

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of : Case No. 14-1505
The Dayton Power and Light Company for :
Approval of Its Electric Security Plan, etc. : Appeal from the Public Utilities
 : Commission of Ohio
 :
 : Public Utilities Commission of Ohio
 : Case Nos. 12-426-EL-SSO,
 : 12-427-EL-ATA,
 : 12-428-EL-AAM,
 : 12-429-EL-WVR, and
 : 12-672-EL-RDR

**MEMORANDUM OF THE DAYTON POWER AND LIGHT COMPANY IN
OPPOSITION TO MOTION TO EXPEDITE RULING ON APPEAL BY THE
INDUSTRIAL ENERGY USERS-OHIO AND THE OFFICE OF THE OHIO
CONSUMERS' COUNSEL**

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I. INTRODUCTION AND SUMMARY

Appellants Industrial Energy Users-Ohio ("IEU") and The Office of the Ohio Consumers' Counsel ("OCC") have taken yet another bite at the apple. Instead of relying on their four briefs¹ and oral argument to argue the merits of their appeals, Appellants have abused this Court's original-action and motion dockets with a series of meritless papers attacking the decision by the Public Utilities Commission of Ohio ("PUCO"): (1) the May 6, 2014 Complaint for Writs of Prohibition and Mandamus by IEU (dismissed by this Court on October 22, 2014, Case No. 2014-0711); (2) the October 14, 2014 Joint Motion for a Stay by IEU and OCC (denied by this Court on February 18, 2015); and (3) the October 31, 2014 Joint Motion to Dismiss Assignments of Error in Cross-Appeal of The Dayton Power and Light Company by Appellants

¹ Dec. 1, 2014 First Merit Brief of Appellant Industrial Energy Users-Ohio; Dec. 1, 2014 Merit Brief and Appendix by Appellant The Office of the Ohio Consumers' Counsel; Mar. 11, 2015 Third Merit Brief of Appellant/Cross-Appellee Industrial Energy Users-Ohio; Mar. 11, 2015 Third Merit Brief and Appendix by Appellant The Office of the Ohio Consumers' Counsel.

IEU and OCC (denied by this Court February 18, 2015). In their Motion, Appellants yet again seek special treatment and extraordinary relief by asking this Court to expedite consideration of their appeals.

The Court should deny the Motion to Expedite Ruling on Appeal for three separate and independent reasons. First, the requested relief has been rejected by this Court. In the past year alone, this Court has denied two similar motions to expedite appeals from the PUCO, one of which OCC joined.² Appellants cite neither case, despite their obligation to "disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." Ohio Prof. Cond. R. 3.3(a)(2) (emphasis omitted). Second, Appellants concede that they have not obtained their ordinary remedy provided by law: a stay of the PUCO's decision under R.C. 4903.16. The Court should not allow Appellants to avoid the requirements of that statute by granting them extraordinary relief. Third, Appellants provide no valid reason for this Court to treat their appeals differently from other appeals on this Court's docket.

² Nov. 20, 2014 Motion to Expedite Ruling on Appeal by The Kroger Company, The Office of the Ohio Consumers' Counsel, The Ohio Manufacturers' Association, and Ohio Partners for Affordable Energy ("OCC *et al.* Mot. to Expedite"), *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Its Natural Gas Distribution Rates, et al.*, Case No. 2014-0328 ("*Duke Gas Distribution Case*") (denied by this Court Jan. 28, 2015); Aug. 28, 2014 Appellant Northeast Ohio Public Energy Council's Motion to Expedite Oral Argument and Opinion ("NOPEC Mot. to Expedite"), *In the Matter of the Application of Ohio Edison Co., The Cleveland Electric Illuminating Co. and The Toledo Edison Co. for Authority to Provide for a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 2013-0513 ("*FirstEnergy ESP Case*") (denied by this Court Oct. 8, 2014).

II. THIS COURT RECENTLY REJECTED TWO SIMILAR MOTIONS TO EXPEDITE APPEALS FROM THE PUCO, INCLUDING ONE BY OCC

This past year, the Court has denied two motions to expedite appeals from the PUCO. *First*, in the *FirstEnergy ESP Case*, Northeast Ohio Public Energy Council ("NOPEC") moved the Court to expedite oral argument eleven months after briefing was complete. Like Appellants in this appeal, NOPEC relied on R.C. 4903.20 for the proposition that the Court should consider its appeal out of order. NOPEC Mot. to Expedite, p. 3. This Court denied the motion. Oct. 8, 2014 Entry, *FirstEnergy ESP Case* (attached as Ex. A).

A few weeks later, OCC and other appellants in the *Duke Gas Distribution Case* moved to expedite the appeal. Like NOPEC, the appellants argued that R.C. 4903.20 allows the Court to take PUCO appeals out of turn. OCC *et al.* Mot. to Expedite, p. 2. In addition, they argued that the Court "could mitigate the potential harm to consumers if the Court overturns the PUCO's decision * * * ." *Id.* As in the *FirstEnergy ESP Case*, the Court denied the appellants' motion. *1/28/2015 Case Announcements*, 2015-Ohio-239, p. 7 (attached as Ex. B).

Here, Appellants make substantially similar arguments: they cite R.C. 4903.20 for the proposition that the Court may take PUCO appeals out of order, and they ask the Court to "mitigate the damage" caused by the PUCO's decision. Motion, p. 3. The Court should follow its recent precedent, reject those arguments, and deny Appellants' Motion.

III. APPELLANTS SEEK AN EXTRAORDINARY REMEDY DESPITE AN ORDINARY REMEDY AT LAW

Appellants concede (p. 3) that they have asked the Court to expedite this case because they are unable to secure a stay under R.C. 4903.16, which provides the exclusive means for this Court to stay decisions of the PUCO. *In re Columbus S. Power Co.*, 128 Ohio St.3d 512,

2011-Ohio-1788, 947 N.E.2d 655, ¶ 20. Specifically, the statute allows "any person who feels aggrieved by [a PUCO] order a right to secure a stay of the collection of the new rates after posting a bond." *Id.* at ¶ 17.

Appellants ask (p. 2-3) this Court to circumvent that statute by expediting this case so that Appellants may avoid the statutory requirements of R.C. 4903.16. This Court, however, has refused to ignore that statute. *Id.* at ¶ 20 ("The legislature has seen fit to attach a significant requirement to the court's stay power: the posting of a bond sufficient to protect the utility against damage. * * * Whether it is wise to apply the bond requirement to OCC is a matter for the General Assembly to consider, not this court."). The Court should decline Appellants' invitation to circumvent the legislature's policy determination, and deny Appellants' Motion.

IV. APPELLANTS HAVE NOT PROVIDED AN ADEQUATE BASIS FOR EXPEDITING THEIR APPEALS

This case does not involve issues that warrant expedited treatment. Appellants claim that the PUCO's order authorizes rates that are too high, which is usually an argument in intervenor appeals from PUCO orders. Such a routine issue involving the payment of money is not the type of issue that warrants this case being decided ahead of other cases that are pending on the Court's docket.

As in the *FirstEnergy ESP Case* and *Duke Gas Distribution Case* motions, Appellants rely (p. 2) on R.C. 4903.20 for the proposition that "actions and proceedings" in the Supreme Court arising under Title 49 of the Revised Code "shall be taken up and disposed of by the court out of their order on the docket." However, that statute provides no guidance for how the Court should consider items "out of their order on the docket." Further, there is nothing that

would require the Court to decide this case before the many other cases that would fall within the scope of that statute.

Appellants also argue (p. 3) that expediting this case could "mitigate the damage caused" by the PUCO. However, every Appellant would make the same argument – in every case before the Court, the Appellant asserts that a lower tribunal erred, and the Appellant invariably wants that error to be corrected as soon as possible. In fact, the same argument was raised by OCC and other appellants in their motion to expedite the *Duke Gas Distribution Case*. As previously mentioned, the Court denied that motion.

Moreover, Appellants ignore this Court's Rules of Practice, which permit specific kinds of expedited cases: matters involving the termination of parental rights, the adoption of a minor, and pending elections. S.Ct.Prac.R. 7.08(A)(1)(b) (expediting determination of jurisdiction for cases involving the termination of parental rights, the adoption of a minor, or both), 8.02(A) (expediting review of an order certifying a conflict in cases involving the termination of parental rights, the adoption of a minor, or both), 12.08 (governing expedited election cases), 12.09 (governing expedited cases involving the termination of parental rights, the adoption of a minor, or both), 15.03(A)(2) (expediting certification and transmission of the record in cases involving the termination of parental rights, the adoption of a minor, or both), 18.01 (expediting entry of judgment in cases involving the termination of parental rights, the adoption of a minor, or both). The Rules of Practice do not provide for the expedited treatment of appeals from the PUCO. S.Ct.Prac.R. 10.02 (governing appeals from the PUCO). Appellants provide no reason that the Court should stray from its own Rules.

V. CONCLUSION

This case is about the payment of money, and there is nothing extraordinary about this case that warrants it being decided before other pending cases. This Court should deny the Motion to Expedite Ruling on Appeal by IEU and OCC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum of The Dayton Power and Light Company in Opposition to Motion to Expedite Ruling on Appeal by The Industrial Energy Users-Ohio and The Office of The Ohio Consumers' Counsel has been served via electronic mail, upon the following counsel of record, this 18th day of June, 2015:

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The Supreme Court of Ohio

FILED

OCT 08 2014

CLERK OF COURT
SUPREME COURT OF OHIO

In the Matter of Ohio Edison Company,
The Cleveland Electric Illuminating
Company, and The Toledo Edison
Company for Authority to Provide for a
Standard Service Offer Pursuant to Section
4928.143, Revised Code, in the Form of an
Electric Security Plan.

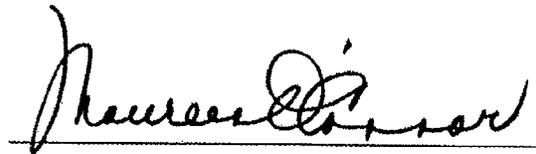
Case No. 2013-0513

ENTRY

This cause is pending before the court as an appeal from the Public Utilities Commission of Ohio.

Upon consideration of Northeast Ohio Public Energy Council's motion to expedite oral argument and opinion, it is ordered by the court that the motion is denied.

(P.U.C.O.; No. 12-1230-EL-SSO)



Maureen O'Connor
Chief Justice

EXHIBIT A

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

January 28, 2015

[Cite as *1/28/2015 Case Announcements, 2015-Ohio-239.*]

MERIT DECISIONS WITH OPINIONS

2012-1985. State v. Radcliff, Slip Opinion No. 2015-Ohio-235.

Franklin App. No. 11AP-652, 2012-Ohio-4732. Judgment affirmed.
O'Connor, C.J., and O'Donnell, Kennedy, and French, concur.
Pfeifer, Lanzinger, and O'Neill, JJ., dissent.

2013-1010. State v. Vanzandt, Slip Opinion No. 2015-Ohio-236.

Hamilton App. No. C-130079, 2013-Ohio-2290. Judgment reversed and cause remanded.

O'Connor, C.J., and Lanzinger, Kennedy, French, and O'Neill, JJ., concur.
Pfeifer, J., dissents.

O'Donnell, J., dissents and would dismiss the case as improvidently allowed.

MERIT DECISIONS WITHOUT OPINIONS

2014-0553. State ex rel. Shue v. Croft.

In Mandamus. On complaint in mandamus. On S.Ct.Prac.R. 12.04 determination, cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1238. In re Warren.

Public Utilities Commission, No. 12-2100-TR-CVF. On motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1296. State ex rel. Boland v. Cuyahoga Cty. Clerk of Court.

In Mandamus. On application to dismiss the Cuyahoga County Court Administrator from this matter and motions to dismiss of Cuyahoga County Clerk of Courts Andrea F. Rocco and the Cuyahoga County Court Administrator. Motions granted. Cause dismissed. On motion of Judge John J. Russo to intervene as respondent. Motion denied. On relator's motion for oral argument on respondents' motions to dismiss. Motion denied.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1338. Scott v. Sloan.

In Mandamus and Prohibition. On motion to dismiss and motion to strike motion to dismiss. Motion to dismiss granted. Motion to strike motion to dismiss denied. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1482. Foster v. Calaway.

In Mandamus. On complaint in mandamus of JaMichael Foster. On S.Ct.Prac.R. 12.04 determination, cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1493. Foster v. Sheldon.

In Habeas Corpus. On petition for writ of habeas corpus, amended motion to amend, motion habeas corpus verification sub judice, and complaint for mandamus. Sua sponte, cause dismissed and motions denied.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1605. State ex rel. Varnau v. Twelfth Dist. Court of Appeals.

In Mandamus and Prohibition. On motion for issuance of peremptory or alternative writ. It is ordered by the court, sua sponte, that an alternative writ is granted and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. 12.05:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relator shall file a brief within 10 days of the filing of the

evidence; respondents shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within 7 days after the filing of respondents' brief.

On motion to dismiss. Motion denied.

O'Connor, C.J., and Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

Pfeifer, J., would issue a peremptory writ.

O'Donnell, J., would dismiss the petition.

2014-1607. Keith v. Bunting.

In Habeas Corpus. On petition for writ of habeas corpus of Jeffrey C. Keith. Sua sponte, cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1644. McClain v. Horner.

In Mandamus. On complaint in mandamus of Robert McClain III. On S.Ct.Prac.R. 12.04 determination, cause dismissed.

O'Connor, C.J., and O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

Pfeifer, J., dissents.

2014-1704. State ex rel. Wyatt v. Ohio Dept. of Rehab. & Corr.

In Mandamus. On motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1708. Wells v. Pagano.

In Mandamus. On motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1731. Watley v. Tenth Dist. Court of Appeals.

In Mandamus. On motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1751. State ex rel. Anderson v. Hendrickson.

In Procedendo. On motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1795. Foster v. Calaway.

In Mandamus. On complaint in mandamus of JaMichael Foster. On S.Ct.Prac.R. 12.04 determination, cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1815. Mattice El v. State.

In Mandamus. On motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1840. State ex rel. Harris v. Sheehan.

In Procedendo. On motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1851. Watley v. Tenth Dist. Court of Appeals.

In Mandamus. On motions to dismiss of the Franklin County Common Pleas Court and the Tenth District Court of Appeals. Motions granted. Cause dismissed. On motion of Tenth District Court of Appeals to declare relator a vexatious litigator. Motion denied.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1855. State ex rel. Sultaana v. Corrigan.

In Mandamus. On motion to have Cuyahoga County Clerk of Court intervene, motion for emergency joinder, motion to identify signature, and judicial notice. Motions denied. On motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, and French, JJ., concur.

O'Neill, J., dissents and would grant an alternative writ.

2014-1861. Stallworth v. Lomax.

In Mandamus. On answer of respondent. On S.Ct.Prac.R. 12.04 determination, cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1868. State ex rel. Barksdale v. Sutula.

In Prohibition. On motion to dismiss. Motion granted. Cause dismissed. On motions for judgment and damages and for sanctions or default. Motions denied.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1894. Davis v. Ohio Adult Parole Auth.

In Prohibition. On complaint in prohibition of Terrance Davis. On S.Ct.Prac.R. 12.04 determination, cause dismissed. On motion to transfer relator's declaratory judgment action to the Franklin County Court of Common Pleas. Motion denied.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1914. Lester v. Gallagher.

In Mandamus and Prohibition. On relator's revised emergency motion to stay. Motion denied. On motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1927. State ex rel. Wagner v. Marshall.

In Procedendo. On motion to dismiss. Motion granted. Cause dismissed. On motion to strike motion to dismiss. Motion denied.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, and O'Neill, JJ., concur.

French, J., would deny the motion to dismiss and grant an alternative writ.

2014-1928. State ex rel. Harris v. Herbert.

In Procedendo. On motions to dismiss. Motions granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1932. Lange v. Trumbull Cty. Bd. of Elections.

In Mandamus. On motion to dismiss. Motion granted. Cause dismissed. On relator's motion for order. Motion denied. On respondents' motion to strike or dismiss amended complaint. Motion denied.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, and French, JJ., concur.

O'Neill, J., would deny the motion to dismiss and grant an alternative writ.

2014-1955. State ex rel. Hamilton v. Horton.

In Procedendo. On motion to dismiss as moot. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1988. Meyers v. Geauga Cty. Common Pleas Court.

Miscellaneous case. On respondent's answer and motion for judgment on pleadings. Motion granted. On S.Ct.Prac.R. 12.04 determination, cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-1990. State ex rel. Bradley v. Steele.

Miscellaneous case. On motion to dismiss. Motion granted. Cause dismissed. On relator's motion for default judgment. Motion denied.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-2030. Bertuzzi v. Slagle.

In Mandamus. On answer of respondent. On S.Ct.Prac.R. 12.04 determination, cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-2032. Dumas v. Donofrio.

In Mandamus. On motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-2056. State ex rel. Chappell v. Evans.

In Procedendo. On respondent's motion to dismiss. Motion granted. Cause dismissed. On relator's motion asking court to take appropriate action against respondent and respondent's attorney. Motion denied.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

2014-2116. State v. Mace.

Cuyahoga App. No. 100779, 2014-Ohio-5036. On review of order certifying a conflict, it is determined that no conflict exists. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, and French, JJ., concur.
Kennedy and O'Neill, JJ., dissent.

MOTION AND PROCEDURAL RULINGS

2011-0087. Pinkney v. Ohio Dept. of Job & Family Servs.

Cuyahoga App. No. 94696, 2010-Ohio-5252. On motion to vacate. Motion denied.

2013-1064. State ex rel. Keith v. Ohio Adult Parole Auth.

Franklin App. No. 12AP-408, 2013-Ohio-2514. On expedited motion to clarify court judgment/judgment entry, on motion for appointment of counsel with costs taxed to respondent, on motion for order directing respondent to include relator in investigation and correction of substantive errors in record used to consider relator for possible parole release at parole release hearings per judgment entry of October 7, 2014, and on motion to withdraw/strike expedited motion to clarify judgment/judgment entry filed October 16, 2014. The motion to withdraw/strike expedited motion to clarify is granted. All other pending motions are denied.

2014-0328. In re Application of Duke Energy Ohio, Inc.

Public Utilities Commission, Nos. 12-1685-GA-AIR, 12-1686-GA-ATA, 12-1687-GA-ALT, and 12-1688-GA-AAM. On intervening appellees' joint motion for leave to file a table of authorities. Motion granted. On appellants' motion to expedite ruling on appeal. Motion denied.

Pfeifer and O'Donnell, JJ., would grant the motion to expedite.

2014-0360. State v. McDaniel.

Summit App. No. 26997, 2014-Ohio-183. On motion to reopen. Motion denied.

O'Donnell, J., dissents.

2014-0423. State ex rel. Claugus Family Farm, L.P. v. Seventh Dist. Court of Appeals.

In Mandamus and Prohibition. On intervening respondent Beck Energy Corporation's motion for leave to file supplemental evidence. Motion granted. On intervening respondent Beck Energy Corporation's motion for stay and notice of mootness. Motion denied.

2014-0902. Willoughby v. Willoughby.

Trumbull App. No. 2012-T-0095, 2014-Ohio-743. On motion for attorney fees, costs, and expenses pursuant to S.Ct.Prac.R. 4.03(A). Motion denied.

2014-0983. DLJ Mtge. Capital, Inc. v. Rosario.

Cuyahoga App. No. 100233, 2014-Ohio-1835. On motion for clarification. Motion denied.

2014-1241. Haight v. Cheap Escape Co.

Montgomery App. No. 25983, 2014-Ohio-2447. On motion to dismiss appeal as improvidently allowed. Motion denied.

2014-1256. State ex rel. Chappell v. Morgan.

In Mandamus. On motion of respondent to strike request for the court to take judicial notice and take appropriate action. Motion granted. On relator's motion for court to take judicial notice and motion to take appropriate action against respondent's attorney for willfully violating Civ.R. 11. Motions denied.

2014-1837. MHN SUB I, L.L.C. v. Donnelly.

Lake App. No. 2014-L-031, 2014-Ohio-4128. On motion for stay of lower court proceedings. Motion denied.

O'Neill, J., dissents.

2014-1962. Onderko v. Sierra Lobo, Inc.

Erie App. No. E-14-009, 2014-Ohio-4115. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 4 of the court of appeals' entry filed November 5, 2014:

“Whether, as an element of establishing a prima facie claim for retaliatory discharge under R.C. 4123.90, plaintiff must prove that he or she suffered a workplace injury.”

Pfeifer, J., dissents.

The conflict case is *Kilbarger v. Anchor Hocking Glass Co.*, 120 Ohio App.3d 332, 697 N.E.2d 1080 (5th Dist.1997).

Sua sponte, cause consolidated with 2014-1881, *Onderko v. Sierra Lobo, Inc.*, 6th Dist. Erie No. E-14-009, 2014-Ohio-4115.

2014-1989. State v. Cook.

Franklin App. Nos. 14AP-777 and 14AP-780. On motion for stay of lower court proceedings. Motion denied.

2014-1998. State v. Sluss.

Highland App. No. 13CA24. On motion for delayed appeal. Motion granted.

O'Connor, C.J., and O'Donnell and French, JJ., dissent.

2014-2003. State v. Webb.

Richland App. No. 13CA84, 2013-Ohio-5616. On motion for delayed appeal. Motion denied.

O’Neill, J., dissents.

2014-2006. State v. Gibson.

Cuyahoga App. No. 98725, 2013-Ohio-4372. On motion for delayed appeal. Motion denied.

2014-2007. State v. Nesser.

Clark App. No. 2013 CA 21, 2014-Ohio-1978. On motion for delayed appeal. Motion denied.

2014-2028. State v. Martin.

Montgomery App. No. 26033, 2014-Ohio-3640. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 6 of the court of appeals’ entry filed November 6, 2014:

“With respect to R.C. 2907.323(A)(1), which proscribes the creation or production of nudity-oriented material involving a minor, which definition of nudity applies: the statutory definition (R.C. 2907.01(H)), or the narrower definition set forth in *State v. Young*, 37 Ohio St.3d 249, 525 N.E.2d 1363, which requires additional elements of ‘lewd depiction’ and ‘graphic focus on the genitals?’”

Pfeifer and O’Donnell, JJ., dissent.

The conflict case is *State v. Graves*, 184 Ohio App.3d 39, 2009-Ohio-974, 919 N.E.2d 753.

2014-2029. State v. Wooten.

Lorain App. No. 13CA010510, 2014-Ohio-3980. On motion for delayed appeal. Motion denied.

Lanzinger, Kennedy, and O’Neill, JJ., dissent.

2014-2036. In re Messer.

Certified Question of State Law, United States Bankruptcy Court, Southern District of Ohio, Eastern Division, No. 13-57467, Adversary Proceeding No. 13-02448. On review of preliminary memorandum pursuant to S.Ct.Prac.R. 9.05. The court will answer the following questions:

- “1. Does O.R.C §1301.401 apply to all recorded mortgages in Ohio?
2. Does O.R.C. §1301.401 act to provide constructive notice to the world of a recorded mortgage that was deficiently executed under O.R.C. §5301.01?”

Petitioner shall file its merit brief within 40 days and the parties shall otherwise proceed in accordance with S.Ct.Prac.R. 16.02 through 16.04 and S.Ct.Prac.R. 9.07.

O'Donnell and Kennedy, JJ., would answer only the first question.

2014-2044. State v. Harris.

Cuyahoga App. No. 101371. On motion for delayed appeal. Motion denied.

O'Neill, J., dissents.

2014-2049. State v. Moore.

Cuyahoga App. No. 99788, 2014-Ohio-5135. On motion for stay of court of appeals' judgment. Motion denied.

O'Connor, C.J., and O'Donnell and Kennedy, JJ., dissent.

2014-2052. State v. Jackson.

Cuyahoga App. No. 100877, 2014-Ohio-5137. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer, French, and O'Neill, JJ., dissent.

2014-2064. State v. Barry.

Scioto App. No. 13CA3569, 2014-Ohio-4452. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 2 of the court of appeals' entry filed November 24, 2014:

“Whether a person who hides evidence of a crime that is unmistakable to him or her commits tampering with evidence in the absence of evidence that a victim or the public would report a crime?”

Pfeifer and O'Donnell, JJ., dissent.

The conflict case is *State v. Cavalier*, 2nd Dist. Montgomery No. 24651, 2012-Ohio-1976.

Sua sponte, cause consolidated with 2014-1984, *State v. Barry*, 4th Dist. Scioto No. 13CA3569, 2014-Ohio-4452.

2014-2082. State v. Bailey.

Franklin App. No. 12AP-699, 2013-Ohio-3596. On motion for delayed appeal. Motion denied.

2014-2086. State v. Smith.

Cuyahoga App. No. 100641, 2014-Ohio-3420. On motion for delayed appeal. Motion denied.

Pfeifer, J., dissents.

2014-2101. State v. Long.

Lake App. No. 2013-L-102, 2014-Ohio-4416. On motion for delayed appeal. Motion denied.

Pfeifer and O’Neill, JJ., dissent.

2014-2122. State v. Marcum.

Gallia App. No. 13CA11, 2014-Ohio-4048. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 3 of the court of appeals’ entry filed December 5, 2014:

“[D]oes the test outlined by the [c]ourt in *State v. Kalish* apply in reviewing felony sentences after the passage of R.C. 2953.08(G)?”

O’Donnell, J., dissents.

The conflict cases are *State v. Hill*, 7th Dist. Carroll No. 13CA892, 2014-Ohio-1965, and *State v. Simmons*, 9th Dist. Summit No. 27197, 2014-Ohio-4191.

Sua sponte, cause consolidated with 2014-1825, *State v. Marcum*, 4th Dist. Gallia No. 13CA11, 2014-Ohio-4048.

2014-2144. In re A.B.1.

Hamilton App. No. C-130611. On motion to stay. Motion denied.

2014-2145. In re J.B.

Hamilton App. No. C-130612. On motion to stay. Motion denied.

2014-2151. State v. Stone.

Geauga App. No. 2013-G-3154, 2014-Ohio-2699. On motion for delayed appeal. Motion denied.

2014-2163. State v. Lollis.

Summit App. No. 26607, 2014-Ohio-684. On motion for delayed appeal. Motion denied.

O’Neill, J., dissents.

2014-2164. State v. Rhodes.

Franklin App. Nos. 13AP-821 and 13AP-845, 2014-Ohio-2283. On motion for delayed appeal. Motion denied.

2014-2182. State v. Stadmire.

Cuyahoga App. No. 100620. On motion for delayed appeal. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2014-1364. State v. Weimer.

Lake App. No. 2013-L-005, 2014-Ohio-2882. Discretionary appeal accepted on Proposition of Law No. III; cause held for the decision in 2013-0827, *State v. Beverly*, 2d Dist. Clark No. 2011 CA 64, 2013-Ohio-1365; and briefing schedule stayed.

2014-1402. State v. Cornelison.

Lake App. No. 2013-L-064, 2014-Ohio-2884. Discretionary appeal accepted and cause held for the decision in 2014-2122 and 2014-1825, *State v. Marcum*, 4th Dist. Gallia No. 13CA11, 2014-Ohio-4048; and briefing schedule stayed.

Pfeifer and O'Donnell, JJ., dissent.

2014-1825. State v. Marcum.

Gallia App. No. 13CA11, 2014-Ohio-4048. Discretionary appeal accepted; cause consolidated with 2014-2122, *State v. Marcum*, 4th Dist. Gallia No. 13CA11, 2014-Ohio-4048.

O'Donnell and Kennedy, JJ., dissent.

2014-1881. Onderko v. Sierra Lobo, Inc.

Erie App. No. E-14-009, 2014-Ohio-4115. Discretionary appeal accepted; cause consolidated with 2014-1962, *Onderko v. Sierra Lobo, Inc.*, 6th Dist. Erie No. E-14-009, 2014-Ohio-4115.

Pfeifer, J., dissents.

2014-1884. State v. Williams.

Cuyahoga App. No. 90845, 2014-Ohio-4196.

Pfeifer, O'Donnell, and Kennedy, JJ., dissent.

2014-1933. Hupp v. Beck Energy Corp.

Monroe App. No. 12MO6, 2014-Ohio-4255. Discretionary appeal accepted on Proposition of Law Nos. I and II; sua sponte, cause consolidated with 2014-0423, *State ex rel. Claugus Family Farm, L.P. v. Seventh Dist. Court of Appeals*.

Pfeifer and O'Neill, JJ., would also accept Proposition of Law No. III.

2014-1984. State v. Barry.

Scioto App. No. 13CA3569, 2014-Ohio-4452. Discretionary appeal accepted; cause consolidated with 2014-2064, *State v. Barry*, 4th Dist. Scioto No. 13CA3569, 2014-Ohio-4452.

Pfeifer and O'Donnell, JJ., dissent.

2014-2201. In re Adoption of H.N.R.

Greene App. No. 2014-CA-35, 2014-Ohio-4959.

Pfeifer, O'Donnell, and Lanzinger, JJ., dissent.

APPEALS NOT ACCEPTED FOR REVIEW

2012-1598. State v. Mammone.

Stark App. No. 2012CA00012, 2012-Ohio-3546.

2013-0043. State v. Lynch.

Hamilton App. No. C-120138.

2014-1274. State v. Buzanowski.

Cuyahoga App. No. 99854, 2014-Ohio-1947. Discretionary appeal and cross-appeal not accepted.

O'Connor, C.J., dissents and would accept the appeal on Proposition of Law No. II.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law Nos. I and II.

2014-1335. State v. Hyde.

Clark App. No. 13-CA-41, 2014-Ohio-1278.

2014-1346. Ross v. Columbus.

Franklin App. No. 14AP-38, 2014-Ohio-2738.

2014-1347. State v. Miller.

Mahoning App. No. 13MA 12, 2014-Ohio-2936.

O'Connor, C.J., dissents and would accept the appeal on Proposition of Law No. IV.

2014-1350. State v. McDaniel.

Lucas App. No. L-14-1068.

