

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY

September 3, 1997

MERIT DOCKET

- 97-424. State ex rel. Williams v. Brigano.
Warren App. No. CA96-10-108. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.
- 97-499. State ex rel. Tranor Co., Ltd. v. Moreland Hills.
In Mandamus. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Cook and
Lundberg Stratton, JJ., concur.
Pfeifer, J., dissents and would grant the writ.
- 97-943. State ex rel. Bradford v. Janas.
In Mandamus. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.
- 97-1007. State ex rel. Wilson v. Gaul.
In Procedendo. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.
- 97-1032. State ex rel. Fatherly v. O'Neill.
In Mandamus. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.
- 97-1068. State ex rel. Taylor v. Court of Common Pleas of
Summit Cty.
In Procedendo. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.

97-1076. State ex rel. Watson v. Spicer.
In Mandamus and Procedendo. On motion to dismiss of Willard F. Spicer. Motion to dismiss sustained. Cause dismissed.

On objection to joinder of Maureen O'Connor. Objection sustained.

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

97-1085. Naething v. Court of Appeals, Richland Cty.
In Procedendo. Sua sponte, cause dismissed.

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

97-1086. Hoover v. Court of Common Pleas of Ashland Cty.
In Procedendo. On motion for default judgment. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

F.E. Sweeney, J., dissents and would grant an alternative writ.

97-1171. Wyler v. Wyler.
In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1172. Wyler v. Wyler.
In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1178. State ex rel. Strothers v. Lakewood.
In Mandamus. On motion to dismiss of city of Lakewood. Motion to dismiss sustained. Cause dismissed.

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

97-1223. Patterson v. Tebe.
In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1224. Floyd v. Walker.
In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1229. State ex rel. Hall v. Court of Appeals, Sixth App. Dist.
In Procedendo. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Resnick, J., not participating.

97-1265. State ex rel. Browing v. Civ. Div., Franklin Cty.

Court of Common Pleas.

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

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

97-1266. King v. State.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1378. Cole v. Ohio Adult Parole Auth.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1392. Wright v. