

OhioLawyer

THE OHIO STATE BAR ASSOCIATION MEMBER MAGAZINE

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Meet Judge Dean Wilson

2022-2023 Ohio State Bar Association President

 2022 Election Preview

Statehouse Connection

Taking a Gander at Lame Duck

Ohio's Black Judges:

Providing Extraordinary Leadership



Your Greenbook Companion Inside!

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Editorial Offices

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In Memoriam

2021

Joseph A. Robinette 59, Cincinnati, Aug. 31, 2021

Richard A. Rice 61, Covington, Oct. 3, 2021

Steven B. Wagner 52, Cleveland, Oct. 28, 2021

Merlin G. Briner 86, Labelle, FL, Dec. 21, 2021

2022

Ronald A. Apelt 56, Highland Heights, April 8, 2022

Bernard "Bernie" Z. Yavitch 78, Columbus, May 15, 2022

Evelyn Bachman 84, Bowling Green, May 24, 2022

Reuel Dolnick Ash 65, Cincinnati, June 25, 2022

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What's Happening at the Bar?

Updates from the CEO



Promoting justice and advancing the legal profession.

This autumn at the Ohio Bar, we're excited to connect with all of you – whether it's shaping the future of the association at a district meeting, hanging out with friends at a tailgate or learning about important practice area updates at a committee meeting. We're also happy to announce what we'll be focused on for the next three years with our new strategic plan and to celebrate our bar leaders, past and present.

-Mary Amos Augsburger

OSBA CEO



Ohio Bar Strategic Initiatives 2022-2025

This spring, the Ohio Bar Board of Governors used your valuable feedback to create a new, three-year strategic plan. Here is what we'll be focused on for the next three years:



Access to Justice

We'll work to promote and improve access to lawyers for all Ohioans, especially by connecting those in need of legal services with Ohio Bar member attorneys.

- We formed a task force to recommend solutions and encourage attorneys to open a rural practice.
- We're advocating for increased funding for access to lawyers.
- We're exploring a public outreach campaign to encourage connections with Ohio Bar members.



Justice, Equity, Diversity and Inclusion

We'll be working to advance inclusion within the legal profession so that we reap the benefits of diverse backgrounds, viewpoints and experiences within our justice system and better reflect all of the communities we serve.

- We'll continue to offer educational ID&E programming and other resources.
- We'll collaborate with Ohio's affinity bars to influence public policy and advance equity in the legal system.
- We're offering public resources on citizen rights and responsibilities, and information on the court system.



Innovation

We're working to update and revolutionize our programs, services, and activities to best equip Ohio attorneys to succeed amid disruptive change with the legal services market.

- We're updating membership plans to include options for unlimited CLE (available for 2023).
- We're investing in technology to improve online experiences and programming.



Culture and Community

As the state's largest network of legal professionals, we aim to foster a culture and community where attorneys can best support and engage each other. We're committed to ensuring that the bar's structure and business processes are flexible enough to meet these charges as well as the changing needs of our membership.

- We'll continue to work with committees and sections to engage members through practice resources and programming.
- We're exploring collaborative opportunities with local bars so we're more present in communities across the state.



Coming Up

District Meetings

Ohio Bar district meetings are in full swing. Visit ohiobar.org/districtmeetings to check the schedule and register for your meeting. Another eight will take place in the spring. Stay tuned!

Ohio Bar Tailgates

Join us at the Shoe this fall for fun and football with your colleagues and Ohio Bar staff. Visit ohiobar.org/tailgates to learn more and RSVP.

Board of Governors

The Ohio Bar Board of Governors convenes again this December.



Ohio Bar Leadership Announcements



Introducing Your New President-Elect Designee

We are pleased to announce **Dan Griffith** as the 2022-2023 President-Elect Designee of the Ohio Bar.

As a result of an uncontested election, Griffith will follow Michelle Kranz to become president of the Ohio Bar in the 2024-25 bar year. ***Congratulations Dan!***



Welcome New Board Members

The Ohio Bar Board of Governors shapes the future of the association and our incoming board members are ready to leave their own mark. Welcome to:

- Matthew Miller, District 3 Representative
- Vallie Bowman-English, District 4 Representative
- Wendi Fowler, District 9 Representative
- Matthew G. Vansuch, District 18 Representative



Committee and Section Chairs

This summer, President Dean Wilson appointed bar members from across practices areas to serve as chairpersons of Ohio Bar committees and sections. We'd like to thank our outgoing chairs for their service and leadership during the past year.

Committees and sections work to improve the justice system by keeping Ohio lawyers informed and working to improve Ohio law. Chairpersons selected for this honor have demonstrated excellence and expertise in their practice area as well as outstanding leadership and a commitment to the profession and the rule of law. We offer our warm welcome to all of our new and re-appointed chairs and can't wait to see where this year takes us.

Learn about all of our new leaders at ohiobar.org/ohiobarnews.



The Ohio Bar at the American Bar Association Annual Meeting

The Ohio Bar hit the road in August for Chicago, where the American Bar Association House of Delegates took up several policy proposals and honored our very own past president, Barb Howard.

Howard completed her two-year term as chair of the House of Delegates and we were very excited to join her in celebration of her service to the legal profession and host a reception in her honor. ***Congratulations on a job well done, Barb!***



From left to right: Ohio Bar immediate past president David Lefton, CEO Mary Augsburger, past president Barb Howard, at-large board member Michael Flowers and Ohio attorney and executive director of the California Lawyers Association Oyango Snell.



Treasurer's Report FY 2022

Ohio State Bar Association Treasurer Ken Heintz provided the following year end report outlining the Ohio Bar's financials for fiscal year 2022 (July 1, 2021 – June 30, 2022). Please note that these financials are not yet audited but will be in coming months.

TREASURER'S REPORT – FY 2022

Report of the OSBA Treasurer for the Fiscal Year End June 30, 2022⁽¹⁾

REVENUE

Dues	\$4,468,290
CLE	2,421,006
Advertising, Sponsorships & Exhibitors	131,258
Investment Income ⁽²⁾	2,504,258
Other	815,967
PPP Loan Forgiveness	911,730
TOTAL	\$11,252,510

EXPENSES

Publications	\$572,924
Meetings & Seminars	432,485
Board of Governors & Council of Delegates	302,721
Video Production	31,237
Personnel	4,907,210
Office & Occupancy	1,547,430
Building (including capital expenditures)	919,278
Operational Initiatives	420,472
Other	284,509
TOTAL	\$9,418,266

NET INCOME SURPLUS/(DEFICIT)

\$1,834,244

NOTES:

(1) This statement is unaudited

(2) Includes dividends from OBLIC

**Oct. 25**

Advanced Commercial Real Estate

Oct. 25

Contract Law - Survey Says: The Top 5 Drafting Errors in 2021 Ambiguous Contract Cases

Oct. 27

Juvenile Law

Oct. 28

Advanced Workers' Compensation

Nov. 2

Taking and Defending Effective Depositions

Eligible for NLT credit

Nov. 3

Thinking About Retirement? What's Next?

Nov. 4

Corporate Counsel Institute

Nov. 9

Learning To Dance - Understanding the Rules and Risks of Practicing Law Without Injury

Nov. 10

2022 Oil and Gas Update

Nov. 15

Equity Education Series Season 3 - Part 2: ESG (Environmental, Social and Governance): Diversifying Your Portfolio and Impact

Complimentary for members and non-members

Nov. 17

Ohio Special Needs and Elder Law Planning

Nov. 18

Advanced Residential Real Estate

Nov. 19

Saturday CLE - Succession Planning for Attorneys

Nov. 29

Getting the Most Out of Decisis
Complimentary CLE for members

The CLE You Need, The Way You Want It

Browse all upcoming courses in the Ohio Bar CLE Store, where new programs are added all the time.

Visit ohiobar.org/cle-store.



2022 Election Preview

Ready To Vote?

Make sure you're ready and registered to vote this November. Check your registration, get a sample ballot, find your polling place and even sign up to be a poll worker (for CLE credit!) at voteohio.gov.

Important Dates:

Oct. 11 – Deadline to register to vote.

Oct. 12 – Early voting begins for the Nov. 8 General Election, in-person or absentee.

Nov. 8 – General Election Day! Polls open 6:30am to 7:30pm.

Judicial Elections

On Nov. 8 2022, Ohioans will elect nearly 170 judges, including chief justice and two justices of the Supreme Court of Ohio. And thanks to a new law passed by the General Assembly, candidates for Supreme Court and Ohio's courts of appeals will have party designations on the ballot for the first time.

In order to prepare Ohio Bar members to make well-informed decisions at the polls, we asked candidates for the

Ohio Supreme Court a few questions covering everything from their legal background to their judicial philosophy. A selection of the questions that we asked – and the candidates' answers – are presented here. Visit ohiobar.org/2022judicialections to view each candidate's complete profile and be sure to share this resource with your colleagues, friends and family and encourage them to cast their votes for all judicial races at the polls.

For Chief Justice, Term Beginning Jan. 1, 2023



Jennifer Brunner
Current position:
Justice of the Supreme Court
of Ohio, 2021 – Present



Sharon Kennedy
Current Position:
Justice of the Supreme Court
of Ohio, 2012 – Present

How would you describe your judicial philosophy?

Brunner: My judicial philosophy is based on strict adherence to the separation of powers of the three branches of government that is required for American democracy to be effective and work to the benefit of people. The "rule of law" contemplates that every person is subject to the law, including people who are lawmakers, law enforcement officials and judges. The strength and integrity of the judiciary, including the power to prosecute corruption, is a predictor of the longevity of a democracy. The judiciary must adhere to its core principals and functions, using restraint when called for and shouldering the burden of unpopularity when action is called for.

Kennedy: My judicial philosophy is described as judicial restraint. When resolving a legal question I answer only the question that is necessary to resolve the controversy. My determination of what the law says is guided by the words of the constitutional provision, statute, or contract. As a member of the judiciary I have no authority to rewrite the law for that power is given to the legislative branch.

How will you work with the profession to improve the administration of justice?

Kennedy: The topic of the administration of justice covers a wide-array of areas, including but not limited to, judicial officers and the judicial system, court operations, specialized dockets, and addressing the needs of

the communities we serve. Given the limited space I will touch briefly upon three of these issues. The primary topic people discuss with me is access to justice. In the aftermath of COVID-19, there is a backlog of cases and people are frustrated that their case has not been heard. To ease docket strain I will continue to encourage judges to apply for technology grants to enhance their court's virtual hearing capabilities. I will also continue to direct judges to the task force report on technology. For those courts and communities that are struggling to help people suffering from mental illness I will continue to refer them to the statewide Stepping-Up Program run by former Justice Stratton. Lastly, because of the rise in non-violent substance abuse cases I will continue to encourage judges to establish drug treatment courts and provide them with the necessary resources.

Brunner: An important role for the Ohio Supreme Court is attorney ethics and discipline in a system of professional self-governance. I would rather prevent missteps than punish them. I have already been introduced by OSBA's executive director to the Access to Justice Foundation and have previous work and personal experience with the Center for Law Related Education. Continued support of these and continuing legal education is important to me. I am a fellow of both the Ohio State Bar Foundation and the Columbus Bar Foundation and recognize their benefit in service to the community.

Describe what you believe to be the appropriate role of the courts in our political process, particularly from the standpoint of the court's role and authority as a co-equal branch of state government.

Brunner: The Ohio Supreme Court is not a legislative nor an executive body, except as to its oversight of the courts of Ohio and the legal profession. Courts should not make political statements by virtue of their decisions and should exercise restraint in not issuing advisory opinions. As Chief Justice I will work for professionalism and respect among all our courts and to maintain effective relationships among the members of the bench and with the Governor and the Ohio General Assembly, working collaboratively whenever possible on legislative and administrative solutions to problems faced by Ohioans.

Kennedy: Courts have enumerated powers. The authority of courts to act is limited to the power granted to them through constitutional or statutory provisions. Courts have the power to declare laws unconstitutional and review the actions of the other branches of government and administrative agencies and determine whether their actions are consistent with constitutional authority. In simple terms, courts settle disputes through a legal process. But the courts does not have the authority to enact legislation or order the General Assembly to enact specific legislation. And the courts, while having the contempt power, do not have the enforcement powers bestowed upon the executive branch.

Visit ohioabar.org/2022judicialections to learn more about the candidates' background, qualifications and to see responses to additional questions posed by the bar.



For Justice, Term Beginning Jan. 1, 2023



Patrick "Pat" Fischer
Current Position:
Justice of the Supreme Court of
Ohio, 2017 – Present



Terri Jamison
Current Position:
Judge on the 10th District Court
of Appeals, 2021 – Present

How would you describe your judicial philosophy?

Fischer: Common sense textualism.

Jamison: I begin to interpret a regulation, statute, or constitutional provision by referring to the original intent or original meaning of the rule at the time it was created and look to what legislators intended at the time it was written. I will apply the law to the individual facts of the case and to our current society to ensure justice and equity for all people. I believe that Chief Justice Roberts said it best, "Judges are like umpires. Umpires don't make the rules. They apply them." When there is no rule that fits the facts, I believe a judge has the authority to interpret the law and render a decision that will answer questions that are of great interest to the public.

How will you work with the profession to improve the administration of justice?

Jamison: I will continue and expand upon many of the innovative initiatives and programs initiated by Chief Justice Maureen O'Connor that deal with a broad range of legal/judicial issues including: Technology/Innovation access to justice, creation of a criminal sentencing database, modernization of ORC Title 29.

Fischer: I do every day by participating in numerous CLEs and bar activities, and giving public presentations.

Describe what you believe to be the appropriate role of the courts in our political process, particularly from the standpoint of the court's role and authority as a co-equal branch of state government.

Fischer: The courts should apply the law, if constitutionality is not at issue, as written to the facts of the case. The courts must remain a separate branch of government, leaving legislating to the legislature and execution to the executive.

Jamison: To maintain their status as a co-equal branch of government empowered to hear and rule on disputes between the executive and legislative branches, the courts must remain above the political fray. Courts must never be viewed as partisan entities willing to tilt the scales of justice toward a political party. If and when that happens, the public will lose faith in the courts and the judicial system. Obviously, cases with political implications will come before the courts. When they do the judges who hear them should issue rulings based solely on the law.

Visit ohioabar.org/2022judicialections to learn more about the candidates' background, qualifications and to see responses to additional questions posed by the bar.



For Justice, Term Beginning Jan. 1, 2023



Marilyn Zayas
Current Position:
Judge on the 1st District Court
of Appeals, 2016 – Present



Pat DeWine
Current Position:
Justice of the Supreme Court of
Ohio, 2017 – Present

How would you describe your judicial philosophy?

Zayas: My judicial philosophy is to be faithful to the law and to apply it equally to all. I decide cases based on what the law is, not by advancing a personal or political agenda, or by who the parties are. My priority is to ensure that the law is applied fairly and consistently and with integrity, independence and common sense. I strive to write each decision so that both sides of the case can understand why the outcome is what it is and to reflect that both sides were considered and understood.

DeWine: I believe that it is the role of the courts to interpret, not make, the law. I share the view that judges are not given a broad commission to solve society's problems as they see them, but rather to decide cases before them according to the rule of law. At its best, judicial decision-making does not advance any particular policy objective; but fairly applies the law as it is written. In interpreting the law, a judge should seek to apply the will of the legislative branch elected by the citizens to write it. I favor the textualist approach to interpretation; that is, the judiciary best divines the intention of the legislative branch by a disciplined focus on the language of the governing documents. A judge also must be respectful of his or her place within our legal system. Ours is an adversarial system, and a judge must resist the temptation to quickly latch on to a view point before he or she has carefully considered the arguments of all sides. Not only must a judge

carefully consider all sides, but he or she must subject all arguments to vigorous intellectual probing before reaching a decision.

How will you work with the profession to improve the administration of justice?

DeWine: I have spearheaded efforts to use technology to improve court efficiency and improve access to justice by working to establish Ohio's iCourts task force. I have a strong commitment to helping educate and train the next generation of lawyers. I teach as an adjunct law school professor for the past 9 years, make it a point to hire young lawyers as term law clerks, and select approximately 10 law school students each year to serve as judicial externs.

Zayas: I will support and advance the justice reform initiatives introduced by our current Chief Justice including a sentencing database and bail reform. I am also interested in advancing initiatives that work towards eliminating bias in our justice system. Additionally, I will seek ways to support and enlarge the use of specialized dockets, such as the mental health, human trafficking second chance, veterans, drug court, and commercial dockets.

Describe what you believe to be the appropriate role of the courts in our political process, particularly from the standpoint of the court's role and authority as a co-equal branch of state government.

Zayas: The independence and integrity of the judicial system is essential for courts to serve as a safeguard of our constitutional rights and privileges, to prevent executive and legislative encroachment upon our rights, and to ensure equal protection for all.

DeWine: The Framers understood that liberty would not be guaranteed by any one branch of government but through the checks and balances provided by our tripartite system. For this reason, the judiciary must be independent, and it must exercise restraint.

The judicial role is to interpret the law and to ensure that the other branches of government act within the roles assigned to them by our state and federal constitutions. As long as the other branches of government are acting within their constitutional limitations, the court's role is limited. If another branch of government violates individual rights guaranteed by our constitutional system, or exceeds the powers granted by our constitution, then it is appropriate for the judiciary to step in to enforce constitutional guarantees. A court, however, should be cautious in not infringing upon the constitutional duties of other more democratic branches of government.

Visit ohiobar.org/2022judicialections to learn more about the candidates' background, qualifications and to see responses to additional questions posed by the bar.



JUDICIAL COUNT

Supreme Court seats are only a few of the judicial races on the ballot in November. But we know that judicial races typically have a low voter turnout and that a majority of Ohio voters who skip voting for judges do it because they don't know enough about the candidates. But as attorneys know all too well, *judges make decisions that affect the lives of Ohioans every single day.*

At judicialvotescount.org, voters can get quality, unbiased information about the judges on every level of their ballot.

The Ohio Bar, in partnership with the Ohio State Bar Foundation, Ohio News Media Association and Ohio Association of Broadcasters, is proud to announce this resource for Ohio voters.



Let's all turn in a complete ballot this November.

Encourage your friends, family and clients to visit judicialvotescount.org to learn more about judges running for office.

Ohio Attorney General Election

The seat of the state's top legal officer is also on the ballot this year. Incumbent Dave Yost will face opponent Ohio Rep. Jeff Crossman for the office of Ohio Attorney General. With more than 30 sections and special divisions, the AG's office affects the practice of law and daily life for Ohioans – from advising local governments to regulating charities to supporting criminal investigations and much more. We asked the candidates to tell us a little about themselves in these abbreviated interviews. Learn more about them at ohiobar.org/2022agelection.



Dave Yost
Current Position:
Ohio Attorney General,
2019 – Present



Jeff Crossman
Current Position:
State Representative,
2019 – Present

What do you think it is important for attorneys in Ohio to know about the role of the state Attorney General?

Crossman: The Ohio Attorney General's office is the largest public interest law firm in the state. The office has the ability to shape public policy in a variety of ways which touch nearly every aspect of everyday life in Ohio (criminal law, environmental concerns, consumer protections, workers issues, civil rights, etc.). The AG can use these sections to wield positive influences that help shape Ohio's future for the better. For example, the Attorney General should be rooting out the corruption in our state government which, by some estimates, costs states like Ohio \$500 million in economic impact annually. That is a massive cost of corruption that is holding our state back, deterring companies and individuals from wanting to invest in our state and makes it harder for Ohioans to thrive in our state.

Yost: As Ohio Attorney General, my client is the people of Ohio. Not a political party, and certainly not an individual politician – though my client elects officers to carry out their business, and those officers are due deference. My personal views and opinions cannot override the office's duty to the law.

Our goal is compliance over enforcement; we use enforcement to achieve compliance. No one should ever be surprised when they are named as a defendant in an action.

The individuals who work here are the most dedicated public servants I have had the pleasure of working with.

Virtually every attorney on our team could make more money in the private sector. But they choose to stay here because they see the ability to do public *good*.

If elected, what are your priorities while in office?

Yost: The word limit will not allow me to describe all my goals for a second term in office, so I will share my top four priorities:

1) Police Training: We need to have annual, funded, mandatory training for all Ohio peace officers. Training has always been sporadic in Ohio. We would never expect a basketball team that only trains and receives coaching every third or fourth year to win a championship. The same applies to police training. These officers deserve better, and I will continue to work with the General Assembly to achieve this goal. We had a great first step in 2022 with funded training for all.

2) PBMs: I want to continue our fight to bring accountability and reform to the pharmacy benefit manager (PBM) space. We have recovered nearly \$100 million from PBMs already, but there is more work to be done to be certain that Ohioans get the value they pay for.

3) Human Trafficking: Ohio is a national pioneer in demand reduction for human trafficking. If we can remove demand and the money that funds trafficking, we will eliminate the market and the crime. I want to finish what we started, and I am excited for a day when no human being is bought or sold in this state.

4) Protecting the Rule of Law: The use of executive fiat in place of legislation is threatening our system of representative government. The Attorney General can, and should, play a role in bringing accountability to government. Our Constitution is a blueprint – and a limitation – on the actions of government.

Crossman: (1) Establishing a corruption task force to take on and deter state government corruption. There is currently no office monitoring the behavior of state government actors which may explain the repeated scandals in Ohio's General Assembly. (2) Prioritizing the fight against the opioid epidemic. We need to renew the focus on the best methods to reverse the trend of increasing overdose deaths, which includes fully funding our law enforcement community and dedicating resources for mental health and drug addiction treatment. (3) Protecting Ohio's middle class by supporting our state's workers and their families.



Perspectives on Issue 1

Two statewide ballot issues this year seek to amend Ohio's Constitution. The first is a proposal from the General Assembly that was passed as House Joint Resolution 2 and would make public safety a required consideration

when setting bail amounts by amending Section 9 Article I of the Constitution. The resolution was adopted largely in response to the Ohio Supreme Court's January 2022 ruling in *DuBose v. McGuffey*, in which the court ruled 4-3 that bail determinations

should be limited to a defendant's risk of non-appearance in court. To assess the pros and cons of Issue 1, we asked Ohio Public Defender Tim Young and Senator Theresa Gavarone to present their views on the issue.



The Argument for Issue 1

By Theresa Gavarone
Ohio State Senator

“Detective, there is another report of a car with shattered windows, a laptop stolen and nothing left in the car except a burned out cigarette.”

“On Main Street, again? That’s the fourth car theft this week.”

“Yes, crime is up, economic growth is down, and if you come into town, you’re likely to be harassed, robbed, or surrounded by illegal drugs. Ever since they defunded the police and the city prosecutor stopped enforcing the law, even in daylight, the cities just aren’t safe.”

“Detective – you’re never going to believe the latest news story. Despite rampant crime, the Ohio Supreme Court says judges cannot consider public safety when setting bail. Listen to the facts of this case – the accused broke into a home, shot a man in the head, and then robbed him. After the murder, he fled to Las Vegas, Nevada where he tried to fool police with a fake ID and had thousands of dollars in cash on him.”

“Really?”

“Yes, the accused was indicted on two counts of murder, one count of aggravated robbery, and one count of aggravated burglary. He’s already skipped town once and now the court wants him on the loose on our streets or somewhere else without anyone tracking him. The victim’s mother and grandmother testified at the bail hearing that they feared for their life, their safety, and the safety of the community. The court is gambling with public safety. The casinos always win in Las Vegas. Let’s see what voters think of the

Constitutional amendment that will be on the November ballot”

A paramount duty of government is to keep individuals safe from violence and crime. We also affirm and recognize that the criminal justice system is set up to require the state to prove all elements of the crime, to reject evidence that is overly prejudicial, and that the accused shall remain innocent until proven guilty. We can all agree that these are bedrock principles enshrined within our state and federal constitutions.

Issue 1 provides balance to these competing interests by requiring courts to consider public safety, the seriousness of the offense, the accused’s criminal record, and flight risk. Additionally, trial judges hear criminal cases every week and decisions are best made at the local level by judges who can read body language, hear the tone of live witnesses, and ask questions of the accused. Local judges know their communities and see defendants regularly. We should not overrule their decisions lightly and we should maintain an abuse of discretion standard when determining excessive bail.

On Nov. 8, the citizens of Ohio have an opportunity to ensure public safety while protecting the rights of the accused. Crime has been rampant in our cities as people and businesses have fled to safer areas over the last three years. As a result, prosecutors, judges, and victims of crime from across the state have expressed concern that without the consideration of public safety, dangerous and violent criminals may be released back onto Ohio’s streets with no consideration given to the threat posed to the public. Restoring public confidence in the rule of law not only makes us safer, but it ensures the law is enforced equally across Ohio.

Even without this amendment, citizens of Ohio have already spoken with their feet and their dollars. They are not

“They are avoiding the parts of town where the police do not have the authority to arrest people breaking the law, where judges cannot detain individuals accused of violent crimes, where prosecutors refuse to enforce the law.”

coming to our cities. They are avoiding the parts of town where the police do not have the authority to arrest people breaking the law, where judges cannot detain individuals accused of violent crimes, where prosecutors refuse to enforce the law. They may be willing to gamble with your safety, but I am not, which is why I fully support the incorporation of Issue 1 into Ohio’s Constitution.

A “yes” vote on Issue 1 clearly and unambiguously ensures that courts can consider public safety when setting bails. This language guarantees a safer Ohio for you and for your loved ones while maintaining the rights of the accused which are sacred and fundamental aspects of criminal procedure and our republic. However, we should not be releasing violent career criminals onto the streets when a judge determines he is a risk to public safety. Please join me by voting “yes” on Issue 1 on or before Election Day, Nov. 8, 2022. 



The Argument Against Issue 1

By Tim Young
Ohio Public Defender

Under the guise of public safety, Issue 1 asks voters to enact sweeping changes to Ohio's laws and rules governing bail through a constitutional revision, that will make it permissible to hold Ohioans in jail simply because they are economically struggling.

Bail is made up of two components: 1) monetary bond – an amount of money that must be posted to be released; and 2) conditions of bond that must be obeyed. The first component, money, is to ensure that the person returns to court.¹ The amount of the monetary bond is to be based on the risk of whether a person will return to court. Money does not address or guarantee safety.² The second component, conditions of bond, is specifically about safety. A court may order a person to wear an ankle monitor, remain under home detention, report to a pretrial services officer on a routine basis, require drug screening, and any other conditions necessary to protect the public. These conditions are to monitor and control the behavior of the individual pending trial and keep our communities safe. Monetary bond cannot and does not address safety because a dangerous person may be rich and have the means to pay whatever amount of bond that is set. Is safety really achieved when a dangerous person, who has money, can pay to be released?

Issue 1 is misleading because today, if a prosecutor anywhere in Ohio believes someone they have accused is dangerous, they may ask for preventative detention.³ They then must prove the person poses a substantial risk of serious physical harm by clear and convincing evidence. If the court agrees, the person can be held, without bail, to protect the community.

Instead, for far too long, the criminal justice system has skipped this step. Instead of having preventative detention hearings, prosecutors often asked for high bonds, courts granted them, and defense attorneys hardly ever objected. It was a broken system quietly ignoring the law. In January 2022, the Ohio Supreme Court issued an opinion in *DuBose v. McGuffey*, and correctly reminded everyone what the actual rules are and how monetary bond and conditions are to be used.⁴

“Is safety really achieved when a dangerous person, who has money, can pay to be released?”

Don't be fooled by Issue 1. Courts are already required to consider public safety by setting limits on the person's behavior or holding potentially dangerous individuals in jail without bail.⁵ The true impact of Issue 1 is to allow courts to set cash bail in amounts that less well-off Ohioans cannot pay. Loud claims were made that the Court had rendered all of Ohio unsafe in the *Dubose* decision.⁶ But the Ohio Supreme Court simply said, this is the law, it is well-settled, and it is the duty of all within the criminal justice system to follow it. It made no new law; it announced no new principles. It merely reiterated a long-standing legal doctrine; a doctrine that includes public safety as a main principle in setting the conditions of bond.⁷

We have been setting high bonds long enough to know it does not work. Setting a high bond such as \$1 million or more and relying on the individual being unable to post is a gamble. What the prosecutor is really saying when they request a \$1 million dollar bond is that they believe this person, who is

presumed innocent, should stay in jail pretrial and that this amount should accomplish that goal. It is a system that allows rich people, some of whom are dangerous, to pay their way out. And it corrupts the system for those who cannot pay.

Public safety is not achieved by setting a high monetary bond and just hoping a person cannot pay it. Public safety is achieved when a prosecutor proves to a judge that a person who is presumed innocent falls into a carefully limited exception of dangerousness and should not be free prior to trial. And that is the law in Ohio today. Prosecutors are required to prove that a person is dangerous to be held pre-trial.⁸

Both the United States Constitution and the Ohio Constitution prohibit excessive bail.⁹ A bail amount that is “higher than an amount reasonably calculated to” ensure the accused's presence in court is “excessive.”¹⁰ Amending our state constitution to allow courts to replace real, meaningful inquiries into public safety with high cash bail amounts does not insulate those high bail amounts from being challenged as excessive. Even if Issue 1 passes, it is still unconstitutional to set cash bail just to keep a person in jail. Passing Issue 1 will result in more Ohioans, detained while presumed innocent, litigating their bail, resulting in delayed justice for those who are accused and victims.

As Chief Justice Rehnquist reminded us, “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”¹¹ People are presumed innocent and innocent people should not be held in jail unless they are dangerous. They certainly should not be held in jail just because they live paycheck to paycheck. People presumed innocent should be able to keep their jobs, their housing, and stay with their families. Liberty should not depend on a person's wealth.

Issue 1 creates a false equivalency between money and morality. Just because a person is rich, and can afford a high monetary bond, does not make them a safe person.¹² Just because a person does not have money to pay a high monetary bond does not make them a dangerous person. Public safety is achieved by addressing the specific case and specific individual, imposing conditions relevant to that individual and that case, and/or holding potentially dangerous individuals in jail without bail. Otherwise, dangerous people with money will be released right back into our communities.

The presumption of innocence is a foundation of our entire criminal justice system. If we start saying poor Ohioans should not be presumed innocent and should be held in jail because they do not have money, the whole system falls apart.

Issue 1 creates a false sense of security and a false equation between safety and

money. It will inevitably lead to rich individuals being released and poor people sitting in jails. Ohioans deserve better, we deserve real safety. Issue 1 is misleading. This amendment will make it constitutional to discriminate against a vast number of Ohioans who are not rich and will do nothing to improve public safety. Vote “no” on Issue 1. 

Endnotes

¹Crim.R. 46(B).

²Arpit Gupta, Christopher Hansman, and Ethan Frenchman, “The Heavy Cost of High Bail: Evidence from Judge Randomization,” *The Journal of Legal Studies* 45 (2) (2016): 471–516, available at <https://www.journals.uchicago.edu/doi/abs/10.1086/688907>.

³Crim.R. 46(A).

⁴*DuBose v. Mc Guffey*, Slip Op. No. 2022-Ohio-8.

⁵Crim. R. 46(B).

⁶*DuBose v. Mc Guffey*, Slip Op. No. 2022-Ohio-8.

⁷*DuBose v. Mc Guffey*, Slip Op. No. 2022-Ohio-8 at ¶ 24.

⁸Crim.R. 46(A).

⁹Eighth Amendment to the U.S. Constitution and Article I, Section 9 of the Ohio Constitution.

¹⁰*DuBose v. Mc Guffey*, Slip Opinion No. 2022-Ohio-8, at ¶12 citing *Stack v. Boyle*, 342 U.S. 1, 4, 72 S.Ct. 1, 96 L.Ed. 3 (1951).

¹¹*Unites States v. Salerno*, 481 U.S. 739, 755 (1987).

¹²*State v. Bevacqua*, 147 Ohio St. 20, 22, 67 N.E.2d 786 (1946).



What's Issue 2?

Issue 2 was adopted by the General Assembly as House Joint Resolution 4. If passed, it would bar noncitizens from voting in local elections by amending Article V, Section 1 of the Ohio Constitution. Lawmakers adopted the proposal after a Yellow Springs, Ohio referendum in 2019 would have allowed non-citizen residents to vote in local elections.

Issue 2 proposes that only adult U.S. citizens who legally reside in and are registered to vote in Ohio for at least 30 days can cast a ballot in future state and local elections.