2014-1354. Hudson v. Cincinnati Group Health Assocs., Inc.

Hamilton App. Nos. C-130164 and C-130181, 2014-Ohio-2161. Discretionary appeal not accepted. Motion for stay and/or remand denied as moot.

O'Neill, J., dissents.

2014-1356. Murray v. Columbus.

Franklin App. No. 13AP-912, 2014-Ohio-2790.

2014-1357. In re Guardianship of Soltesz.

Erie App. Nos. E-13-067 and E-13-072, 2014-Ohio-2832.

2014-1359. State v. Joseph.

Franklin App. Nos. 13AP-752 and 13AP-753, 2014-Ohio-2733.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law No. I.

2014-1360. State v. Keeley.

Washington App. No. 13CA34, 2014-Ohio-693.

2014-1365. Harvey v. Karl.

Richland App. No. 14 CA 29.

O'Neill, J., dissents.

2014-1366. Metcalf v. Kilzer.

Athens App. No. 14CA13, 2014-Ohio-4713.

2014-1378. State v. Pettis.

Cuyahoga App. No. 100851, 2014-Ohio-3147.

2014-1396. State v. Moore.

Adams App. No. 13CA965, 2014-Ohio-3024.

2014-1414. State v. Webb.

Clermont App. No. CA2014-01-013, 2014-Ohio-2894.

French and O'Neill, JJ., dissent.

2014-1415. State v. Robbins.

Hamilton App. No. C-130244.

2014-1417. Veach v. Chuchanis.

Stark App. No. 2014CA00026, 2014-Ohio-2949.

O'Donnell and French, JJ., dissent.

2014-1419. Certain Underwriters at Lloyds v. Woodling.

Darke App. No. 2013-CA-7, 2014-Ohio-2811.

2014-1420. State v. Plevyak.

Trumbull App. No. 2013-T-0051, 2014-Ohio-2889.

2014-1423. Osborne v. Malkamaki.

Lake App. No. 2012-L-134, 2014-Ohio-2874.

O'Donnell, J., dissents.

2014-1424. In re A.A.C.W.

Franklin App. Nos. 13AP-618 and 13AP-714, 2014-Ohio-2903.

2014-1425. Harris v. MC Sign Co.

Lake App. No. 2013-L-115, 2014-Ohio-2888.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law No. I.

2014-1427. Patton v. Hickling-Patton.

Medina App. No. 13CA0071-M, 2014-Ohio-2862.

2014-1428. State v. Tinney.

Richland App. No. 13CA18, 2014-Ohio-3053.

2014-1433. State v. Ervin.

Cuyahoga App. No. 100528, 2014-Ohio-2981.

2014-1438. State v. Bauer.

Cuyahoga App. No. 100438, 2014-Ohio-2980.

2014-1439. Cartwright v. Batner.

Montgomery App. No. 25938, 2014-Ohio-2995.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law No. I.

2014-1440. Foster v. Sullivan.

Franklin App. No. 13AP-876, 2014-Ohio-2909.

2014-1441. State v. Hostacky.

Cuyahoga App. No. 100003, 2014-Ohio-2975.

2014-1442. State v. Robinson.

Cuyahoga App. No. 99917, 2014-Ohio-2973.

2014-1443. State v. Tyree.

Cuyahoga App. Nos. 100377 and 100378.

2014-1444. State v. Henderson.

Fairfield App. No. 13-CA-61, 2014-Ohio-2991.

O'Connor, C.J., and O'Neill, J., dissent.

2014-1445. Murphy-Kesling v. Kesling.

Summit App. Nos. 26957 and 26962, 2014-Ohio-1816.

2014-1447. Schwartz v. Testa.

Hamilton App. No. C-140162.

O'Neill, J., dissents.

2014-1448. State v. Payne.

Hamilton App. No. C-130790, 2014-Ohio-3113.

2014-1451. State v. McGrath.

Cuyahoga App. No. 93445. Discretionary appeal not accepted. Motion to hold for 2014-1454, *State v. Earley*, denied.

2014-1452. State v. Chavis-Tucker.

Franklin App. No. 14AP-40, 2014-Ohio-3050.

O'Neill, J., dissents.

2014-1453. State v. Shabazz.

Cuyahoga App. No. 100623, 2014-Ohio-3142.

2014-1455. In re T.L.

Cuyahoga App. No. 100328, 2014-Ohio-1840.
O'Neill, J., dissents.

2014-1456. State v. Bindus.

Cuyahoga App. No. 101509.

2014-1457. Hodge v. Prater.

Franklin App. No. 13AP-838, 2014-Ohio-3152. Discretionary appeal not
accepted. Motion to strike denied as moot.

2014-1465. Foster v. Idegy, Inc.

Franklin App. No. 13AP-948, 2014-Ohio-3015.

2014-1470. State v. Barker.

Hamilton App. No. C-130694.
O'Neill, J., dissents.

2014-1475. State v. Baker.

Montgomery App. No. 25828, 2014-Ohio-3163.

2014-1484. State v. Smith.

Cuyahoga App. No. 100501, 2014-Ohio-3034.

2014-1513. State v. Jones.

Hamilton App. No. C-130359, 2014-Ohio-3110.

