

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
March 6, 1996

MERIT DOCKET

95-2551. State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas.

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

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

96-47. Cox v. Court of Appeals, Fifth App. Dist.

In Mandamus. Sua sponte, cause dismissed.

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

96-62. Drawl v. Clerk of Court, Supreme Court of Ohio.

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

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

96-64. State ex rel. Aloï v. Judges of the Ninth Dist. Court of Appeals. In Mandamus. On amended motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

96-75. State ex rel. Young v. Judges of the Fourth App. Dist. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

96-77. State ex rel. Mack v. Ohio Adult Parole Auth. In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

Moyer, C.J., dissents and would grant an alternative writ.

96-98. Guess v. Judges.

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

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

96-106. Lane v. Corp. Information Serv., Inc.

Summit County, No. 17266. On review of order certifying a conflict and on motion to dismiss. The court determines that a conflict does not exist; sua sponte, cause dismissed.

Douglas, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.

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

96-213. Barnett v. Weston.

In Mandamus. Sua sponte, cause dismissed.

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

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

95-1684. State v. Allen.
Montgomery County, No. 14730.

95-2201. Jasper v. Jasper.
Hamilton County, No. C-940481.

95-2203. State v. Burke.
Mahoning County, No. 92 C.A. 157.

95-2211. Cassim v. Cassim.
Franklin County, No. 94APF12-1771. On discretionary appeal and cross-
appeal. Appeal and cross-appeal denied.
Moyer, C.J., and F.E. Sweeney, J., dissent.

95-2219. State v. Brant.
Portage County, No. 94-P-0117.

95-2223. State v. Bailey.
Cuyahoga County, No. 67333.

95-2226. State v. Savchuk.
Lake County, No. 93-L-187. On discretionary appeal and cross-appeal.
Appeal and cross-appeal denied.
Resnick and F.E. Sweeney, JJ., dissent.

95-2234. State v. Nunn.
Cuyahoga County, No. 67755.
Wright, J., dissents.

95-2247. State v. Mullins.
Fairfield County, No. 56CA1994.
Wright, J., dissents.

95-2255. State v. Peoples.
Hamilton County, No. C-940809.

95-2258. Urichich v. Youngstown.
Mahoning County, No. 93 C.A. 221.

95-2265. State v. Moore.
Miami County, No. 94CA46.

95-2266. State v. Sherman.
Union County, No. 14-95-16.

95-2277. Greater Cincinnati Plumbing Contrs'. Assn. v. Blue Ash.
Hamilton County, No. C-940727.
Wright and F.E. Sweeney, JJ., dissent.

95-2278. Lakewood v. Town.
Cuyahoga County, No. 68345.

95-2285. Keycorp Mtge., Inc. v. Shimp.
Portage County, No. 94-P-0073.
Resnick, J., not participating.

95-2289. Harm v. Parma.
Cuyahoga County, No. 67915.

95-2291. Kirtland v. Grunz.
Lake County, Nos. 95-L-009 and 95-L-010.

95-2301. Truck World, Inc. v. Fifth Third Bank.
Hamilton County, No. C-940029.

95-2305. Crist v. Crist.
Montgomery County, No. 14970.

95-2308. In re Kerry Ford, Inc.
Franklin County, No. 94APE10-1569.

95-2311. State v. Engel.
Hamilton County, Nos. C-950109, C-950110 and C-950111.
Pfeifer, J., dissents.

95-2321. Burch v. Akron Hous. Appeals Bd.
Summit County, No. 17201.

95-2324. State v. Gill.
Franklin County, No. 95APC01-84.

95-2345. Magyar v. Lightning Rod Mut. Ins. Co.
Erie County, No. E-95-007.
Resnick, J., not participating.

95-2349. State v. Whitaker.
Cuyahoga County, No. 68142.

95-2351. In re Meeks.
Lake County, No. 95-L-050.

95-2358. Critzer v. Critzer.
Butler County, No. CA95-03-043.

95-2368. State v. Bishop.
Cuyahoga County, Nos. 68799, 68800, 68801 and 68802.

95-2372. State v. Patton.
Hamilton County, No. C-940871.
Moyer, C.J., Douglas and Resnick, JJ., dissent.

95-2399. Pheils v. Black.
Wood County, No. WD95028.
Resnick, J., not participating.