Learn more about Issue 2 and other statewide ballot issues via the Ohio Ballot Board:
ohiosos.gov/legislation-and-ballot-issues/ballot-board/#ga

A portrait of Judge Dean Wilson, a middle-aged man with grey hair, wearing a light grey suit, white shirt, and a purple patterned tie. He is smiling slightly and looking towards the camera. In the background, there is a wooden bench and a large, ornate seal on the wall.

Meet Judge Dean Wilson

2022-2023 Ohio State Bar Association President

*By Annie Yamson
Ohio Lawyer Editor*

While visiting Judge Dean Wilson at the Perry County Municipal courthouse this summer, it became very clear that the best way to get to know him is through the people around him.

Judge Wilson walked through the courthouse on a Friday morning, introducing court staff, bailiffs, custodians, community service coordinators and citizens completing their service – all with the same friendly banter and casual conversation. People seemed genuinely pleased to see him, even if he was the one to hand down their community service order, and he had an inside joke with seemingly everyone he encountered. On the sidewalk outside, folks waved from the other side of the street and cars slowed down to say hello. He’s a hugger.

In today’s world, this strikes an onlooker as ... unique. But it is no surprise when you hear Wilson talk about his deep ties to his community and how his values were shaped.

“One of the things I was taught by my grandparents that I didn’t fully appreciate until I became an adult, is that before 1964, there weren’t food stamps and my grandparents were not wealthy people, but they had a small grocery store that they maintained,” Wilson said. “It didn’t occur to me why they kept a board in back of the cash register – that was a credit. So if you came in and you didn’t have money to pay, Grandma and Grandpa gave you credit.”

In the small mining town of Cannelville, just across the border from Perry County where Wilson now serves as judge, many residents struggled to feed their families or buy gifts for their children during the holidays. In 1950s America, the town was also dealing with the same racial divides as the rest of the country. Wilson’s grandparents dutifully treated every customer equally, extending credit to anyone in need if they had an inability to pay.

“My grandparents did not die wealthy by any stretch of the imagination in one respect, but I think they died extremely wealthy in some other respects,” Wilson said. “That touched me, that helped formulate me, especially with regard to what I’ve tried to do in the court system and what I tried to do in my private practice before that.”

Early Career

But before he ended up as an attorney and then a judge, Wilson had no plans to go to law school. After earning an undergraduate degree in history and a master’s in foreign policy, he was recruited by the CIA. That’s right. The United States Central Intelligence Agency.

“I was accepted to the CIA in 1978 but I realized that it was not a paying proposition,” he said. “You had to be based in Washington, D.C. for two years before they would spin you out to a post where the money went up substantially.”

So, the would-be Agent Wilson took a year off to assess his options. It was over a beer with an attorney friend that he was convinced to apply to law school and he was eventually accepted to Capital University, where he opted to work as he studied to earn his law degree in order to gain practical experience.

“Law school teaches you how to think as an attorney but it does not teach you how to practice as an attorney,” Wilson said. “So I worked through law school. I worked for the prosecutor’s office in Franklin County where they taught us how to mediate cases as opposed to filing charges, and I worked as a legislative aid down at the state capital for Senator Sam Speck.”

During the summer, Wilson took a position as a clerk at the firm of Graham & McClelland in Zanesville (now Graham & Graham) where he met one of his mentors, Jack McClelland, and learned the art of trial work. He joined the firm after passing the bar exam in 1983.

“As a new attorney, you had to find your area that you thought you would be best suited for, so I was trained by Jack, who taught me to do trials,” Wilson said. “My first murder trial was sitting second chair in 1985, and after that, I did several murder trials, rape cases, federal cases and things of that nature, but my area of expertise became domestic relations.”

Eventually, Wilson built up his own domestic relations practice, and with his childhood friend Jim Ransbottom – the one who convinced him to become a lawyer over a beer – the two ran a small, satellite office in their hometown of Roseville. As their practice grew and the law office expanded, Wilson remembers they came under criticism for the ways in which they charged their clients.

“I didn’t charge people down in my hometown, Roseville, the same as I did in the office in Zanesville and there was



Wilson (right) with his mentor and predecessor on the bench, Judge Robert Tague.

a reason for that,” he said. “My partner and I, we were both from that area and we knew the people and knew what they could afford. Down home, it was still Dean and Jim, and that’s the way it should have been. That’s part of how my childhood shaped me.”

Later, when Wilson was elected to his position on the Perry County Municipal Court, it would be another mentor, Perry County Judge Robert Tague, who would reinforce Wilson’s commitment to the community.

“He would talk to me quite frequently about being out in the community, that’s something that he preached,” Wilson said. “I don’t think you can fairly and accurately represent the county if, like so many judges, you just stay back in your chambers.

“Sometimes you have to defend some of the decisions that you’ve made but people, nonetheless, know you’re accessible. I think, in a rural county, they need to have that understanding and I’ve tried always to make myself available. That door has always been open since November 1990 and it will be until Dec. 31, 2023, when I retire.”

The programs that he has helped develop as judge reflect this commitment. In 2008, he and Judge Luann Cooperrider established the Perry County Free Legal Clinic to provide pro bono services to those who

can’t afford legal help. The clinic is still going strong and a big success. For their commitment to closing the access to justice gap, the judges received the 2018 Presidential Award for Pro Bono Service from the Ohio Access to Justice Foundation.

In 2016, Wilson established the Perry County New Direction Drug Court, which enlists county and service agencies to form customized recovery plans for individuals who otherwise would have faced likely jail sentences.

“I had to get buy-in from the community because I was asked the question I knew I would be: ‘Why would we hire a drug addict?’” Wilson said. “I asked them to give me a year and I would show them why.”

The court has now taken dozens of cases that have helped those charged with nonviolent, drug related offenses and offered them a second opportunity instead of a prison sentence. Many of them now work in the community and the county has saved upwards of \$300,000 in incarceration fees, some of which will go toward remodeling their aging courthouse.

“I have told new judges that, of the 32 years I spent on the bench, the satisfaction that you get walking out of here at night after you’ve completed the drug court is probably the best and most satisfying element of the practice of law



A young Judge Wilson on the bench in 1992.

that I've had," Wilson said. "My hope – and I will help the person who takes my place as much or as little as they want – is to continue the good success that we've had with this program."

Bar Association Leadership

Though Wilson has been a member of the Ohio State Bar Association since the first days of his legal career, he's blunt in admitting that for the first decade or so, he just didn't have the time to get involved.

"I had to work, sometimes 70 or 80 hours a week," he said. "But eventually, I saw my involvement with the bar association as serving more people – the more than 40,000 attorneys in Ohio."

Wilson was first appointed to serve on the Ohio Bar Council of Delegates and served five terms before being elected by his peers in Ohio Bar District 9 to the association's Board of Governors. It was then, he says, that he truly saw (and was able to prove to the members of his firm) why bar association membership was worthwhile.

Wilson served as chair of the Government Affairs Committee and ended his three-year term on the board in June 2019. That July, he received the text message that would bring him back – that attorneys were going to lose the business income tax deduction (BID) in the next state budget bill and the bar was in for a fight.

"Because of my contacts at the legislature, I got involved," he said.

Wilson worked closely with Ohio Bar CEO Mary Augsburger, then-president Eleana Drakatos and the bar's lobbying team to mobilize bar members and successfully re-secure the BID for attorneys following changes in the state's biennial budget.

"I don't know, maybe that's what sealed the deal and people thought I'd be worthwhile to have as president," Wilson joked.

But the following year, he would be unopposed in his run for the leadership position and take the up the mantle of president-elect the year after that. This year, as president, he hopes to bring a new perspective to the team.

"I think I am the first bar president since the 1960s to come from a very rural area and that's an incredibly important perspective for the bar association to never lose sight of," Wilson said. "Many of our members are in that category, meaning not from a major firm in Cincinnati, Columbus or Cleveland, and I would like to think that's the insight I provide."

It is a topic that's especially vital to him because when he retires from his judicial seat at the end of 2023, his community will have only a couple attorneys who are qualified to take his place. A



Longtime friends, (from left to right) John McGaughey, Judge Wilson and Richard Sayre at Wilson's first swearing in ceremony in 1990.



From left to right, Judge Wilson's father Jimmie, wife Lisa, Wilson and mother Grace Ann on Nov. 23, 1990.



Judge Luann Cooperrider (left) and Judge Wilson have shared a courthouse since 1991.



Dean Wilson accepts the gavel from Ohio Bar Immediate Past-President David Lefton.

major focus of Wilson's is to engage young attorneys, not only with the bar association, but also with rural practice. Part of that means that he'll be setting the stage for his successors to achieve this work in the years to come.

"We really have to resolve how best to get the younger people to come out into the rural areas and practice," he said. "I'm concerned about where the future is headed with this and we're going to keep trying things like the Rural Practice Clerkship Program to really get young people involved."

But Wilson also knows that he doesn't have all the answers at his disposal, so he's taking a collaborative approach to his year at the helm to ensure a strong succession plan when President-Elect Michelle Kranz of Toledo takes the reins, and after her, President-Elect Designee Dan Griffith of North Canton.

"My strong suit is government affairs and I've told Michelle I'll continue to help her after I'm done if she wants me to do so, but where the future of the Bar Association is going to be challenged is financially and with engaging younger attorneys as expectations evolve, and you're going to have two exceptionally strong people leading in that position – Michelle and Dan. That's what their backgrounds are," Wilson said. "That's important for the success of the bar association down the road."

So as he takes a look at the future, Wilson is optimistic that the association can meet the challenges laid out for it ahead, even if, when he takes a look back at how he got here, he still feels a little surprised:

"I've been very fortunate. The last person in the world that ever would have ever thought I'd be in this position is me – as a judge and as bar president. I've been very blessed."



Judge Wilson and his wife, Lisa. The two will retire together in December 2023.

Family

My wife, Lisa, who works for Primary Aim, which is a Wendy's franchise. She is in charge of the workers' compensation, maintenance and accounting for restaurants in Ohio, western Pennsylvania and West Virginia. She's worked for them for 25 years and she's going to retire Dec. 31st of 2023, the same time I retire.

My son, Austin, attended school in Crooksville and graduated from Wittenberg University. He lives in Columbus with his fiancée, who is from Cincinnati. And I have a stepdaughter that lives in Lancaster. She's in the nursing profession.

Hobbies

Golf. You know, I'm a member of the Zanesville Country Club and my golf is not a worth a damn, but I enjoy the three-and-a-half hours that you get away from the phones and the office, and it's a beautiful course so it's relaxing.

Favorite Law Related Book or Movie

"Paper Chase." I think it's from 1977 and it's a film based on Harvard Law School. There's a law professor and basically it's exactly what law school was like when I went through it.

Also, even though I'm a Republican, I've always been a big fan of Kennedy books. One of the first things I remember was when John Kennedy was shot, I was in the fourth grade when the superintendent came in and told us. So I've always liked books about him and I'm reading one right now, Robert Dallek wrote an amended biography about him. But Robert Kennedy's memoir "Thirteen Days" is probably one of my favorite books.



Watch the video interview and learn more about Judge Wilson at ohiobar.org/deanwilson.



Vega v. Tekoh

*Warning You of Your Right to Remain Silent
Is Not a Right After All*

By Justin M. Burns & Brady R. Wilson

You have the right to remain silent and to an attorney and what you say can be used against you in a court of law. From Sergeant Joe Friday on “Dragnet” to Lennie Briscoe on “Law & Order,” millions of television viewers have been *Mirandized* by these all-too-familiar warnings such that they have become as much a part of police work as handcuffs and a badge. The late Supreme Court Chief Justice William Rehnquist observed, “Miranda has become embedded in routine police practice to the point where the warnings have become part of our national culture.”¹ The “Miranda warnings,” which arose out of a “constitutional rule” provided by the Supreme Court in *Miranda v. Arizona*² over 50 years ago, has become guarded precedent such that the court has shielded it from attack even if subsequent jurists disagreed with its decree – at least for now.³

Another well-established rule is the ability to sue the government when one’s rights have been violated. Section 1983 is a federal statute that allows a person to sue those in government who cause a “deprivation of any rights, privileges, or immunities secured by the Constitution and laws.”⁴ The statute was passed at a time when the federal government became concerned with states that may be “unable or unwilling” to protect individual freedoms and enforce the laws, and if a state would not intervene, federal courts could do so.⁵ Section 1983 is the statute often used to claim the government acted in an unconstitutional manner and that a statute should be enjoined or an injured party should be compensated with money damages – e.g., challenging an Ohio public school district’s discipline of students,⁶ holding prison guards liable for using excessive force that caused death in the Toledo, Ohio area⁷ and challenging the Ohio Department of Health’s refusal to change sex markers on birth certificates for transgender persons.⁸

Miranda and Section 1983 recently intersected in the matter of *Vega v.*

Tekoh. The U.S. Supreme Court faced a dilemma: If police officers violated a “constitutional rule” created by Miranda that was meant to protect the Fifth Amendment right to remain silent, could a person sue for money damages under Section 1983 as he would for any other violation of a right? (Spoiler Alert: No.)

The case arose out of a confession to sexual assault. A patient accused Terence Tekoh, a certified nursing assistant, of sexual assault and after questioning by Deputy Carlos Vega, Tekoh eventually signed a written confession. That confession was used at trial over Tekoh’s

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“
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Constitution,
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to Miranda
warnings...”

.....

objection. Tekoh was acquitted and he sued Vega in federal court alleging a violation of his civil rights – specifically, for violating his Fifth Amendment right against compelled self-incrimination because Vega obtained a confession, without first providing Miranda warnings, that was later used against him.

One could reasonably conclude that when police officers obtain a confession without first issuing the Miranda warnings, a “constitutional rule” has been violated and the suspect could sue in federal court under Section 1983 for

money damages. After all, that is the purpose of Section 1983: “The purpose of [Section 1983] is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.”⁹ That conclusion is arguably even more appropriate within the Miranda context considering, as a group of scholars did in an amicus brief filed in *Vega*, similar warnings had been provided as a well-established practice for hundreds of years before the Miranda decision itself. The warnings were a fundamental part of legal culture.¹⁰

The Supreme Court, however, saw the issue differently. In *Vega*, Justice Samuel Alito wrote that even if Miranda was based on the Constitution, there is no “right” to Miranda warnings and thus no ability to invoke Section 1983 to vindicate a non-existent right. “At no point in the [Miranda] opinion did the Court state that a violation of its new rules constituted a violation of the Fifth Amendment right against compelled self-incrimination.”¹¹ Miranda was not itself a right, but rather, a set of “rules” designed to “safeguard” other rights during interrogation.¹² While a confession obtained without Miranda warnings could be suppressed at a criminal trial (an evidentiary remedy recognized by Miranda and its progeny), a person could not also sue for money damages because, simply put, there is no “right” to Miranda in the Constitution to create a Section 1983 cause of action. In other words, violating a “constitutional rule” was not akin to violating a “right” because the Fifth Amendment says nothing about a right to receive Miranda warnings.

While *Vega* is not itself transformative – after all, the Fifth Amendment does not actually state that one has a right to receive Miranda warnings – the path the court took to arrive at that conclusion provides some indication about how the court views its role and its own power. For instance, *Vega*



suggests that the court is skeptical about the bounds of government action and its limited authority, even if the action at issue has become commonplace and routine. Last term, the court decided *AMG Capital Management, LLC v. Federal Trade Commission*, which struck down the Federal Trade Commission's (FTC) practice of seeking monetary relief in certain circumstances – an established FTC practice that, as many observed, had become the “norm.” The court, however, found such action exceeded statutory authority and struck down a practice even though it became commonplace.¹³ Recently, in *Dobbs v. Jackson Women's Health Organization*, the court overruled precedent recognizing a right to abortion despite the country adapting to that right for decades.¹⁴ And with respect to *Miranda*, Justice Alito questioned whether the court had the authority to issue *Miranda* in the first place:

Whether this Court has the authority to create constitutionally based prophylactic rules that bind

both federal and state courts has been the subject of debate among jurists and commentators. . . . But that is what the Court did in *Miranda*, and we do not disturb that decision in any way. Rather, we accept it on its own terms, and for the purpose of deciding this case, we follow its rationale.¹⁵

The court's second-guessing of its own authority, together with restricting that authority and the authority of other branches of government unless a statute or the Constitution clearly allows it, is an emerging theme that may very well guide future cases before the current court.

Second, there is the issue of *stare decisis* and when, if ever, precedent should be overruled. *Stare decisis* is the idea that “today's court should stand by yesterday's decisions” because respecting precedent is a “foundation stone of the rule of law.”¹⁶ The doctrine arose out of the framers of the Constitution itself – it is a doctrine that “permits society

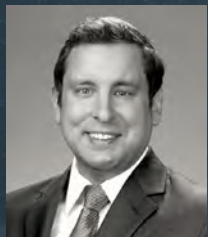
to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.”¹⁷ *Stare decisis* does not mean that prior cases can never be overturned. The doctrine permits that practice, but in so doing, reserves such a drastic change for the rarest of cases.

Recent developments suggest that the court's disagreement with prior case law could place well-settled understandings of law in question. Justice Alito, for example, questioned the court's authority to issue *Miranda*, which had become part of the “national culture,” in a footnote (quoted above), even though that question was likely not directly related to the question before the court or dispositive of any legal issue, thereby raising questions about whether the court would reconsider *Miranda* itself in a future case.¹⁸ The court's recent decision in *Dobbs*, which recognized how abortion had become part of

American life for nearly five decades, also signaled the court's willingness to discard established precedent because, in the court's view, the prior decision was "wrong."¹⁹ If *stare decisis* is the bedrock of our legal system and a closely guarded foundation of the rule of law, the current court may be poised to expand upon when and in what cases future jurists can use their disagreement with prior cases to disturb settled precedent – which, as a consequence, could open up large swaths of cases to reexamination when they were once thought to be untouchable.

The issue before the court in *Vega* was narrow and the court's decision was undoubtedly a win for government officials. But placing *Vega* in context and considering the direction of the court could mean that *Vega*, as in other cases over the past two terms, is another iteration of a court that will not hesitate to check the government's (including its own) authority, even if doing so means overruling decades of precedent that, at least for the current generation, has always been the law. 

About the Authors



Justin Burns is an associate attorney at the Columbus office of Dinsmore where he has been successful in trial courts and

on appeal for a variety of cases including multi-million dollar contract disputes, allegations of civil rights violations against municipalities and government officials, employee embezzlement actions and other complicated issues. In addition to a busy litigation practice, he also publishes legal resources and presents cutting-edge content for colleagues and clients. Burns earned his law degree from the University of Akron School of Law.



Brady Wilson is an associate attorney at the Columbus office of Dinsmore where he focuses his practice on commercial

litigation and has experience handling motions, demand letters, discovery requests and formulating arguments for appellate briefs. While in law school, he was a member of the Veteran's Legal Clinic, working to assist veterans through different stages of litigation. Wilson earned his law degree from the University of Michigan Law School.

Endnotes

¹*Dickerson v. United States*, 530 U.S. 428, 443 (2000).

²*Miranda v. Arizona*, 384 U.S. 436 (1966).

³See *id.* at 443–44 (“Whether or not we would agree with *Miranda*’s reasoning and its resulting rule, were we addressing the issue in the first instance, the principles of *stare decisis* weigh heavily against overruling it now . . .”).

⁴42 U.S.C. 1983

⁵See *Monroe v. Pape*, 365 U.S. 167, 173–80 (1961) (“It is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies.”).

⁶*Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729 (1975)

⁷See *Coley v. Lucas Cnty.*, 799 F.3d 530 (6th Cir. 2015). The plaintiffs later accepted an offer of judgment and received an award of over \$1.2 million. See *Coley v. Lucas Cnty.*, Case No. 3:09-CV-00008 (S.D. Ohio), Doc. No. 192.

⁸*Ray v. McCloud*, 507 F. Supp. 3d 925, 928 (S.D. Ohio 2020); see also J. Burns & S. Brinker, “Federal Judge Confirms Transgender Ohio Residents Are Entitled to Accurate Birth Certificates,” available at <https://www.dinsmore.com/justin-m-burns/publications/federal-judge-confirms-transgender-ohio-residents-are-entitled-to-accurate-birth-certificates/> (last accessed July 11, 2022).

⁹*Wyatt v. Cole*, 504 U.S. 158, 161 (1992).

¹⁰See generally, Brief of Amici Curiae Historians of Criminal Procedure, *Vega v. Tekoh*.

¹¹*Vega v. Tekoh*, ___ U.S. ___, 29 Fla. F. Weekly Fed. S. 421 (2022).

¹²*Id.*

¹³*AMG Capital Mgt., LLC v. FTC*, ___ U.S. ___, 141 S. Ct. 1341 (2021).

¹⁴*Dobbs v. Jackson Women’s Health Organization*, ___ U.S. ___ (2022), 2022 U.S. LEXIS 3057, at *22 (2022).

¹⁵*Vega*, ___ S.Ct. at fn. 5.

¹⁶*Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446, 455 (2015) (quotation omitted).

¹⁷*Ramos v. Louisiana*, ___ U.S. ___, 140 S. Ct. 1390, 1411 (2020) (quotation omitted).

¹⁸*Dickerson*, 530 U.S. at 443.

¹⁹*Dobbs v. Jackson Women’s Health Organization*, ___ U.S. ___ (2022), 2022 U.S. LEXIS 3057, at *22 (2022).



Statehouse Connection: Taking a Gander at Lame Duck

Scott Lundregan
Ohio Bar Director of
Government Affairs/
Legislative Counsel



Marisa Myers
Ohio Bar Government
Relations Manager



As members gear up for the last couple months of the General Assembly, we are expecting lame duck to be jam packed (as usual!). Legislators will return to Columbus after the November 8 election, each one with their wish list in hand. While there are sure to be issues that pop up, here is a preview of a few things your Ohio Bar legislative team will be working on.

What We Support

Public Defender Loan Repayment

House Bill 150, sponsored by Reps. Brett Hillyer (R-Uhrichsville) and David Leland (D-Columbus), creates the Ohio Public Defender State Loan Repayment Program, in which the state would repay the student loans of public defenders (including appointed counsel) who serve at least three years in a public defender shortage area. The bill also creates a task force to study Ohio's indigent defense system.

Last General Assembly, Reps. Hillyer and Leland carried a similar proposal that didn't make it across the finish line. From our perspective, this version is even stronger in that it applies not only to public defenders, but appointed counsel as well. This is critical in counties that rely solely on appointed counsel. The bill unanimously passed the

House Criminal Justice Committee, but because it has an appropriation, it needs to be considered by the House Finance Committee. While the bill is still pending in the original chamber, we're hopeful for its passage.

Providing Electronic Means of Recording Instruments

House Bill 237, sponsored by Rep. Brett Hudson Hillyer (R-Uhrichsville), requires counties to provide an electronic means of recording instruments and of accessing recorded instruments by Jan. 1, 2024 and it contains an appropriation for this purpose. The bill also streamlines requirements regarding powers of attorney for the execution of real property instruments. In our view, this bill will both modernize Ohio's system of recording instruments and improve practitioners' ability to complete real estate transactions.

HB237 has passed the House State and Local Government Committee but, it too has an appropriation and is pending in the House Finance Committee.

Improving Wrongful Death Claims

House Bill 279, sponsored by Reps. Richard Brown (D-Canal Winchester) and Scott Oelslager (R-North Canton), is a proposal from the Ohio Bar Negligence Law Committee that would improve and streamline Ohio's wrongful death statute. The bill modifies the process for notifying "other next of kin," modeling it on the administration of probate in order to solve the problem of varying local rules and jurisdictions when it comes to defining "other next of kin." The proposal would not only define "other next of kin," but also require them to opt-in and present a claim for damages to a probate court.

HB279 is just a few steps away from the Governor's desk, pending a floor vote in the Senate. After Senate passage, the House will have to concur on changes made in Senate.

Clarifying Nonprofit Corporation Law

House Bill 556, sponsored by Rep. D.J. Swearingen (R-Huron), is a proposal from the Ohio Bar Corporation Law Committee that makes several updates to nonprofit corporation law. The bill primarily conforms, where appropriate, nonprofit corporation law (chapter 1702) with changes that have been made to the corporation law (chapter 1701) over the years.

HB556 passed the House just before summer break and is pending in the Senate. As of this article, the bill has not yet been referred to a committee, so stay tuned for more details on next steps.

Streamlining Court Documents

House Bill 567, sponsored by Reps. Brian Stewart (R-Ashville) and Richard Brown (D-Canal Winchester), requires that all courts of common pleas make their civil docket and relevant case files available for online viewing and remote access. We are always fans of increasing access for the public and efficiency for practitioners. The bill has passed the House and is pending in the Senate Judiciary Committee.

Improving Probate Law

Senate Bill 199, sponsored by Sen. Louis Blessing III (R-Colerain Township), is the latest proposal from the Ohio Bar Estate Planning, Trust, and Probate Law Section aimed at improving Ohio's probate and trust code. It contains five proposals:

- Revisions to the law on disinterment of bodies to make it consistent and coordinated with the Ohio right of disposition statutes.
- Clarification of the process by which a creditor can present a claim against an estate.

- Allowance for a transfer on death designation for tangible personal property.
- Clarification on the effective date of certain provisions of the rule against perpetuities statute.
- And the addition of an optional provision to the Ohio Trust Code, providing a process for a trustee to resolve potential claims on conclusion of the trustee's administration of an Ohio irrevocable inter vivos trust.

SB199 passed the Senate unanimously and is pending in the House Civil Justice Committee. As of this article, the bill has already had two hearing in House committee.

Modernizing Ohio's OVI Law

Senate Bill 203, sponsored by Sen. Nathan Manning (R-North Ridgeville), is a proposal from our Traffic Law Committee. It seeks to adjust Ohio's OVI law considering the legalization of medical marijuana. The bill would clarify the evidentiary standards used to infer that a driver is impaired and create a marijuana threshold for a trier of fact to determine impairment. SB203 is pending in the Senate Veterans and Public Safety Committee and has had two hearings so far.

Updating Legal Relations Between Spouses

In short, Senate Bill 210, sponsored by Sen. Theresa Gavarone (R-Bowling Green), allows for postnuptial agreements, which are currently not permissible by statute. The bill is another proposal from Ohio Bar estate planners and permits a couple to voluntarily enter into agreements with each other that alter their legal relations as they deem appropriate and to modify or terminate existing premarital agreements. The bill has passed the Senate and is pending in the House Civil Justice Committee, where it's had two hearings.

Facilitating Public Notary Duties

Senate Bill 300, sponsored by Sen. Steve Wilson (R-Maineville), makes several miscellaneous adjustments to Ohio Notary Law, including a redefinition of acknowledgement, removal of the oath of office requirement, expanded list of government officials that are required to accept electronically notarized documents, and other changes meant to facilitate the duties of public notaries. SB300 is pending in the Senate General Government Budget Committee and has had four hearings.

What We Oppose

Allowing for E-Wills

House Bill 339 (Swearingen), and its companion Senate Bill 230, sponsored by Rep. Kristina Roegner (R-Hudson), would allow wills to be executed electronically, among other changes. The bar's primary (but not only) concern is the use of remote witnessing of wills, which may lead to more fraud, abuse, or allegations of undue influence.

HB339 is pending in the House Civil Justice Committee, and SB230 is pending in the Senate Judiciary Committee, so both bills remain in their original chambers. For more on our work in opposition to e-wills, see this column in your Nov.-Dec. 2021 Ohio Lawyer magazine.

Predetermined Child Custody Outcomes

We wrote about our stance on House Bill 508, sponsored by Reps. Thomas West (D-Canton) and Rodney Creech (R-West Alexandria), in our last Statehouse Connection column (Apr-Jun 2022) and how it would make drastic changes to child custody law by transferring focus in disputed custody cases from the best interests of the child to a rebuttable presumption of equal parenting time and responsibility. Despite best intentions, HB508 will make child custody cases more combative, expensive and end in less desirable results for the child. This bill is pending in the House Civil Justice Committee.

Expanding the Debt Settlement Industry

Senate Bill 211, sponsored by Sen. Bob Hackett (R-London), expands the latitude for the debt settlement industry to operate in Ohio and seeks to allow for them what has already been established as the practice of law. A version of this legislation was around last General Assembly (SB112), and although iterations may vary, the essential substance has remained the same. We've voiced our opinion on this before: Proposals like this not only encourage practices that cross the line into the unauthorized practice of law, but also put consumers at risk. SB211 is now pending in the Senate Financial Institutions and Technology Committee and has had five hearings.

As you can see, it should be a busy end to the year for the Ohio Bar advocacy team, with just a few short weeks to accomplish our legislative goals for biennial cycle. We will continue to advocate for legislation that the association supports, while keeping an eye on the handful of bills that we oppose. Be sure to check the Weekly Legislative Report every Friday in your Greenbook for the latest information and tune in to our Quarterly Legislative Updates to keep an eye on everything going on at the Ohio Statehouse. 

Don't Miss Your Next Quarterly Legislative Update: Dec. 12, 2022

For more on lame duck and other legislative issues, tune into our complimentary quarterly legislative updates. Earn some complimentary CLE credit while keeping up to speed on essential news from the Ohio General Assembly.

Visit [OhioBar.org/Legislative-Updates](https://ohiobar.org/Legislative-Updates).



Ohio's Black Judges

Providing Extraordinary Leadership

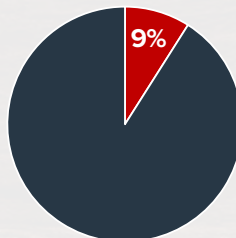
By Judge Ronald B. Adrine

Today, approximately 723 individuals sit as elected judges in Ohio's state court system. They sit on the state's Supreme Court and they inhabit its 12 appellate court jurisdictions.

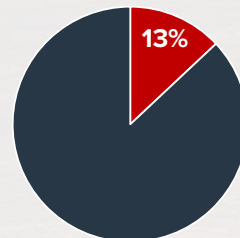
They also sit on the common pleas court bench in all of the state's 88 counties. In the state's larger population centers, they serve in the general, domestic relations, juvenile and probate divisions of those common pleas courts. In Ohio's municipalities, judges can be found meting out justice on municipal and county trial courts.

However, only 59, or less than 9% of those elected identify as Black or African American, either alone or in combination with one or more other racial categories. That number is well under the 13% of Black representation in the state's general population.

Indeed, those 59 Black judges are concentrated in just a few of Ohio's state court jurisdictions. To be exact, they sit in only 25 of the state's 382



Of the **723** elected judges in Ohio, **59** are African American.



The **1.443 million** African Americans in Ohio make up **13%** of the state's **11.68** million total population.

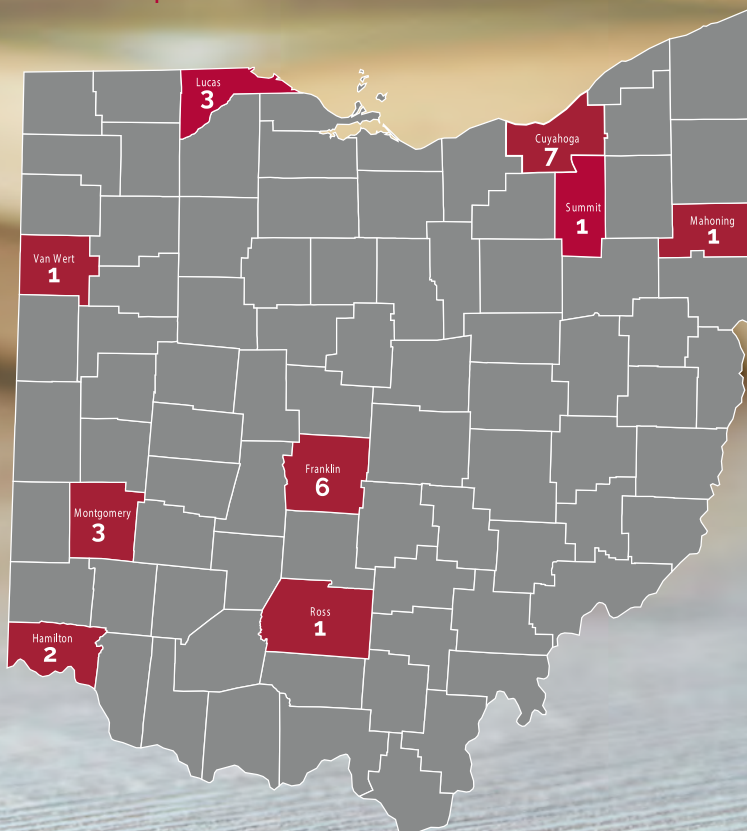
court jurisdictions. Despite the paucity of their numeric strength, African Americans have an outsized footprint in the leadership of Ohio's elected judiciary.

There are 410 presiding (PJ) and administrative judge (AJ) leadership positions in Ohio's courts. The presiding judge position was created by statute, whereas the position of administrative judge is a creature of the Ohio Supreme Court.

The presiding judgeships came into being to provide overall accountability for the management of each court's

fiscal, human resource, security and other business, particularly in those jurisdictions where more than one judge serves. The original purpose of the administrative judgeships was to separate specific accountability to the Supreme Court for case flow management and oversight for the timely disposition of lower court business to better serve the public. Over time, the responsibilities of the two positions have largely melded in such a way that in most multi-judge jurisdictions the same jurist holds both positions at the same time. The statutes and rules allow for such mergers.

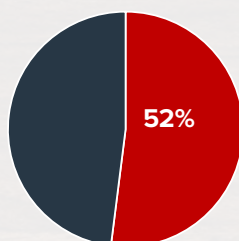
Jurisdictions Where African American Judges Serve on a Court Bench



However, merger is not required, and there are still jurisdictions where different judges hold each position, separately.

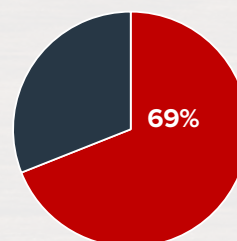
Given the paucity of African Americans as a percentage of the total number of those serving as judges at all levels in Ohio, the number of Black judges holding these leadership positions is noteworthy. As noted, people of African descent currently sit on 25 Ohio courts. Of those benches, 21 are multi-judge courts. In eight of those 21 multi-judge courts, a Black judge was elected by their peers to serve as either AJ, PJ or both. In the Dayton Municipal Court separate Black judges were elected to both the administrative and the presiding judge positions. Four Black judges sit on single-judge benches where the judge assumes leadership by virtue of public election to their courts.

Black judges, therefore, hold leadership positions in more than half of the jurisdictions in which African



Black judges hold leadership positions in more than half of the jurisdictions where they serve.

Americans have a presence. Of those courts, such an achievement must be viewed as all the more significant when it is observed that in those 13 jurisdictions, African American jurists are the majority of the bench in only two multi-judge courts and in four other single-judge districts. A majority of the jurists in the multi-judge districts where Black judges do not constitute the majority chose to elect a Black judge to serve a top leadership post. That speaks to the regard in which those Black judges are held by their peers and the legal, professional, political and personal skillsets that



Black woman judges hold most of those leadership positions.

those Black judicial officers bring to the table.

Another extraordinary fact that cannot be overlooked is that of the 13 individuals who identify as African American currently sitting as administrative/presiding judges in Ohio, nine are females. They are part of the 110 females holding those positions statewide. However, within the 25 jurisdictions in which Black judges serve, Black women hold approximately 25% of the leadership positions available.



Notable Firsts



1870

Feb. 3, 1870
Ratification of the 15th Amendment gives African Americans the right to vote



1942

Perry B. Jackson becomes Ohio's first elected Black judge



1967

Thurgood Marshall becomes the first African American U.S. Supreme Court Justice



1969

Lillian W. Burke becomes Ohio's first African American woman judge



2011

Yvette McGee Brown becomes the first Black woman on the Ohio Supreme Court



2019

Melody Stewart becomes the first elected Black woman on the Ohio Supreme Court



2022

Ketanji Brown Jackson becomes the first Black woman on the U.S. Supreme Court

The advancements made by African Americans in the judicial branch of Ohio's government must be viewed through the lens of the state's fraught racial history.

It has only been 152 years since the ratification of the 15th Amendment to the Constitution of the United States gave African American males the right to vote. It took another 72 years before the first African American, Perry B. Jackson, was elevated to judicial office in this state in 1942. Thereafter, it took another 27 years before the first African American female, Lillian W. Burke, reached the bench. It must also be noted that it took 123 years for the first Black woman, Yvette McGee Brown, to ascend to the bench of the Supreme Court of Ohio.

The progress of African Americans in their quest for judicial office is real and cannot be downplayed or ignored. And yet, those quests have not kept pace with the involvement of African Americans in a legal system that needs to have more individuals capable of understanding and empathizing with the lived experiences of a majority of those upon whom it is called upon to pass judgment.

In 2022, the Ohio Black Judges Association, Inc. is more than proud of the hard-fought accomplishments of the following Black Ohio judges who aspired to and achieved the opportunity to lead and who now bring their unique perspectives to courthouses all across our state. They are:

- The Hon. Carla Baldwin, AJ/PJ Youngstown Municipal Court
- The Hon. Laurel Beatty Blunt, AJ, 10th District Court of Appeals
- The Hon. Kimberly Cocroft, AJ, Franklin Co. Ct. of Com. Pleas, Gen.
- The Hon. Denise Cross, AJ/PJ, Montgomery Co. Ct. of Com. Pleas, DR.
- The Hon. William Dawson, AJ/PJ, East Cleveland Municipal Court
- The Hon. Myron Duhart, AJ/PJ, 6th District Court Appeals
- The Hon. Michelle Earley, AJ/PJ, Cleveland Municipal Court
- The Hon. Ian English, AJ, Lucas Co. Ct. of Com. Pleas, Gen.
- The Hon. Carl Henderson, PJ, Dayton Municipal Court
- The Hon. Deirdre Logan, AJ, Dayton Municipal Court
- The Hon. Stephanie Mingo, AJ, Franklin Co. Muni., Environmental Div.

- The Hon. Monā Scott, AJ, Cleveland Municipal Court, Housing Div.
- The Hon. Jill Worthington, AJ/PJ, Van Wert Municipal Court*



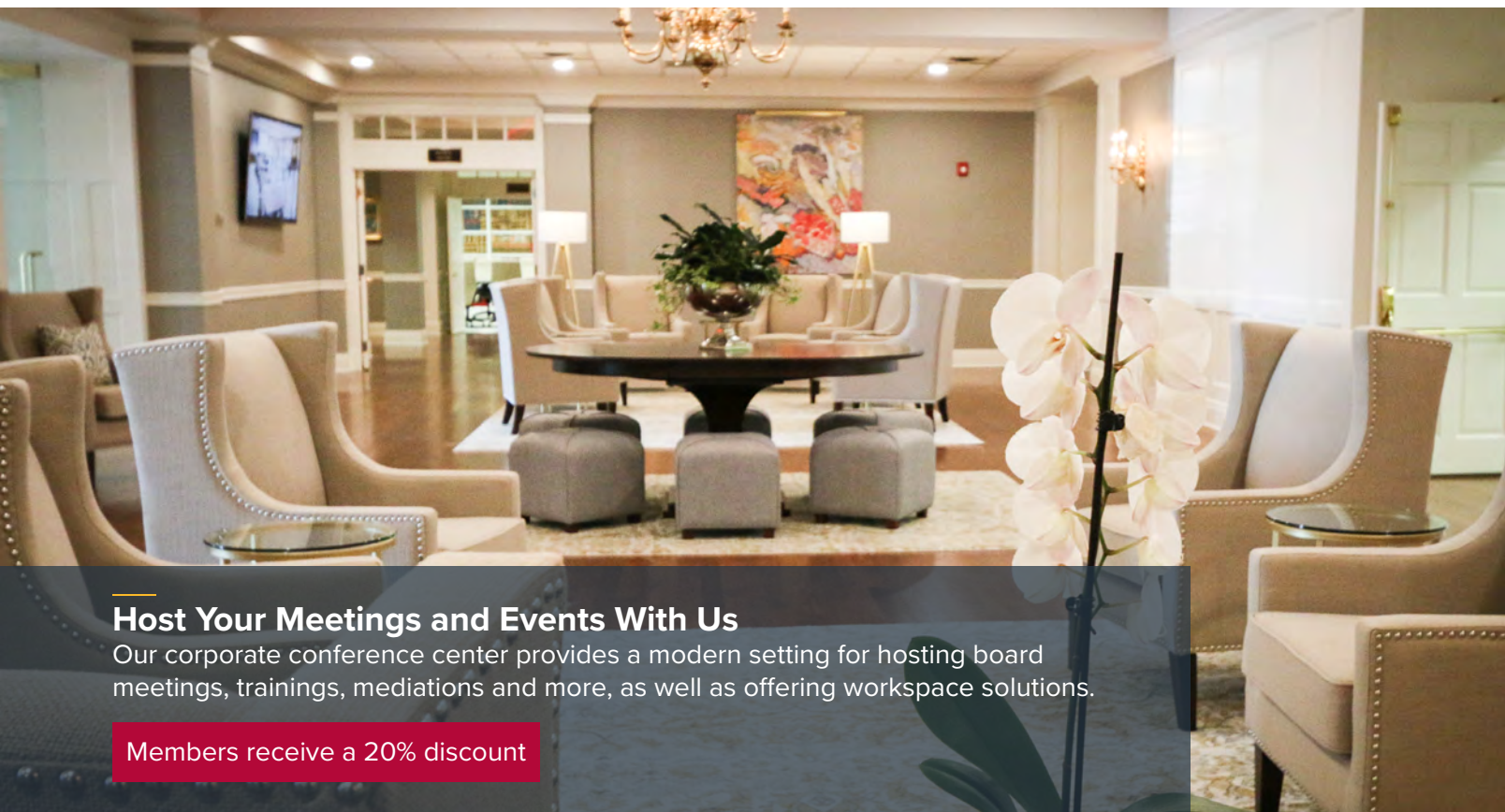
**Identifies as African American, as well as other ethnicities*

About the Author



Judge Ronald B. Adrine was first elected to the bench of the Cleveland Municipal Court in 1981 and proceeded

to win re-election five times before his retirement at the end of his sixth term in January 2018. In 2000, he was awarded the Ohio Bar Medal, the Ohio State Bar Association's highest honor, and in 2019, he became the recipient of the Thomas J. Moyer Award for Judicial Excellence. Judge Adrine has served on more than 70 professional, civic and social organizations and, in retirement, continues his active service to his community. He currently serves as a legacy member and chair of the communications committee of the Ohio Black Judges Association.



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ADVOCATING FOR AMENDED ADVERTISING RULES

Ohio Bar Submits Proposal to Supreme Court

By Karen E. Rubin

The Ohio State Bar Association has proposed to the Ohio Supreme Court's Board of Professional Conduct a package of amendments that would streamline and update the Rules of Professional Conduct governing lawyer advertising. In the July letter submitting the proposed amendments to the board, the Ohio Bar cited the need to bring the rules into alignment with the way that lawyers now communicate with legal consumers, and to streamline them to best help lawyers connect with potential clients.

The proposed amendments largely conform to the analogous rules in the American Bar Association's (ABA) Model Rules of Professional Conduct. The ABA adopted its advertising rule updates in 2019, and they have already been adopted in some form in several jurisdictions.

Council of Delegates Action on Proposed Amendments

The Ohio Bar's proposal grew out of the work of the Law Practice Modernization Task Force convened in 2020 by then-president Eleana Drakatos. The task force, chaired by immediate past president David Lefton, consisted of a diverse group of Ohio lawyers and judges from all over the state and represented a broad range of practice types and practice areas. The task force was charged with reviewing the need for regulatory reform with the goal of connecting more legal consumers with lawyers. At the same time, the task force's lodestar was to maintain the core values of the legal profession, including the principle that lawyers are the ones best-trained and best-suited to serve the legal needs of clients.

In its review, the task force specifically identified as an issue that the marketplace for legal services has undergone radical change since the adoption of the Ohio Rules of Professional Conduct (ORPC) in 2007. This transformation has made the current ORPC rules governing lawyer advertising unduly complicated and unnecessarily restrictive in some ways.

In September 2021 the Ohio Bar Board of Governors approved the task force's recommendation that a working group be appointed to suggest ways of simplifying the ORPC's section on "Information About Legal Services," Rules 7.1 – 7.5. The working group consisted of practitioners from large, small and solo practices, and included plaintiff-side and defense-side lawyers, as well as lawyers with civil, criminal and legal ethics experience and expertise. The working group met throughout the fall and winter and presented its recommendations to the Ohio Bar Council of Delegates at the May 10, 2022 annual meeting, where the proposed amendments were unanimously approved for submission.

The proposed rule changes are now before the board, which will weigh in with the Supreme Court. The court has exclusive authority over amendments to the ORPC. The bar association has offered its assistance to the court in convening other stakeholders to help assess the proposal.

What's New in the Proposed Amendments?

The working group did a deep dive into the ORPC's lawyer advertising provisions, including their history,

relevant ethics opinions and the ABA's basis for its 2019 revamp of the analogous Model Rules. The package of changes that the Ohio Bar proposed includes numerous detailed suggestions regarding the existing rules and comments and included a detailed outline of explanations justifying the changes. Here is a summary of eight significant proposed changes:

- Eliminating the prohibition against "non-verifiable" communications regarding legal services, while maintaining the strong prohibition against false and misleading communications.
- Permitting non-exclusive reciprocal referral arrangements between lawyers and non-lawyers. Paying anything solely for referrals remains prohibited, the arrangements must not interfere with the lawyer's independent legal judgment and conflicts of interest must be resolved in accordance with the conflict rules.
- Permitting lawyers to give nominal gifts to referral sources, provided that they are not compensated for recommendations.
- Eliminating the requirement that print advertisements contain an "office address" but requiring all communications to contain "contact information."
- Defining "solicitation" as a communication initiated by or

on behalf of the lawyer directed to a specific person needing legal services in a particular matter and permitting live, person-to-person solicitation of lawyers, family members, those having a prior business or professional relationship with the lawyer and those who routinely use, for business purposes, the particular type of legal services offered.

- Eliminating the requirement for an “advertising material” recital on solicitations, based on the fact that people are used to identifying as advertisements mail flyers and other communications such as they might receive after a car accident.
- Eliminating the requirement of providing the “understanding your rights” document in solicitations of accident or disaster victims within 30 days of the event. Requiring a long document with specific wording to be provided in the 30-day window renders impractical the use of certain permissible electronic media to communicate about legal services and there is no comparable requirement imposed on medical professionals or the insurance industry.
- Moving selected provisions now found in ORPC 7.4 (“Communication of Fields of Practice and Specialization”) and 7.5 (“Firm Names and Letterheads”) to the comment section of amended ORPC 7.2 (retitled, “Communication Concerning a Lawyer’s Services: Specific Rules”) and eliminating current ORPC 7.4 and 7.5, aligning the ORPC with the streamlined approach of the ABA’s Model Rules as adopted in many other jurisdictions.

Some Recommendations Keep the Status Quo

Although recommending these and many other changes to the ORPC and its comments in order to generally align with the ABA Model Rules, the package of proposals to the Supreme Court also recommends retaining features and provisions of the current ORPC. For instance, ORPC 7.2(d) currently prohibits seeking employment in connection with a matter that the lawyer only intends to refer to other counsel, with certain exceptions. The bar recommended to the court that this provision be retained, as the Model Rules fail to address the issue. In addition, the Ohio Bar recommended adopting new language providing that the requisite intent may be inferred from circumstances, a standard already used in the ORPC.

Other examples of existing rules that the OSBA recommends retaining include the requirement that the names of professional corporations, legal clinics, LLC’s or LLP’s contain symbols indicating the organization’s nature, as provided in Gov. Bar. R. III and ORPC 7.5(a), and the recommendation that the rules continue to require law firms with offices in more than one jurisdiction to indicate the jurisdictional limitations on those not licensed to practice in Ohio, as ORPC 7.5(b) now requires.

Watch This Space ...

If adopted, the Ohio Bar’s proposed changes to the Rules of Professional Conduct will simplify the ethics landscape regarding communication about attorney services and help connect more lawyers with people in need of legal help. While the board, as of this writing, hasn’t reacted to the proposals yet, you can count on your Ohio Bar team to keep you informed of all significant developments – so stay tuned. Reach out with your questions or comments to editor@ohiobar.org with the subject line Advertising Rules in Ohio Lawyer. 

About the Author



Karen E. Rubin retired in 2021 as counsel in the Cleveland office of Thompson Hine LLP, where she worked with the firm’s Office of General Counsel

and co-edited the firm’s award-winning legal ethics blog, “The Law for Lawyers Today.” She is a member of the Ohio Bar’s Ethics Committee and led the working group that drafted the proposed advertising rule changes submitted to the Ohio Supreme Court. She is also vice chair of the Ohio Supreme Court’s Commission on Professionalism and continues to teach and write in the area of legal ethics and professional responsibility.

! That’s Not All:

We’re Advocating for Inclusion and Diversity in Continuing Legal Education

As a result of the Council of Delegates meeting at the Ohio State Bar Association Annual Meeting in May, the bar will also be advocating for amendments to the Rules for the Government of the Bar.

Another Board of Governors proposal approved by the council will place before the Supreme Court of Ohio an amendment Gov. Bar R. X, Section 3 to allow diversity, inclusion and elimination of bias training to be eligible for the required biennial 2.5 credit hours of professional conduct instruction.

? Did You Know?

The Ohio Supreme Court releases proposed rule amendments for input from all interested parties and each justice is given a copy of all submitted comments. Keep an eye on your Ohio Bar Greenbook – ohiobar.org/green-book – where we publish all proposed and adopted rules so you can stay in the know and make your voice heard.



ANNOUNCING NEXT ROUND OF OSBF RACIAL JUSTICE INITIATIVE GRANTS

We're proud to announce that the **OSBF has granted \$91,042** through its latest phase of the Racial Justice Initiative:

\$49,642 to the Kent State University Foundation which will bring together leaders from Black communities and from law enforcement agencies to evaluate and revise existing police training through the Kent State Basic Police Officer Training Academy. Feedback from community forums will be used to evaluate and revise existing police training through the Kent State program.

\$41,400.00 to the Mental Health & Addiction Advocacy Coalition to identify areas of racial and ethnic inequity in Ohio's community behavioral health system by collecting and analyzing available data and making recommendations to improve data collection and reduce the disparity, inequity, and negative impact that result in poor outcomes for minority populations.

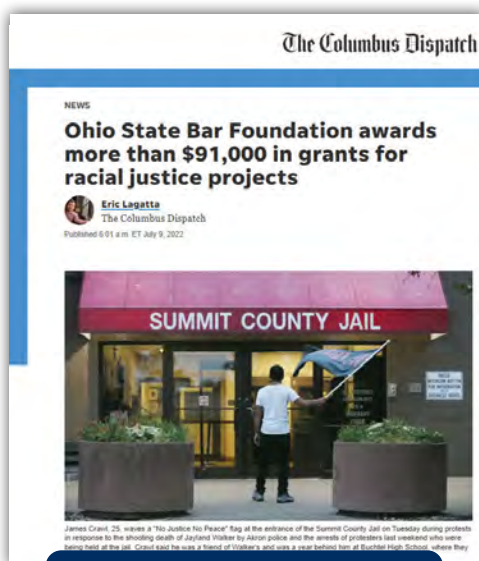


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OSBF IN THE NEWS

In July, *The Columbus Dispatch* featured the latest round of the Racial Justice Initiative and spoke with OSBF Executive Director Lori Keating.



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ANNOUNCING OSBF'S 2022 SPRING GRANT RECIPIENTS

\$332,200.00 GRANTED
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\$15,000 to the **Catholic Charities Corporation**

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\$25,000 to the **Legal Aid Society of Cleveland**

\$116,000 to the **Ohio Center for Law Related Education**

\$50,000 to **Ohio Legal Help**

\$10,000 to **Ohio State Legal Services Association**

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RAISE THE BAR COMING THIS NOVEMBER!

Formerly a friendly competition among OSBF Fellows on Giving Tuesday, the Ohio State Bar Foundation's annual *Raise the Bar Ohio* campaign is now a month-long event that brings together teams of OSBF Fellows and community members to raise public awareness and support of our mission to build a justice system that works for everyone. **100 percent of all donations will be used for grant making to charities** who share OSBF's vision and whose work addresses inequities among Ohio's most vulnerable and marginalized populations, including communities of color. Stay tuned for more information!



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HOSTED BY OSBF TRUSTEE JOSEPH WENGER, THIS EPISODE IS THE SECOND OF A TWO-PART SERIES ON THE ISSUES AND CHALLENGES FACING THE LGBTQ+ COMMUNITY.

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Ohio case law summaries from May 16 – Aug. 1

In Case You Missed It: The following are selected summaries of cases decided by Ohio courts between May 16, 2022 – Aug. 1, 2022.

To view all of the decisions issued in this time period or to read the selected cases in their entirety, please visit ohioabar.org/greenbook where you can search by case name or view by date.

Banking and Commercial

Overdraft fees. Szewczyk v. Century Fed. Credit Union | 2022-Ohio-1683 | 8th Appellate District | 05/19/2022 In plaintiff's putative class action against defendant-credit union alleging breach of contract for charging overdraft fees on accounts that were never overdrawn, trial court did not err in granting defendant's motion to dismiss since documentation unambiguously provided that defendant would charge fees for overdrafts of available balance; although the agreement did not specifically define available balance, the documents as a whole showed that available balance is not synonymous with actual balance, and in some instances deposits may not become immediately available to cover withdrawals, Civ.R. 12(B)(6).

Construction

Unjust enrichment. Sterling Contracting, L.L.C. v. Main Event Entertainment, L.P. | 2022-Ohio-2138 | 8th Appellate District | 06/23/2022 In plaintiff-subcontractor's unjust enrichment action against defendants-property owner and lessee for failure to pay outstanding balance on charge orders after general contractor defaulted on terms of construction contract, summary judgment in favor of defendants was not error since plaintiff had obtained judgment on a breach of contract claim against general contractor for the full value of the outstanding debt and the claim was not discharged in bankruptcy, so it has not been shown that general contractor was incapable of satisfying its debt and is deemed available for judgment, extinguishing any unjust enrichment claim against the owner or lessee in possession of the property.

Contract/Breach. Perkins v. Petrilli | 2022-Ohio-2029 | 7th Appellate District | 06/15/2022 In concrete company's breach of contract and unjust enrichment action against

homeowner seeking balance due on construction of a wall, trial court did not err in finding that company failed to perform the contract in a workmanlike manner and in disallowing either party from collecting additional money where the company used materials not bargained for, the wall was not level, there were other defects established by the evidence, and the company acknowledged that homeowner showed that reduction in payment was warranted.

Contract/Personal liability. Riesterer v. Porter | 2022-Ohio-1698 | 6th Appellate District | 05/20/2022 In plaintiff-home owner's breach of contract action against defendant-owner of remodeling company for failure to complete renovations, summary judgment in favor of plaintiff, holding defendant personally liable, was error where a question remains as to whether defendant's company was a sole proprietorship or a limited liability company, the fact that defendant personally did most of the work does not necessarily make him personally liable under a contract, and issues of fact remain as to plaintiff's damages, Civ.R. 56(C).

Consumer Vehicle repairs/Agency relationship. Smith v. McDiarmid | 2022-Ohio-2151 | 10th Appellate District | 06/23/2022 In plaintiff-truck purchaser's action against defendants-dealership and service contract provider for violation of Consumer Sales Practices Act (CSPA) by denying claim for repairs after truck broke down soon after purchase, summary judgment in favor of defendants was error where question remains as to whether the service contract provider held dealership out to public as having authority to enter into vehicle service contracts on its behalf, and if there was an agency relationship, the service provider could be liable for CSPA violations committed by dealership.

Consumer Sales Practices Act/JNOV.

Lester v. FCA US, L.L.C. | 2022-Ohio-1776 | 1st Appellate District | 05/27/2022 In plaintiff's action against defendant-car dealer alleging violation of the Consumer Sales Practices Act (CSPA) and breach of warranty in sale of truck for not repairing persistent vibration where jury found no warrantable defect but did find a CSPA violation, the trial court erred in denying defendant's motion for JNOV on the CSPA claim since that claim was derivative of the warranty claims so the finding of no defect or breach of warranty precluded a finding that defendant misled plaintiff about the nature of the vehicle or the application of warranties, R.C. 1345.02.

Contracts

Breach/Dismissal. Geletka v. Radcliff | 2022-Ohio-2497 | 8th Appellate District | 07/21/2022 In dispute between neighbors over alleged contract for plaintiff-contractor to repair defendant's damaged roof where defendant decided to hire a different contractor, plaintiff sought payment of cancellation fee under contract, and defendant counterclaimed, trial court did not err in granting both parties' motions for summary judgment and dismissing the entire case since contract did not exist because plaintiff never performed work for defendant, defendant never paid for services, and defendant failed to demonstrate that plaintiff's actions were deceptive or false under R.C. 1345.01(A).

Breach/Dismissal. Lima Refining Co. v. Linde Gas N. Am., L.L.C. | 2022-Ohio-2185 | 3rd Appellate District | 06/27/2022 In plaintiff-refining company's breach of contract action against defendant-industrial gas supplier for failure to deliver demanded excess amounts of gas, trial court did not err in granting defendant's motion to dismiss for failure to state a claim, Civ.R. 12(B)(6), since complaint did not establish a disputed legal interest

Contracts (Cont.)

or right under the contract where defendant was contractually obligated only to provide excess gas not already committed to other customers, parties' communications attached to complaint showed that plaintiff rejected excess product defendant offered, and complaint did not assert that defendant had available amount of gas demanded.

Forum selection clause. Howard v. Go Ahead Vacations, Inc. | 2022-Ohio-2202 | 11th Appellate District | 06/27/2022 In plaintiff's action against defendant-travel company for failure to refund deposit after tour was unable to depart during pandemic travel ban, trial court erred in finding that forum selection clause in agreement between parties was enforceable where, although forum selection clauses involving consumers are not expressly unenforceable, the clause in question was invalid because the tour had a local coordinator and involved residents of Ohio, defendant specifically targeted regional groups of travelers, and out-of-state forum would be significant inconvenience for plaintiff; also, commercial and non-commercial parties are treated differently in relation to forum selection clauses.

Breach/Indemnification/Damages. WSB Rehab. Servs., Inc. v. Cent. Accounting Sys., Inc. | 2022-Ohio-2160 | 1st Appellate District | 06/24/2022 In plaintiff-therapy service's action against defendants-nursing facilities for failure to pay for services that prompted defendants to file counterclaims, pursuant to parties' indemnification contract provision, for qui tam action-related expenses arising from plaintiff's services, trial court erred in determining the amount of damages awarded to defendants to indemnify for the qui tam expenses where defendants' employees' salaries should not be included in the expenses, and defendants did not show that claimed damages were reasonable.

Breach/Sponsorship. Thiel's Wheels, Inc. v. State Route 30, Ltd. | 2022-Ohio-2093 | 3rd Appellate District | 06/21/2022 In plaintiff-motorcycle dealership's breach of contract action against defendant-business for failure to make payments for racing sponsorship, judgment in favor of plaintiff was not error since agreement

to provide sponsorship was not an illusory promise because it was made as further consideration for sale of assets as well as for defendant's recognition as sponsor under the agreement, and although plaintiff cancelled some of its races, evidence showed that defendant used plaintiff's name, image, and likeness to promote its own business.

Oral/Meeting of minds. Tecco v. Iconic Labs, L.L.C. | 2022-Ohio-2041 | 8th Appellate District | 06/16/2022 In plaintiff's breach of executory contract action against defendant-business owner for breach of oral agreement to make plaintiff an equal partner in business, trial court did not err in granting defendant's motion for summary judgment where evidence did not demonstrate a meeting of the minds regarding essential terms of the agreement to form partnership, plaintiff made no capital investment, there was no agreement as to ownership interest, and defendant viewed plaintiff as an employee rather than partner.

Attorney fees/Quasi contract/Quantum meruit. Law Office of Craig T. Weintraub v. Bruner | 2022-Ohio-1939 | 8th Appellate District | 06/09/2022 In plaintiff-law office's action in quantum meruit against defendant-former client's new attorney to recover fees owed for work performed prior to termination of attorney-client relationship, judgment in favor of plaintiff was not error where, although terms of first agreement were contradictory, parol evidence showed that the parties recognized the need for a new agreement and that the client would pay for hours expended by plaintiff, compensation was awarded on an equitable basis, and defendant's claim that clean-hands doctrine precluded recovery was based on speculation.

Breach/Personal jurisdiction. Ricker v. Mercedes-Benz of Georgetown | 2022-Ohio-1860 | 10th Appellate District | 06/02/2022 In plaintiff-vehicle purchaser's breach of contract action against defendant-out-of-state car dealership for backing out of contract for sale of vehicle after it had been paid in full, trial court erred in granting defendant's motion to dismiss for lack of personal jurisdiction where the long-arm statute R.C. 2307.382 was satisfied because plaintiff executed the contract in state and wired money from in-state bank, and defendant purposefully

directed contact by initiating parties' negotiations by telephone and sending contract to plaintiff's home, creating a substantial connection.

Breach/Nominal damages/Attorney fees. Total Quality Logistics, L.L.C. v. Tucker, Albin & Assocs. | 2022-Ohio-1802 | 12th Appellate District | 05/31/2022 In plaintiff-freight broker's breach of contract and related claims action, arising from dispute and plaintiff's decision not to pay carrier that then sold its account receivable to defendant-debt collector where plaintiff alleged that defendant violated the broker-carrier agreement by directly contacting plaintiff's customer for payment, summary judgment for defendant was error since the breach of contract invaded a significant interest of plaintiff, and even though plaintiff did not show a loss of goodwill, it is entitled to nominal damages which may confer prevailing party status to allow award of attorney fees and costs under contract.

Corporate and Business

Fraudulent transfer. White v. Molnar Trust | 2022-Ohio-1976 | 6th Appellate District | 06/10/2022 In plaintiffs-former marina purchasers' replevin/conversion action against defendants-former marina sellers claiming ownership of floating docks after defendants bought back the marina at foreclosure sheriff's sale, the trial court erred in dismissing defendants' claim of fraudulent transfer where plaintiffs had sought to transfer all remaining assets from marina to themselves rather than making them part of sheriff's sale of the marina, defendants presented evidence imputing fraud to plaintiffs pursuant to R.C. 1336.05, and plaintiffs failed to demonstrate lawful right to possession of docks on replevin claim.

Business tort/Civil conspiracy/Pleading. Sal's Heating & Cooling, Inc. v. Bers Acquisition Co., L.L.C. | 2022-Ohio-1756 | 8th Appellate District | 05/26/2022 In plaintiff-business' action against defendants-former employees and their new employers alleging civil conspiracy for conspiring to utilize plaintiff's proprietary and confidential information, trial court did not err in dismissing the civil conspiracy count of plaintiff's claim since plaintiff failed to plead an underlying tort that would be actionable as an independent cause of action, and former employees' assignment of trade licenses to new

employers was not an independent act that created an independent cause of action, R.C. 4740.13.

Fiduciary duty. Hawes v. Downing Health Technologies, L.L.C. | 2022-Ohio-1677 | 8th Appellate District | 05/19/2022 In plaintiff-investor employee's action against defendant-corporate officer alleging breach of fiduciary duty for failure to make disclosures about business, trial court erred in finding that defendant breached a de facto fiduciary duty where parties were negotiating an arms-length commercial transaction and there was no evidence to indicate they stood in position of special confidence to each other or that defendant exerted a superior position, and plaintiff had prior experience in evaluating prospective investments and was advised not to invest.

Litigation expenses advancement/ Director. Schmitt v. Schmitt | 2022-Ohio-1685 | 10th Appellate District | 05/19/2022 In plaintiff-director's action against defendant-business, alleging breach of contract for termination of his employment, trial court erred in denying plaintiff's motion for advancement of litigation expenses for defendant's counterclaim of breach of fiduciary duty where advancement of expenses to a director of a corporation is mandatory under R.C. 1701.13(E), defendant did not opt out of mandatory advancement, and although counterclaim was against plaintiff as an officer, the plain language of the statute does not require that action be taken in director's capacity as director.

Criminal

Aggravated murder. State v. Brinkman | 2022-Ohio-2550 | Supreme Court of Ohio | 07/28/2022 In a conviction by plea to, inter alia, two counts of aggravated murder by a three judge panel and imposition of the death penalty for the aggravated murder counts, the Supreme Court of Ohio affirms the convictions and imposition of the death penalty following an independent review of the death sentence, but holds that the trial court erred by imposing post-release control for convictions for aggravated robbery and aggravated burglary since those counts were merged with the aggravated murder convictions for sentencing; remanded with instructions to correct the sentencing entry.

