

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M. WEDNESDAY  
July 17, 1996

MERIT DOCKET

96-1186. State ex rel. Colwell v. Rogers.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1198. Brenneman v. Curran.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1207. Dulaney v. Jefferson Cty. Court of Appeals.

In Mandamus and Prohibition. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1251. Southers v. Ohio Adult Parole Auth.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1257. Morgan v. Kennedy.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1261. State ex rel. Eisaman v. Wilkinson.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-1282. State ex rel. Mancini v. Saffold.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

DISMISSALS, SUA SPONTE, NO SUBSTANTIAL  
CONSTITUTIONAL QUESTION AND DISCRETIONARY  
APPEALS, IF APPLICABLE, NOT ALLOWED

96-392. Pysl v. Pysl.  
Lake County, No. 94-L-147.

96-418. Chubb Group of Ins. Cos. v. Guyuron.  
Cuyahoga County, No. 68468.

96-421. Akron v. Darulis.  
Summit County, No. 17246.

96-424. Bernasek v. Bernasek.  
Cuyahoga County, No. 69103.

96-447. In re Estate of Thompson.  
Hamilton County, No. C-950343.  
Resnick, J., dissents.

96-454. In re Estate of Jarvis.  
Medina County, No. 2446-M.

96-457. State v. Landis.  
Perry County, No. 95CA2.

96-461. State v. Guess.  
Franklin County, No. 94APA09-1278.  
Moyer, C.J., dissents.

96-469. State v. Evans.  
Cuyahoga County, No. 68675.  
Pfeifer, J., dissents.

96-477. Farm Credit Serv. of Mid America, ACA v. Dues.  
Shelby County, No. 17-95-21.

96-482. Kigar v. Ohio Motor Vehicle Dealers Bd.  
Franklin County, Nos. 95APE08-1045 and 95APE08-1046.

96-488. State v. Johnson.  
Summit County, No. 17335.

96-493. Auxier v. Auxier.  
Lucas County, No. L-95-154.

96-494. In re Billman.  
Franklin County, No. 95APF11-1531.

96-495. State v. Hatcher.  
Hamilton County, No. C-940778.

Moyer, C.J., dissents.

96-496. State v. Bradley.  
Logan County, No. 8-95-15.

96-501. Axson v. LTV Steel Corp.  
Cuyahoga County, No. 68538.

96-510. State v. Pettiford.  
Franklin County, No. 95APA07-942.

96-511. Gahanna v. Hinkle.  
Franklin County, No. 95APC05-640.

96-514. State v. Market.  
Cuyahoga County, No. 68508.

96-521. Hilliard v. Lease.  
Franklin County, No. 95APE04-473.

96-527. DeVall v. Erie Ins. Group.  
Summit County, No. 17300.  
Moyer, C.J., Resnick and Pfeifer, JJ., dissent.

96-531. State v. Quisenberry.  
Montgomery County, No. 15373.

96-532. State v. Myles.  
Montgomery County, No. 15201.

96-533. State v. Jennings.  
Clark County, No. 95CA36.

96-535. Levengood v. Transfuel, Inc.  
Tuscarawas County, No. 95AP060049. Discretionary appeal not allowed. On motion for fees and costs. Motion granted; sua sponte, leave granted to submit properly itemized bill.  
Resnick and Pfeifer, JJ., dissent.

96-534. Levengood v. Transfuel, Inc.  
Tuscarawas County, No. 95AP060050. Discretionary appeal not allowed. On motion for fees and costs. Motion granted; sua sponte, leave granted to submit properly itemized bill.  
Resnick and Pfeifer, JJ., dissent.

96-538. State v. Troutman.  
Lorain County, No. 95CA006207.

96-548. State v. Williams.  
Franklin County, No. 95APA05-624.

96-549. Neff v. Litzow.  
Cuyahoga County, No. 68195.

96-551. State v. Perry.  
Summit County, No. 17279.

96-553. State v. Smith.  
Lorain County, No. 95CA006070.

96-554. State v. Wernet.  
Lucas County, No. L-95-031.  
F.E. Sweeney, J., dissents.  
Resnick, J., not participating.

96-562. State v. Yacovella.  
Cuyahoga County, No. 69487.  
Moyer, C.J., dissents.

96-572. Kouba v. St. Francis Rehab. Ctr.  
Sandusky County, No. 95CAS00029.  
Pfeifer, J., dissents.  
Resnick, J., not participating.

95-575. State v. Kurincic.  
Cuyahoga County, No. 68246.

96-578. State v. Hunter.  
Cuyahoga County, Nos. 68447, 68448, 68449, 68450, 68451 and 69306.

96-588. State v. Mahan.  
Montgomery County, No. 15071.

96-594. Ferrone v. Medina Cty. Bd. of Revision.  
Medina County, No. 95CA2498M.

96-597. Nationwide Mut. Fire Ins. Co. v. Sonitrol, Inc. of Cleveland.  
Cuyahoga County, No. 68584.  
Douglas, F.E.Sweeney and Stratton, JJ., dissent.

96-598. Nationwide Mut. Fire Ins. Co. v. Sonitrol, Inc. of Cleveland.  
Cuyahoga County, No. 68583.  
Douglas, F.E. Sweeney and Stratton, JJ., dissent.

96-619. State v. Steele.  
Hamilton County, No. C-950019.

96-620. State v. Hester.  
Hamilton County, No. C-950462.  
Stratton, J., not participating.

96-628. State v. Jones.  
Summit County, No. 17213.

96-636. State v. Clark.  
Cuyahoga County, No. 67305.

96-637. State v. McCadney.  
Lucas County, No. L-95-123.

96-641. Prysock v. Ohio Counselor & Social Worker Bd.

Stark County, No. 1995CA00077.

96-642. State v. Fields.  
Cuyahoga County, No. 68906.

96-654. State v. Clancy.  
Cuyahoga County, No. 66902.

96-656. State v. Faulkner.  
Warren County, No. CA95-09-087.

96-662. Damascus Steel Internatl. Co. v. Massillon Dev. Found., Inc.  
Stark County, No. 1995CA00029.

96-669. State v. Prichard.  
Hamilton County, No. C-941011.  
Stratton, J., not participating.

96-672. Wendling v. Wendling.  
Cuyahoga County, No. 68837.  
Pfeifer and Stratton, JJ., dissent.

96-673. State v. Bowling.  
Franklin County, No. 95APA05-599.  
Moyer, C.J., and Pfeifer, J., dissent.

96-688. State v. Sensor.  
Summit County, No. 17668.

96-698. Franks v. The Lima News.  
Allen County, No. 1-95-59.  
Moyer, C.J., Douglas and Stratton, JJ., dissent.

96-714. State v. James.  
Cuyahoga County, No. 69075.  
Douglas, Resnick and Stratton, JJ., dissent.

96-746. State v. Quinones.  
Lorain County, No. 95CA006084.

96-747. State v. Nicholson.  
Cuyahoga County, No. 68979.

96-749. State v. Richardson.  
Cuyahoga County, No. 69131.

#### MOTION DOCKET

88-1074. State v. Hutton.  
Cuyahoga County, No. 51704. On motion to set execution date. Motion granted  
and September 22, 1996 set.

On motion to continue stay. Motion denied.

91-374. State v. Rojas.  
Hamilton County, No. C-8800332. On motion to set execution date. Motion  
granted.

Pfeifer, J., would also set a date certain.

95-2575. Ohio Edison Co. v. Pub. Util. Comm.  
Public Utilities Commission, No. 93-1408-EL-CSS. On request to seal  
record/document. Request granted.  
Cook, J., not participating.

95-2591. Sharon Village, Ltd. v. Licking Cty. Bd. of Revision.  
Board of Tax Appeals, No. 94-M-1214. On request for argument before full court.  
Request granted.  
Cook, J., dissents.

95-2594. Derby Downs, Ltd. v. Licking Cty. Bd. of Revision.  
Board of Tax Appeals, No. 94-M-1215. On request for argument before full court.  
Request granted.  
Cook, J., dissents.

95-2596. Cherry Lee, Ltd., Realty Dev. Co., #3 v. Licking Cty. Bd. of Revision.  
Board of Tax Appeals, Nos. 94-M-1325 and 94-M-1326. On request for argument  
before full court. Request granted.  
Cook, J., dissents.

