissed that complaint and re-filed largely indistinguishable claims within one year of dismissal and, because claims were substantially the same, savings statute is invoked, R.C. 2305.19(A).

Medical malpractice. Schuster v. Durrani, 2020-Ohio-3789 | 1st Appellate District | 7/22/20

In plaintiff's medical malpractice action for claims arising from surgery, trial court erred in denying plaintiff's motion for leave to file amended complaint where, because savings statute R.C. 2305.19(A) allowed re-filing of claim outside the R.C. 2305.113(C) medical statute of repose, leave to amend was not time barred, and case is remanded for further consideration.

Medical malpractice. Deck v. Durrani, 2020-Ohio-3790 | 1st Appellate District | 7/22/20

In plaintiff's medical malpractice action for claims arising from surgery, trial court erred in dismissing plaintiff's spoliation-of-evidence claims on basis of untimely presentation of underlying claims since plaintiff filed original claim within the R.C. 2305.113(C) medical statute of repose and then timely re-filed the claim following dismissal pursuant to Civ.R. 41(A), thus invoking the savings statute, R.C. 2305.19(A).

Negligence. Snay v. Burr, 2020-Ohio-3828 | 6th Appellate District | 7/24/20

In negligence action where plaintiff was injured when his vehicle swerved presumably on ice and struck defendants' mailbox, summary judgment in favor of defendants was not error where mailbox placement did not create an unsafe condition for normal travel because it was outside traveled portion of road, mailbox did not cause plaintiff to lose control of his vehicle, defendants had no duty to remove ice on road, material used in construction of mailbox was irrelevant because postal guidelines are not mandates with force of law, and mailbox was open and obvious.

Violation of criminal statute. Buddenberg v. Weisdack, 2020-Ohio-3832 | Supreme Court of Ohio | 7/29//20

In answer to federal district court's request to certify state-law questions pertaining to underlying civil liability action based on violations of criminal statutes, R.C. 2307.60 permits but does not require use of a conviction as evidence to establish civil liability, and R.C. 2921.03(C) provides for civil liability of a person who violates the intimidation statute but does not require a conviction as a prerequisite for civil liability.

Dismissal. Green v. Zep Inc., 2020-Ohio-3896 | 10th Appellate District | 7/30/20

Dismissal of wrongful death and negligence action for failure to prosecute was not error where plaintiff claimed that her husband's death was caused by exposure to defendants' products, but the case had a nearly ten-year history of delay where plaintiff failed to comply with trial court orders regarding the case schedule and

the key issue of product identification, Civ.R. 41(B)(1).

Appeal. Vanek v. Geauga Soil & Water Conservation Dist., 2020-Ohio-3950 | 9th Appellate District | 8/5/20

In plaintiffs' negligence and related claims action against defendant-soil and water conservation district employee arising from traffic accident in which defendant's vehicle collided with plaintiffs' vehicle, defendant's appeal is dismissed for lack of a final appealable order where plaintiffs' amended complaint supplanted original complaint, and thus defendant's motion for judgment on pleadings was rendered moot, but not denied, and defendant is not precluded from raising an immunity defense in response to the amended complaint.

Vandalism. Brothers v. Nixon, 2020-Ohio-4035 | 7th Appellate District | 8/5/20

In plaintiffs-neighbors' complaint against defendants-minor and parents for vandalism and negligent supervision, trial court did not err in denying defendants' summary judgment motion asserting that the action was filed outside the one-year statute of limitations where, because R.C. 2307.70(B)(1), which allows damages for vandalism, is remedial rather than penal, the claim is governed by the R.C. 2305.10 two-year statute of limitations, which was met, and award of attorney fees is proper under the statute.

Wrongful death. Maddy v. Honeywell Internatl., Inc., 2020-Ohio-3969 | 8th Appellate District | 8/6/20

In plaintiff-estate's wrongful death action for occupational exposure to asbestos-containing brake products manufactured by defendant, summary judgment in favor of defendant was error where plaintiff presented evidence that defendant manufactured asbestos-containing brake products and that brake linings that were returned to defendant and likely contained asbestos were ground and chiseled in area where decedent supervised work, there was no evidence that decedent was exposed to other asbestos-containing products, and trier of fact must weigh R.C. 2307.96(B) factors.

Employer intentional tort. Sinley v. Safety Controls Technology, Inc., 2020-Ohio-4068 | 8th Appellate District | 8/13/20

In plaintiff's employer intentional tort action against defendant-dairy for loss of fingers while working on malfunctioning grinder, trial court did not err in denying defendant's motion to stay proceedings and compel arbitration where plaintiff's union's collective bargaining agreement does not specifically list employer intentional tort, or intentional torts generally, as arbitrable, and therefore plaintiff did not clearly and unmistakably waive his right to judicial forum, R.C. 2745.01.

Wrongful death. Casey v. Erie Ins. Co., 2020-Ohio-4067 | 8th Appellate District | 8/13/20

In wrongful death action where vehicle driven by defendants' babysitter collided with vehicle with decedent-driver education instructor in passenger seat, summary judgment in favor of defendants was not error since babysitter was an independent contractor where she provided her own vehicle in performance of duties for which she was hired, she never babysat for defendants again and was not paid, she could only babysit when she was not working at her other job, and defendants did not facilitate her negligence as joint tortfeasors.

Legal malpractice. U.S. Specialty Ins. Co. v. Hoffman, 2020-Ohio-4114 | 10th Appellate District | 8/18/20

In bond insurer's legal malpractice action against attorney for failure to file appellate brief in bond forfeiture case, summary judgment in favor of attorney was not error since insurer failed to file a memorandum contra attorney's motion for summary judgment and therefore waived arguments for purposes of appeal; even if specific argument could be addressed on appeal, it is without merit because insurer's argument against bond forfeiture that failed in underlying case was the same argument it claimed attorney should have made in appellate brief.

False arrest. Morrison v. Horseshoe Casino, 2020-Ohio-4131 | 8th Appellate District | 8/20/20

In plaintiffs' action for, inter alia, false arrest and detention against defendants-casino security personnel, arising from report of an alleged robbery, summary judgment in favor of defendants was not error where plaintiff conceded that there was reasonable articulable suspicion to stop him and, under the totality of the circumstances, including the nature of alleged criminal conduct, the source of the allegations, and the need to act swiftly, it was reasonable to conclude that probable cause existed so qualified immunity applied pursuant to R.C. 2744.03(A)(6).

Damages. Berardo v. Felderman-Swearigen, 2020-Ohio-4271 | 1st Appellate District | 8/31/20

In plaintiffs' action seeking damages for injuries sustained when vehicle driven by defendant collided with their car, trial court erred in denying plaintiffs' motion for a new trial with respect to plaintiff who experienced pain from which she later recovered since there was undisputed evidence regarding her pain, making the jury's award of medical expenses without any award for past pain and suffering against the manifest weight of evidence, Civ.R. 59(A)(6).

Workers' Compensation

Appeal. Browning v. Zoological Soc. of Cincinnati, 2020-Ohio-4042 | 1st Appellate District | 8/12/20

In zoo employee's appeal of administrative denial of her claim for an additional condition following an injury sustained on the job, trial court's judgment in favor of employee is affirmed, although the court admitted to not reading every page of the medical records, since it reviewed the record and made detailed comments in issuing its decisions, reflecting command of the record, and there is no evidence that the court skirted its obligations or refused to consider record evidence.

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