Self-defense. State v. Brooks | 2022-Ohio-2478 | Supreme Court of Ohio | 07/21/2022 In a certified conflict appeal concerning the applicability of R.C. 2901.05 that shifted the burden of proof on self-defense to the prosecution, the Supreme Court of Ohio holds that the legislation applies to all trials after the effective date of the act, regardless of when the alleged offenses occurred; remanded for a determination of whether defendant was entitled to claim self-defense since the state argues that defendant claimed that she was not trespassing when she entered the home of the person injured, and that issue was not addressed by the court of appeals.

Habeas corpus. Stevens v. Hill | 2022-Ohio-2479 | Supreme Court of Ohio | 07/21/2022 In inmate's pro se habeas corpus action against warden, challenging the sentences imposed in his conviction, the court of appeals did not err in granting warden's Civ.R. 12(B) (6) motion to dismiss since petitioner's sentences are not void because he had an adequate remedy at law by way of direct appeal or post-conviction relief to challenge his sentences, Henderson.

Habeas corpus. State ex rel. Barnette v. Hill | 2022-Ohio-2469 | Supreme Court of Ohio | 07/20/2022 In inmate's habeas corpus action against warden alleging errors in the grand-jury process that led to his indictment and subsequent conviction of, inter alia, two counts of aggravated murder, the court of appeals did not err in granting warden's motion to dismiss for failure to state a claim since relator had an adequate remedy by way of direct appeal to challenge the indictment, and thus his claim is not cognizable in an action for habeas corpus.

Search. State v. Barcus | 2022-Ohio-2491 | 5th Appellate District | 07/19/2022 In a conviction by plea to drug offenses, denial of motion to suppress was error since, although officers had reasonable suspicion of a traffic violation to make a stop and even if an initial pat down of defendant was reasonable for officer safety, a second more thorough pat down by a second officer was not supported by reasonable suspicion since there was no indication in the record that defendant was a known criminal, involved in drugs and/or firearms, or was armed and dangerous and, contrary to the trial court's finding, the

drugs found following the second pat down were not in plain view under her blouse since she was not wearing a blouse but a short crop top and her waistband was clearly visible.

Gross sexual imposition/Sexual imposition. State v. Biggs | 2022-Ohio-2481 | 5th Appellate District | 07/19/2022 Conviction of gross sexual imposition, R.C. 2907.05(A)(1), was not supported by sufficient evidence of force necessary for a conviction of the offense since there was no amount of force used by defendant beyond the force inherent in the crime itself; however, the evidence was sufficient to sustain the lesser included offense of sexual imposition that the state had also charged defendant with committing and the trial judge had instructed jury on; remanded to modify defendant's conviction and to re-sentence him.

Evidence/Cell-phone records. State v. Sutton | 2022-Ohio-2452 | 3rd Appellate District | 07/18/2022 In a bench conviction of, inter alia, murder and aggravated burglary, the trial court did not commit plain error by admitting unauthenticated cell-phone records since defendant did not demonstrate prejudice where he failed to show that the error was outcome determinative in light of evidence presented showing defendant's phone was used to call victim and defendant had stated he was in possession of that phone when the victim was called, he had picked up a person who was shot and died at the scene of the attempted robbery, defendant's shoes matched prints of the shoes used to kick in defendant's backdoor and defendant's cell phone had been used to search for information about the incident.

Sentencing/Reagan Tokes. State v. Stevens | 2022-Ohio-2474 | 5th Appellate District | 07/18/2022 On remand from the Ohio Supreme Court to consider whether the challenged provisions of the Reagan Tokes Law are constitutional, the court of appeals holds that in a conviction of first-degree felony aggravated burglary with a repeat violent offender specification, R.C. 2911.11(A)(1) and 2941.149, and second-degree felony possession of drugs, R.C. 2925.11(A), challenge to imposition of a minimum mandatory six-year prison term and an aggregate indefinite maximum prison term of nine years is without merit since the presumptive release feature of

Criminal (Cont.)

R.C. 2967.271 does not violate the constitutional rights to trial by jury and due process of law, nor does it violate the constitutional requirement of separation of powers.

Sentencing. State v. Criswell | 2022-Ohio-2450 | 3rd Appellate District | 07/18/2022 In a conviction by plea to involuntary manslaughter, R.C. 2903.04(A), imposition of a sentence of a minimum prison term of eight years to a maximum prison term of 12 years was not error since the trial court considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12 and the sentence is within the sentencing range for the offense, and R.C. 2953.08(G)(2)(a) does not provide a basis for an appellate court to modify or vacate a sentence because R.C. 2929.11 and R.C. 2929.12 are not among the statutes listed in the provision, Jones; also, the Reagan Tokes Law does not violate a defendant's constitutional right to due process of law.

Forfeiture. State v. Humphrey | 2022-Ohio-2456 | 12th Appellate District | 07/18/2022 In a conviction by plea to carrying a concealed weapon with an agreement to forfeit a black-powder pistol, although plea agreement included forfeiture of a specific gun, the trial court's ordering forfeiture of all other weapons confiscated during the search was error since the items were not included either in the indictment or the bill of particulars, R.C. 2981.04(A)(1) and (A)(2).

Child endangering. State v. Harvey | 2022-Ohio-2424 | 2nd Appellate District | 07/15/2022 Bench conviction of two counts of child endangering, R.C. 2919.22(A), was against the sufficiency and weight of evidence where the living conditions as shown in photographs were not "dirty and in disarray," but only cluttered and did not create a substantial risk to the health or safety of defendant's 11 month-old twins, and the fact that defendant smoked marijuana to deal with her stress, she testified that she never used marijuana with the twins present, and there was no evidence she acted on her threats of self-harm and purported threats against her children so as to create a substantial risk of harm to their health and safety.

Disrupting school activity. State v. Gonzales | 2022-Ohio-2433 | 6th Appellate District | 07/15/2022 Conviction of municipal code disrupting school activity was against the weight of evidence since defendant did not disrupt any school activity where he did not make physical contact with school officials, and the video evidence introduced at trial demonstrates that the activity of the school was not disturbed in any manner by defendant's behavior since when he was asked to exit the school, he did not become visibly upset or angry, nor did he appear angry and disrupt any school activity.

Sentencing/Reagan Tokes. State v. Eaton | 2022-Ohio-2432 | 6th Appellate District | 07/15/2022 In a conviction of, inter alia, first-degree felony involuntary manslaughter and imposition of aggregate indefinite prison sentence of 13 to 18 years pursuant to the Reagan Tokes Law, challenge to the sentencing provisions of the Law as violative of the separation-of-powers doctrine and as infringing on due process rights is without merit since the Law does not, on its face, violate well-established separation-of-powers parameters or infringe upon a defendant's due process rights.

New trial. State v. Thompson | 2022-Ohio-2438 | 6th Appellate District | 07/15/2022 Following a 2008 conviction of complicity in the commission of aggravated murder, R.C. 2923.03(A)(2) and 2903.01(A) and (F), that was affirmed, the trial court erred in denying motion for new trial where multiple recorded interviews and information about alternative suspects was not disclosed to defendant, it was favorable to him because it had significant exculpatory or impeachment value, and the failure to disclose this evidence to defendant prejudiced his defense and undermined confidence in the verdict, Brady.

Identification. State v. Williams | 2022-Ohio-2439 | 6th Appellate District | 07/15/2022 In a conviction of felonious assault, denial of motion to suppress pretrial photographic identification of defendant was not error since the identification was not unduly suggestive where, although defendant was the only individual with dreadlocks, his hair was pulled back from his face, another individual had braided hair that the witness recognized as consistent with

either braided hair or dreadlocks, and the pretrial photographic identification was followed by eyewitness identification at trial.

Speedy trial. State v. Rentas | 2022-Ohio-2412 | 8th Appellate District | 07/14/2022 In appeal by state of the trial court's dismissal of a prosecution of rape and gross sexual imposition offenses, dismissal for speedy trial violation was not error where the length of delay in filing the action was 39 years, the amount of missing or destroyed evidence, including hospital records, clothing, police department archives, witness statements and unavailability of the alleged victim's mother due to her decease, prejudiced defendant and the remaining evidence, inconsistent statements and the investigation conducted by counsel and the investigator hired by defendant's brother did not remedy the prejudice.

Sentencing/Reagan Tokes. State v. Thompson | 2022-Ohio-2413 | 8th Appellate District | 07/14/2022 In a conviction by plea to, inter alia, first-degree felony voluntary manslaughter, R.C. 2903.03(A), and second-degree felony felonious assault, R.C. 2903.11(A)(2), imposition of indeterminate prison sentence of a minimum of 18 years and a maximum of 23.5 years was not error where claim that the indeterminate sentencing imposed pursuant to the Reagan Tokes Law violates the constitutional right to trial by jury, the separation-of-powers doctrine, and due process is without merit in light of circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing/Reagan Tokes. State v. Guzman | 2022-Ohio-2414 | 8th Appellate District | 07/14/2022 In a conviction by plea to multiple counts of aggravated robbery, kidnapping, felonious assault and having weapons while under disability, imposition of aggregate minimum of 24 years and maximum of 28.5 years in prison was error because the trial court did not notify defendant of the mandatory advisements regarding the Reagan Tokes Law, R.C. 2929.19(B)(2)(c); remanded for the limited purpose of re-sentencing to provide the required notification.

Evidence/Other acts. State v. McDermitt | 2022-Ohio-2422 | 5th Appellate District | 07/14/2022 In a conviction of aggravated murder and menacing by stalking, admission of a Skype phone conversation by defendant with another person that involved the person murdered was not error where the evidence was relevant to show defendant's obsession with the victim and to prove motive and identity, and defense counsel had opened the door to admission of the Skype material by bringing up the fact that defendant had pictures of other women on his phone.

Plea. State v. Battle | 2022-Ohio-2444 | 5th Appellate District | 07/14/2022 In a conviction by plea to having weapons while under disability, R.C. 2923.13, and imposition of a 12-month prison sentence to be served consecutively to a judicial sanction of 1,145 days for violating post-release control in another case, plea was not validly made since the trial court failed to inform defendant during the Crim.R. 11 colloquy that the court would have the authority under R.C. 2929.141 to terminate his existing post-release control and impose a prison term that he would serve consecutively to the term of imprisonment imposed for the weapons offense, Crim.R. 11(C)(2) and Bishop; plea is vacated and remanded.

Restitution. State v. Mickey | 2022-Ohio-2396 | 5th Appellate District | 07/11/2022 In a conviction by plea to breaking and entering, R.C. 2911.13(A)(C), award of restitution to the victim after the sentencing hearing was not error since Marsy's Law creates a clear legal duty for the trial court to provide for "full and timely restitution," R.C. 2929.18(A)(1) allows a trial court to rely upon the amount of restitution recommended by the victim and does not require written documentation, and victim obtained an oral estimate to replace the window broken by defendant and, even though the information was provided after the sentencing hearing, the trial court did not err in ordering defendant to pay the amount of \$329 in restitution that was the oral estimate that the victim obtained.

Sentencing/Reagan Tokes. State v. Waltz | 2022-Ohio-2395 | 5th Appellate District | 07/11/2022 On remand from the Ohio Supreme Court to consider whether the challenged provisions of the Reagan Tokes Law

are constitutional, the court of appeals holds that in a conviction of, inter alia, four counts of second-degree felony felonious assault, the presumptive release feature of R.C. 2967.271 of the Reagan Tokes Law does not violate the constitutional rights to trial by jury and due process of law nor violates the constitutional requirement of separation of powers.

Search. State v. Edwards | 2022-Ohio-2384 | 12th Appellate District | 07/11/2022 In prosecution of drug offenses, grant of motion to suppress was error since search of vehicle that defendant was driving while his license was under suspension that officer was aware of was not an illegal search where drug was in plain view both inside and outside of vehicle, and the trial court erred in concluding that an inventory search of the vehicle was a pretext for an evidentiary search of the vehicle since officers were acting within the acceptable bounds set forth by the city towing policy when deciding whether the vehicle could, or should, be towed away from the scene.

Sentencing/Reagan Tokes. State v. Downard | 2022-Ohio-2393 | 5th Appellate District | 07/11/2022 On remand from the Ohio Supreme Court to consider whether the challenged provisions of the Reagan Tokes Law are constitutional, the court of appeals holds that in a conviction of, inter alia, second-degree felony robbery, the presumptive release feature of R.C. 2967.271 of the Reagan Tokes Law does not violate the constitutional rights to trial by jury and due process of law, nor violates the constitutional requirement of separation of powers.

Zoning violation. State v. Sulken | 2022-Ohio-2371 | 1st Appellate District | 07/08/2022 Conviction of minor misdemeanor violation of municipal zoning resolution because of the use of dirt bikes on the property was against the weight of evidence since, although the resolution prohibited certain structures, the state argued that the use of the dirt bikes was prohibited under the ordinance because of the noise that was made in the operation of the dirt bikes, but the resolution regulates equipment and structures, not actions or activities.

Sentencing/Reagan Tokes. State v. Beatty | 2022-Ohio-2394 | 5th Appellate District | 07/08/2022 On remand from the Ohio Supreme Court to consider whether the challenged provisions of the Reagan Tokes Law are constitutional, the court of appeals holds that in a conviction of, inter alia, four counts of second-degree felony felonious assault, the presumptive release feature of R.C. 2967.271 of the Reagan Tokes Law does not violate the constitutional rights to trial by jury and due process of law, nor violates the constitutional requirement of separation of powers.

Post-conviction relief. State v. Morton | 2022-Ohio-2358 | 8th Appellate District | 07/07/2022 Following a 2019 conviction of, inter alia, four counts of rape that was affirmed, denial of 2020 petition for post-conviction relief was error where the trial court failed to make findings of fact and conclusions of law of a timely filed petition for post-conviction relief, R.C. 2953.21(D), even though the petition was filed 365 days after the transcript was filed in the direct appeal since the clerk inadvertently docketed the appeal under the wrong case number in the wrong court.

Restitution. State v. Beckwith | 2022-Ohio-2362 | 8th Appellate District | 07/07/2022 In a conviction by plea in two cases to menacing by stalking, the trial court committed plain error by ordering an indigent defendant to pay \$725 to the sheriff's office for damage to an ankle monitor and \$1,890 to the prosecutor's office for extradition expenses since R.C. 2929.18 limits the financial sanction of restitution to victims of crimes, and an order of restitution is improper when the defendant was neither charged with nor convicted of any crime related to the alleged economic losses; also, recovery of extradition expenses by the state under R.C. 2949.14 is limited to felony defendants who are non-indigent, and the trial court had found defendant indigent.

Return of property. State v. Freeman | 2022-Ohio-2364 | 8th Appellate District | 07/07/2022 Trial court erred in denying motion seeking the return of property seized by police on defendant-movant's arrest for felonious assault since case has been dismissed and the state has not objected to the motion, but the police have failed to return the

Criminal (Cont.)

property to the owner and since police may only dispose of unclaimed or forfeited property before the property can be deemed unclaimed, a law enforcement agency is required to "make a reasonable effort to locate persons entitled to possession of the property, to notify them of when and where it may be claimed, and to return the property to them at the earliest possible time," R.C. 2981.11(C).

Gross sexual imposition. State v. Moore | 2022-Ohio-2349 | 5th Appellate District | 07/05/2022 Conviction of gross sexual imposition, R.C. 2907.05(A)(1), did not meet the sufficiency and weight of evidence standards since the state failed to prove defendant compelled his paramour's minor niece to submit to sexual contact by force or threat of force where, although the evidence presented demonstrated defendant had a position of authority over the minor, he manipulated the minor's clothing and touched her thigh and vaginal area while she was sleeping, but did not hold her down and as soon as she became aware of his conduct, she got up and left the room, and defendant did not tell her to do or refrain from doing anything, did not restrain her, nor reposition or relocate her body, and did not prevent her from leaving the room.

Self-defense. State v. Ballein | 2022-Ohio-2331 | 12th Appellate District | 07/05/2022 In a conviction of, inter alia, attempted murder, R.C. 2923.02(A) and (D), the state rebutted the presumption that defendant shot the victim in self-defense, R.C. 2901.05, by presenting evidence contradicting defendant's description of attempted forced entry into his friend's home by the victim where the jury viewed defendant's interviews with an officer in which defendant altered his version of events, recanted his allegation that victim was shouldering the door and attempting to break in, and jury could reasonably conclude that defendant's response of shooting the victim four times through a locked wooden door was unreasonable under the circumstances.

Jury/Juror removal. State v. Davids | 2022-Ohio-2272 | 8th Appellate District | 06/30/2022 In a conviction of, inter alia, aggravated burglary and felonious assault, the trial court did not err in removing a prospective juror

for cause where, although the person stated that she could be impartial, she also indicated that she believed that her relative was treated unfairly by the same office prosecuting defendant, and she also indicated that she did not believe that the law protected everyone equally.

Sentencing/Post-release control. State v. Woods | 2022-Ohio-2295 | 6th Appellate District | 06/30/2022 In a conviction by plea of attempted trespass in a habitation and imposition of an 11-month prison term for that offense and an additional consecutive 459 days of prison time for violation of post-release control in another case pursuant to R.C. 2929.141, challenge to the additional prison sentence is not reviewable in this appeal since the proper procedure to correct the alleged error is a declaratory judgment action, Hinton; the trial court did err by memorializing the sentence in two separate judgment entries, R.C. 2929.141.

Prosecutorial misconduct. State v. Pajestka | 2022-Ohio-2257 | 9th Appellate District | 06/30/2022 In a conviction of OVI, R.C. 4511.19(A)(1)(a) and (A)(1)(d), the trial court erred by denying a motion to dismiss for prosecutorial misconduct alleging prosecutor violated defendant's right to testify by disclosing to defense counsel that if defendant testified, defendant would be prosecuted for falsification where the court failed to hold an evidentiary hearing on the motion.

Fair trial. State v. Rhodes | 2022-Ohio-2337 | 7th Appellate District | 06/30/2022 In a conviction of, inter alia, murder, claim that jury reached a compromised verdict not supported by the evidence resulting in an unfair trial is without merit since, based on evidence presented to the jury, it was reasonable for them to find defendant guilty of murder, conspiracy and that he fired into a habitation of the intended victim, without finding him guilty of aggravated murder where, although there was evidence that defendant conspired with others to kill an individual who was in his own apartment with another person who was killed when defendant and others fired weapons into intended victim's apartment, there was no evidence the person who was killed was an intended victim.

Fair trial. State v. Montgomery | 2022-Ohio-2211 | Supreme Court of Ohio | 06/30/2022 In a conviction of rape and kidnapping, defendant was denied his federal and state constitutional right to a fair trial by the trial court, allowing the alleged victim to remain in the courtroom as the state's designated representative and to sit at counsel table with the prosecutor during the entirety of the proceedings since it undermined the fairness of the fact-finding process and lessened defendant's presumption of innocence, constituting structural error; Evid.R. 615 and Ohio Const. Art. I, Sec. 10a, (Marsy's Law) do not permit otherwise.

Endangering children/Domestic violence. State v. Swift | 2022-Ohio-2283 | 11th Appellate District | 06/30/2022 In a conviction of misdemeanor domestic violence, R.C. 2919.25(A), and misdemeanor endangering children, R.C. 2919.22(B)(1), arising out of injuries sustained by daughter of defendant-mother, the trial court did not have subject matter jurisdiction of the endangering children charge since there was no indictment with a felony charge, and the juvenile court had exclusive jurisdiction under R.C. 2151.23(A)(6); also, even if defense counsel provided ineffective assistance in any regard, defendant did not demonstrate that she sustained prejudice.

Plea. State v. Gumm | 2022-Ohio-2287 | 6th Appellate District | 06/30/2022 In a conviction by plea to, inter alia, two counts of burglary and five counts of grand theft when property is a firearm or dangerous ordnance where plea was not validly made where, during the change of plea hearing, the prosecutor misstated some of the pleas that defendant was pleading guilty to and the trial court's colloquy with defendant contained numerous errors concerning the charges that defendant was pleading to, constituting a complete failure of the trial court to comply with Crim.R. 11(C)(2)(a).

Suppression. State v. Eastman | 2022-Ohio-2241 | 5th Appellate District | 06/29/2022 In a conviction of aggravated murder, R.C. 2903.01(B), the trial court did not err by denying motion to suppress statements defendant made to Ohio detectives while he was incarcerated in another state since the statements were not unequivocal requests for counsel, and

statements made to an inmate were not inadmissible since the jailhouse informant testified that he did not engage defendant in conversations about his case for the purpose of eliciting incriminating remarks, and the only direction from the officers he received was to listen and not ask questions and the record confirms that he complied with those instructions, Johnson.

Jury instructions. State v. Hartfield | 2022-Ohio-2243 | 5th Appellate District | 06/29/2022 In a conviction of rape of a substantially impaired person, R.C. 2907.02(A)(1)(c), and sexual battery, R.C. 2907.03, the trial court did not commit plain error by not instructing jury that it must unanimously agree on the same specific incident of sexual conduct within each count in the indictment since the jury was not required to agree whether defendant committed the offenses by two distinct acts of sexual conduct because each is an alternative form of "sexual conduct," an element of rape and sexual battery, Gardner and Crim.R. 31(A); the trial court did err by failing to merge the rape and sexual battery convictions for sentencing because distinct acts of sexual conduct are not assigned to each count, R.C. 2941.25(A).

Criminal damaging. State v. Thomas | 2022-Ohio-2218 | 1st Appellate District | 06/29/2022 Bench conviction of criminal damaging, R.C. 2909.06(A)(1), met the sufficiency and weight of evidence standards where, after defendant was sent home from work by his manager, he was seen standing by the manager's car with trash heaped on top of the car, defendant admitted he did it, and the manager later found damage to her bumper and wiper, the circumstantial evidence of a photograph of defendant standing beside the manager's car and his statement that he did it extended to all damage to the car that had not been there previously, and a reasonable trier of fact could conclude that defendant did all the damage.

Search. State v. Burroughs | 2022-Ohio-2146 | Supreme Court of Ohio | 06/28/2022 In a conviction by plea to marijuana possession, denial of motion to suppress was error where police, while executing an arrest warrant at defendant's residence, made a warrantless search of a book bag under circumstances that did not give rise

to any exigency and was not justified under the single-purpose container exception to a search warrant since a book bag can contain a wide variety of items and the part of the clear plastic baggie hanging outside of the book bag was empty.

Self-defense. State v. Palmer | 2022-Ohio-2181 | 12th Appellate District | 06/27/2022 In a conviction of felonious assault, the trial court did not err by declining to give a self-defense jury instruction since defendant's bare assertion that he acted in self-defense was insufficient where there was no evidence presented to raise a reasonable doubt as to guilt because, based on the evidence presented, defendant used excessive and disproportionate response in using deadly force under the circumstances because there was testimony that defendant told the victim he had left his cell phone in defendant's taxi, and shooting the victim in response to a minor altercation was unreasonable, excessive and disproportionate under the circumstances, R.C. 2901.05(B)(1).

Sentencing/Allied offenses. State v. Seymore | 2022-Ohio-2180 | 12th Appellate District | 06/27/2022 In a conviction by plea to burglary, R.C. 2911.12(A)(3), and aggravated assault, R.C. 2903.12(A)(2), and imposition of consecutive prison sentences totaling 54 months was plain error where the offenses were allied offenses of similar import because the offenses involved neither separate/multiple victims nor separate and identifiable harm since, although defendant was originally in the victim's home for the appropriate purpose to gather his personal belongings, his subsequent use of force during an argument with the victim resulted in trespassing and physical harm to the victim, and defendant committed both offenses while acting with the same purpose, intent or motive, R.C. 2941.25.

Search/Traffic stop. State v. Haley | 2022-Ohio-2188 | 3rd Appellate District | 06/27/2022 In an appeal by the state of grant of motion to suppress in a prosecution for drug possession, R.C. 2925.11(A), the trial court did not err since officer did not have a reasonable articulable suspicion that could serve as a basis for extending the stop beyond the time to issue a citation for the traffic violation in order to accommodate the arrival of a canine unit by the mere fact

that a passenger in the car had a 2018 drug conviction without a reasonable suspicion that the vehicle contained drugs.

Sentencing/Review. State v. McPheron | 2022-Ohio-2186 | 3rd Appellate District | 06/27/2022 In a conviction by plea to having a weapon under disability, R.C. 2923.13(A)(2), imposition of maximum prison sentence of 36 months was not error since the sentence is not clearly and convincingly contrary to law pursuant to R.C. 2953.08(G)(2)(b) where the trial court stated on the record at the sentencing hearing and in its journal entry that it had considered the principles and purposes of felony sentencing under R.C. 2929.11 and the seriousness and recidivism factors under R.C. 2929.12, Jones, including her high risk assessment score, her drug issues and her being involved with drug users.

Self-defense. State v. Casey | 2022-Ohio-2199 | 11th Appellate District | 06/27/2022 In a conviction of improperly discharging a firearm into a habitation and a firearm specification, R.C. 2923.161(A)(1) and (C), the trial court did not err in denying defense counsel's request to include an instruction on the "castle doctrine" as contained in the former version of R.C. 2901.09(B) since that doctrine does not extend to parking lots and driveways, and there was evidence that the shooting took place in the parking lot.

Sentencing/Resentencing. State v. McCullough | 2022-Ohio-2178 | 6th Appellate District | 06/24/2022 Following a conviction of, inter alia, reckless homicide and remand on appeal for re-sentencing where the court of appeals found speedy trial violations on some of the charges, the trial court did not err in not holding a re-sentencing hearing in the absence of defendant because a defendant need not be present when a trial court on remand modifies a sentencing entry to remove reference to a conviction reversed on appeal and the court retains the same sentence on the remaining convictions since the court is not re-sentencing defendant, and the Crim.R. 43 presence requirement of a defendant is not triggered, Howard.

Fair trial/Judicial bias. State v. Graf | 2022-Ohio-2169 | 2nd Appellate District | 06/24/2022 In a bench conviction of aggravated menacing, the trial court erred in denying a Crim.R. 33 motion for a new trial by relying on information outside the record to assess defendant's credibility and find her guilty based on the judge's observation of her out-of-court behavior at the warrant enforcement window on prior occasions since the state's witnesses' testimony conflicted on facts and the error violated defendant's due-process right to a fair trial.

Sentencing. Animal Control v. Keller | 2022-Ohio-2164 | 2nd Appellate District | 06/24/2022 In a conviction by plea on five counts of misdemeanor charges of failure to confine or control a dog in three cases, the trial court erred by journalizing a sentence in each case that conflicted with the sentence orally imposed at the sentencing hearing, and imposition of sentences "consecutively or concurrently" to other sentences effectively says nothing; remanded for re-sentencing.

Search. State v. Wright | 2022-Ohio-2161 | 1st Appellate District | 06/24/2022 In a conviction by plea of weapon offenses, denial of motion to suppress was not error since officers investigating a complaint of a disturbance at a hotel had a reasonable suspicion of criminal activity to stop defendant and maintain the status quo while the officers obtained more information where officers encountered defendant as he was leaving an elevator from which officers heard an altercation involving defendant and another person who appeared disheveled, and defendant fled as officers attempted to gather more information.

New trial. State v. Howard | 2022-Ohio-2159 | 1st Appellate District | 06/24/2022 Following a conviction of, inter alia, aggravated murders of three persons, the trial court erred by denying 2019 and 2020 Crim.R. 33(B) motions for leave to file a new trial motion for prosecutorial misconduct and newly discovered evidence, Crim.R. 33(A)(2) and (A)(6), since the court failed to rule on the Crim.R. 33(B) motion for leave and also failed to hold an evidentiary

hearing, even though the new-trial motion asserted a Brady claim and defendant presented evidence tending to show that the state had suppressed fingerprint and DNA evidence and that he was unavoidably prevented from discovering the evidence since it was no longer available because of state's failure to preserve it.

Sentencing. State v. Giancaterino | 2022-Ohio-2142 | 8th Appellate District | 06/23/2022 In a conviction by plea to 13 counts of child pornography, R.C. 2907.322(A)(1), and to three counts of illegal use of a minor in nudity-oriented material or performance, R.C. 2907.323(A)(1), imposition of concurrent, indefinite sentences with a minimum term of three years and a maximum term of four years and six months on each count pursuant to the Reagan Tokes Law was not error since this court of appeals has held that the imposition of indefinite sentences under the Reagan Tokes Law is constitutional, Delvallie.

Sealing. State v. Mirkin | 2022-Ohio-2229 | 4th Appellate District | 06/23/2022 Denial of application to seal record of a 2008 conviction of unauthorized use of a computer, R.C. 2913.04, was not error where applicant was subsequently convicted of another unauthorized use of a computer offense in 2008 and a drug possession offense in 2011 since, even though neither of the subsequent offenses were per se disqualifying offenses, under R.C. 2953.32(C)(1)(c) and (e), the interest of the state in maintaining the criminal record outweighed applicant's interest in sealing the record, and also, the nature of the allegations in the 2008 conviction involving solicitation of a minor warranted denial of the application, R.C. 2953.32(C)(2).

Jury. State v. Russaw | 2022-Ohio-2145 | 8th Appellate District | 06/23/2022 In a conviction of rape and other sexual offenses of a minor, the trial court did not err by instructing the jury of the elements of the offenses after the victim's testimony where the court determined the jury may have been confused regarding the elements of the offenses since the major difference between the two instructions given was the trial court's clarification of the counts that required proof of "sexual conduct" and the other counts that required proof of "sexual contact."

Jury instructions. State v. Wiley | 2022-Ohio-2131 | 8th Appellate District | 06/23/2022 In a conviction of, inter alia, murder, voluntary manslaughter and felonious assault, the trial court committed plain error by instructing the jury that it could find defendant guilty of murder and voluntary manslaughter for the same killing; the trial court also committed plain error by not instructing the jury to consider the inferior degree offense of aggravated assault with respect to the felonious assault charge and, since the aggravated assault instruction was required, the jury should have also been instructed concerning the felony murder charge that if it found defendant committed aggravated assault that resulted in the victim's death, it should find him guilty of involuntary manslaughter; remanded for new trial on those counts.

Sentencing/Reagan Tokes. State v. Mills | 2022-Ohio-2175 | 5th Appellate District | 06/23/2022 On remand from the Ohio Supreme Court to rule on the constitutionality of the Reagan Tokes Act, imposition of a mandatory indefinite prison sentence of 10 to 15 years pursuant to the Act for a qualifying conviction does not violate defendant's constitutional rights to trial by jury, equal protection and due process of law, nor does it violate the constitutional requirement of separation of powers by permitting the Department of Rehabilitation and Corrections to potentially add additional time to the sentence based on a defendant's behavior in the institution, Householder.

Self-defense. State v. Ralls | 2022-Ohio-2110 | 1st Appellate District | 06/22/2022 In a bench conviction of felony murder and possession of weapon under disability, the trial court did not err in finding that defendant did not act in self-defense in shooting the victim since, although defendant met his burden under R.C. 2901.05(B) to produce evidence sufficient to cast a reasonable doubt as to guilt, the trial court also found that defendant violated the duty to retreat "beyond a reasonable doubt" by rejecting defendant's testimony as lacking credibility; also, the trial court did not commit plain error by not recognizing the "imperfect self-defense doctrine."

Theft/Criminal trespass/Criminal mischief. State v. Callihan | 2022-Ohio-2082 | 7th Appellate District | 06/17/2022 Conviction of theft, R.C. 2913.02(A)(1); criminal trespass, R.C. 2911.21(A)(1); and criminal mischief, R.C. 2909.07(A)(1), met the sufficiency and weight of evidence standards where neighbor victims of defendant had video showing that defendant took property stakes from their property that had been surveyed, and defendant admitted to cutting a cord that victims ran inside the line to mark it, and defendant had no permission to do so.

Post-conviction relief. State v. Dixon | 2022-Ohio-2051 | 2nd Appellate District | 06/17/2022 Following conviction of, inter alia, complicity to commit aggravated robbery that was affirmed and denial of, inter alia, motions and petitions for post-conviction relief that were affirmed, denial of 2021 "Motion to Withdraw (Plea) – Re-sentencing [sic] or Vacate all," was not error since the claims were or could have been raised previously and thus are barred by res judicata, with the court of appeals noting that "diverse rulings by the trial court in response to the repeated filings of substantively identical motions in no way constitutes a legitimate legal basis for a continuation of [a] properly concluded case."

