

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

October 12, 2005

[Cite as *10/12/2005 Case Announcements*, 2005-Ohio-5343.]

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### MERIT DECISIONS WITH OPINIONS

**2004-0883. Cobblestone Square Co., Ltd. v. Lorain Cty. Bd. of Revision, 2005-Ohio-5128.**

Board of Tax Appeals, Nos. 2002-T-2024 and 2002-T-2158. Decision affirmed.

Moyer, C.J., Resnick, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Pfeifer, J., concurs in judgment only.

**2004-1104. Smith v. Leis, 2005-Ohio-5125.**

Hamilton App. No. C-040273. Judgment affirmed.

Moyer, C.J., Pfeifer, O'Connor and Lanzinger, JJ., concur.

Resnick, Lundberg Stratton and O'Donnell, JJ., concur in part and dissent in part.

**2004-1559. Fazio v. Hamilton Mut. Ins. Co., 2005-Ohio-5126.**

Licking App. No. 03 CA 73, 2004-Ohio-2748. Judgment reversed.

Moyer, C.J., Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Resnick and Pfeifer, JJ., dissent and would dismiss the cause as having been improvidently accepted.

**2005-0365. Disciplinary Counsel v. Freeman, 2005-Ohio-5142.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 03-112. Thomas Herbert Freeman, Attorney Registration No. 0007852, is suspended from the practice of law in Ohio for six months.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor and Lanzinger, JJ., concur.

O'Donnell, J., concurs in judgment only.

**2005-0382. Richland Cty. Bar Assn. v. Akers, 2005-Ohio-5144.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 04-013. Eric Jonathan Akers, Attorney Registration No. 0019706, is suspended from the practice of law in Ohio for 18 months, with 12 months stayed on condition.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Donnell and Lanzinger, JJ., concur.

O'Connor, J., dissents.

**2005-1013. Jimison v. Wilson, 2005-Ohio-5143.**

Richland App. No. 05CA20. Judgment affirmed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**MERIT DECISIONS WITHOUT OPINIONS**

**2005-1547. State ex rel. Martinez v. Cronin.**

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

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-1617. Crosby v. Jeffreys.**

In Habeas Corpus. On petition for writ of habeas corpus of Ronald G. Crosby. Sua sponte, cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**MOTION AND PROCEDURAL RULINGS**

**2005-0293. Glidden Co. v. Lumbermens Mut. Cas. Co.**

Cuyahoga App. No. 81782, 2004-Ohio-6922. On motion for admission pro hac vice of Paul R. Walker-Bright by Timothy C. Sullivan. Motion granted.

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

On motion for admission pro hac vice of Evan T. Knott by Timothy C. Sullivan. Motion granted.

**2005-0304. Castle Aviation, Inc. v. Wilkins.**

Board of Tax Appeals, No. 2003-M-146. On request for oral argument. Request granted.

**2005-1355. Myers v. Toledo.**

Lucas App. No. L-04-1241, 2005-Ohio-3207. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 15 of the court of appeals' Decision and Judgment Entry filed June 24, 2005:

“Is a ruling which grants a Civ.R. 35(A) motion for a physical or mental examination, made in a special proceeding such as a divorce case or a workers' compensation case, a final appealable order under either R.C. 2505.02(B)(2) or R.C. 2505.02(B)(4)?”

The conflict cases are *Montecalvo v. Montecalvo* (1999), 126 Ohio App.3d 377, and *Harness v. Harness* (2001), 143 Ohio App.3d 669, 2001-Ohio-2433.

Sua sponte, cause consolidated with 2005-1473, *Myers v. Toledo*, Lucas App. No. L-04-1241, 2005-Ohio-3207.

Resnick and Pfeifer, JJ., dissent.

**2005-1432. In re Guardianship of Schneider.**

Medina App. No. 05CA0050-M. On emergency motion for relief by way of a protective order and motion for stay of court of common pleas' and court of appeals' proceedings. Motions denied.

**2005-1551. State v. Maracz.**

Cuyahoga App. No. 85131, 2005-Ohio-3419. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1575. State v. Mora.**

Wayne App. No. 05CA0039. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

**2005-1598. State v. Eckstein.**

Hamilton App. No. C-030139, 2004-Ohio-5059. On motion for leave to file delayed appeal. Motion denied.

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

**2005-1604. State v. Calhoun.**

Hamilton App. Nos. C-030821 and C-030869. On motion for leave to file delayed appeal. Motion granted.

Resnick and O'Donnell, JJ., dissent.

**2005-1634. State v. Dunham.**

Scioto App. No. 04CA2931, 2005-Ohio-3642. On motion for leave to file delayed appeal. Motion granted.

Resnick, J., dissents.

**2005-1640. State v. Neely.**

Hamilton App. No. C-030755, 161 Ohio App.3d 99, 2005-Ohio-2342. On motion for leave to file delayed appeal. Motion granted.

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

**2005-1652. In re Guardianship of Schneider.**

Medina App. No. 05CA0050-M. On motion for stay of court of appeals' judgment. Motion denied.

**2005-1730. In re Subpoenas Issued to Lynd.**

Scioto App. Nos. 04CA2966 and 04CA2978, 2005-Ohio-4607. On motion for stay of court appeals' judgment. Motion denied.

**APPEALS ACCEPTED FOR REVIEW**

**2005-1134. State v. Howard.**

Clark App. No. 2004CA29. Discretionary appeal accepted on Proposition of Law No. IV; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1139. State v. Clifford.**

Paulding App. No. 11-04-18, 2005-Ohio-2357. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1161. State v. Watkins.**

Allen App. No. 1-04-17, 2005-Ohio-2359. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v.*

*Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1175. State v. Montgomery.**

Clermont App. No. CA2004-06-047, 2005-Ohio-2371. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1178. State v. Bolling.**

Montgomery App. No. 20225, 2005-Ohio-2509. Discretionary appeal accepted on Proposition of Law No. III; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1200. State v. Sebring.**

Butler App. No. CA2004-08-195. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1215. In re T.K.**

Cuyahoga App. No. 84934, 2005-Ohio-2321.  
Resnick and Pfeifer, JJ., dissent.

**2005-1242. State v. Calhoun.**

Butler App. No. CA2004-08-192. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1303. State v. Mason.**

Butler App. Nos. CA2004-06-154 and CA2004-06-164, 2005-Ohio-2918. Discretionary appeal accepted on Proposition of Law No. VII; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

Pfeifer, J., dissents.

**2005-1321. State v. Coffeen.**

Butler App. No. CA2004-08-211. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1324. State v. Langlois.**

Ashtabula App. No. 2003-A-0080, 2005-Ohio-2795. Discretionary appeal accepted on Proposition of Law No. III; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1473. Myers v. Toledo.**

Lucas App. No. L-04-1241, 2005-Ohio-3207. Discretionary appeal accepted on Proposition of Law No. I and cause consolidated with 2005-1355, *Myers v. Toledo*, Lucas App. No. L-04-1241, 2005-Ohio-3207.

Lundberg Stratton and Lanzinger, JJ., would accept on all Propositions of Law.

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

**APPEALS NOT ACCEPTED FOR REVIEW**

**2005-1029. Thompson v. Bagley.**

Paulding App. No. 11-04-12, 2005-Ohio-1921. Discretionary appeal not accepted.

Pfeifer and Lundberg Stratton, JJ., dissent.

Discretionary cross-appeal not accepted.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

**2005-1069. Kelly v. Ohio Dept. of Rehab. & Corr.**

Madison App. No. CA2004-08-027.

**2005-1080. Griffin v. O'Neil.**

Summit App. No. 22495.

**2005-1081. State v. Robinson.**

Wayne App. No. 04CA0066, 2005-Ohio-2151.

**2005-1085. Hudkins v. Stratos.**

Summit App. No. 22188, 2005-Ohio-2155.

O'Donnell, J., dissents.

**2005-1089. State v. Robinson.**

Fairfield App. No. 2004-CA-45, 160 Ohio App.3d 802, 2005-Ohio-2280.

**2005-1093. State v. Thacker.**

Greene App. Nos. 2004CA38 and 2004CA57, 2005-Ohio-2230.

**2005-1101. State v. Boswell.**

Cuyahoga App. No. 86200.

**2005-1103. Robinson v. Indus. Comm.**

Franklin App. No. 04AP-1010, 2005-Ohio-2290.

**2005-1109. Thornton v. Hardiman, Buchanan, Howland & Trivers.**

Cuyahoga App. No. 83400, 2005-Ohio-1969.

Resnick and Lundberg Stratton, JJ., dissent.

**2005-1110. State v. Whitfield.**

Allen App. No. 1-04-80, 2005-Ohio-2255.

**2005-1111. Tarellari v. Case W. Res. Univ. School of Dentistry.**

Cuyahoga App. No. 84892, 2005-Ohio-2327.

Resnick, J., dissents and would accept on Proposition of Law No. II.

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

**2005-1113. Brooks-Lee v. Lee.**

Franklin App. No. 03AP-1149, 2005-Ohio-2288.