95-2437. Kohler v. Deel.
Wayne County, No. 95CA0044.

MOTION DOCKET

94-1174. State v. Mays.
Cuyahoga County, No. 67262. On motion to cancel/revoke bond. Motion granted.

Moyer, C.J., and Wright, J., dissent.

95-1239. Young v. The Morning Journal.
Lorain County, No. 94CA005952. On motion to strike. Motion granted.

Wright and Pfeifer, JJ., dissent.

95-1536. ALLTEL Ohio, Inc. v. Pub. Util. Comm.
Public Utilities Commission, No. 94-2012-TP-ACE. On motion for leave to intervene by MCI Metro Access Transmission Services, Inc. Motion granted.

Resnick, J., not participating.

95-1537. ALLTEL Ohio, Inc. v. Pub. Util. Comm.
Public Utilities Commission, No. 94-2019-TP-ACE. On motion for leave to intervene by MRS Intelenet of Ohio, Inc. Motion granted.

Resnick, J., not participating.

95-1708. State v. Triplett.
Cuyahoga County, No. 67450. On motion to strike appellant's Proposition of Law No. II. Motion denied.

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

95-1997. State ex rel. Rossman v. Cleveland.
In Mandamus. On motion to withdraw motion for attorney fees. Motion granted.

95-2141. Garfield Hts. v. Pub. Util. Comm.
Public Utilities Commission, Nos. 94-1176-EL-CMR, 94-1177-EL-CMR and 94-578-EL-CMR. On motion for leave to intervene by Cleveland Electric Illuminating Company. Motion granted.

95-2444. Cleveland Elec. Illum. Co. v. Pub. Util. Comm.
Public Utilities Commission, No. 95-458-EL-UNC. On motion for leave to intervene of Ohio Power Company and on motion for leave to intervene of Medical Center Company. Motions granted.

95-2575. Ohio Edison Co. v. Pub. Util. Comm.
Public Utilities Commission, No. 93-1408-EL-CSS. On motion for leave to intervene by Youngstown Thermal Limited Partnership. Motion granted.
Cook, J., not participating.

95-2576. Cincinnati Bell Tel. Co. v. Pub. Util. Comm.
Public Utilities Commission, No. 94-1695-TP-ACE. On motion for leave to intervene by Time Warner Communications of Ohio, L.P., and Time Warner AxS. Motion granted.

96-2621. Ohio Tel. Assn. v. Pub. Util. Comm.
Public Utilities Commission, No. 94-1695-TP-ACE. On motion for leave to intervene of Time Warner Communications of Ohio, L.P., and Time Warner AxS. Motion granted.

95-2622. ALLTEL Ohio, Inc. v. Pub. Util. Comm.
Public Utilities Commission, No. 94-1695-TP-ACE. On motion for leave to intervene of Time Warner Communications of Ohio, L.P., and Time Warner AxS. Motion granted.
Resnick, J., not participating.

95-2626. In re Kleich Children.
Stark County, No. 1995CA00062. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause consolidated

with 95-2623, In re Kleich Children, Stark County, No. 1995CA00062; briefing schedule stayed.

Wright and Pfeifer, JJ., dissent.

Resnick, J., not participating.

96-52. Valvoline Instant Oil Change, Inc. v. Tracy.

Board of Tax Appeals, No. 94-B-1179. On motion for admission pro hac vice by Roger F. Day, Esq. for William R. Buzo, Esq. Motion granted.

96-53. Ashland Branded Marketing, Inc. v. Tracy.

Board of Tax Appeals, No. 94-B-1180. On motion for admission pro hac vice by Roger F. Day, Esq. for William R. Buzo, Esq. Motion granted.

96-54. SuperAmerica Group, Inc. v. Tracy.

Board of Tax Appeals, No. 94-B-1181. On motion for admission pro hac vice by Roger F. Day, Esq. for William R. Buzo, Esq. Motion granted.

96-76. State v. Kinsey.

Holmes County, No. CA515. On motion to appear pro se on behalf of Kinsey Equipment Co. Motion denied.

Moyer, C.J., and Pfeifer, J., would permit Roger F. Kinsey to appear pro se for himself only and would not appoint an attorney to represent the company.

Resnick, J., would grant the motion.

96-128. State v. Richards.

Mercer County, No. 10-95-2. On motion for leave to file delayed appeal. Motion denied.

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

96-156. State v. Luster.

Lucas County, No. L-92-052. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., not participating.

96-167. State v. Smith.

Cuyahoga County, No. 68351. On motion for leave to file delayed appeal. Motion denied.

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

96-169. State v. Dinger.

Summit County, No. 17250. On motion for leave to file delayed appeal. Motion granted.

Douglas, Wright and F.E. Sweeney, JJ., dissent.

96-181. State v. Avery.

Hamilton County, No. C-940422. On motion for leave to file delayed appeal. Motion granted.

Douglas, Wright and F.E. Sweeney, JJ., dissent.

96-185. Wooten v. Knisley.

Highland County, No. 94CA858. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at pages 4-5 of the court of appeals' Entry on Motion to Certify Record, filed December 26, 1995:

"Accordingly, the judges of this court of appeals do hereby find that the judgment upon which they have agreed in this case is in direct conflict with the judgment pronounced upon the same question by the Court of Appeals of the Twelfth Appellate District in Miller v. Jordan (1993), 87 Ohio App.3d 819 [623 N.E.2d 219] and Hecker v. Dayton Fin. Servs. Corp. (Feb. 7, 1994), Warren App. No. CA93-05-041, unreported, and the Fifth Appellate District in Kilgore v. Schindler (July 24, 1989), Richland App. No. CA-2665, unreported.

"The rule of law upon which the conflict exists is whether R.C. 901.51 requires a criminal conviction before treble damages may be imposed pursuant [to] that section of the Revised Code."

96-281. Planey v. Planey.

Mahoning County, No. 95 C.A. 213. On motion for stay of execution. Motion denied.

DISCRETIONARY APPEALS ALLOWED

95-2208. Davis v. Flickinger.

Tuscarawas County, No. 94AP110077.

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

95-2210. State v. Sanders.

Miami County, Nos. 95CA11 and 95CA12. On discretionary appeal and cross-appeal. Sua sponte, appeal and cross-appeal allowed only as to the issues raised in 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 C.A. 232, and held for the decision in Gustafson; briefing schedule stayed.

Wright, J., would allow the appeal and cross-appeal on all issues raised therein.

95-2337. State v. Montecalvo.

Lorain County, No. 95CA006041.

Wright, Resnick and Pfeifer, JJ., dissent.

95-2623. In re Kleich Children.

Stark County, No. 1995CA00062. Sua sponte, cause held for the decision in 95-941 and 95-942, In re Young Children, Stark County, No. 94CA0198; 95-1213, In re Bunting Children, Stark County, No. 94CA0264; 95-1510 and 95-1688, In re Brock Children, Stark County, No. 94CA0227; and 95-1526, In re Farrar, Guernsey County, No. 94CA20; briefing schedule stayed.

Wright and Pfeifer, JJ., dissent.

Resnick, J., not participating.

96-190. Middleton v. Combs.

Butler County, No. CA95-08136. On motion to consolidate case with 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 C.A. 232. Sua sponte, discretionary appeal allowed and cause held for the decision in 95-1377 and 95-1466; briefing schedule stayed.

96-191. Middletown v. Smallwood.
Butler County, No. CA95-08-127. On motion to consolidate case with 95-1377 and 95-1466, supra. Sua sponte, discretionary appeal allowed and cause held for the decision in 95-1377 and 95-1466; briefing schedule stayed.

DISCRETIONARY APPEALS NOT ALLOWED

95-2204. Sorge v. Copaz Packaging Corp.
Hamilton County, No. C-940818.

95-2221. Doe v. Ohio State Univ. Hosp.
Franklin County, No. 94API11-1625.
Moyer, C.J., and Pfeifer, J., dissent.

95-2227. In re Annexation of 57.035 Acres of Liberty Twp.
Trumbull County, No. 95-T-5186.

95-2238. Cedar Fair, L.P. v. Weinstein.
Erie County, No. E-95-040.
Wright and Pfeifer, JJ., dissent.
Resnick, J., not participating.

95-2239. Fobes v. AVI Foodsystems.
Summit County, No. 16958.
Wright, J., dissents.

95-2240. Fannin v. Norfolk & W. Ry. Co.
Summit County, Nos. 17134 and 17136.

95-2245. Leis v. Leis.
Miami County, No. 94CA54.