Sentencing. State v. Stenson | 2022-Ohio-2072 | 6th Appellate District | 06/17/2022 On remand from the Ohio Supreme Court's reversal of the court of appeals' holding that the sentencing provisions of the Reagan Tokes Law were not ripe for review, the court of appeals holds that the indefinite sentencing provisions of the Law do not violate the separation-of-powers doctrine and does not, on its face, deprive offenders of their right to due process.

Menacing. State v. Bingham | 2022-Ohio-2074 | 1st Appellate District | 06/17/2022 In prosecution of aggravated menacing, bench conviction of menacing, R.C. 2903.22, was not against the weight of evidence since the trial court concluded that defendant did not brandish a gun as alleged, but that defendant did knowingly cause the victim to believe that defendant would cause her physical harm by the threats that he made to her.

Evidence. State v. Kamer | 2022-Ohio-2070 | 6th Appellate District | 06/17/2022 In a conviction of, inter alia, rape of a five year-old female, the trial court erred by allowing defendant's former step-daughter to testify that defendant committed acts of abuse against her that were similar to those charged in the underlying case where state's specified purposes for the testimony, identity and absence of mistake, were not material facts actually in dispute, and there was no substantial proof that defendant committed the acts that the witness testified to, Evid.R. 404(B), and the trial court's error did not constitute harmless error.

Right to counsel. State v. Jordan | 2022-Ohio-2033 | 10th Appellate District | 06/16/2022 In a conviction in two joined cases of burglary, R.C. 2911.12, the trial court did not err in denying defendant's request for appointment of substitute counsel or in denying a continuance to allow defendant to prepare to represent himself where the record reflects defendant's persistent complaints were often vague, general objections to counsel's representation, with defendant acknowledging during the change of plea hearing that he was "content" with his attorney's representation and that counsel answered all his questions; also, defendant never properly invoked his right to self-representation or waived his right since he acquiesced to counsel's representation.

Joinder. State v. Quinn | 2022-Ohio-2038 | 8th Appellate District | 06/16/2022 In a conviction of, inter alia, aggravated robbery in one case and aggravated vehicular assault and failure to comply in another case, the trial court did not commit plain error in granting state's motion for joinder of the cases where the latter case arose from events when officers were executing defendant's arrest warrant for the crimes charged in the earlier case since there was a sufficient nexus between the first case and the failure to comply with a lawful order to join those counts because joinder promoted the public policy of conservation of judicial economy, with no demonstrable prejudice to defendant, Crim.R. 8(A).

Domestic violence. State v. Kennard | 2022-Ohio-2055 | 2nd Appellate District | 06/16/2022 Bench conviction of domestic violence, R.C. 2919.25(A), and assault, R.C. 2903.13(A), that were merged for sentencing, met the sufficiency and weight of evidence standards where a neighbor of the victim and defendant testified that she saw defendant hit the victim twice that caused her to fall down on concrete steps and injure her head and the head injury was also confirmed by the victim and the investigating officer, victim testified that she and defendant had been living together since 2019, and credibility issues were for the trial court as the trier of fact.

Disorderly conduct. State v. Winters | 2022-Ohio-2061 | 2nd Appellate District | 06/16/2022 Although a conviction of fourth-degree misdemeanor disorderly conduct, R.C. 2917.11(A)(3) and (E)(3)(a), was plain error in part since where complaint did not identify (E)(3)(a) or include language that defendant persisted in disorderly conduct after reasonable warning or request to desist, defendant could only be convicted of the least degree of offense raised in the complaint, disorderly conduct, a minor misdemeanor and state's evidence met the sufficiency and weight of evidence standards for that offense; 30-day suspended jail sentence is vacated, but the \$25 fine and imposition of court costs is affirmed.

Murder/Voluntary manslaughter. State v. Blalock | 2022-Ohio-2042 | 8th Appellate District | 06/16/2022 In a bench conviction of two counts of murder, voluntary manslaughter and felonious assault, all with firearm specifications, and imposition of a prison term of three years on the firearm specification in Count 1 (murder in violation of R.C.2903.02(A)), to be served consecutively and prior to a term of 15 years to life on the underlying charge of murder in Count 1, with the remaining counts merged into the murder conviction, the trial court committed plain error since a person cannot be convicted of both murder and voluntary manslaughter for the same killing, Duncan.

Murder/Voluntary manslaughter. State v. Hurt | 2022-Ohio-2039 | 8th Appellate District | 06/16/2022 In a conviction of, inter alia, felony murder and voluntary manslaughter, the trial court erred in instructing the jury that it could find defendant guilty of both offenses since voluntary manslaughter is an inferior degree offense of murder, and a person cannot be convicted of both murder and voluntary manslaughter for the same killing, Duncan; also, the trial court erred in not instructing the jury on the inferior degree offense of aggravated assault with respect to felonious assault and by not instructing the jury on aggravated assault and involuntary manslaughter as inferior degree offenses of felony murder.

Sentencing. State v. Brazo | 2022-Ohio-2066 | 5th Appellate District | 06/16/2022 On remand from the Ohio Supreme Court reversal of the court of appeals' opinion that the sentencing provisions of the Reagan Tokes Act were not ripe for review, the court of appeals holds that the indefinite sentencing provisions of the Act do not violate the separation of powers doctrine, the constitutional right to trial by jury or due process.

Ineffective assistance. State v. Link | 2022-Ohio-2067 | 5th Appellate District | 06/16/2022 In a conviction by plea to, inter alia, drug and receiving stolen property offenses, and imposition of consecutive prison sentences totaling seven years, defendant's right to the effective assistance of counsel was infringed by the trial court where defendant's assertion of a breakdown in communication with appointed counsel about reviewing discovery and not visiting the jail was a specific objection triggering the trial court's duty to inquire into the complaint and make an inquiry into the nature of the breakdown a part of the record, Anderson; remanded for a re-investigation of claim of ineffective assistance.

Self-defense. State v. Vinson | 2022-Ohio-2031 | 10th Appellate District | 06/16/2022 In a conviction of, inter alia, multiple counts of murder and attempted murder against five victims, the trial court did not commit plain error by not providing a jury instruction on transferred intent self-defense since the jury rejected defendant's claim of

self-defense of the person at whom defendant claimed he intended to shoot, it would not have "transferred" any asserted justification to the murder charge against the person who was killed by defendant.

Search. State v. Haralson | 2022-Ohio-2052 | 2nd Appellate District | 06/16/2022 In a conviction by plea to drug offenses, denial of motion to suppress drug evidence that was discovered on defendant and in his residence while officers were executing a search warrant was not error since search warrant was not required to be filed with the clerk of courts before it was executed, R.C. 2933.23 and Lumbus, and the warrant also authorized the search of defendant's person where the officer averred six controlled illegal drug buys from defendant at his residence and two controlled illegal drug buys from him at other locations out of defendant's vehicle.

Tampering with evidence. State v. Dominique | 2022-Ohio-2068 | 6th Appellate District | 06/16/2022 Conviction of tampering with evidence, R.C. 2921.12(A)(2), was not supported by sufficient evidence where, as a condition of defendant's community control imposed in a prior conviction, he was required to provide a urine sample to his probation officer to test for the presence of drugs or alcohol, and he arrived with a bladder around his waist filled with synthetic urine, but since the bladder that contained the synthetic urine leaked before he could place the synthetic urine in the testing cup, his conduct rose only to the level of attempted tampering with evidence.

Child endangering. State v. A.M. | 2022-Ohio-2044 | 8th Appellate District | 06/16/2022 In a conviction of, inter alia, child endangering, R.C. 2919.22, the trial court did not err in finding that the spousal exception in R.C. 2921.22 for the offense of failure to report a crime or knowledge of a death or burn injury did not apply to the offense of child endangering in R.C. 2919.22.

Aggravated assault. State v. James | 2022-Ohio-2040 | 8th Appellate District | 06/16/2022 In a conviction of aggravated menacing and aggravated assault in an action that included a charge of felonious assault that the jury found defendant not guilty,

the trial court committed plain error by instructing jury to consider the inferior offense of aggravated assault upon a finding of not guilty on the felonious assault since a not guilty verdict to felonious assault should have precluded any consideration of aggravated assault, Ruppert; conviction of aggravated assault is vacated and matter is remanded for a new trial on felonious assault.

Ineffective assistance. State v. Lyall | 2022-Ohio-2016 | 5th Appellate District | 06/14/2022 In a conviction by plea of drug possession, R.C. 2925.11(A), and possession of drug paraphernalia, R.C. 2925.14(C)(1), defense counsel did not provide ineffective assistance by advising defendant to enter into a stipulation that the offenses would not merge as allied offenses of similar import since defendant has not demonstrated a reasonable probability the trial court would have merged the offenses as allied offenses of similar import absent the parties' stipulation since there is nothing in the record to demonstrate a cut straw was possessed with the same animus or motivation as possession of the baggie of fentanyl where there was no drug residue on the straw.

Jail-time credit. State v. Beck | 2022-Ohio-2013 | 5th Appellate District | 06/14/2022 In a conviction in two cases of drug offenses and subsequent violations of community control, and imposition of concurrent six-month prison sentences with 85 days jail-time credit in one case and 22 days in the other case, challenge to jail-time awarded is dismissed since defendant has served his entire sentence, and thus any error in the trial court's calculation of his jail-time credit is moot but, the court of appeals, in the interest of justice, addresses the assignment of error and finds defendant cannot receive jail-time credit in the later case for time served in the earlier case because the later case did not yet exist when the jail-time accrued.

Jury instructions. State v. Kiser | 2022-Ohio-2012 | 5th Appellate District | 06/14/2022 In a conviction of two counts of assault on a peace officer, R.C. 2903.13(A) and (C)(5), the trial court did not err by declining to provide a requested jury instruction on the lesser included offense of disorderly conduct, R.C. 2917.11(B), since the evidence presented at trial did not reasonably

support both an acquittal on the crime charged and a conviction on the lesser-included offense where defendant did physically assault one officer by biting him, and defendant unequivocally attempted to cause another officer physical harm by attempting to strike her with his fist.

Sentencing/Community control. State v. Hernandez | 2022-Ohio-2028 | 5th Appellate District | 06/14/2022 In a conviction by plea to identity fraud, R.C. 2913.49(B)(1), (I)(2), and imposition of community control, subsequent finding of violation of community control was error in part since requiring defendant to abide by a curfew and to obtain permission from his supervising officer before changing employment do not relate to the crime of identity fraud nor promote the purposes of rehabilitation and deterring further crime; the trial court did not err by requiring defendant to not be terminated from his employment for cause since maintaining employment serves rehabilitative purposes and prevents future crime.

Search. State v. Jordan | 2022-Ohio-1992 | 3rd Appellate District | 06/13/2022 Grant of motion to suppress in prosecution of illegal cultivation of marijuana, R.C. 2925.04(A), and possession of marijuana, R.C. 2925.11(A), was error since defendant did not carry his burden of proving that he had an objectively reasonable expectation of privacy that the curtilage of his home would be protected from observation by aircraft traveling at the altitude at which the police helicopter was flying in this case.

Endangering children. State v. Gillum | 2022-Ohio-2005 | 5th Appellate District | 06/13/2022 In a conviction of endangering children, tampering with evidence and aiding and abetting in the abuse of a human corpse in the death of a newborn baby, the trial court did not err by not dismissing the indictment; in allowing a doctor to testify that, in his expert opinion and based on the infant's photograph shortly after his birth, the infant was born alive, Evid.R. 702; also, denial of defendant's request to present an expert on intimate partner violence was not error since defendant waived any objection to the issue by failing to have the judge revisit its grant of the state's motion in limine to exclude that evidence.

Restitution. State v. James | 2022-Ohio-1994 | 11th Appellate District | 06/13/2022 In a conviction by plea of grand theft, R.C. 2913.02, forgery, R.C. 2913.31, and theft, R.C. 2913.02, and imposition of concurrent and consecutive sentences, with the victims "granted a civil judgment against the Defendant in this matter for restitution" was error since the trial court's entry fails to order an enforceable civil judgment or restitution because the entry fails to identify an amount awarded or the recipients of the purported civil judgment.

Sentencing. State v. Freeman | 2022-Ohio-1991 | 3rd Appellate District | 06/13/2022 In a conviction in two cases of three counts of aggravated robbery, imposition of an aggregate prison sentence of 28-32 years pursuant to the Reagan Tokes Law, R.C. 2967.271, was not plain error since the indefinite sentencing provisions do not violate the right to a jury trial, the right to due process or the separation of powers doctrine.

Drug offense. State v. Wilson | 2022-Ohio-1985 | 12th Appellate District | 06/13/2022 Conviction of aggravated trafficking in drugs, R.C. 2925.03(A)(1) and (C)(1)(d), met the sufficiency and weight of evidence standards where the state proved defendant, while in the vicinity of a juvenile during a controlled buy that was monitored and recorded by officers, sold 24.42 grams of methamphetamine to a confidential informant, and defendant's recorded phone calls while in jail provided additional evidence of his involvement in the sale of the drug to the confidential informant.

Sentencing. State v. Good | 2022-Ohio-1981 | 9th Appellate District | 06/13/2022 In a conviction by plea of 29 counts of drug and weapons offenses, imposition of consecutive prison sentences totaling 15.5 years was error where the trial court failed to make all the required R.C. 2929.14(C)(4) findings for the imposition of consecutive sentences since the court failed to engage in a complete analysis of whether consecutive sentences are not disproportionate to the seriousness of the defendant's conduct and to the danger defendant poses to the public; also, the trial court did not make findings as to the necessity of consecutive sentences in either of its sentencing entries; remanded for re-sentencing.

Corrupting another with drugs. State v. Arthur | 2022-Ohio-1980 | 9th Appellate District | 06/13/2022 Conviction of corrupting another with drugs, R.C. 2925.02(A)(3), (C)(1), met the sufficiency and weight of evidence standards where the state presented evidence that a drug dealer sold drugs to defendant, that defendant then gave the drugs to the victim, the drugs included defendant's DNA on the drugs and that the victim ingested those drugs and died of an acute fentanyl and norfentanyl overdose, and the jury did not lose its way in making its credibility determinations.

Sentencing/Merger. State v. Fender-son | 2022-Ohio-1973 | 6th Appellate District | 06/10/2022 In a conviction of, inter alia, possession of drugs and trafficking in drugs, the trial court erred in failing to merge the offenses as allied offenses of similar import since both convictions involved the same drugs from the same transaction, there was no evidence that defendant intended to retain a portion of the drugs for his own personal use, the victim of both offenses was society in general and the harm from the offenses was not separate and identifiable.

Jury instructions. State v. Rider | 2022-Ohio-1964 | 2nd Appellate District | 06/10/2022 In a conviction of, inter alia, felony murder and felonious assault, the trial court did not commit plain error by not instructing the jury on lesser-included offenses where the evidence presented at trial was insufficient to allow the jury to reasonably reject the greater offense and find the defendant guilty on a lesser-included or inferior-degree offense since victim's death and injuries were clearly excessive and out of all proportion to the relatively slight amount of provocation present, even if defendant's account were believed and, moreover, defendant's defense was based on a claim of actual innocence as to the murder and assault charges.

Discovery. Toledo v. Wyse | 2022-Ohio-1979 | 6th Appellate District | 06/10/2022 In prosecution of violating an Ohio Health Department "stay at home" order, grant of motion to dismiss for failure to provide requested body-cam discovery was error because since arresting officer had no constitutionally-mandated duty to record his encounter with defendant, his failure to create such evidence did not result in any violation of defendant's due process

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rights and, since the prosecutor had no intention to call other officers who may have been present when defendant was arrested, the prosecutor complied with the requirement in Crim.R. 16(l) to disclose the identity of the witness he intended to call at trial.

Firearms disability relief. Swann v. State | 2022-Ohio-1977 | 6th Appellate District | 06/10/2022 Denial of petition for relief from firearms disability, R.C. 2923.14, was error where the trial court denied the petition in a non-oral hearing since an oral hearing is required by R.C. 2923.14(D), Jomaa and Parks.

Plea. State v. Lanier | 2022-Ohio-2024 | 7th Appellate District | 06/10/2022 In a conviction by plea to drug offenses, imposition of consecutive prison sentences totaling 11 years was error since the trial court failed to comply with Crim.R. 11(C)(2)(c) by accepting defendant's guilty plea and only stating that defendant was waiving his right to a "speedy and public" trial without specifically mentioning that defendant was giving up his constitutional right to a jury trial, even if the advisement is in the written plea agreement, Thomas.

Self-defense. State v. Harper | 2022-Ohio-1966 | 5th Appellate District | 06/10/2022 In a conviction of, inter alia, aggravated murder, R.C. 2903.01(A), the state proved beyond a reasonable doubt that defendant did not shoot the victim in self-defense, R.C. 2901.05, two witnesses testified that there was no fight or altercation prior to the shooting and that the victim did not have a weapon when defendant shot him, and this testimony is sufficient evidence from which a rational trier of fact could determine the state proved defendant did not have a bona fide belief he was in imminent danger of death or great bodily harm for which the use of deadly force was his only means of escape.

Self-defense. State v. Claytor | 2022-Ohio-1938 | 8th Appellate District | 06/09/2022 In a conviction of, inter alia, two counts of aggravated murder, R.C. 2903.01(A), claim of self-defense is without merit since the self-defense instruction that was in effect at the time of the murder is inapplicable where the evidence demonstrates that defendant created the situation giving rise to the shooting of the victim by

defendant in enlisting victim in a scam to obtain funds from the state's COVID unemployment fund, defendant knew that the victim was upset because he thought he was not receiving his share, defendant chose to stop while driving from his home on seeing victim approaching defendant's own house development, defendant approached the unarmed victim and shot him five times.

Search. State v. Bugno | 2022-Ohio-2008 | 7th Appellate District | 06/09/2022 In a conviction of multiple counts of compelling prostitution, R.C. 2907.21(A)(2)(b) and (c), and pandering obscenity involving a minor, R.C. 2907.321(A)(3), denial of motion to suppress was not error since, even though the warrant itself does not contain a command to seize specific property, the affidavit attached to the warrant does state with particularity the property to be seized, and the warrant incorporates the affidavit attached to the warrant and with the officers at the time of the search, Groh, and the warrant for the search of a specific laptop computer was not invalid for a lack of particularity since the warrant only allowed a search for evidence relating to certain sex offenses involving juveniles.

Hearsay. State v. Jones | 2022-Ohio-1936 | 8th Appellate District | 06/09/2022 In a conviction of, inter alia, aggravated arson, felonious assault, arson and domestic violence, the trial court erred in admitting testimony by officers of alleged victim's statements that defendant burned her where statements were made to officers about an hour after the alleged incident and there was no longer an ongoing emergency, and thus statements were testimonial and their admission violated the Confrontation Clause, Davis.

Contempt. In re Contempt of Christman | 2022-Ohio-1937 | 8th Appellate District | 06/09/2022 Finding of direct contempt of attorney for failing to wear a mask as required by the trial court's COVID-19 mask guidelines and policies that occurred in the presence of the trial judge during a proceeding was not error, R.C. 2705.01, but finding of direct contempt of attorney for failing to wear a mask in presence of the judge's bailiff outside the judge's chambers the week before the proceeding was error because it occurred outside the judge's presence, R.C. 2705.03.

Mistrial. State v. Robinson | 2022-Ohio-1940 | 8th Appellate District | 06/09/2022 In a conviction of theft, R.C. 2913.02(A)(3), and three counts of forgery, R.C. 2913.31(A)(3), denial of motion for mistrial was not error where, although the state erroneously referred to defendant's right to remain silent at trial, on defense objection, the trial court immediately provided a curative instruction, and the record showed the statement could be ignored and that serious prejudice was not likely to occur.

Sentencing. State v. Johnson | 2022-Ohio-1948 | 8th Appellate District | 06/09/2022 In a conviction in two cases of failure to verify address and two counts of gross sexual imposition, the trial court erred by imposing both a prison sentence and community control for the same count since a prison term and a community-control sanction cannot be imposed for the same offense, Anderson; remanded for re-sentencing.

Sentencing. State v. Briggs | 2022-Ohio-1950 | 10th Appellate District | 06/09/2022 In remand for re-sentencing in appeal in three cases of convictions by plea to aggravated vehicular homicide, possession of cocaine and burglary, the trial court committed plain error by finding that the offenses constituted an ongoing course of conduct and by imposing consecutive sentences without making the findings required by R.C. 2929.19(C)(4) where the trial court failed to make a finding on the record at the sentencing hearing that consecutive sentences are not disproportionate to the seriousness of the offender's conduct as required under R.C. 2929.14(C)(4); remanded for re-sentencing.

Prohibition. State ex rel. Hare v. Russell | 2022-Ohio-1932 | 1st Appellate District | 06/08/2022 Following trial judge's oral declaration of a mistrial and her recusal in an action for assault and after transfer of case to another judge, defendant/relator filed a motion to dismiss on double jeopardy grounds, former trial judge subsequently entered a nunc pro tunc entry on the Judge's Sheet that "[b]ased on defense attorney's statements, the court declares a mistrial, recuses, and requests that the case be re-rolled," defendant/relator filed a "verified complaint for writ of prohibition," the court of appeals grants writ and vacates the nunc pro tunc judgment

entry, finding that the former trial judge patently and unambiguously lacked jurisdiction over the case and usurped the authority of the trial judge to whom the case had been transferred.

Double jeopardy. State v. Hare | 2022-Ohio-1931 | 1st Appellate District | 06/08/2022 Following trial judge's oral declaration of a mistrial and her recusal in an action for assault and transfer of case to another judge, denial of a motion to dismiss on double jeopardy grounds was not error since a manifest necessity existed warranting a mistrial where the former trial judge declared the mistrial because of her belief that she could no longer be fair and impartial and ensure a fair trial in a bench trial because of her interaction with defense counsel in how to properly impeach a state's witness.

Sentencing/Contempt. State v. Bryant | 2022-Ohio-1878 | Supreme Court of Ohio | 06/07/2022 Trial court erred in increasing sentence imposed on defendant at sentencing following defendant's outburst after the trial judge announced sentence since no provision in the sentencing statutes authorizes a trial court to impose or increase a defendant's prison sentence merely because the defendant had an outburst or expressed himself in a profane and disrespectful way that may be punishable by contempt since the outburst was not motivated by, or demonstrated, a lack of remorse for his crimes, and is not a permissible sentencing factor that the court may consider under R.C. 2929.11 and 2929.12.

Aggravated menacing. State v. Colon | 2022-Ohio-2009 | 7th Appellate District | 06/06/2022 Conviction of first-degree misdemeanor aggravated menacing, R.C. 2903.21, met the sufficiency and weight of evidence standards where chief deputy with the county clerk's office testified that, when defendant was told by a clerk that he could not file his action in that office, defendant threatened to hang him and clerk believed him, and circumstantial evidence, including the fact that chief deputy reported the incident to police sufficed, if believed, to prove the elements of the crime of aggravated menacing, Smith.

Self-defense. State v. Elam | 2022-Ohio-1895 | 12th Appellate District | 06/06/2022 Bench conviction of assault, R.C. 2903.13(A), was not against the weight of evidence where defendant and the person defendant confronted about a matter the other person said she knew nothing about and, moreover, had not met defendant before their confrontation, and the trial court, after viewing video of the incident and hearing the testimony, found that defendant was not acting in self-defense, notwithstanding that the court found that even though the other person initiated the physical contact, since the trial court found defendant was at fault in creating the situation that led to the fight, defeating her claim of self-defense, R.C. 2901.05(B)(1).

Domestic violence. State v. Roesener | 2022-Ohio-1901 | 3rd Appellate District | 06/06/2022 Bench conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of evidence standards where victim testified that defendant punched her in the buttocks and that it hurt for a short time, and the duration and gravity of an injury are not part of the consideration as to whether physical harm occurred. R.C. 2901.01(A)(3), and a reasonable person could foresee that striking another person with a closed fist may result in pain.

Attempted murder. State v. Ammons | 2022-Ohio-1902 | 9th Appellate District | 06/06/2022 Conviction of, inter alia, attempted murder, R.C. 2903.02(A), met the sufficiency and weight of evidence standards where sufficient circumstantial evidence was presented to identify defendant as the shooter of the victim based on a neighbor's testimony of an argument between defendant and the victim, a grainy surveillance video showed persons running from the house occupied by defendant and the victim to another nearby house and one of the persons running back to the house, providing ample circumstantial evidence demonstrating that defendant was the individual who shot the victim, and defendant was apprehended after fleeing after being told not to leave.

Self-defense. State v. Bloodworth | 2022-Ohio-1899 | 12th Appellate District | 06/06/2022 In a conviction of felonious assault and possession of a deadly weapon while under detention, the state met its burden of proving beyond a reasonable doubt

that defendant did not act in self-defense in inflicting serious injuries on his cell-mate, R.C. 2901.05(B)(1), where defendant initially told prison officials that his cell-mate was not the initial aggressor, but later testified at trial his cell-mate had a weapon that defendant took from him, but appellant used force that was not reasonably necessary in repelling the alleged attack by the cell-mate.

Failure to comply with police order. State v. Johnson | 2022-Ohio-1883 | 5th Appellate District | 06/03/2022 In a conviction of failure to comply with police signal or order, admission of outstanding warrants against defendant for misdemeanor offenses outside of the county was not error where the evidence was relevant to prove motive of why appellant was trying to elude police since the evidence would be admissible under motive for flight given defendant's knowledge of the outstanding warrants and to rebut his claim of a mechanical issue with the vehicle, the probative value of the outstanding warrants was not substantially outweighed by the danger of unfair prejudice, and the trial court provided the jury with a limiting instruction, Evid.R. 404(B).

Plea. State v. Ryan | 2022-Ohio-1888 | 6th Appellate District | 06/03/2022 In a conviction by plea in two cases to sexual battery, R.C. 2907.03(A)(7) and (B), and tampering with evidence, R.C. 2921.12(A)(1), (2) and (B), the trial court did not fail to comply with Crim.R. 11(C)(2)(a) since it was not required to explain the elements of the offenses in order to render defendant's plea "knowing" and "voluntary," Duhart, and defendant recited the underlying facts in a colloquy with his trial counsel, and defendant demonstrated understanding of the charges.

Jury instructions. State v. Sepeda | 2022-Ohio-1889 | 6th Appellate District | 06/03/2022 In a conviction of felonious assault, R.C. 2903.11(A)(2), arising out of an altercation between defendant-driver of a vehicle and a pedestrian resulting in injuries to the pedestrian, the trial court did not commit plain error by not giving jury instructions on the lesser included offenses of negligent assault and simple assault since testimony of eyewitnesses demonstrated that defendant intentionally used his vehicle as a weapon by hitting a pedestrian

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after a confrontation at an intersection where there was evidence that after the initial encounter with the victim at a cross-walk, the driver used his car as a weapon by turning around in the middle of the intersection after the initial confrontation with the victim and returned to use his car as a weapon to hit the victim.

Sentencing. State v. Martin | 2022-Ohio-1879 | 2nd Appellate District | 06/03/2022 In a conviction by plea to third-degree felony discharging a firearm on or near a prohibited premises, imposition of 36-month prison sentence was not error where the trial court considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12, and a trial court's seriousness and recidivism findings are not among the specified findings subject to appellate review under R.C. 2953.08(G)(2), Jones.

Drug offenses. State v. Fleming | 2022-Ohio-1876 | 2nd Appellate District | 06/03/2022 Convictions of, inter alia, trafficking in cocaine and aggravated trafficking in drugs (methamphetamine) were not supported by sufficient evidence since traffic stop of defendant in which a search revealed he had only had small amounts of the drugs in his possession and text messages sent over a month earlier showing that he was actively engaged in drug trafficking made it highly unlikely that those messages related to the small amount of drugs in defendant's possession on the date of his arrest during the traffic stop.

Miranda. State v. Davis | 2022-Ohio-1875 | 2nd Appellate District | 06/03/2022 In a conviction by plea of having weapons while under disability, R.C. 2923.13(A)(2), denial of motion to suppress was not error where evidence and statements that were obtained by officers who entered defendant's hotel room to execute an arrest warrant for aggravated burglary and asked him if he had any weapons, defendant responded affirmatively and when asked where, defendant said it was in a nearby nightstand drawer, a gun was in the drawer, and defendant's statements were admissible under the public safety exception to Miranda.

Plea. State v. Allen | 2022-Ohio-1872 | 2nd Appellate District | 06/03/2022 In a conviction by plea in two cases of, inter alia, two counts of misdemeanor theft, plea was not validly made where the trial court failed to substantially comply with Crim.R. 11(E) by accepting defendant's guilty plea, but failing to inform him that his plea is a complete admission of guilt, and the trial court also incorrectly informed him that he faced "up to a year in jail" as the maximum penalty, but the court then imposed a consecutive sentence totaling 18 months in jail.

Evidence. State v. Wilk | 2022-Ohio-1840 | 8th Appellate District | 06/02/2022 In a conviction of, inter alia, five counts of rape of two minors, R.C. 2907.02(A)(2), the trial court did not err by allowing the state to cross-examine defense witnesses about appellant's juvenile adjudication for sexual offenses since defendant introduced evidence of his good character through his witnesses, Evid.R. 404(A)(1), and pursuant to Evid.R. 405(A), the state was permitted to rebut defendant's character evidence with evidence showing that he was capable of engaging in the conduct for which he was accused.

Sentencing. State v. McNary | 2022-Ohio-1842 | 8th Appellate District | 06/02/2022 In state's appeal of sentence imposed in conviction by plea of, inter alia, second-degree felonious assault, R.C. 2903.11(A)(1), the trial court erred by failing to impose an indefinite sentence pursuant to the Reagan Tokes Law and instead imposing a definite sentence pursuant to the Law prior to the enactment of the Law in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional; remanded for re-sentencing.

Habeas corpus/Psychological report. Rance v. Watson | 2022-Ohio-1822 | Supreme Court of Ohio | 06/02/2022 In defendant's convictions of sex offenses where he asserts that his competency to stand trial was called into question and the trial court imposed a sentence without the benefit of a psychological report, the court of appeals' judgment dismissing defendant's petition for a writ of habeas corpus is affirmed since the trial court's subject-matter jurisdiction is not affected by the decision to sentence a defendant without the psychological report and the defendant has an adequate

remedy at law by direct appeal; the psychological report was ordered pursuant to R.C. 2947.06, as part of the pre-sentence investigation, rather than as an inquiry into defendant's competency to stand trial.

Appeal/Final order. State v. Jackson | 2022-Ohio-1823 | Supreme Court of Ohio | 06/02/2022 In appeal of the court of appeals' affirmance of the trial court's denial of bond company's motion to set aside a bond-forfeiture judgment against it and to release it from liability, the court of appeals' judgment is reversed and cause is remanded to the trial court since magistrate's decision finding the state was entitled to judgment against the defendant and bond company for \$50,000 has not been adopted by the trial court, and thus no final appealable order exists, Civ.R. 53(D)(4)(a).

Mandamus/Procedendo. State ex rel. White v. Aveni | 2022-Ohio-1755 | Supreme Court of Ohio | 06/01/2022 Dismissal of relator's petition for a writ of mandamus/procedendo was not error since relator had an adequate remedy at law where relator was seeking to compel the trial court to issue a new sentencing entry, claiming that his sentencing entry did not identify the predicate felony underlying his felony-murder conviction and that the defective sentencing entry was not final and appealable, but relator did have an adequate remedy at law that he could have pursued by filing a motion for a new sentencing entry in the trial court, and the court's ruling on that motion would be a final appealable order.

Ineffective assistance. State v. Sloan | 2022-Ohio-1930 | 4th Appellate District | 05/31/2022 In a conviction by plea in two cases to, inter alia, receiving stolen property following denial of motion to suppress, defendant received ineffective assistance when his trial counsel allowed him to plead guilty when counsel and the court had become aware that defendant indicated his desire to appeal the trial court's ruling on his motion to suppress, and defense counsel should have instructed defendant to enter a no contest plea rather than a guilty plea, and thus the plea was not knowingly or intelligently entered; remanded for further proceedings.

Sentencing. State v. Warfield | 2022-Ohio-1818 | 11th Appellate District | 05/31/2022 In a conviction by plea to two third-degree felony drug offenses and imposition and subsequent violation of community control, the trial court violated due process in revoking community control and imposing a 48-month prison sentence since no written notice was provided to defendant of the alleged community control violation, nor did the state introduce evidence tending to show that it was more probable than not that defendant violated the terms of his community control since he was found not guilty in an unrelated criminal action, and the record of the jury trial proceeding in that action is not before the court of appeals in this case; remanded for a community control revocation hearing complying with all legal requirements.

Drug offense. State v. Brodie | 2022-Ohio-1794 | 9th Appellate District | 05/31/2022 Conviction of first-degree felony possession of cocaine met sufficiency/weight of evidence standards where defendant was arrested with three bags, from which the contents of the first two tested positive for cocaine in initial test, and the contents of the third bag ultimately tested positive under gas chromatograph mass spectrometer testing; while the weight of cocaine in the third bag may have been enhanced by other substances, the entire compound, mixture, preparation, or substance, including any fillers that are part of the usable drug, must be considered for the purpose of determining the appropriate penalty for cocaine possession under R.C. 2925.11(C)(4).

Jury instructions/Self-defense. State v. Hodge | 2022-Ohio-1780 | 2nd Appellate District | 05/27/2022 In conviction of felonious assault and domestic violence, arising from defendant pouring hot grease on the person he was living with, the trial court erred in declining to instruct the jury on self-defense, R.C. 2901.05(B)(1), where defendant testified that the alleged victim threatened to pour the grease on him, that person then raised the pot to pour it on defendant, who raised his arm to block the pot's contents from being poured on him, causing some liquid to spill on alleged victim's body; without a self-defense instruction before it, the jury had no choice but

to make a finding of guilt, even if it believed all of defendant's testimony.

Jail-time credit. State v. Windsor | 2022-Ohio-1785 | 2nd Appellate District | 05/27/2022 Calculation of jail-time credit following conviction by plea to having weapons while under disability was error where the trial court failed to provide defendant the opportunity to be heard or to award defendant a specific amount of jail-time credit, R.C. 2949.08(B); the case is remanded so that the trial court can specify the total number of days of jail-time credit that defendant had earned prior to the date of his sentencing.

Hearsay. State v. Wright | 2022-Ohio-1786 | 2nd Appellate District | 05/27/2022 In convictions of three counts of rape of a child under 13 years-old, R.C. 2907.02(A)(1)(b), admission of state's witness' statements about what victim told other people was not error since the statements were not hearsay where they were consistent with victim's testimony and were offered to rebut defendant's assertion that the victim fabricated the statements to avoid discipline, Evid.R. 801(D)(1)(b).

Sex offender registration. State v. Schilling | 2022-Ohio-1773 | 1st Appellate District | 05/27/2022 Denial of defendant's petition to terminate his duty to comply with Tier I sex offender registration requirements was error where defendant was convicted pursuant to plea to attempted voyeurism in an Ohio court, making defendant eligible to have his petition considered under R.C. 2950.15, and although the trial court erroneously ordered sex offender registration under the Adam Walsh Act that had not been enacted on the date of the offense, the order was voidable but could not be corrected since it was not appealed, Henderson; also, trial court lacked authority to enter an order stating that defendant was a sexually-oriented offender under Megan's Law.

Evidence. State v. Knight | 2022-Ohio-1787 | 6th Appellate District | 05/27/2022 In defendant's convictions of kidnapping, importuning and gross sexual imposition, and on a repeat violent offender specification, arising from the sexual assault of a minor, the trial court did not err in allowing defendant's parole officer to testify since defendant was tried and convicted of importuning, requiring

proof of a prior sexually-oriented offense or a child-victim oriented offense, R.C. 2907.07(F)(2), making officer's testimony relevant, the state did not offer parole officer's testimony to show defendant's propensity, and the probative value of the Crim.R. 404(B) evidence is outweighed by its prejudicial effect.

Arraignment. State v. Wilson | 2022-Ohio-1788 | 6th Appellate District | 05/27/2022 In defendants' convictions for OVI, R.C. 4511.19, and related charges, the trial court did not err in conducting defendant's arraignment where, inter alia, at no time during the five separate occasions during which the court advised defendant of his right of counsel did the court ever suggest or create an impression that the right to counsel was connected to, or limited by, which of the available plea options defendant elected to exercise, Crim R. 10.

Sentencing. State v. Clausing | 2022-Ohio-1762 | 8th Appellate District | 05/26/2022 Imposition of aggregate definite sentence for convictions of rape and gross sexual imposition was error since the offenses are qualifying offenses subject to an indefinite sentencing scheme under R.C. 2929.14 and R.C. 2929.144(B) of the Reagan Tokes Law; sentences are vacated and matter is remanded since the Reagan Tokes Law is not unconstitutional pursuant to Delvallie; also, the trial court's nunc pro tunc entry to correct sentence was a nullity because the decision had already been appealed.

Weapons offense. State v. Embree | 2022-Ohio-1741 | 1st Appellate District | 05/25/2022 Bench conviction of carrying a concealed weapon, R.C. 2923.12(A)(2), met the sufficiency and weight of evidence standards where the gun and ammunition were on the passenger seat of the vehicle, defendant was in the driver's seat, and the gun and ammunition were within his reach; also, defendant failed to establish an affirmative defense of transporting a firearm for lawful purposes under R.C. 2923.12(C)(1)(c) where claim that he was planning to go to a target range was without merit since it had been closed for six hours when he was stopped and he had been at his home shortly before his arrest, and the fact that he was a courier did not give him carte blanche to carry a weapon in his vehicle at all times.

Sealing. State v. Q.M.E. | 2022-Ohio-1745 | 9th Appellate District | 05/25/2022 Sealing the record of convictions for child endangering pursuant to R.C. 2953.32, a fourth-degree felony, was error since applicant was not an eligible offender where victim of the offense was less than 16 years-old, R.C. 2953.36(A)(7); applicant's argument that there was no evidence of victim's age is of no merit because it could be calculated by determining victim's age at the time of the hearing and the date of the offense.

Stay. State v. Horvath | 2022-Ohio-1743 | 9th Appellate District | 05/25/2022 In a conviction of municipal housing violation for accumulations throughout exterior of property, the trial court did not err in denying defendant's motion for a stay, even if a stay was granted in a civil action ordering the demolition of the property while an appeal was pending, since the demolition ordered in the civil action was unrelated to the criminal prosecution.

Post-conviction relief. State v. Johnson | 2022-Ohio-1739 | 1st Appellate District | 05/25/2022 Following a conviction of drug offenses that was affirmed, denial of petition for post-conviction relief was error where petitioner provided expert evidence outside the record that state's latent fingerprint expert's testimony expressing absolute certainty in her identification of a fingerprint as that of appellant was incorrect in light of the subjective nature of latent-print analysis, and these claims could not have been determined on direct appeal without resorting to evidence outside the record since there was no evidence in the trial record showing that the state's expert's testimony was misleading or false, and defense counsel provided ineffective assistance in failing to challenge the expert witness' testimony.

Evidence/Witness impeachment. State v. Moore | 2022-Ohio-1732 | 10th Appellate District | 05/24/2022 In convictions of aggravated murder and related offenses, defendant's claim that the state was impermissibly permitted to impeach its own witness, Evid.R. 607, is without merit since the state did not impeach its witness by asking him if it would refresh his memory as to the things he had said two years previously if he were able to listen to

a portion of his interview describing the assailant; the witness initially stated he did not remember a lot, the state laid a proper foundation to refresh witness' recollection, and the witness was never asked to identify the defendant as the assailant.

Mistrial. State v. Alexander | 2022-Ohio-1812 | 4th Appellate District | 05/24/2022 In a conviction of two first-degree felony drug offenses, claim that the trial court erred by denying a motion for mistrial for discovery violations by the state is without merit since any error the court made in selecting the sanction for the first discovery violation by state's witnesses testifying about incriminating statements defendant allegedly made to officer that the state failed to disclose to defense counsel during discovery was the sanction requested by defendant and, as to the second discovery violation involving an officer's testimony of another possible incriminating statement by defendant, defendant failed to show that court's sanction to strike the testimony and give curative instructions instead of granting a mistrial was unreasonable.

Sentencing. State v. Eshack | 2022-Ohio-1734 | 5th Appellate District | 05/24/2022 In drug offense conviction, imposition of mandatory indefinite prison sentence with a mandatory minimum term and a maximum term, with mandatory post-release control, is affirmed with a finding that the Reagan Tokes Law does not violate defendant's constitutional rights to trial by jury and due process of law and does not violate the constitutional requirement of separation of powers, citing the dissenting opinion in Wolfe as the opinion of the court.

Search. State v. Johnson | 2022-Ohio-1733 | 10th Appellate District | 05/24/2022 In drug offense prosecution, the trial court erred in suppressing evidence discovered in inventory search of vehicle since officer's arrest of defendant for driving with a suspended license following observation of moving vehicle with only one functioning headlight was lawful, the inventory search of the area behind the access panel in the vehicle, which revealed drugs, was conducted pursuant to the standardized policies of police department and was lawful under the inventory-search exception to the Fourth Amendment, and the search of the area behind the instrument panel

was lawful pursuant to the automobile exception to the Fourth Amendment warrant requirement.

Court's witness. State v. Nurein | 2022-Ohio-1711 | 3rd Appellate District | 05/23/2022 In conviction of, inter alia, felonious assault and aggravated burglary, the trial court did not err by granting state's motion to call defendant's ex-wife, who was in the apartment that had been shot at, as a court's witness, Evid.R. 614, where she was in frequent and forbidden contact with defendant throughout the months leading up to trial, and she willingly communicated with defense counsel and appeared to regard defense counsel as her own attorney, while simultaneously rejecting the state's offers to talk to her and her son about the case, Evid.R. 614(A).

Allocution. State v. Farhat | 2022-Ohio-1716 | 11th Appellate District | 05/23/2022 In a conviction by plea of theft from a person in a protected class, R.C. 2913.02(A)(1), (B)(1) and (3), the trial court erred by denying defendant his right of allocution, Crim.R. 32(A)(1), since although defendant was offered an opportunity to speak at the sentencing hearing, he spoke only to the reason for his failure to appear for nearly one year, not to the substance of his offense, and the trial judge refused to offer defendant an opportunity to present any mitigating considerations, speak to his criminal history or to express remorse for his actions; remanded for re-sentencing.

Sealing. State v. Hart | 2022-Ohio-1706 | 12th Appellate District | 05/23/2022 In denial of application to seal record of previous convictions, the trial court erred in applying a version of R.C. 2953.31(A)(1) that was no longer in effect at the time of the application, and the court further erred in determining that applicant was not an eligible offender under R.C. 2953.31(A)(1).

Post-conviction relief. State v. Liles | 2022-Ohio-1713 | 3rd Appellate District | 05/23/2022 Following a conviction by plea of trafficking in cocaine that was affirmed, denial of Brady violation-based successive petition for post-conviction relief for lack of jurisdiction was not error since petitioner cannot establish the applicability of the exception found in R.C. 2953.23(A)(1) that would allow the trial court to consider his untimely, successive post-conviction petition.

Search. State v. Owensby | 2022-Ohio-1702 | 12th Appellate District | 05/23/2022 In drug offense prosecution in which police found drugs on defendant after receiving a tip from a highly reliable informant, the trial court erred in granting motion to suppress since multiple searches of a suspect can be justified if a second officer did not observe the original or was concerned about the adequacy of the search, Wyatt, and first officer's failure to locate any drugs during a "jail type" search did not dissipate any concerns of criminal activity and by the time the second officer conducted the "credit card" search on defendant, the second officer had obtained ample evidence justifying a probable cause search of defendant's person.

Inducing panic. State v. Martinez | 2022-Ohio-1736 | 5th Appellate District | 05/23/2022 Conviction of inducing panic, R.C. 2917.31(A)(3), and the predicate offense of disorderly conduct, R.C. 2911.11(A), were supported by sufficient evidence and the trial court did not err in denying defendant's motion for acquittal, Crim.R. 29, where the evidence showed that, inter alia, defendant was walking down a busy street ostensibly carrying two firearms and pointing them at passing traffic, resulting in numerous 9-1-1 calls and fear among people at the scene, and officer testified that a passerby would not be able to determine that the weapons defendant was carrying and pointing at traffic were not actual firearms.

Sentencing. State v. Martinez | 2022-Ohio-1700 | 9th Appellate District | 05/23/2022 Imposition of maximum sentence after plea to attempted murder with a firearm specification and two counts of felonious assault that were merged at sentencing was not error where pre-sentence report reflected that defendant asked victim, with whom he had no previous contact, if she had a cigarette lighter and when she responded that she did not, defendant shot her six times; in imposing sentence, the trial court referenced, inter alia, the physical and mental injuries suffered by the victim and the physical, psychological and economic harm to her, R.C. 2929.12(B)(1) and (2).

Reimbursement. State v. Thames | 2022-Ohio-1715 | 11th Appellate District | 05/23/2022 In conviction of six counts of cruelty to companion animals, R.C. 959.131(D)(1), where the trial court mistakenly referred to restitution in ordering defendant to pay county humane society, the payment was to reimburse a government agency for its expenses in caring for defendant's companion animals, and no hearing was required for an order of reimbursement to the government, R.C. 2929.28(B); judgment entry is modified to reflect payment ordered to be paid to county humane society is reimbursement.

Obstructing official business. State v. Kelly | 2022-Ohio-1696 | 6th Appellate District | 05/20/2022 Conviction of obstructing official business under R.C. 2921.31(A), rather than R.C. 4507.35(A), arising from a traffic stop was not supported by sufficient evidence where the charge was based on defendant's failure to comply with officer's request to produce his driver's license and insurance, and evasive actions taken by defendant, supporting conviction for resisting arrest, occurred only after the officers decided to arrest him and did not support a conviction for obstructing.

Witness. State v. Gutierrez | 2022-Ohio-1692 | 2nd Appellate District | 05/20/2022 In a conviction of domestic violence, assignment of error that the trial court erred in allowing the state to treat victim as a hostile witness is without merit and conviction is affirmed since the trial court's ruling did not prejudice defendant where victim's answers to the state's leading questions did not help prove any of the necessary elements of domestic violence, and no material information was brought out in the few leading questions by the state, Evid.R. 607.

Ineffective assistance. State v. J.R. | 2022-Ohio-1664 | 8th Appellate District | 05/19/2022 Defendant's conviction by plea to multiple counts in connection with an armed burglary after she was bound over from juvenile court to the general division of common pleas court is reversed on reasoning that she was deprived of effective assistance of counsel since her attorney was suspended from the practice of law at the time he represented her at the bindover hearing, and the circumstances of this case warrant the presumption that defendant was

denied the effective assistance of counsel without the need to establish specific attorney errors or prejudice as a result of the representation; the case is remanded to the juvenile court for further proceedings.

Speedy trial. State v. Havens | 2022-Ohio-1712 | 4th Appellate District | 05/19/2022 In a conviction of drug possession, R.C. 2925.11(C)(2), the trial court did not err by denying defendant's motion to dismiss on speedy trial grounds since the R.C. 2945.71 speedy trial time began to run on the date that defendant was arrested and charged with possession of drugs, not on the prior date on which he was arrested and charged with OVI, where the drugs obtained by officer when defendant was arrested for OVI were subsequently determined by a state laboratory to be a controlled substance, Skinner.

Sentencing. State v. Smith | 2022-Ohio-1667 | 8th Appellate District | 05/19/2022 In state's appeal of sentence imposed in conviction of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, the trial court erred by imposing a definite sentence pursuant to the statutes in effect prior to the enactment of the Law in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional; remanded for re-sentencing.

Evidence. State v. Russell | 2022-Ohio-1746 | 4th Appellate District | 05/19/2022 In a conviction of heroin possession after police executed a search warrant and discovered heroin in the room that defendant was occupying, the trial court did not violate Evid.R. 403(A) in admitting into evidence a large sum of money found on defendant's person and digital scales nearby since the probative value of that evidence was not substantially outweighed by a danger of unfair prejudice where the state did not attempt to create an improper inference that defendant was a drug trafficker.

Aggravated murder. State v. Scott | 2022-Ohio-1669 | 8th Appellate District | 05/19/2022 Conviction of, inter alia, aggravated murder, R.C. 2903.01(A), was supported by sufficient evidence since the state proved defendant purposely, and with prior calculation and design, caused victim's death

Criminal (Cont.)

where evidence showed, *inter alia*, that defendant was a coworker, friend, and drug dealer to victim, that their relationship was strained because victim owed defendant money, that defendant called victim's girlfriend about the debt and later showed up at victim's house, that the two men had an argument, and that defendant ultimately shot victim.

Discovery. State v. Walker | 2022-Ohio-1684 | 10th Appellate District | 05/19/2022 In a conviction of assault, denial of motion to dismiss indictment was not error where defendant argued that he was deprived of due process, claiming that video evidence of police abuse recorded on telephone by his girlfriend was erased while the phone was in the custody of police, but since the alleged evidence could not have shown that defendant did not commit the assault itself, it was not materially exculpatory, and since defendant did not show bad faith by the police arising from the unavailability of potentially useful evidence, he did not demonstrate a due process violation.

Search. State v. Tincher | 2022-Ohio-1701 | 9th Appellate District | 05/19/2022 In OVI prosecution, the trial court erred in granting defendant's motion to suppress evidence of her intoxication since the tip the police received from caller, when combined with the totality of the circumstances, provided the officer reasonable suspicion to execute a traffic stop, even though tipster was relaying information actually observed by her boyfriend, where, *inter alia*, tipster identified herself and shared her tip with the police via the 9-1-1 emergency system, dispatcher could observe tipster's name and phone number on call screen, and the immediacy of her tip and the fact that it described a presently occurring situation gave the tip a further degree of trustworthiness.

Speedy trial. State v. Gibson | 2022-Ohio-1653 | 9th Appellate District | 05/18/2022 In convictions of abduction and assault, defendant was not deprived of a speedy trial since the continuance was reasonable under the circumstances given defendant's repeated requests to represent himself and the credible information that led the state to believe that defendant could be

suffering from untreated mental illness, generally R.C. 2945.72(H); defendant's argument that the continuance was not requested by own motion is meritless.

Joinder. State v. Jamea | 2022-Ohio-1647 | 10th Appellate District | 05/17/2022 In convictions pursuant to two indictments, the trial court did not err in denying defendant's Crim.R. 14 motion for relief from joinder since, *inter alia*, the two indictments tried together shared common features and charged similar crimes, but those crimes occurred on different days, had different victims and were supported at trial by completely different witnesses and testimony and there was no danger the jury would not be able to separate the two sets of crimes in its analysis; also, defendant failed to renew his objection to joinder either at the close of the state's evidence or at the close of all evidence, thereby forfeiting all but plain error.

Gross sexual imposition. State v. York | 2022-Ohio-1626 | 3rd Appellate District | 05/16/2022 Conviction of two counts of gross sexual imposition, R.C. 2907.05(A)(5), was based on insufficient evidence where the state argued the victims' ability to resist or give consent was substantially impaired because of their "age of youth;" victim's young age is not a condition of impairment under the statute.

Jury trial. State v. White | 2022-Ohio-1635 | 11th Appellate District | 05/16/2022 Bench conviction of misdemeanor assault is reversed since defendant, through counsel, demanded a jury trial and did not waive his right to be tried to a jury in the manner required by R.C. 2945.05.

Disability

Medicaid/Unpaid medical expense. Chamberlain v. Ohio Dept. of Job & Family Servs. | 2022-Ohio-2505 | 1st Appellate District | 07/22/2022 Administrative denial by state department of executor's request that decedent-Medicaid recipient's unpaid patient liability should have been subtracted from his future patient liability as an unpaid past medical expense under Ohio Adm. Code 5160:1-6-07(F)(6) is affirmed since the requested subtraction would allow patients to fail to pay their share of costs to a nursing facility and later

claim it as an unpaid medical expense, rendering the patient-liability obligation meaningless.

Medicaid eligibility/Access to property. Chamberlain v. Ohio Dept. of Job & Family Servs. | 2022-Ohio-2309 | 1st Appellate District | 07/01/2022 In plaintiff-estate administrator's administrative appeal of denial of decedent's application for retroactive Medicaid benefits on the basis of ineligibility because of financial resources, trial court did not err in affirming agency's denial where, although decedent was unable to secure a buyer for real property held in another state, he had the legal ability to access property pursuant to the plain language of former Ohio Admin. Code 5160:1-1-01(B)(72), and under the analysis in *Cowan*, the legal ability to access property precludes exemption for impracticability, and therefore the property was a countable resource.

Medicaid eligibility/Reasonable efforts. Gardner v. Ohio Dept. of Job & Family Servs. | 2022-Ohio-2021 | 1st Appellate District | 06/15/2022 In claimant's administrative appeal of denial of Medicaid application based on real property which put her assets in excess of program eligibility limits, trial court erred in finding that the reasonable-efforts exclusion for Supplemental Security Income (SSI) does not apply to Medicaid since the Medicaid eligibility factors must not be more restrictive than SSI eligibility criteria, and the real property which plaintiff was making reasonable efforts to sell is excluded as a resource and does not require a conditional-benefits period.

Elections and Campaign Finance

Redistricting. Neiman v. LaRose | 2022-Ohio-2471 | Supreme Court of Ohio | 07/19/2022 In challenge by two petitioners to recent redistricting plan adopted by the state redistricting commission, the court's analysis demonstrates that the plan unduly favors one political party over another, in violation of Ohio Const. Art. XIX, Sec. 1(C)(3)(a), and this analysis is supported by evidence, *inter alia*, that there was a misunderstanding about the applicable standard requiring that the redistricting plan not favor one party over another; the General Assembly is ordered to pass a new congressional-district plan within 30 days that complies with the

Ohio Constitution, as required under Ohio Const. Art. XIX, Sec. 3(B)(1), and if the General Assembly fails to comply with the order, Ohio Const. Art. XIX, Sec. 3(B)(2) will require the commission to adopt a constitutional plan within 30 days of the General Assembly's failure.

Certify candidacy/Laches. State ex rel. Jones v. LaRose | 2022-Ohio-2445 | Supreme Court of Ohio | 07/18/2022

After county board of elections declined to certify candidate's name to ballot on the basis of secretary of state's directive to reject declarations and petitions of state-central-committee-member candidates filed after a certain date, candidate's subsequent petition for a writ of mandamus to, inter alia, compel the county board to certify his candidacy to the ballot for upcoming election is denied on the basis of laches since the board informed candidate that he would not be certified to the ballot by a letter dated two months before the election, but the candidate let half that time elapse before filing his lawsuit, and in election cases, a relator must act with the utmost diligence.

Candidacy declarations/Deadlines/Mandamus. State ex rel. DeMora v. LaRose | 2022-Ohio-2173 | Supreme Court of Ohio | 06/24/2022 Original relators' petition for a writ of mandamus to compel secretary of state to instruct boards of elections to accept declarations of candidacy and declarations of intent to be a write-in candidate and to certify their candidacies for the August 2 primary-election ballot is granted for declarations that are otherwise valid since relators complied with the deadline requirements in R.C. 3513.05 and 3513.041 after federal court set the date of the primary election, as the result of state redistricting impasse; intervening relators' request that secretary of state order a new 10-day period for candidate filings for the August 2 primary or, alternatively, issue an order postponing the primary is denied since intervening relators have not established that the secretary of state has a clear legal duty to undertake either of these actions.

Redistricting. League of Women Voters of Ohio v. Ohio Redistricting Comm. | 2022-Ohio-1727 | Supreme Court of Ohio | 05/25/2022 In challenge to the state redistricting commission's re-adoption of a redistricting plan

previously rejected by the Ohio Supreme Court where the re-adoption was prompted by federal court's decision regarding the status of Ohio's primary election for the General Assembly, petitioners' objections to the plan are sustained in accord with the court's previous decision and since the commission's duty to draft and adopt a constitutional district plan is distinct from considerations regarding the feasibility of implementing that plan for the 2022 election. The commission is ordered to be reconstituted, to convene, and to draft and adopt an entirely new General Assembly district plan that meets the requirements of the Ohio Constitution, including Art. XI, Sec. 6(A) and 6(B).

Environmental and Natural Resources

Mineral interests. Senterra, Ltd. v. Winland | 2022-Ohio-2521 | Supreme Court of Ohio | 07/26/2022 In action by owner of surface property to quiet title to mineral interests underlying the property, court of appeals' judgment is affirmed where the court ruled that the trial court erred in finding that reservation in earlier deed failed because seller purported to reserve and convey more interest than he had; the inaccurate conveyance was repeated for more than 40 years, the defect remained in the chain of title without any other documents recorded to indicate that it was not correct, the Marketable Title Act validated the defect and validated the oil and gas interest reservation, and the court of appeals correctly determined that the Duhig rule which estops a grantor from claiming title to a severed oil and gas interest when doing so would breach the grantor's warranty as to the title and interest purportedly conveyed to the grantee did not apply in this case.

Estate Planning, Trust and Probate

Legal malpractice/Standing/Privity. White v. Sheridan | 2022-Ohio-2418 | 10th Appellate District | 07/14/2022 In executor/beneficiary's legal malpractice action against attorney for negligently causing decedent's home to pass to daughter rather than to executor/beneficiary, summary judgment in favor of attorney on reasoning that executor/beneficiary lacked standing was error where, although attorneys are not liable to third parties under strict privity rule, decedent's claim for legal malpractice survived his death pursuant to R.C.

2305.21, and executor is in privity with decedent and may sue for negligence in estate planning.

Name change/Agreement. In re Name Change of C.L.F. | 2022-Ohio-2300 | 10th Appellate District | 06/30/2022 In father's application to change child's last name to father's or to a hyphenated last name, judgment to change name to a hyphenated name is affirmed where the trial court considered the best interest of the child in determining whether reasonable and proper cause was established for the change pursuant to the standard now found in R.C. 2717.09, Willhite; father's argument that child's name should be changed to father's last name because of agreement with mother, supported by monetary consideration paid by father to mother, is unavailing.

Jurisdictional priority. State ex rel. Minshall v. Swift | 2022-Ohio-2158 | 6th Appellate District | 06/23/2022 In brothers' dispute about division of property that belonged to their now-deceased mother where one brother filed a petition for a writ of prohibition to prevent judge in probate court from exercising jurisdiction over trust claims on the basis of jurisdictional priority because of a pending case in the general division of common pleas court, prohibition is denied since the probate court has general subject matter jurisdiction over the trust claims, authorizing the judge to resolve specific challenges to that jurisdiction, there was no showing of patent and unambiguous lack of jurisdiction, and petitioner can challenge probate court's rulings through a direct appeal.

Name change. In re Name Change of E.S. | 2022-Ohio-2107 | 10th Appellate District | 06/21/2022 Following resolution of divorce action, mother's applications in probate court to change children's last name to her last name hyphenated with father-former husband's last name were properly granted where mother did not waive her right to seek name change since the absence of any provision in the divorce filings permitting mother to request the name changes did not reflect an intent by mother to abandon her right to file name change applications in the probate court, and father provided no evidence to support his assertion that the parties negotiated this issue out of the divorce settlement agreements, former R.C. 2717.01

Estate Planning, Trust and Probate (Cont.)

Birth certificate/Gender identity.

In re Application for Correction of Birth Record of Adelaide | 2022-Ohio-2053 | 2nd Appellate District | 06/17/2022 Denial of plaintiff's application to change the sex marker on her birth certificate was not error since R.C. 3705.15 does not allow for amendments to a birth certificate, even though it allows for corrections of errors, the language of the statute does not specifically grant authority to the probate court to alter the sex marker unless it was originally made in error, and even though evidence showed that plaintiff's sexual identity is now female, both psychologically and in lifestyle gender expression, the sex marker accurately recorded her male anatomy at the time of birth.

Guardianship/Trust. Garber v. Schneider | 2022-Ohio-1777 | 1st Appellate District | 05/27/2022 In petitioner-guardian's action seeking to declare void an amendment to trust designating respondent-ward's neighbor as beneficiary of revocable trust assets, trial court erred in granting petitioner's motion for summary judgment and in sua sponte revoking trust amendment where the parties presented conflicting evidence from which alternate reasonable conclusions could be drawn on the issue of ward's lack of capacity to amend trust, and notice and hearing were not provided prior to revocation of trust amendment, as required by R.C. 2111.50.

Family Law and Domestic Relations

Property division/Distributive award.

Devito v. Devito | 2022-Ohio-2563 | 1st Appellate District | 07/27/2022 In divorce action in which the magistrate awarded most of the parties' assets to wife because husband was incarcerated, the trial court erred in making the distributive award to wife where the court failed to determine whether husband's inheritance was separate property, the distributive award was improper under R.C. 3105.171(E) because there was no evidence of husband's financial misconduct, and even if distributive award was justified, it may not be used in place of spousal support pursuant to R.C. 3105.171(A)(1).

Property division/Business debt. Fulton v. Fulton | 2022-Ohio-2472 | 5th Appellate District | 07/18/2022 In divorce action in which husband objected to division of property, trial court did not err in its assignment of business debt as husband's separate property where, although the business was purchased during marriage, wife did not assist in the finances of running business, she was not listed on business account and did not have access to it, husband's mother loaned husband money for purchase of business, and wife did not sign notes for loans made to husband.

Frivolous conduct/Attorney fees.

Menkhaus v. Menkhaus | 2022-Ohio-2369 | 1st Appellate District | 07/08/2022 In divorce action in which wife challenged decree of divorce, trial court erred in granting husband's motion for attorney fees where wife's conduct was not frivolous pursuant to R.C. 2323.51 because her argument that husband's businesses were not included as his separate property under express terms of prenuptial agreement required interpretation of agreement, and her argument under R.C. 3105.18 that enforcement of spousal-support provision would be unconscionable because her contributions to husband's earning ability hinged on credibility.

Civil protection order. J.A.C. v. A.L. | 2022-Ohio-2275 | 8th Appellate District | 06/30/2022 Issuance of a civil protection order against defendants was error where, despite the trial court's indication on the record that the allegations did not warrant a protection order, the court issued the order; R.C. 2903.214 allows a petitioner to obtain a civil stalking protection order by filing a petition alleging that the respondent engaged in conduct constituting menacing by stalking as defined in R.C. 2903.211, but a protection order is not appropriate merely because neighbors share unfriendly or untenable relationships.

Magistrate's decision. A.K. v. G.K. | 2022-Ohio-2250 | 9th Appellate District | 06/30/2022 In case in which the trial court issued a civil protection order against husband, who then appealed, the reviewing court declines to address the merits of husband's assignments of error since he failed to file objections to the magistrate's decision as required by Civ.R. 65.1(G), and the judgment of the trial court is affirmed.

Magistrate's decision/Transcript/

Costs. Brehm v. Brehm | 2022-Ohio-2308 | 5th Appellate District | 06/29/2022 In divorce action in which wife sought modification of custody of child where the trial court agreed with father's objection and overruled magistrate's decision that there was a change in circumstances, the court erred in failing to tax transcript fees as costs where husband was required to file transcript of magistrate's hearing pursuant to Civ.R. 53(D) in his objection to magistrate's decision, transcript was a necessary litigation expense under R.C. 2303.21, transcript expense was not unusual or unreasonable, and costs were allowed to husband as prevailing party under Civ.R. 54(D).

Property division/Pension. Ostaneck v. Ostaneck | 2022-Ohio-2197 | 11th Appellate District | 06/27/2022 In divorce action in which wife was awarded half of husband's federal pension, the trial court erred in denying husband's motion for relief from judgment dividing his pension where wife obtained order for division after the date of husband's retirement, which was appropriate, but division of pension required agreement by both spouses pursuant to R.C. 3105.171(I) and husband was never served with proposed order.

Psychological evaluation/Interpreter.

Migliara v. Migliara | 2022-Ohio-2111 | 1st Appellate District | 06/22/2022 In divorce action in which legal custody of child was granted to husband, trial court did not err in declining to provide wife with an interpreter during psychological examinations since there is no constitutional right to free interpreter services in civil cases, psychological evaluation was not a legal proceeding requiring appointment of interpreter under R.C. 2311.14(A), and because husband paid for evaluation, it was not an ancillary court service for which the court was required to provide interpreter under Sup.R. 89(A).

Property division. Ott v. Ott | 2022-Ohio-2087 | 9th Appellate District | 06/21/2022 In divorce action in which wife challenged division of property, trial court erred in finding that the equity in the parties' home was husband's separate property where, although husband bought the house prior to the marriage and it was his separate property, there was no equity in the property at the time of marriage and there was a reduction in the mortgage

balance during marriage by payment of marital funds; also, insurance disbursement from damage to home was not separate property because insurance was funded with marital property, R.C. 3105.171.