2014-1515. State v. Brothers.

Cuyahoga App. Nos. 100163 and 100164, 2014-Ohio-3132.
O'Neill, J., dissents.

2014-1518. State v. Jamison.

Lucas App. No. L-12-1274, 2014-Ohio-3275.

2014-1521. State v. Pope.

Summit App. Nos. 26928 and 27096, 2014-Ohio-3212.

2014-1529. State v. Smith.

Cuyahoga App. No. 98547, 2014-Ohio-3224.

2014-1541. State v. Crumpler.

Summit App. No. 26763, 2014-Ohio-3211. Discretionary appeal not accepted.
Motion to advance case denied as moot.

2014-1543. State v. Jordan.

Franklin App. No. 14AP-01, 2014-Ohio-3208.

2014-1546. State v. Isbell.

Franklin App. No. 13AP-694, 2014-Ohio-3204.
O'Neill, J., dissents.

2014-1553. Ryerson v. White.

Cuyahoga App. No. 100547, 2014-Ohio-3233.

2014-1570. State v. Cressel.

Montgomery App. No. 25979, 2014-Ohio-3353.

2014-1587. State v. Boyd.

Cuyahoga App. No. 101523, 2014-Ohio-2023.

2014-1599. State v. Martin.

Montgomery App. No. 26033, 2014-Ohio-3640.
French and O'Neill, JJ., dissent.

2014-1864. State v. Palmer.

Richland App. No. 13 CA 33.

2014-1963. State v. Love.

Hocking App. No. 13CA16, 2014-Ohio-1603.

2014-1968. State v. Woods.

Stark App. No. 2013CA00176, 2014-Ohio-2375.

2014-1970. State v. Rabe.

Clermont App. No. CA2013-09-068, 2014-Ohio-2008.
O'Neill, J., dissents.

2014-1999. State v. Jarrells.

Cuyahoga App. No. 99329, 2014-Ohio-4564.

2014-2004. State v. DeNoma.

Hamilton App. Nos. C-140590 and C-081178. Discretionary appeal not accepted. Motion for findings of fact and conclusions of law and judicial notice of intent denied.

2014-2037. State v. D.D.F.

Franklin App. No. 13AP-688, 2014-Ohio-2075.

2014-2066. State v. Fomby.

Lake App. No. 2012-L-073, 2013-Ohio-2821.

2014-2097. State v. Brown.

Mahoning App. No. 11 MA 117, 2014-Ohio-4008.

2014-2181. In re A.G.

Lucas App. No. L-14-1079. Discretionary appeal not accepted. Motion for stay denied as moot.

O'Neill, J., dissents.

RECONSIDERATION OF PRIOR DECISIONS

2010-1373. State v. Thompson.

Summit App. No. CR2008072390. Reported at ___ Ohio St.3d ___, 2014-Ohio-4751, ___ N.E.3d ___. On motion for rehearing and reconsideration. Motion denied.

Pfeifer and O'Neill, JJ., dissent.

2014-1216. Hawk v. Stocklin.

Allen App. No. 1-13-56, 2014-Ohio-2335. Reported at 140 Ohio St.3d 1497, 2014-Ohio-4845, 18 N.E.3d 1251. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

French, J., dissents and would grant the motion as to Proposition of Law No. I.

2014-1279. State v. Oester.

Stark App. No. 2012-CA-00118, 2013-Ohio-2676. Reported at 140 Ohio St.3d 1507, 2014-Ohio-5098, 19 N.E.3d 924. On motion for reconsideration. Motion denied.

O'Connor, C.J., and French and O'Neill, JJ., dissent.

2014-1485. Brown v. Williams.

In Mandamus. Reported at 140 Ohio St.3d 1495, 2014-Ohio-4845, 18 N.E.3d 1250. On motion for reconsideration. Motion denied. On relator's "motion to expedite and re: Nationwide Mutual Insurance Companies bad faith against Aretha D. Brown, the 3rd party beneficiary." Motion denied. On respondent's motion to strike relator's motion to expedite. Motion denied. On relator's motion to strike opposition of respondent. Motion denied.

2014-1506. State v. Ellis.

Cuyahoga App. No. 99830, 2014-Ohio-3226. Reported at 140 Ohio St.3d 1508, 2014-Ohio-5098, 19 N.E.3d 924. On motion for reconsideration. Motion denied.

2014-1574. State v. Gonzalez.

Lucas App. Nos. L-13-1206 and L-13-1207, 2014-Ohio-3272. Reported at 140 Ohio St.3d 1465, 2014-Ohio-4629, 18 N.E.3d 445. On motion for reconsideration. Motion denied.

Pfeifer and O'Neill, JJ., dissent.

2014-1689. State ex rel. Williams v. Clancy.

In Mandamus. Reported at 140 Ohio St.3d 1520, 2014-Ohio-5251, 20 N.E.3d 728. On motion for reconsideration. Motion denied.

2014-1790. State v. Moody.

Franklin App. No. 06AP-1034. Reported at 140 Ohio St.3d 1520, 2014-Ohio-5251, 20 N.E.3d 729. On motion for reconsideration. Motion denied.

O'Donnell and French, JJ., not participating.