96-319. State ex rel. Neal v. Ohio Adult Parole Auth.  
In Mandamus. On request for findings of fact and conclusions of law. Request  
denied.

96-962. Luntz Corp. v. Ohio Edison Co.  
Public Utilities Commission, No. 94-1783-EL-CSS. On motion for leave to  
intervene of Ohio Edison Company. Motion granted.  
Cook, J., not participating.

96-1165. State ex rel. Gannett Satellite Information Network v. Shirey.  
In Mandamus. On motion for admission pro hac vice of Max D. Truitt, Jr. by Karl  
P. Kadon. Motion granted.

96-1216. State v. Foster.  
Hamilton County, No. C-950449. On motion for leave to file delayed appeal.  
Motion granted.  
Moyer, C.J., F.E. Sweeney and Cook, JJ., dissent.

96-1244. State v. Reed.  
Cuyahoga County, No. 66246. On motion for leave to file delayed appeal. Motion  
denied.

96-1247. Zelch v. Plain Dealer Publishing Co.  
Cuyahoga County, No. 70460. On motion to expedite decision. Motion denied.  
Douglas and F.E. Sweeney, JJ., dissent.

96-1268. Champion Spark Plug Co. v. Fid. & Cas. Co. of New York.  
Lucas County, No. L-94-374. On motion for admission pro hac vice of Michael H.  
Ginsberg, motion for admission pro hac vice of David E. Trainor by Cormac  
DeLaney, and motion for admission pro hac vice of Katherine E. Tammaro by Cormac  
DeLaney. Motions granted.

96-1289. State v. Jackson.

Madison County, No. CA95-12-039. On motion for stay pending disposition of 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 C.A. 232. Motion granted.

Pfeifer and Cook, JJ., dissent.  
Stratton, J., not participating.

96-1294. State v. Grace.  
Summit County, No. 16950. On motion for leave to file delayed appeal. Motion denied.

Stratton, J., dissents.

96-1301. State v. Smith.  
Richland County, No. 94CA62. On motion for leave to file delayed appeal. Motion denied.

Stratton, J., dissents.

96-1304. In re Riddle.  
Guernsey County, No. 96CA03. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated in the court of appeals' Judgment Entry filed May 15, 1996: "This matter is before this court upon appellant's motion to certify conflict. Appellant argues this court's decision in In the Matter of Travis Riddle, Jr. (April 11, 1996), Guernsey App. No. 96 CA 03, unreported, is in conflict with judgments pronounced by the Tenth District Court of Appeals in In re Reese (1982), 4 Ohio App.3d 59, 446 N.E.2d 482, In re Crisp (February 5, 1981), Franklin App. 80AP-678, unreported, and In re Darst (1963), 117 Ohio App. 374, 24 O.O.2d 144, 192 N.E.2d 287.

"Upon review, we agree and hereby certify the following question to the Supreme Court of Ohio:

"Can a trial court make a finding of neglect under R.C. 2151.03(A) if the child is being properly cared for by a relative who has not been declared legal guardian or custodian as those terms are defined in R.C. 2151.011(18) and R.C. 2151.011(26), respectively?"

Cook, J., dissents.

96-1333. State v. Kulczak.  
Summit County, No. 17258. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, Pfeifer and Cook, JJ., dissent.

96-1347. State v. Edwards.  
Wayne County, No. 2706. On motion for leave to file delayed appeal. Motion denied.

Cook, J., not participating.

96-1349. State v. Smith.  
Lucas County, No. L-95-035. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., and Resnick, J., dissent.

96-1384. State v. Gordon.  
Ashtabula County, No. 92-A-1696. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., dissents.

Stratton, J., dissents and would also deny appellant's indigent status.

96-1410. In re Norris Children.

Stark County, No. 1994CA00147. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause consolidated with 95-1788, infra, and held for the decision in 95-941, 95-942 and 95-1213, infra; briefing schedule stayed.

96-1429. Walters v. Enrichment Ctr. of Wishing Well. Cuyahoga County, No. 69159. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated in the court of appeals' entry filed May 24, 1996:

"We certify a conflict on the following narrow issue: Whether the denial of an asserted statutory privilege of confidentiality is a special proceeding for purposes of R.C. 2505.02 and therefore a final appealable order."