**2005-1114. Jacobs v. Gateway Property Mgt.**

Cuyahoga App. No. 84973, 2005-Ohio-1983.

**2005-1119. Malott v. Sunesis Constr. Co.**

Butler App. No. CA2005-01-015.

**2005-1124. State v. Edwards.**

Marion App. No. 9-04-67, 2005-Ohio-2246.

**2005-1129. Columbus v. Duff.**

Franklin App. No. 04AP-901, 2005-Ohio-2299.

Lundberg Stratton, J., dissents.

**2005-1133. CommuniCare, Inc. v. Wood Cty. Bd. of Commrs.**

Wood App. No. WD-04-057, 161 Ohio App.3d 84, 2005-Ohio-2348.

Moyer, C.J., dissents and would accept on Proposition of Law No. I.

**2005-1135. George v. Ohio Dept. of Human Serv.**

Franklin App. No. 04AP-351, 2005-Ohio-2292.

**2005-1136. State v. Browning.**

Muskingum App. No. CT050013.

**2005-1137. Victory White Metal Co. v. N.P. Motel Sys., Inc.**

Mahoning App. No. 04 MA 245, 2005-Ohio-3828. Discretionary appeal not accepted. Motion to strike denied as moot.

**2005-1143. WAS, Inc. v. Alea London Ltd.**

Montgomery App. No. 20646, 161 Ohio App.3d 111, 2005-Ohio-2533.

**2005-1144. Wood v. U.S. Bank, N.A.**

Hamilton App. No. C-040162, 160 Ohio App.3d 831, 2005-Ohio-2341.

Lundberg Stratton and O'Donnell, JJ., dissent.

**2005-1145. Snow v. Brown.**

Franklin App. No. 04AP-507, 2005-Ohio-2333.

**2005-1146. State v. Gaither.**

Cuyahoga App. No. 85023, 2005-Ohio-2619.

**2005-1150. Cincinnati Gas & Elec. Co. v. Butler Cty. Bd. of Commrs.**

Butler App. No. CA2004-09-220.

**2005-1151. State v. Woodfork.**

Ross App. No. 04CA2798, 2005-Ohio-2469.

Lundberg Stratton and O'Donnell, JJ., dissent.

**2005-1152. State v. Smith.**

Lorain App. No. 04CA008546, 2005-Ohio-2571.

**2005-1163. Zappola v. OSI Sealants, Inc.**

Lake App. No. 2003-L-184, 2005-Ohio-2527.

**2005-1165. State v. Todd.**

Brown App. No. CA2004-07-013.

**2005-1171. State v. Turner.**

Richland App. No. 04-CA-01, 2005-Ohio-2986.

**2005-1173. Fuller v. Croft.**

Richland App. No. 2004-CA-105, 2005-Ohio-3054.

O'Donnell, J., dissents.

**2005-1174. State v. Morgan.**

Shelby App. No. 17-05-03. Discretionary appeal not accepted. Motion for default judgment denied as moot.

**2005-1177. Kelley v. Kelley.**

Defiance App. Nos. 4-04-28 and 4-04-32, 2005-Ohio-2355.

Resnick, J., dissents.

**2005-1181. In re S.M.**

Cuyahoga App. No. 84409, 160 Ohio App.3d 794, 2005-Ohio-2187.

**2005-1185. Bailey v. Whittekind.**

Delaware App. No. 04CAE6044, 2005-Ohio-2548.

**2005-1188. Hicks-Malak v. Cincinnati Ins. Co.**

Lucas App. No. L-04-1272, 2005-Ohio-2745.

Lundberg Stratton, J., dissents.

**2005-1189. Hughes v. Bethesda Hosp., Inc.**

Hamilton App. No. C-040567, 2005-Ohio-2451.

**2005-1190. Porrello v. UHHS Richmond Hts. Hosp.**

Cuyahoga App. No. 84955, 2005-Ohio-2454.

**2005-1191. Tolson v. Am. Family Ins. Co.**

Franklin App. No. 04AP-672, 2005-Ohio-2434.

**2005-1193. Benford v. Smith.**

Franklin App. No. 04AP-908, 2005-Ohio-2561.  
Moyer, C.J., and Lundberg Stratton, J., dissent.  
O'Donnell, J., dissents and would accept on Proposition of Law No. I.

**2005-1195. Dunlap v. W.L. Logan Trucking Co.**

Franklin App. No. 03AP-463, 161 Ohio App.3d 51, 2005-Ohio-2386.  
Pfeifer, J., dissents.