Property division/Personal. Pruitt v. Pruitt | 2022-Ohio-2058 | 2nd Appellate District | 06/17/2022 In divorce action in which husband challenged division of personal property, trial court erred by failing to make determinations as to items wife removed from marital home where wife admitted to taking items, including firearms and precious metals, which were not included in the list of property, she sold the items without giving any of the proceeds to husband, and there was no indication that the court exercised its discretion in failing to address items taken during separation.

Child support/Fraud/Jurisdiction. Dorsey v. Henry | 2022-Ohio-2023 | 9th Appellate District | 06/15/2022 In plaintiff's fraud action in common pleas court, general division, against defendant-child's mother asserting that she falsely represented that plaintiff was child's father and claimed child support payments, trial court did not err in granting defendant's motion to dismiss for lack of jurisdiction since domestic relations court has exclusive jurisdiction to hear all cases pertaining to child support; if trial court did have jurisdiction, the jurisdictional-priority rule would apply, even though the causes of action are not identical, because the fraud claim comprises part of whole issue within the jurisdiction of domestic relations court.

Jurisdiction. Smith v. Smith | 2022-Ohio-1897 | 12th Appellate District | 06/06/2022 In divorce action in which wife sought modification of parental rights and responsibilities, trial court did not err in relinquishing jurisdiction to state of husband's residence where there was most of the evidence relating to the parties' child, including child's school and therapist, and the judicial system in that state had familiarity with parties and was willing to accept jurisdiction, while wife's argument that the case should not have transferred when husband had an outstanding bench warrant is unsupported by legal authority, R.C. 3127.21(B).

Civil protection order/Res judicata. Hankinson v. Cooper | 2022-Ohio-1896 | 12th Appellate District | 06/06/2022 Granting mother's petition for a domestic violence civil protection order against father for making threats against her and children is reversed where, although the court indicated it was granting the petition because father posed a threat of further violence, the order indicated that the petition was granted for father's past acts of violence that occurred several years earlier, making this a successive petition for the same acts that had been adjudicated in a previous order and therefore precluded by res judicata and collateral estoppel in the instant case, and because of ambiguity between the court's statements and the order itself, the matter is remanded for further proceedings, R.C. 3113.31.

Child support. R.G. v. N.G. | 2022-Ohio-1886 | 5th Appellate District | 06/03/2022 In dissolution action in which husband challenged the amount of child support, trial court erred in failing to provide the cash medical deviation on the guideline child support worksheet where the court determined in a previous judgment entry that cash medical that was due and owing should be deviated down to zero, so long as private health insurance was being provided for the child; also, upward and downward deviations, based on the facts and circumstances of the case, were appropriately calculated, and the law of the case doctrine did not apply because the trial court did as instructed on remand, R.C. 3119.23.

Child support. Moore v. Moore | 2022-Ohio-1862 | 10th Appellate District | 06/02/2022 In divorce action child support dispute, trial court erred in assigning to husband an excessive child support obligation since R.C. 3119.04 provides for calculation of child support for child of higher income parents; however, the court's calculation was not based on the statutory preliminary floor for support but on the parties' combined adjusted annual gross income, resulting in an amount substantially greater than if it had been based on the statutory levels, and analysis of child's needs and standard of living should be used to calculate support.

Relief from judgment. Vitek v. Ward | 2022-Ohio-1797 | 9th Appellate District | 05/31/2022 In divorce action in which husband sought relief from trial court's spousal support judgment, the court erred in resolving husband's combined Civ.R. 60(B) motion for relief from judgment and his motion to "vacate judgment void ab initio" entirely under Civ.R. 60(B) standards without considering husband's argument that he was entitled to relief through the court's inherent power to vacate a void judgment without reference to Civ.R. 60(B).

Spousal support. Morrison v. Walters | 2022-Ohio-1740 | 1st Appellate District | 05/25/2022 In divorce action in which husband disputed spousal support and division of assets, trial court did not err in declining to award husband spousal support where, although considerable difference exists in parties' current incomes, husband failed to show that he lacked earning ability pursuant to R.C. 3105.18, he has no debt and has skills to provide a standard of living comparable to one during marriage, and he failed to show that wife engaged in deceitful conduct to conceal her gambling or had engaged in financial misconduct.

Child support/Adult disabled child. Clay v. Clay | 2022-Ohio-1728 | 4th Appellate District | 05/18/2022 In dissolution action, trial court's order that father pay child support for adult, disabled son, is reversed since there is a lack of evidence regarding the nature and extent of the parties' adult son's disability, and the case is remanded for the trial court to hold an evidentiary hearing on the nature and extent of the child's alleged disability and whether, as a result of the disability, the child is incapable of supporting and maintaining himself; the court has continuing jurisdiction over child support matters and the parties misunderstood the law regarding child support for an adult child, so the doctrine of res judicata does not bar the instant claim.

Adoption. In re Adoption of J.S. | 2022-Ohio-1659 | 5th Appellate District | 05/17/2022 Granting adoptive parents' petition for adoption of dependent child without requiring consent of the biological mother, R.C. 3107.07(A), was not error where mother failed to provide for the maintenance or support of child without justifiable cause for one

Family Law and Domestic Relations (Cont.)

year prior to the filing of the petition, even though the adoptive parents did prevent mother from having contact and communication with child, since R.C. 3107.07(A) requires mother to provide maintenance support for her child, but it does not require that the maintenance and support be accepted.

Adoption/Consent/Support. In re Adoption of P.S. | 2022-Ohio-1657 | 5th Appellate District | 05/17/2022 Order that mother's consent was not required for the petitions for adoption to proceed is affirmed since mother failed to provide support to children in the year preceding the date of the action where mother's contention that juvenile court's dismissal of complaint for child support was a judicial decree equivalent to a zero-support order is without merit since such dismissal does not fall within the Supreme Court of Ohio's definition of a no-support order, and mother was subject to the general obligation of parents to support their children as imposed by law in R.C. 3103.03.

Adoption/Consent/Support. In re Adoption of S.S. | 2022-Ohio-1658 | 5th Appellate District | 05/17/2022 Order that mother's consent was not required for petition for adoption to proceed on reasoning that mother failed to provide support in the year before the petition was filed is affirmed since juvenile court's dismissal without prejudice of complaint for child support was not a judicial decree equivalent to a zero-support order and a dismissal without prejudice is not a final determination of the rights of the parties and does not constitute a judgment or final order; also, evidence did not support mother's allegations that she purchased gifts, cards, and clothing for child.

Insurance

Motor vehicle/Limitations/Tolling. Middleton v. Erie Ins. | 2022-Ohio-2486 | 10th Appellate District | 07/19/2022 In injured driver's action against insurer of driver who caused accident for refusal to pay medical bills for injuries sustained in the accident, trial court did not err in granting insurer's motion to dismiss where complaint was filed well outside limitations period under R.C. 2305.10(A), injured driver failed to provide evidence substantiating her claim that the R.C. 2305.16 tolling

provision should have applied because she was under a disability, and victim's rights statute under R.C. 2930.01 did not apply to civil personal injury claim.

Homeowner's/Intentional acts exclusion. Allstate Vehicle & Property Ins. Co. v. Inabnitt | 2022-Ohio-2098 | 12th Appellate District | 06/21/2022 In insurer's action seeking a declaration that it did not provide coverage to insured-homeowner for injuries sustained by worker doing construction on insured's home when insured assaulted worker, trial court erred in denying insurer's motion for summary judgment regarding coverage for worker's assault and negligence claims since the policy has an exclusion for intentional acts that precluded coverage where homeowner's criminal conviction demonstrated that he knowingly caused serious physical harm to worker.

Motor vehicle/Coverage proration. Acuity, A Mut. Ins. Co. v. Progressive Specialty Ins. Co. | 2022-Ohio-1816 | 11th Appellate District | 05/31/2022 In dispute between two insurers regarding coverage for a single-vehicle accident, the trial court erred in granting summary judgment to defendant-insurer, applying its "escape clause" providing that its policy insures a loss only if no other valid and collectible automobile liability insurance is available; the case is remanded for the trial court to enter judgment based on the proration method, holding that where two insurance policies cover the same risk and both provide that their liability with regard to that risk shall be excess insurance over other valid, collectible insurance, the two insurers become liable in proportion to the amount of insurance provided by their respective policies.

Juvenile

Custody/Magistrate's decision/ Transcript. In re J.S. | 2022-Ohio-2502 | 8th Appellate District | 07/21/2022 Award of legal custody of children to paternal great-grandparents is affirmed where mother filed objections to the magistrate's decision but did not file a transcript of the proceedings with the trial court, the court overruled the mother's objections, and a transcript was filed with the reviewing court, but the reviewing court may not consider the transcript since it was not available for the trial court's review.

Custody/Special immigrant status. In re J.A.S. | 2022-Ohio-2508 | 5th Appellate District | 07/21/2022 In sibling's action seeking custody of child, trial court erred in summarily denying sibling's request for specific findings with respect to child's eligibility for special immigrant juvenile status where the court has jurisdiction to make the determination regarding whether sending the child back to his home country is in child's best interest, and the determination as to parental unsuitability was made prior to awarding legal custody to sibling, but the court failed to articulate findings as to why request for special immigrant juvenile status was denied, R.C. 3109.04, 8 U.S.C. 1101(a)(27)(J).

Bindover. State v. Dell | 2022-Ohio-2483 | 5th Appellate District | 07/19/2022 In a conviction by plea to aggravated robbery, R.C. 2911.01(A)(1), following bindover of juvenile from the juvenile court to the general court, admission of hearsay evidence at the bindover hearing was not error since the hearing was non-adjudicatory because it did not result in any conclusive factual findings that could be used against juvenile at a subsequent trial, and the purpose was only to determine his age at the time of the alleged incident and the existence of probable cause, R.C. 2152.12(A)(1)(a)(i), and the federal and state Confrontation Clauses were inapplicable at the juvenile's mandatory transfer hearing.

Bindover. State v. Smith | 2022-Ohio-2455 | 12th Appellate District | 07/18/2022 Following juvenile court mandatory bindover of 17 year-old juvenile to the general division court without an amenability hearing since juvenile waived his right to a probable cause hearing and subsequent pled to one count of murder, R.C. 2903.02(B)(1), that was affirmed, denial of "Motion to Dismiss for Unconstitutional Bindover" was not error since the mandatory bindover provisions in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) are constitutional, Aalim.

Delinquency. In re D.S. | 2022-Ohio-2408 | 8th Appellate District | 07/14/2022 In adjudication by admission of juvenile as delinquent of, inter alia, adult aggravated robbery, following an amenability hearing on the state's motion to relinquish jurisdiction to the general division for criminal prosecution, the juvenile court erred by

failing to provide the state with a means of seeking a serious youthful offender (SYO) sentence when, immediately following its amenability decision, the juvenile court allowed the juvenile to admit to the indictment without giving the state any opportunity to file a notice of intent to seek a SYO dispositional sentence by applying a blanket policy without weighing the interests of the parties, R.C. 2152.13(A)(4)(a).

Custody. In re J.M. | 2022-Ohio-2400 | 1st Appellate District | 07/13/2022

Designation of father as residential parent of child for purposes of school registration was not error where mother had moved repeatedly and child would benefit from having stable school experience, credible evidence supported conclusion that child's educational interests were best served through enrollment in father's school district, child is well-adjusted to both parents' homes, and equal parenting time is in child's best interest, R.C. 3109.04.

Custody. Ackley v. Haney | 2022-Ohio-2382 | 12th Appellate District | 07/11/2022 In custody action in which father sought modification of parental rights and responsibilities, the trial court did not err in terminating shared parenting plan and in naming mother as residential parent and legal custodian since parents were unable to agree on schooling during pandemic, father put child in middle of disputes with mother, mother was more likely to facilitate court-approved parenting time rights, and guardian ad litem's recommendation was weighed with other admitted evidence, R.C. 3109.04.

Bindover. State v. Lewis | 2022-Ohio-2357 | 8th Appellate District | 07/07/2022 Following bindover of juvenile to general division, conviction by plea to, inter alia, attempted murder and improperly-discharging-firearm-into-habitation count, probable cause was not shown to warrant the mandatory transfer of jurisdiction of the firearm count from the juvenile court to the general division since the juvenile court had previously dismissed an identical charge after finding that there was no probable cause to believe appellant committed the offense; mandatory bindover under R.C. 2152.12(A)(1)(a)(i) and the "more than a mere suspicion standard" do not violate due process.

Bindover. State v. Rojas | 2022-Ohio-2333 | 12th Appellate District | 07/05/2022 Following R.C. 2152.12(A)(1)(a)(i) mandatory bindover of juvenile to general division of common pleas court for, inter alia, attempted murder and juvenile's subsequent plea to second-degree felony felonious assault, the general division court erred by failing to comply with the reverse-bindover procedures in R.C. 2152.121(B)(3); cause is remanded for consideration and application of R.C. 2152.121.

Delinquency/Ineffective assistance.

In re J.D. | 2022-Ohio-2334 | 11th Appellate District | 07/05/2022 In adjudication of juvenile as delinquent of adult sex offenses, the juvenile court did not commit plain error in finding that defense counsel did not provide ineffective assistance by not challenging the amendment of the complaint of the dates of the offenses since juvenile was not prejudiced by the amendment, Juv.R. 22(B), nor was he prejudiced by admission of his therapist as an expert where the foundation of the therapist's opinion was not based solely on the victim's testimony, Evid.R. 702, and since juvenile's challenges to the sufficiency and weight of evidence are without merit, counsel was not ineffective in not raising these issues.

Delinquency/Speedy trial. In re C.C. | 2022-Ohio-2264 | 8th Appellate District | 06/30/2022 In delinquency action for, inter alia, adult aggravated murder, the juvenile court's dismissal on speedy trial grounds of indictment designating the juvenile as a serious-youthful offender was error since the juvenile court unambiguously and repeatedly issued an ongoing succession of comprehensive continuances and prohibitions on jury trials, including the ongoing COVID-19 public-health crisis, and explicitly stated that those continuances tolled the speedy trial time, R.C. 2945.72(H).

Delinquency. In re J.R. | 2022-Ohio-2231 | 9th Appellate District | 06/29/2022 In adjudication of juvenile by plea as delinquent of adult improperly handling a firearm in a motor vehicle, R.C. 2923.16(B), and possessing a defaced firearm, R.C. 2923.201(A)(2), the juvenile court did not err by finding that the question posed by the officer to the juvenile related directly to the officer's concern for officer and public safety, and thus the public safety exception to Miranda applied to

statement made by juvenile to officer that the gun was real, Maxwell.

Delinquency. State v. Powers | 2022-Ohio-2233 | 9th Appellate District | 06/29/2022 Following dismissal of juvenile complaint for adult rape and appellant's attainment of the age of 21 years old, the general division of the court of common pleas had jurisdiction pursuant to R.C. 2151.23(l) upon the filing of an indictment to determine the offenses appellant was accused of, and there was no prejudice in the juvenile court's dismissal of its proceeding; also, classification of appellant as a sex offender under the Adam Walsh Act, R.C. 2950.01 et seq., was not unconstitutional as applied to appellant since the juvenile court did not have subject matter jurisdiction over appellant.

Delinquency. In re J.N. | 2022-Ohio-2109 | 1st Appellate District | 06/22/2022 Following adjudication of juvenile as delinquent of adult gross sexual imposition with a suspended commitment to the department of youth services and subsequent completion of a sex-offender residential program, the juvenile court did not err in continuing juvenile's classification as a Tier I juvenile offender registrant under the Adam Walsh Act and releasing him from reporting probation and placing him on non-reporting probation with monitored time since no new conditions or penalties were imposed because monitored time had always been a part of his disposition, In re R.B.

Custody/Transfer to tribal court. In re E.M. | 2022-Ohio-2091 | 3rd Appellate District | 06/21/2022 In custody dispute in which foster parents filed motion to intervene for custody of abused, neglected, and dependent child, trial court did not err in denying motion and in relinquishing jurisdiction to tribal court under the Indian Child Welfare Act where foster parents were not parties to proceedings regarding the child under R.C. 2151.424, the court had no option but to approve transfer to tribal court because child's mother and tribe requested transfer, the agency did not assert that there was good cause for denial of transfer, and change of placement of child may not be considered good cause to deny transfer.

Delinquency. In re J.P. | 2022-Ohio-2102 | 11th Appellate District | 06/21/2022 Following juvenile's adjudication of delinquency of complicity to aggravated robbery and a serious youthful offender (SYO) sentence imposed that was stayed, and subsequent imposition of the adult portion invoked after conviction of, inter alia, grand theft, the trial court lacked the statutory authority to impose the SYO portion of the sentence since, pursuant to R.C. 2152.14(E)(1)(b), the trial court was required to find that juvenile was either admitted to a youth services facility or had pending criminal charges against him, neither of which was present in this case at the time the state filed its motion to invoke or at the time of the hearing.

Delinquency. In re G.K. | 2022-Ohio-2124 | 5th Appellate District | 06/21/2022 Adjudication of juvenile as delinquent for adult complicity to assault on a school teacher, R.C. 2903.13(A) and (C)(4)(d) and R.C. 2923.03(A)(2) was supported by sufficient evidence that juvenile knowingly aided and abetted another juvenile in causing physical harm to a teacher where juvenile knew the other juvenile would be placing bodily fluid in a crepe that teacher ate and became physically ill after learning of what she had eaten, and juvenile recorded the assembly of the crepe and of the teacher eating it.

Bindover. State v. Nicholson | 2022-Ohio-2037 | 8th Appellate District | 06/16/2022 In a conviction of, inter alia, felonious assault and weapons offenses following mandatory transfer of juvenile to general division and reverse transfer when juvenile was found not guilty of charged offenses that required the initial mandatory transfer to the general division, the juvenile court did not err in transferring the case back to the general division for imposition of the previously imposed sentences since the juvenile court found juvenile was not amenable to care or rehabilitation within the juvenile system where juvenile had a significant history of criminal conduct, his crimes were escalating, gang-related, involved the use of firearms and were committed while on probation for other offenses, R.C. 2152.12(D) and (E).

Bindover. State v. Williams | 2022-Ohio-2022 | 1st Appellate District | 06/15/2022 In an action for juvenile delinquency for adult murder and felonious assault and bindover of action to the common pleas general division, the general division lacked subject-matter jurisdiction to convict appellant of tampering with evidence where the juvenile court made no probable-cause finding for that offense, R.C. 2152.12 and Smith.

Child support/Current resident. In re H.E.C. | 2022-Ohio-1989 | 12th Appellate District | 06/13/2022 Granting maternal grandmother's motion to recover child support from father for the period of time when father's children were in the temporary custody of grandmother was error since R.C. 2151.231 permits only the custodian with whom a child resides to bring an action in juvenile court, or other court with jurisdiction under R.C. 2101.022 or 2301.03, for an order requiring a parent to pay an amount for the support of the child, and the children in this case no longer resided with grandmother at the time she filed the action.

Delinquency. In re. D.H. | 2022-Ohio-1972 | 6th Appellate District | 06/10/2022 In adjudication of juvenile as delinquent of adult aggravated riot, the juvenile court's commitment of juvenile to the department of youth services for an indefinite term of a minimum of six months and not later than 21 years of age was not error where, although the court expressed its concern that the juvenile had started a course of events that led to the death of another juvenile, the court considered the R.C. 2152.01 purposes of juvenile disposition when it committed appellant to the legal custody of the department, and juvenile's argument that the trial court's stated displeasure with the terms of the plea agreement resulted in a disposition based on those concerns is not reflected in the record.

Appeal/Magistrate's decision. In re J.S. | 2022-Ohio-1847 | 8th Appellate District | 06/02/2022 Mother's appeal of decision to award legal custody of children to paternal grandparents is dismissed for lack of a final appealable order where magistrate filed a decision after the custody hearing, mother timely filed objections, and the trial court entered judgment entries that affirmed, approved and adopted the magistrate's findings, but the court did not render a

ruling on mother's objections, with the result that there is no final appealable order; either party may request reinstatement of the appeal after the juvenile court rules on mother's objections.

Custody. In re A.S. | 2022-Ohio-1861 | 10th Appellate District | 06/02/2022 In permanent custody action, the trial court committed plain error in admitting guardian ad litem's (GAL) report and testimony and in declining to discharge the GAL where, inter alia, the GAL failed to become informed about the facts of case, falling short of the requirement under Sup.R. 48(D) to meet with and observe child, failed to ascertain child's wishes as required, and failed to view child's interaction with both foster parents, R.C. 2151.281(D), 2151.414.

Appointed counsel/Guardian/Fees. In re M.S. | 2022-Ohio-1843 | 8th Appellate District | 06/02/2022 Denial of appointed counsel/guardian ad litem's motion for extraordinary fees in two cases is affirmed and the legal analysis for both positions is the same, counsel who accept appointment as a court-appointed attorney impliedly accept the fee schedule approved by the county commissioners and are bound by that schedule, the juvenile court was in the best position to determine whether the request for extraordinary fees was reasonable and warranted, and the court of appeals is precluded from merely substituting its judgment for the judgment of the juvenile court.

Child support. Krasik v. Newstate | 2022-Ohio-1775 | 1st Appellate District | 05/27/2022 In mother's action against father of child for child support, judgment in favor of mother was not error where, although mother had considerably higher income than father, father was previously voluntarily underemployed and income was appropriately imputed, both parents were found to have a high standard of living, and downward deviation from father's support obligation was not in child's best interest because mother's husband does not provide financial support for child and mother was solely responsible for child's expenses most of child's life, R.C. 3119.23.

Juvenile Transfer. State v. Hope | 2022-Ohio-1753 | 8th Appellate District | 05/26/2022 Convictions in three cases are affirmed where the juvenile court properly transferred the cases

to the general division of the common pleas court on reasoning that it lacked jurisdiction over the cases because of defendant's previous felony convictions, and therefore, the mandatory transfer under R.C. 2152.12(A)(2) was a perfunctory obligation and a ministerial task to transfer the case to the only court with jurisdiction to review the criminal charges; the juvenile court had no statutory authority to retain the case, even in the absence of a probable-cause determination.

Custody. In re K.R. | 2022-Ohio-1768 | 5th Appellate District | 05/25/2022 Award of legal custody of dependent children to paternal grandmother and to father, respectively, was in children's best interest where, inter alia, in mother's house there were piles of clothing throughout, beds without sheets, and dirty diapers on the floor of the bathroom and living room, and there was testimony that the children engaged in violent and aggressive behavior with each other, including hitting, biting, slamming each other into walls, and kicking each other, R.C. 2151.414(D).

Custody/Evidence/Fair trial. In re R.B. | 2022-Ohio-1705 | 12th Appellate District | 05/23/2022 Award of permanent custody of dependent children to agency is affirmed where mother's claim that trial court erred by preventing her from cross-examining caseworker about what mother's and children's therapists told caseworker, depriving mother of the opportunity to show caseworker's bias, is without merit since the therapists had been subpoenaed to testify at the hearing, thus rendering unnecessary the caseworker's testimony about what the therapists' may have shared with the caseworker, Evid.R. 616(A).

Custody. In re G.W. | 2022-Ohio-1678 | 8th Appellate District | 05/19/2022 Award of permanent custody of abused and dependent child to agency on reasoning that it was in child's best interest is reversed since award was not based on clear and convincing evidence where, inter alia, the agency's case worker was unable to confirm whether mother had completed, complied with, or was engaged in the case plan services, and with regard to the intensive out-patient treatment program, there was no current information on mother's substance abuse compliance or lack thereof, R.C. 2151.414.

Dependent child. In re G.G. | 2022-Ohio-1654 | 9th Appellate District | 05/18/2022 In action in which trial court adjudicated child as dependent and placed the child in the temporary custody of agency, the judgment is affirmed where mother's contention that res judicata barred the child from being re-adjudicated is without merit since, in earlier adjudication hearing, mother asserted that no evidence subsequent to the date of the complaints could be admitted, so when the current complaints were later filed, the evidence subsequent to the previous complaints was relevant and admissible, because no issues or claims relating to that time period had been disposed in the prior cases.

Custody. In re A.P. | 2022-Ohio-1577 | 4th Appellate District | 05/18/2022 Award of permanent custody of dependent children to agency was not error where ample evidence supported determination that placing children in agency's custody was in their best interests, mother did not demonstrate that her counsel's decision not to call guardian ad litem to testify was deficient, mother failed to assert that guardian ad litem's report failed to comply with Sup.R. 48.06 during trial court proceedings, and she did not show that the result would have been different if the report had strictly complied with the rule, R.C. 2151.414.

Labor and Employment

Collective bargaining agreement/ Arbitrator's award. Cleveland v. Communication Workers of Am., Local 4340 | 2022-Ohio-2498 | 8th Appellate District | 07/21/2022 In city's action against union, alleging unfair labor practice when union refused to bargain by refusing to sign city's draft of collective bargaining agreement, resulting in an arbitration award in favor of union, the trial court did not err in confirming the arbitration award where the arbitrator was within his authority to reconcile the issue of missing essential terms by logically applying principles of law, and there was a rational nexus between arbitrator's award and the previous collective bargaining agreement, showing that arbitrator's decision was not based on his own interpretations, R.C. 2711.10(D).

Discrimination. Brentlinger v. Winsupply, Inc. | 2022-Ohio-1779 | 2nd Appellate District | 05/27/2022 In employee's action against former employer alleging disability discrimination and interference with medical leave for terminating employee's employment for missed work due to disease flare-ups, summary judgment in favor of employer was not error since employee provided no evidence other than her own testimony that she was incapacitated under the Family Medical Leave Act, she testified that she was able to work through her flare-ups, and she had not been receiving medical treatment for her disease, 29 C.F.R. 825.113.

Unemployment compensation. Beard v. Dir. of Job & Family Servs. | 2022-Ohio-1690 | 2nd Appellate District | 05/20/2022 Affirming denial of employee's claim for unemployment benefits was not error since there was competent, credible evidence to support commission's decision that employee quit his job without just cause where he quit his job before he received the paycheck that he claims was inaccurate; on the date employee quit, he had no unresolved payroll issues, his compensation was complete, and the shortage of his holiday pay was not noticed until after employee had quit, R.C. 4141.29(D)(2)(a).

Discrimination. Anderson v. AccuScripts Pharmacy, L.L.C. | 2022-Ohio-1663 | 8th Appellate District | 05/19/2022 In employee's disability discrimination action against former employer for terminating her employment during probationary period, trial court erred in granting employer's motion for summary judgment where employee's condition qualifies as physical impairment which substantially limits major life activities, employee submitted evidence that she is disabled under the law, and the question remains as to whether employer's nondiscriminatory reason for terminating employee was merely pretextual or that the real reason was employee's disability, R.C. 4112.02.

Procedure

Appeal/Final appealable order. Stewart v. Solutions Community Counseling & Recovery Ctrs., Inc. | 2022-Ohio-2522 | Supreme Court of Ohio | 07/26/2022 Court of appeals' judgment affirming trial court's denial of defendant-mental health providers' motion to dismiss, concluding that immunity from liability afforded to mental health providers under R.C. 2305.51 did not apply in this case, is vacated and remanded since denial of a motion to dismiss is not a final appealable order, and the court of appeals lacked jurisdiction to issue its judgment.

Procedure-Jurisdiction/Prohibition. Santomauro v. McLaughlin | 2022-Ohio-2441 | Supreme Court of Ohio | 07/19/2022 In relators-estate co-executors' prohibition action seeking to prevent respondent-judge of common pleas court general division from enforcing order memorializing settlement in underlying action brought by relators' sisters to dissolve family business, writs are granted for lack of subject-matter jurisdiction since probate court has exclusive jurisdiction to direct relators in the course of administering estate pursuant to R.C. 2101.24(A)(1)(c), and therefore the trial court unambiguously exceeded its jurisdiction in attempting to exercise control over relators' conduct in administering estate through its order.

Appeal. Hogya v. Hogya | 2022-Ohio-2465 | 11th Appellate District | 07/18/2022 In case in which a civil protection order was issued against respondent, followed by trial court's denial of several motions, respondent's appeal from unspecified entry is dismissed for failure to attach to notice of appeal a copy of entry appealed from, as required under App.R. 3(D) and Loc.R. 3(C)(2), and appeal, even from most recent entry, was untimely under App.R. 4(A).

Civil protection order/Sanctions. Curtin v. McCulley | 2022-Ohio-2482 | 5th Appellate District | 07/18/2022 In petitioner's action seeking a civil stalking protection order against respondent where petitioner voluntarily dismissed petition after failing to appear for deposition, the trial court erred in denying respondent's motion for attorney fees and expenses since R.C. 2903.214(J) does not prohibit a court from issuing sanctions for frivolous

conduct or failure to comply with discovery orders in connection with a petition filed under R.C. 2903.14 and Civ.R. 37(B), and R.C. 2323.51 provides for award of attorney fees as a sanction for petitioner's failure to appear for examination.

Judge disqualification/Specialized docket. In re Disqualification of Cook | 2022-Ohio-2268 | Supreme Court of Ohio | 07/05/2022 Affidavit of disqualification to remove judge from custody case is denied since affiant-father's assertion that judge threatened him is without merit where recording of hearing reflects that judge informed affiant of the possible consequences of engaging in conduct that the judge perceived as interfering with mother's visitation, R.C. 2701.03; a judge who administers a specialized docket assumes a more interactive role with parties, treatment providers, probation officers, and social workers and is entitled to express dissatisfaction with litigants perceived as failing to meet the court's expectations, as long as the judge is patient, dignified and courteous to litigants and others.

Appeal/Motion to vacate. Dailey v. Miller | 2022-Ohio-2280 | 11th Appellate District | 06/30/2022 In out-of-state plaintiff's foreclosure action against defendants' real property to satisfy judgment in dispute over ownership of dog that plaintiff purchased from defendants, trial court's judgment is reversed in part since it failed to address defendants' common law motion to vacate out-of-state default judgment and the absence of an explicit ruling on the issue limits reviewing court's ability to evaluate whether the presumed denial of the motion was error and whether the judgment was void for lack of personal jurisdiction, Civ.R. 60(B)(5).

Frivolous conduct. Henderson v. Haverfield | 2022-Ohio-2194 | 7th Appellate District | 06/24/2022 In plaintiff's action seeking to quiet title to property on which defendants claimed mineral rights, trial court erred in awarding defendants sanctions against plaintiff for frivolous conduct for continuing with arguments after controlling decision in Corban was released by the Supreme Court of Ohio where, although plaintiff's arguments lacked merit, his attorneys conducted themselves reasonably by exploring other viable arguments and by relying

on the dissenting opinion in Corban, and assertions were reasonable and based on a cogent argument to extend then-existing law, R.C. 2323.51, Civ.R. 11.

Personal jurisdiction/Prohibition. LG Chem, Ltd. v. Goulding | 2022-Ohio-2065 | Supreme Court of Ohio | 06/22/2022 In products liability action, arising from injury to underlying plaintiffs from defective battery produced by petitioner-underlying defendant with headquarters in a foreign country, the petition for a writ of prohibition asserting lack of personal jurisdiction is denied since defendant did not establish that personal jurisdiction was patently and unambiguously lacking, which is the only issue before the court, where claims relate to defendant's activities in Ohio, defendant served a market for the batteries in Ohio, plaintiffs purchased such batteries in Ohio, and the batteries injured the plaintiffs in Ohio; also, where the finding of personal jurisdiction turns on trial court's resolution of disputed facts, the ruling that it has jurisdiction, if wrong, is simply an error for which prohibition is not the proper remedy.

Limitations/Equitable tolling. Roach v. Vapor Station Columbus, Inc. | 2022-Ohio-2106 | 10th Appellate District | 06/21/2022 In plaintiff's products liability action against defendant for injuries sustained when batteries in e-cigarette spontaneously exploded, trial court did not err in finding that the doctrine of equitable tolling was inapplicable where the statute of limitations under R.C. 2305.10(A) had expired, and although statutes of limitations were tolled during pandemic, plaintiff's failure to review executive order to determine filing deadline was not an extraordinary circumstance warranting equitable tolling.

Summary judgment/Privy. Shamrock v. Cobra Resources, L.L.C. | 2022-Ohio-1998 | 11th Appellate District | 06/13/2022 In plaintiffs' action against defendants alleging, inter alia, breach of contract in dispute over lease of mineral rights on plaintiffs' property, trial court erred in granting summary judgment sua sponte to plaintiffs on defendants' counterclaims on reasoning that the parties lacked privity where plaintiffs waived the affirmative defense of privity and defendants first addressed privity after the summary judgment proceedings when filing a motion for reconsideration of a prior judgment;

also, Civ.R. 56 does not authorize courts to enter summary judgment in favor of a non-moving party except when the court has all the relevant evidence, and in the instant case neither party pointed to evidentiary quality material to meet summary judgment standards.