F.E. Sweeney, Pfeifer and Cook, JJ., dissent.

#### DISCRETIONARY APPEALS ALLOWED

95-1788. In re Norris Children. Stark County, No. 1994CA00147. On motion to consolidate case with 95-941 and 95-942, In re Young Children, Stark County, No. 94CA0198, and 95-1213, In re Bunting Children, Stark County, No. 94CA-0264. Motion granted; sua sponte, cause held for the decision in the above cases; briefing schedule stayed.

96-448. State v. Edmunds. Summit County, No. 17249. Sua sponte, cause held for decision in 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 CA 232; briefing schedule stayed.

Stratton, J., not participating.

96-462. Bowers v. Grange Ins. Co. Franklin County, No. 95APE08-1110. Sua sponte, cause held for the decisions in 94-2569, Cole v. Holland, Summit County, No. 16703, and 95-269, Schaefer v. Allstate Ins. Co., Franklin County, No. 94APE04-507; briefing schedule stayed.

Stratton, J., not participating.

96-631. Akron v. Langley. Summit County, No. 17479. Sua sponte, cause held for the decision in 95-1377 and 95-1466, supra; briefing schedule stayed.

Stratton, J., not participating.

96-686. State v. Lovejoy. Franklin County, No. 95APA07-849. Discretionary appeal and cross-appeal allowed.

F.E. Sweeney and Cook, JJ., dissent.

96-757. Blodgett v. Kahn. Hancock County, No. 5-95-32.

Moyer, C.J., Cook and Stratton, JJ., dissent.

#### DISCRETIONARY APPEALS NOT ALLOWED

96-169. State v. Dinger. Summit County, No. 17250.

96-434. Simon v. State Bd. of Chiropractic Examiners. Franklin County, No. 95APE05-597.

Moyer, C.J., and Stratton, J., dissent.

96-438. Rothenbuhler v. Thompson.  
Wood County, No. WD95025. Discretionary appeal denied. Discretionary cross-  
appeal of Ohio Operating Engineers Apprenticeship Fund denied.  
Douglas, J., would allow the cross-appeal only.

96-450. Valentine v. Valentine.  
Ashland County, No. 95COA01120.  
Pfeifer, J., dissents.

96-470. Hannum v. Hannum.  
Fairfield County, No. 95CA26.

96-481. State v. Crawford.  
Franklin County, No. 95APA07-864.  
Moyer, C.J., Cook and Stratton, JJ., dissent.

96-483. McGee v. C&S Lounge.  
Franklin County, No. 95APE07-895.

96-490. Jaeger v. LaCroix.  
Cuyahoga County, No. 68944.  
Douglas, J., dissents.

96-492. In re Gesen.  
Stark County, No. 95CA0409.  
Douglas and Stratton, JJ., dissent.

96-509. W. World Ins. Co. v. Spevco, Inc.  
Franklin County, No. 95APE07-868.  
Douglas, Pfeifer and Stratton, JJ., dissent.

96-530. Mosley v. Quaker Square Mgt., Inc.  
Summit County, No. 17281.  
Douglas and Stratton, JJ., dissent.

96-537. Aircoa Hospitality Serv., Inc. v. Hopkins Airport Hotel Partnership.  
Cuyahoga County, No. 68391.

96-543. Koon v. Hoskins.  
Vinton County, No. 95CA497.  
Douglas, J., dissents.

96-547. Burigana v. Indus. Comm.  
Franklin County, No. 95APE08-1048.  
Moyer, C.J., and Stratton, J., dissent.

96-558. State v. Chapman.  
Montgomery County, No. 15111.  
Douglas, J., dissents.

96-559. Nayles v. Best Mfg. & Supply, Inc.  
Montgomery County, No. 15026.

96-596. Lusher v. Ohio Motor Salvage Dealers Licensing Bd.  
Wood County, No. WD95052.  
Resnick, J., not participating.

96-602. Sims v. Agosta.  
Fairfield County, No. 95CA0019.  
Stratton, J., dissents.