**2005-1197. State v. Salyers.**

Montgomery App. No. 20695, 2005-Ohio-2772.

**2005-1199. Chambers v. Melling, Harding, Schuman & Montello.**

Cuyahoga App. No. 85045, 2005-Ohio-2456.

**2005-1201. Greenwood Rehab., Inc. v. Boxell.**

Lucas App. No. L-04-1256, 2005-Ohio-2492.

**2005-1202. Sieja v. Sinclair.**

Fulton App. No. F-04-030, 2005-Ohio-2494.  
Resnick, J., not participating.

**2005-1203. Chavis v. AIG Technical Serv., Inc.**

Franklin App. No. 04AP-1019, 2005-Ohio-2427.

**2005-1205. State v. Casalicchio.**

Cuyahoga App. No. 84690, 160 Ohio App.3d 522, 2005-Ohio-1750.

**2005-1206. State v. Lynch.**

Lorain App. No. 04CA008531, 2005-Ohio-2401.

**2005-1212. Hinckley Roofing, Inc. v. Motz.**

Medina App. No. 04CA0055-M, 2005-Ohio-2404.

**2005-1217. Havens-Tobias v. Schwan's Sales Ent., Inc.**

Montgomery App. No. 20895, 161 Ohio App.3d 461, 2005-Ohio-2753.

**2005-1221. Krickler v. Brooklyn.**

Cuyahoga App. No. 85007, 2005-Ohio-2326.  
Pfeifer, J., dissents.

**2005-1225. Nicolas v. Ohio Dept. of Job & Family Serv.**

Franklin App. No. 04AP-771, 2005-Ohio-2635.

Resnick, J., dissents.

**2005-1229. Preferred Capital, Inc. v. Strellec.**

Cuyahoga App. Nos. 85706, 85707, 85723, 85731, 85732, 85733, 85743, 85744, 85745, 85776 and 85777, 161 Ohio App.3d 346, 2005-Ohio-2607.

Moyer, C.J., Lundberg Stratton and Lanzinger, JJ., dissent.

**2005-1234. State v. Bray.**

Warren App. Nos. CA2004-04-049 and CA2004-04-050.

O'Connor, J., dissents and would accept on Proposition of Law No. I.

**2005-1237. State v. Leach.**

Summit App. No. 22369, 2005-Ohio-2569.

**2005-1257. State v. Gilmore.**

Mahoning App. No. 04 MA 214, 2005-Ohio-2936.

**2005-1258. State v. Cole.**

Richland App. No. 2004-CA-108, 2005-Ohio-3048.

**2005-1264. State v. Woods.**

Summit App. No. 22267, 2005-Ohio-2681.

**2005-1295. State v. Wills.**

Hamilton App. No. C-040612.

**2005-1298. Jordan v. Nationwide Mut. Ins. Co.**

Seneca App. No. 13-04-45, 2005-Ohio-2659.

Resnick, J., dissents.

**2005-1302. State v. Horsley.**

Richland App. No. 04-CA-95, 2005-Ohio-2987.

**2005-1306. State v. Martin.**

Summit App. No. 22696.

**2005-1309. State v. Gilliam.**

Mahoning App. No. 03-MA-176, 2005-Ohio-2791.

**2005-1318. Smith v. Hayes.**

Franklin App. No. 04AP-1321, 2005-Ohio-2961.

Lundberg Stratton, J., dissents.

**2005-1370. State v. Meredith.**

Lawrence App. No. 05CA13.

**2005-1379. State v. Turner.**

Franklin App. No. 04AP-364, 2004-Ohio-6609.

O'Donnell and Lanzinger, JJ., dissent.

**2005-1391. State v. Battle.**

Hamilton App. No. C-040388.

**2005-1433. State v. Steimle.**

Cuyahoga App. Nos. 77005, 77006, 77302, and 77303, 2005-Ohio-3478.

Lanzinger, J., dissents.

**2005-1469. State v. Rice.**

Cuyahoga App. No. 82547, 2003-Ohio-6947 and 2005-Ohio-3393.

**2005-1623. In re Patfield.**

Lake App. No. 2005-L-007, 2005-Ohio-3769.

**2005-1636. In re Patfield.**

Lake App. No. 2005-L-006, 2005-Ohio-3768.

**RECONSIDERATION OF PRIOR DECISIONS**

**2004-2144. Cuyahoga Cty. Bar Assn. v. Jurczenko.**

Board of Commissioners on Grievances and Discipline, No. 04-014. Reported at 106 Ohio St.3d 123, 2005-Ohio-4101, 832 N.E.2d 720. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.