95-2250. United Natl. Bank & Trust Co. v. Schlabach.
Mahoning County, No. 94 C.A. 175.

95-2259. State v. Lindsey.
Hamilton County, No. C-950081.

95-2268. Chotkevys v. Seman.
Cuyahoga County, No. 67812.
Douglas and F.E. Sweeney, JJ., dissent.

95-2274. Price v. Reinhardt.
Wood County, No. WD94087.
Resnick, J., not participating.

95-2275. Arena v. Arena.
Franklin County, No. 94APF09-1338.

95-2279. Feichtner v. Ohio Dept. of Transp.
Franklin County, No. 95API01-47.
Douglas and F.E. Sweeney, JJ., dissent.

95-2281. Troy Twp. Trustees v. Greer.
Delaware County, No. 95CAE01003.

95-2292. Airborne Express, Inc. v. Systems Research Laboratories, Inc.
Clinton County, No. CA94-10-026.
Moyer, C.J., and F.E. Sweeney, J., dissent.

95-2296. Jones v. R/P Internatl. Technologies, Inc.
Hamilton County, No. C-940567.
Douglas, J., dissents.

95-2306. Rowan v. Tallmadge.
Summit County, No. 16876.
Douglas, J., dissents.

95-2307. Mark v. Mellott Mfg. Co.
Ross County, No. 94CA2011.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

95-2322. Hughes v. Brogan.
Franklin County, No. 95APE02-153.
Douglas and Pfeifer, JJ., dissent.

95-2323. Jocek v. GTE North, Inc.
Summit County, No. 17097.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

95-2334. Weber v. Condren.
Cuyahoga County, No. 68268.
Douglas, J., dissents.

95-2357. State v. Smith.
Hamilton County, No. C-941041.

95-2548. Wooten v. Knisley.
Highland County, No. 94CA858.
Moyer, C.J., F.E. Sweeney and Cook, JJ., dissent.

DISCIPLINARY DOCKET

95-2213. In re Ginsberg.
Pursuant to the provisions of Gov.Bar R. V(5)(A)(3), Melvin R. Ginsberg of South Euclid, Ohio, Attorney Registration No. 0027592, is indefinitely suspended from the practice of law. On motion for stay of execution. Motion denied.

96-232. In re Resignation of Palmer.
The resignation as an attorney of Jack Harold Palmer of Defiance, Ohio, Attorney Registration No. 0010089, is accepted.

96-297. In re Resignation of Renshaw.
The resignation as an attorney of Robert Eugene Renshaw of Dayton, Ohio, Attorney Registration No. 0033739, is accepted.

RECONSIDERATION DOCKET

94-1217. Hood v. Diamond Products, Inc.

Lorain County, No. 93CA005649. Reported at 74 Ohio St.3d 298, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

94-2526. State v. Pless.

Cuyahoga County, No. 63477. Reported at 74 Ohio St.3d 333, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Pfeifer and Cook, JJ., dissent.

95-1928. Evans v. Culbertson.

Knox County, No. 95CA2. Reported at 74 Ohio St.3d 1497, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

95-1947. Ammon v. Fresh Mark, Inc.

Columbiana County, No. 94-C-46. Reported at 74 Ohio St.3d 1500, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Wright, J., dissents.

95-1960. Adkinson v. Mossing.

Lucas County, No. L-94-363. Reported at 74 Ohio St.3d 1498, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

95-1980. State v. Collins.

Lorain County, No. 94CA005967. Reported at 74 Ohio St.3d 1498, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

95-1992. Weiss v. Thomas & Thomas Dev. Co.

Cuyahoga County, Nos. 67508, 67509, 67515 and 67516. Reported at 74 Ohio St.3d 1498, ___ N.E.2d ___. On motion for reconsideration. Motion granted and discretionary appeal allowed.

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

95-2031. Goldfuss v. Davidson.

Portage County, No. 94-P-0010. Reported at 74 Ohio St.3d 1498, ___ N.E.2d ___. On motion for reconsideration. Motion granted and discretionary appeal allowed; sua sponte, cause consolidated with 95-2014, Goldfuss v. Davidson, Portage County, No. 94-P-0010.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

95-2033. State v. Haywood.

Allen County, No. CA95080049. Reported at 74 Ohio St.3d 1498, ___ N.E.2d ___. On motion for reconsideration. Motion denied.