96-629. Kemper v. Builder's Square.  
Montgomery County, No. 15224.  
Douglas, J., dissents.

96-634. Reckart v. Nationwide Mut. Fire Ins. Co.  
Franklin County, No. 95APE08-1085.  
Moyer, C.J., and Cook, J., dissent.

96-643. In re Estate of Davis.  
Clermont County, No. CA95-06-040.  
Moyer, C.J., and Resnick, J., dissent.

96-644. Thompson v. Otterbein College.  
Franklin County, No. 95APE08-1009.  
Pfeifer, J., dissents.

96-649. Schnorf v. Klingman.  
Lucas County, No. L-94-247.  
Douglas, J., dissents.  
Resnick, J., not participating.

96-655. Ohio Dept. of Human Serv. v. Hoag.  
Stark County, No. 1995CA00051.  
F.E. Sweeney, J., dissents.

96-659. Maddox v. L.O. Warner, Inc.  
Montgomery County, No. 15468.  
Resnick and F.E. Sweeney, JJ., dissent.

96-664. Watson v. Americom.  
Allen County, No. 1-95-58.

96-665. McIlwain v. Ferguson.  
Butler County, No. CA95-06-103.

96-666. Columbus v. Wolfinger.  
Franklin County, No. 95APC07-859.  
Moyer, C.J., dissents.

96-670. Northampton Bldg. Co. v. Sharon Twp. Bd. of Zoning Appeals.  
Medina County, No. 2447-M.

96-674. Lawson v. Nationwide Ins. Co.  
Franklin County, No. 95APE09-1203.

96-712. Fraternal Order of Police, Ohio Labor Council, Inc. v. Umpleby.  
Stark County, No. 1995CA00196.  
Moyer, C.J., dissents.

96-724. Stephens v. Shelby Mut. Ins. Co.  
Seneca County, No. 13-95-39.

96-768. State v. Donnelly.  
Lorain County, No. 95CA006121.  
Moyer, C.J., and Pfeifer, J., dissent.

96-1110. Walters v. Enrichment Ctr. of Wishing Well.  
Cuyahoga County, No. 69159.  
Moyer, C.J., Douglas and Stratton, JJ., dissent.

96-1158. State v. Wiley.  
Summit County, No. 17190.

96-1156. State v. Bobo.  
Cuyahoga County, No. 60013.

#### RECONSIDERATION DOCKET

95-694. N. Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision.  
Board of Tax Appeals, Nos. 93-A-347 and 93-A-348. Reported at 75 Ohio St.3d  
595, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Pfeifer, J., dissents.  
Stratton, J., not participating.

95-1218. Columbus Bar Assn. v. Brooks.  
Reported at 75 Ohio St.3d 524, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration.  
Motion denied.  
Douglas and Pfeifer, JJ., dissent.  
Stratton, J., not participating.

96-352. State v. Mason.  
Hamilton County, No. C-950926. Reported at 75 Ohio St.3d 1512, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.

96-376. Lakewood v. Shaw.  
Cuyahoga County, No. 67733. Reported at 75 Ohio St.3d 1509, \_\_\_ N.E.2d \_\_\_. On  
motion for reconsideration. Motion denied.

96-429. Robiner v. Robiner.  
Cuyahoga County, No. 67195. Reported at 75 Ohio St.3d 1512, \_\_\_ N.E.2d \_\_\_. On  
motion for reconsideration. Motion denied.  
Stratton, J., would also grant sanctions.  
F.E. Sweeney, J., dissents.  
Douglas, J., not participating.

96-489. Barenfeld v. Coventry Twp. Bd. of Zoning Appeals.  
Summit County, No. 17308. Reported at 75 Ohio St.3d 1512, \_\_\_ N.E.2d \_\_\_. On  
motion for reconsideration. Motion denied.  
Resnick, J., dissents.  
Cook, J., not participating.

96-650. State ex rel. Greer v. Parrott.

In Mandamus. Reported at 75 Ohio St.3d 1508, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

Stratton, J., dissents.

96-976. State ex rel. Conley v. N. Cent. Correctional Inst.

In Habeas Corpus. Reported at 75 Ohio St.3d 1508, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

Stratton, J., dissents.