Service. Blon v. Royal Flush, Inc. | 2022-Ohio-1958 | 7th Appellate District | 06/10/2022 In plaintiff-landlord's action against defendants-commercial tenant and personal guarantor for damage to property and failure to pay rent, trial court erred in granting plaintiff's motion for default judgment where, although plaintiff complied with Civ.R. 4.1 procedures for service, defendants rebutted the presumption of service with an affidavit showing relocation from address used by plaintiff, and plaintiff did not rebut the defense affidavit, so there was no personal jurisdiction due to failure of service.

Judge disqualification/Magistrate's ruling. In re Disqualification of Mackey | 2022-Ohio-2267 | Supreme Court of Ohio | 06/03/2022 Attorney and her client's affidavits of disqualification of judge are denied where, inter alia, transcripts of hearings from two prior cases involving attorney-affiant do not show that a disinterested observer might reasonably question the judge's ability to evaluate fairly and objectively client's legal interests or attorney's work as an attorney, magistrate's decision to shorten response time to a motion is not evidence of judicial bias, and if affiants believed that the magistrate was prejudiced against them, their remedy was to seek the magistrate's removal with the trial court, R.C. 2701.03.

Professional Responsibility

Suspension. Disciplinary Counsel v. Vick | 2022-Ohio-2541 | Supreme Court of Ohio | 07/27/2022 Attorney is indefinitely suspended from the practice of law and ordered to make restitution, with reinstatement on conditions.

Reinstatement. Columbus Bar Assn. v. Family | 2022-Ohio-2507 | Supreme Court of Ohio | 07/22/2022 Attorney is reinstated to the practice of law.

Reinstatement. Lorain Cty. Bar Assn. v. Robinson | 2022-Ohio-2509 | Supreme Court of Ohio | 07/22/2022 Attorney is reinstated to the practice of law.

Suspension. Medina Cty. Bar Assn. v. Buzzelli | 2022-Ohio-2470 | Supreme Court of Ohio | 07/20/2022 Attorney is suspended from the practice of law for two years and is ordered to make restitution, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Owens | 2022-Ohio-2477 | Supreme Court of Ohio | 07/19/2022 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Reinstatement. Disciplinary Counsel v. Pertee | 2022-Ohio-2406 | Supreme Court of Ohio | 07/14/2022 Attorney is reinstated to the practice of law.

Suspension. Cleveland Metro. Bar Assn. v. Watson | 2022-Ohio-2212 | Supreme Court of Ohio | 06/30/2022 Attorney is suspended from the practice of law for one year, stayed in its entirety on conditions.

Suspension. Disciplinary Counsel v. Noble | 2022-Ohio-2190 | Supreme Court of Ohio | 06/29/2022 Attorney is suspended from the practice of law for one year, with six months stayed on conditions.

Suspension. In re Corcoran | 2022-Ohio-2208 | Supreme Court of Ohio | 06/28/2022 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Suspension. Butler Cty. Bar Assn. v. Blauvelt | 2022-Ohio-2108 | Supreme Court of Ohio | 06/23/2022 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Resignation. In re Resignation of Donovan | 2022-Ohio-2117 | Supreme Court of Ohio | 06/22/2022 Attorney resigned from the practice of law, with disciplinary action pending.

Reinstatement. Toledo Bar Assn. v. Yoder | 2022-Ohio-2116 | Supreme Court of Ohio | 06/22/2022 Attorney is reinstated to the practice of law.

Suspension. In re Bell | 2022-Ohio-1836 | Supreme Court of Ohio | 06/02/2022 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Reinstatement. Disciplinary Counsel v. Atkins | 2022-Ohio-1651 | Supreme Court of Ohio | 05/18/2022 Attorney is reinstated to the practice of law.

Public and Public Finance

Immunity. Dover Chem. Corp. v. Dover | 2022-Ohio-2307 | 5th Appellate District | 06/29/2022 In company's action for, inter alia, unjust enrichment and negligent misrepresentation arising from a dispute about provision of electric power to company by city, trial court did not err in denying city's sovereign immunity-based motion to dismiss, Civ.R. 12(B)(6), since the unjust enrichment claim sought the return of specific funds wrongfully collected by the city and is a claim in equity, not barred by sovereign immunity, and regarding negligent misrepresentation, the court could not state that there were no set of facts that would allow the company to prove an exception to immunity from liability or that a defense to liability would necessarily apply to reinstate immunity if the company were successful in establishing an exception to immunity under R.C. 2744.02(B)(2).

Public records/Amend complaint. State ex rel. Reese v. Ohio Dept. of Rehab. & Corr. Legal Dept. | 2022-Ohio-2105 | Supreme Court of Ohio | 06/23/2022 Former inmate's petition for a writ of mandamus to compel state department to provide him records is granted, in part, at it pertains to rules infraction board records and personal property inventory records that contain information specifically relating to the former inmate since those records are not exempt under R.C. 5120.21; also, inmate's request to add claims against new parties, treated as a motion for leave to amend his complaint, is denied since inmate's attempt is procedurally defective where the amended complaint would contain no affidavit specifying the details of the claims, as required by S.Ct.Prac.R. 12.02(B).

Negligence/Immunity/Sewer

maintenance. Rice v. Columbiana Cty. Bd. Commrs. | 2022-Ohio-2078 | 7th Appellate District | 06/17/2022 In homeowner's negligence action against county for flooding in basement after sewer repairs were made, trial court did not err in denying county's governmental immunity-based motion for summary judgment where manhole was installed for maintenance of sewer system and not as an upgrade, the county was not entitled to immunity under R.C. 2744.01(G)(2)(d) because it was engaged in a proprietary function, and genuine issues of material fact remain as to whether county's employees performed negligent acts with respect to a proprietary function.

Public records/Police incident

reports. State ex rel. Myers v. Meyers | 2022-Ohio-1915 | Supreme Court of Ohio | 06/09/2022 In relator's public records request petition for writ of mandamus to compel respondents to produce supplement narratives withheld when relator requested police incident reports, writ is granted in part to produce supplement narratives for which the timing and nature of the content shows that the information initiates an investigation and properly constitutes part of the public-record incident report, and writ is denied as to request for work product generated after investigation was under way, constituting investigatory work product, which is excepted from disclosure under R.C. 149.43(A)(2)(c); also, relator is awarded statutory damages for the city's delayed production of certain incident-report forms, but relator's claim for statutory damages is denied in part on the basis that the court does not "stack" statutory damages.

Legislature/Separation of powers/

Mandamus. State ex rel. Jones v. Ohio State House of Representatives | 2022-Ohio-1909 | Supreme Court of Ohio | 06/08/2022 Relators' petition for a writ of mandamus to compel respondents-members of the state House of Representatives to defend Ohio Const. Art. I Sec. 21 against alleged violation in the form of requiring citizens to participate in a health care system is denied since the petition, in part, requests respondents to enact legislation prohibiting the practices to which relators object or seeks to prohibit respondents from enacting

legislation that would conflict with the constitution, and under either theory, the Supreme Court of Ohio lacks jurisdiction to grant the requested relief pursuant to the doctrine of separation of powers, which prohibits a court from directing the legislature to perform duties that are purely legislative in character.

Executive branch/Separation of

powers/Mandamus. State ex rel. Johnson v. Ohio State Senate | 2022-Ohio-1912 | Supreme Court of Ohio | 06/08/2022 Relators' petition for a writ of mandamus to compel respondents-members of the state Senate to defend Ohio Const. Art. I Sec. 21 against alleged violation in the form of requiring citizens to participate in a health care system is denied since the petition, in part, requests respondents to order the state Attorney General to halt the operation of any public or private entity that is participating in the alleged constitutional violations; the Supreme Court of Ohio lacks jurisdiction to grant the requested relief pursuant to the doctrine of separation of powers, which prohibits a court from ordering the legislature to compel the Attorney General, an independently elected executive-branch official, to perform his duties in a certain fashion.

Open Meetings Act/Injunction.

Ames v. Portage Cty. Budget Comm. | 2022-Ohio-1905 | 11th Appellate District | 06/06/2022 In taxpayer's action against county budget commission alleging violations of the Open Meetings Act by holding meetings without giving public notice, summary judgment in favor of taxpayer granting one injunction and one civil forfeiture was not error where commission had failed to adopt a rule to provide notice of meetings pursuant to R.C. 121.22(F), but later did adopt a rule, meetings in question were regular meetings that were not closed to public, and taxpayer failed to establish that he was entitled to an injunction for every meeting held prior to adoption of rule.

Public records/Death records.

WCPO-TV v. Ohio Dept. of Health | 2022-Ohio-1864 | 10th Appellate District | 06/02/2022 In television station's public-records-access action against department of health alleging failure to properly respond to request for records regarding deaths from pandemic of residents of care facility, trial court erred in ordering department to provide, in addition to number and date of deaths,

the further information about deaths such as gender, age, and location since R.C. 3701.17(B) prohibits release of protected health information including cause of death, and requested additional information could be used to reveal an individual's identity.

Public records/Trade secrets

exemption. State ex rel. McNew v. Ohio Dept. of Rehab. & Corr. | 2022-Ohio-1859 | 10th Appellate District | 06/02/2022 In relator's action seeking to compel state department to provide an unredacted copy of requested document, writ of mandamus is granted and damages are awarded to relator where department failed to assert trade secrets exemption or to provide evidence to support a finding that the exemption applied, and therefore in camera review of the document was not required, and award of costs are appropriate pursuant to R.C. 149.43(C) (3)(a)(i) because department is ordered to comply with R.C. 149.43(B).

Public records.

State ex rel. Mobley v. Ohio Dept. of Rehab. & Corr. | 2022-Ohio-1765 | Supreme Court of Ohio | 06/01/2022 Requester's petition for a writ of mandamus to compel state department to provide a paper copy of the public records portion of requester's "inmate master file" is granted, ordering the department to provide records of the charges and decisions in inmate disciplinary proceedings against him and all kites that pertain to him, but the writ is denied as to the records related to the inmate-grievance procedure, R.C. 5120.21; also, the department is ordered to pay court costs and statutory damages.

Immunity.

Ruckman v. Smith | 2022-Ohio-1813 | 11th Appellate District | 05/31/2022 In plaintiff's action against defendants-county commissioners for injuries sustained in a motorcycle accident when an incorrect sign was used to warn of danger on the road, trial court erred in denying defendants' motion for governmental immunity-based summary judgment since county engineers were engaged in a governmental function which led to the condition of road at the time of the accident, and plaintiff presented evidence that the road was unsafe but failed to show that it was not in repair for purposes of R.C. 2744.02(B) (3) to demonstrate an exception to immunity, and placement of sign was discretionary.

Home rule/Traffic camera fines

and costs. Newburgh Hts. v. State | 2022-Ohio-1642 | Supreme Court of Ohio | 05/19/2022 In cities' action for preliminary injunctions to prohibit enforcement of the spending setoff reducing cities' share of state's local government fund by the amount of fines collected from traffic camera citations and to prohibit enforcement of the requirement for cities to pay courts an advance deposit when enforcing traffic camera citations, the court of appeals erred in finding that the spending setoff and the deposit requirement unconstitutionally penalized municipalities for exercising home-rule authority since the Ohio Constitution grants the legislature spending power, and the spending setoff, R.C. 5747.502, falls squarely within the authority to establish priorities in funding to municipalities, and the deposit requirement, R.C. 4511.099(A), ensures that municipal and county courts keep pace with the increased number of traffic camera violation cases.

Public records/Rules of

Superintendence. State ex rel. Ware v. Kurt | 2022-Ohio-1627 | Supreme Court of Ohio | 05/18/2022 In relator's petition for a writ of mandamus, R.C. 149.43, seeking to compel respondent-clerk of courts to provide documents relating to criminal case, court of appeals' denial of petition on reasoning that the request was governed by the Rules of Superintendence, Sup.R. 44(G)(1), is reversed in part since not every document held by the clerk of courts falls under those rules, including documents pertaining to the operations, procedures, and policies of the clerk's office; the case is remanded to determine which documents subject to the Public Records Act were provided to relator, whether respondent had legitimate reasons for rejecting relator's requests for documents not provided, and whether relator is entitled to statutory damages for the documents subject to the Public Records Act.

Public Utilities

Easement/Appropriation/Presumption of necessity. Columbia Gas v. Phelps Preferred Invests., L.L.C. | 2022-Ohio-2540 | 3rd Appellate District | 07/25/2022 In petitioner-gas company's action seeking appropriation of easement rights on respondent's property for construction of pipeline,

trial court did not err in dismissing petition where irrebuttable presumption of necessity for appropriation under R.C. 163.09(B)(1)(c) was inapplicable because siting board did not review or approve terms of proposed easement, board's broad conclusions that pipeline would serve public interest were insufficient to establish rebuttable presumption under R.C. 163.(B)(1)(b), and proposed taking was excessive.

Real Property

Easement/Adverse possession/Leaseholders. Sherritt v. Leath | 2022-Ohio-2367 | 5th Appellate District | 07/07/2022 In plaintiffs-leaseholders' action against defendants-lessors of neighboring property alleging trespass and adverse possession of strip of disputed property plaintiffs had used for many years, summary judgment in favor of defendants was not error since plaintiffs, as leaseholders, do not have standing to claim adverse possession or easement over leased premises, and finding plaintiffs in contempt was appropriate because defendants demonstrated that plaintiffs violated an earlier judgment entry by failing to remove encroachments on their property, R.C. 2705.02(A).

Offer to sell/Specific performance/Relief from judgment. Merritt v. Sanbar, L.L.C. | 2022-Ohio-2344 | 5th Appellate District | 07/05/2022 In dismissal of plaintiff-property buyer's claim against defendant-property owner seeking specific performance of sale after defendant withdrew offer to sell, trial court did not err in denying plaintiff's Civ. R. 60(B) motion for relief from judgment where letter offering to sell property was not signed by defendant, subject of letter referenced a lease agreement rather than sale of property, it specifically stated that defendant would make a written purchase agreement after receipt of plaintiff's qualification letter, and because it was only an intention to sell, it did not satisfy the statute of frauds.

Lease/Animal deposit/Security deposit. Grisham v. Meadow Ridge Cincinnati Assocs., L.P. | 2022-Ohio-2328 | 12th Appellate District | 07/05/2022 In tenant's action against landlord alleging violations of Landlord-Tenant Act for wrongfully withholding deposits after lease was terminated, judgment awarding damages and attorney fees to tenant was not error where deposit

for having animals constituted a security deposit subject to R.C. 5321.16, amount refunded to tenant was the amount tenant had overpaid rather than tenant's security deposit, landlord assumed previous owner's liabilities, including tenant's animal deposit, at time it purchased property, and landlord was strictly liable for noncompliance with statutory obligation.

Receiver/Post-judgment. Stern v. Rob Oldham Properties, L.L.C. | 2022-Ohio-2273 | 8th Appellate District | 06/30/2022 In plaintiff-trust's action against defendant-commercial property owner for failure to make final balloon payment on loan under mortgage agreement, resulting in a partial summary judgment for plaintiff, trial court did not err in granting plaintiff's motion to appoint a receiver to collect the judgment where res judicata did not bar the court from considering plaintiff's post-judgment motion to appoint a receiver because the motion was not a second action, but an aid in execution of final judgment under R.C. 2735.01; neither party was satisfied with management of the properties, and appointment of receiver was necessary to most efficiently preserve the properties' value.

Receiver. Solomon v. Solomon | 2022-Ohio-2262 | 8th Appellate District | 06/30/2022 In husband's action against wife alleging that she had taken control of co-owned properties and retained all rents, trial court erred in ex parte appointment of receiver to manage properties where husband failed to provide evidence that properties were in danger of financial loss or damage or that he would suffer irreparable harm pursuant to R.C. 2735.01(A), and there was no evidence that a receiver was necessary as an equitable remedy necessitating equal division of rents from properties.

Fraud/Pleading. Fast Tract Title Servs., Inc. v. Barry | 2022-Ohio-1943 | 8th Appellate District | 06/09/2022 In plaintiff-title company's fraud action against defendant seeking to pierce corporate veil to hold defendant personally liable for alleged misrepresentations related to sale of real estate, trial court erred in denying defendant's motion to dismiss since plaintiff did not plead the fraud claim with sufficient particularity as to time, place, and content of alleged false representations, as required by Civ.R. 9(B).

Real Property (Cont.)

Adverse possession/Easement. Hall v. Dasher | 2022-Ohio-1735 | 5th Appellate District | 05/24/2022 In plaintiffs-property owners' adverse possession action against defendant-neighbor seeking to enjoin defendant from interfering with use of land subject to prescriptive easement, summary judgment in favor of plaintiffs was not error where, although township previously maintained roadway, any such action by township was a mistake and there was no common law dedication of property, the continuous use by plaintiffs was not interrupted by any action of township, and subjective belief that roadway was public does not negate adverse use.

Taxation

Property/Overpayment/Interest. Musial Offices, Ltd. v. Cuyahoga Cty. | 2022-Ohio-1944 | 8th Appellate District | 06/08/2022 In taxpayer's class action seeking to recover from county alleged overpayments of property taxes, resulting in judgment for taxpayer, trial court erred in awarding post-judgment interest on taxpayer's illegal taxation claim where the law-of-the-case doctrine does not apply because court's previous judgment addressed only pre-judgment interest on taxpayer's claim for unjust enrichment, and there is no provision in R.C. 5715.22 authorizing recovery of interest.

Torts

Wrongful death/Limitations/Saving statute. Ewing v. UC Health | 2022-Ohio-2560 | 1st Appellate District | 07/27/2022 In plaintiff-daughter/executrix's wrongful death action against defendants-healthcare providers claiming that deviations in the standard of care accelerated her mother's death, the trial court erred in reasoning that the medical claim statute of repose under R.C. 2315.113(C) applied and in granting defendants' motion for judgment on the pleadings since wrongful death claims are governed solely by the limitations period set forth in R.C. 2125.02(D), and the savings statute, R.C. 2125.04, applied to save claim.

Evidence/Privilege/Reconsideration.

Sexton v. Healthcare Facility Mgt., L.L.C. | 2022-Ohio-2376 | 2nd Appellate District | 07/08/2022 In plaintiff-executor's application for reconsideration of reviewing court's judgment in which the court ruled that the trial court should have granted a protective order for witness statements regarding allegations of abuse by residents in underlying negligence action against care facility, application is granted where, although records within scope of peer review committee are confidential and not subject to discovery, the records plaintiff sought fell under the original source exception because they were not prepared by, or for use of, committee under R.C. 2305.253, App.R. 26(A).

Negligence/Damages/Relief from judgment.

Twymon v. Eagle Auto Parts, Inc. | 2022-Ohio-2360 | 8th Appellate District | 07/07/2022 In plaintiff's negligence action against defendant-business alleging that he was bitten by dog while attempting to make a purchase, resulting in a default judgment and award of damages, trial court erred in denying defendant's motion to vacate the judgment since there is no evidence that defendant received any of the court's default hearing scheduling orders and defendant presented sufficient operative facts to show that it had a meritorious defense based on excessive damages awarded plaintiff without any evidence other than plaintiff's statement, and no medical records or photographs documented the extent of injuries or the nature of treatment received, Civ.R. 60(B).

Negligence/Traffic accident.

Falkenberg v. Kucharczyk | 2022-Ohio-2361 | 8th Appellate District | 07/07/2022 In plaintiff's negligence action alleging that vehicle collision with defendant occurred in plaintiff's lane of travel, judgment in favor of defendant was not error where plaintiff had passed warning signs for hidden driveways, defendant's vehicle was part in driveway and part in defendant's lane at time of collision, plaintiff was traveling over speed limit in unfamiliar area, and photographic evidence of skid marks showed plaintiff's vehicle had been in defendant's lane.

Wrongful death/Employment/Truck accident.

Alexander v. Davis | 2022-Ohio-2345 | 1st Appellate District | 07/06/2022 In plaintiff-estate's wrongful death and negligent hiring and retention action against defendant-temporary employment agency after decedent was struck by truck driven by temporary employee, summary judgment in favor of defendant on reasoning that defendant was immune from liability was error where, although the holding in Wyckoff established employment relationship between driver and temporary employer, it does not shield defendant from liability or foreclose plaintiff from pursuing a claim based on respondeat superior, and defendant's alleged negligence in hiring and retention occurred prior to driver's action in causing accident.

Negligence/Assumption of risk/Discretionary immunity.

Al-Jahmi v. Ohio Athletic Comm. | 2022-Ohio-2296 | 10th Appellate District | 06/30/2022 In negligence action by estate of boxer who died following a match, the trial court did not err in granting summary judgment to athletic commission on reasoning that primary assumption of risk applied because the risk of head injury could not be eliminated from boxing and also that specific assumption of risk applied where the boxer signed a release and waiver; however, the court did err in ruling that the commission's licensure and appointment decisions were protected by discretionary immunity where there were genuine fact issues regarding, inter alia, whether the commission acted negligently by licensing referee and appointing him to referee the bout and whether physician acted recklessly in failing to assess boxer to determine if he was in condition to continue the bout.

Negligence.

Starling v. Ohio Dept. of Dev. Disabilities | 2022-Ohio-2225 | 10th Appellate District | 06/28/2022 In plaintiff-mother's negligence and medical negligence action against defendant-department of developmental disabilities for physical restraint of son at care facility, which led to his death, judgment in favor of defendant was error since the standard of care permitted use of restraint only when patient's conduct created risk of imminent harm to self or others, video evidence showed that employee's first attempt at restraint failed and that he did not release patient and reassess

before attempting restraint a second time, and there was testimony that patient's conduct did not justify use of physical restraint.

Libel and slander/Individual capacity.

Stewart v. Pugh | 2022-Ohio-2080 | 7th Appellate District | 06/17/2022 In plaintiff-patrolman's libel and slander action against defendants-city and mayor for distributing details of his disciplinary hearing, trial court erred in granting defendants' motion for judgment on the pleadings as to mayor in his individual capacity where plaintiff raised the issue as to whether mayor's actions were performed outside his role as mayor, and although the court lacked jurisdiction over city and mayor in his official capacity because the claims were subject to binding arbitration under the collective bargaining agreement, the mayor, as an individual, is not subject to terms of the agreement, R.C. 4117.10(A).

Negligence/Discovery/Medical records.

Dineen v. Pelfrey | 2022-Ohio-2035 | 10th Appellate District | 06/16/2022 In plaintiff's negligence action against defendant for injuries sustained in vehicle accident, trial court erred in granting defendant's motion to compel production of medical records and in denying plaintiff's motion for a protective order where defendant's discovery requests were broad and included unprotected access to plaintiff's medical records, and waiver of physician-patient privilege was limited to communications causally or historically related to injuries, R.C. 2317.02(B).

Negligence/Discovery/Medical records.

Morgan v. Arick | 2022-Ohio-1987 | 12th Appellate District | 06/13/2022 In plaintiff's negligence action alleging that he was seriously injured when his vehicle was struck by a wheel which had come loose from defendant's truck, trial court did not err in ordering plaintiff to sign medical authorizations to give defendant access to medical records, even though plaintiff asserted that his psychiatric and psychological treatment records injuries were not at issue in the case, since plaintiff did not provide a basis for a determination that the records were privileged or request in camera review of the records.

Medical malpractice/Good faith claim.

Gustinski v. Pleasant View Health Care Ctr. | 2022-Ohio-1928 | 9th Appellate District | 06/08/2022 In plaintiff-estate administrator's medical negligence action against defendant-nursing home alleging negligence in care and treatment of decedent, trial court erred in finding that plaintiff failed to provide information as to the standard of care, the breach of that standard, and any resulting injury and in finding that plaintiff had no reasonable good faith basis for the claim pursuant to R.C. 2323.42 where, although plaintiff may not have provided an abundance of evidence in support of her claim, she reasonably relied on expert physician's report, and that evidence was sufficient to provide a good faith basis for litigation.

Limitations/Saving statute. Mc-

Cullough v. Bennett | 2022-Ohio-1880 | 2nd Appellate District | 06/03/2022 Dismissal for expiration of the statute of limitations of plaintiff's third personal injury complaint, arising from injuries sustained in a vehicle accident allegedly caused by defendant, was error since plaintiff's second action was dismissed prior to the expiration of the statute of limitations and without prejudice for failure to prosecute, which was a failure other than on the merits, and the saving statute provides that when a complaint fails otherwise than upon the merits, the plaintiff may commence a new action within one year after the date of the failure.

Medical malpractice/Evidence. Simon

v. Larreategui | 2022-Ohio-1881 | 2nd Appellate District | 06/03/2022 In plaintiff's medical malpractice action against, inter alia, defendant-manufacturer of medical device that malfunctioned during surgery, resulting in a jury verdict for plaintiff, the trial court did not err in denying defendant's motion for JNOV where medical professionals provided direct evidence that the device deviated in a material way from performance standards, circumstantial evidence that device was defective when it left defendant's control was allowed under R.C. 2307.73 because the device in question was destroyed, and evidence showed that the device was the proximate cause of plaintiff's injuries.

Woods v. Sharkin. Defamation/Different

defendants/Dismissal | 2022-Ohio-1752 | 8th Appellate District | 05/26/2022 In landlord's defamation action against former tenants who allegedly made false and inflammatory statements about him, trial court erred in sua sponte dismissing the complaint against non-answering defendants at default judgment hearing where allegations against non-answering defendants and answering defendants who filed dispositive motions were separate and distinct, and therefore the rationale and justifications regarding answering defendants should not have been used to support a decision to dismiss against the properly served but non-answering defendants, Civ.R. 12(B)(6).

Defamation/Limitations/Discovery.

Weidman v. Hildebrandt | 2022-Ohio-1708 | 12th Appellate District | 05/23/2022 In plaintiff-township trustee's defamation action against defendant-developer for claiming that plaintiff sought kickback from defendant's consulting fee after sale of property to township, summary judgment in favor of defendant on reasoning that the claim was barred by the one-year statute of limitations in R.C. 2305.11(A) was error since plaintiff did not know and could not have discovered that he had allegedly been defamed, and therefore the discovery rule applies so the action accrued on date it was discovered, making claim timely.

Medical malpractice/Discovery.

Williams-Salmon v. Raheja | 2022-Ohio-1675 | 8th Appellate District | 05/19/2022 In plaintiff-patient's action against defendants-physicians alleging, inter alia, medical malpractice for misdiagnosis of condition, trial court did not err in granting plaintiff's motion to compel discovery where defendants declined to answer discovery by giving a blanket Fifth Amendment-based refusal to respond, Fifth Amendment protections do not shield a party from appearing or defending in a civil action, and defendants failed to properly assert privilege as to specific questions.

Traffic and OVI

Impaired driving. State v. Palmer | 2022-Ohio-1968 | 5th Appellate District | 06/10/2022 Convictions of, inter alia, OVI, R.C. 4511.19(A)(1)(a)(G)(1)(e), met the sufficiency and weight of evidence standards where, although officers did not observe any traffic violation or do any field tests because of defendant's aggressive attitude, a gas station employee observed a number of signs of intoxication by defendant and notified police who were familiar with the employee, and officer saw vehicle described by the employee with a license plate number that was only off by one digit, and when officers made contact with defendant, they observed signs of intoxication and defendant admitted he had been drinking alcohol that evening.

Workers' Compensation

Specific safety requirement. State ex rel. Taylor v. Indus. Comm. | 2022-Ohio-2598 | 10th Appellate District | 07/28/2022 Petition for writ of mandamus to compel commission to vacate the order of its staff hearing officer finding that employer did not violate a specific safety requirement is denied where employee was injured when he fell into the space between the bus and a wheelchair lift outside the bus while unloading a client who was in a wheelchair; the hearing officer properly found that claimant was not injured in a "factory or workshop" within the meaning of Ohio Admin. Code 4123:1-5-13 and thus, the specific safety requirements found in Ohio Admin. Code 4123:1-5-13(C)(7) and 4123:1-5-14(G)(1) do not apply to the circumstances in the present case.

Compensable occupational disease. Yeager v. Arconic, Inc. | 2022-Ohio-1997 | 11th Appellate District | 06/13/2022 In employee's administrative appeal of denial of participation in workers' compensation fund for his virus infection incurred while working as furnace operator, summary judgment in favor of employer was not error since, even if employee was required to work in close proximity to infected coworker, common illness to which general public is exposed is not compensable as an occupational disease pursuant to R.C. 4123.01(F), and employee's job did not create the risk of contracting virus in greater degree and different manner from public in general.

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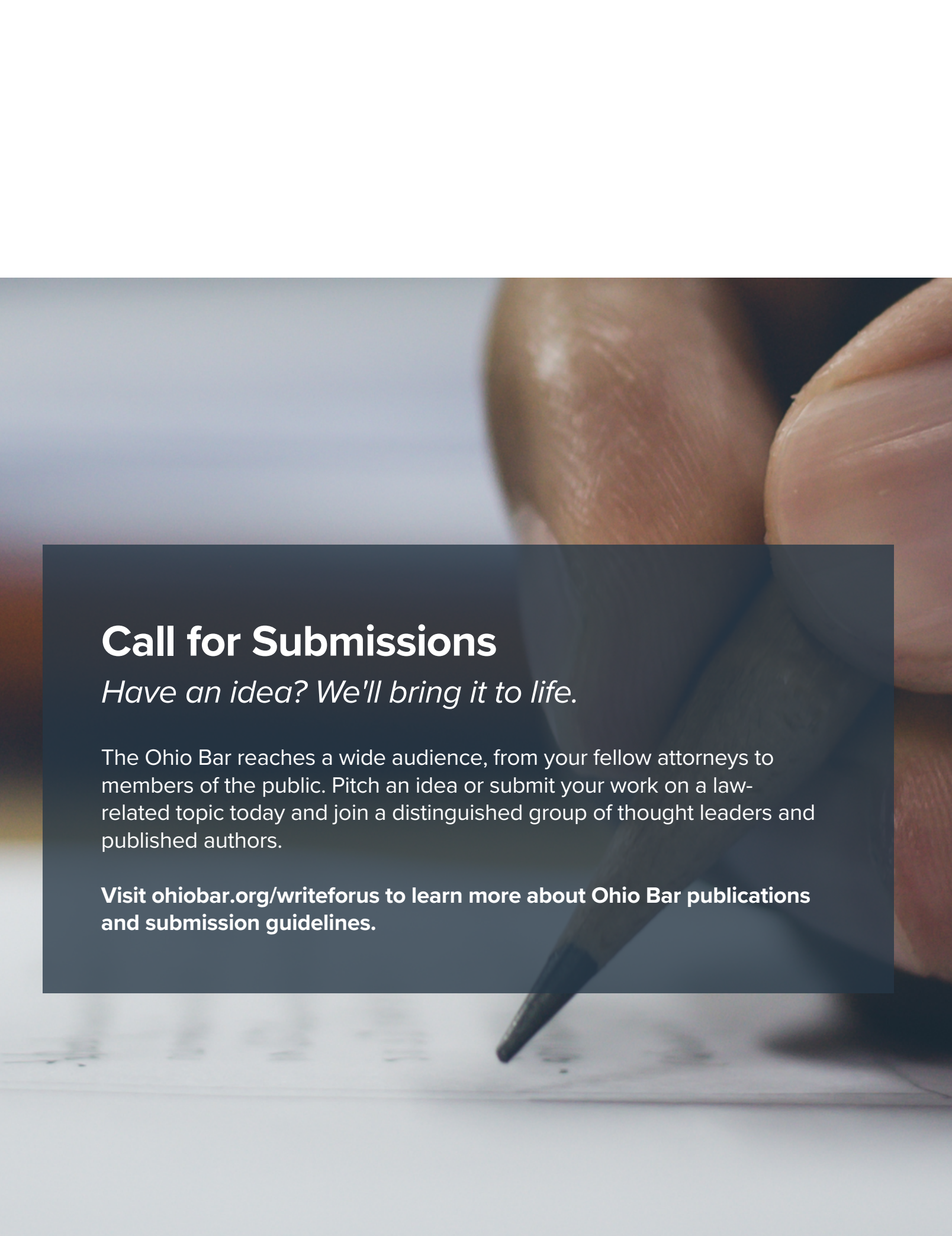
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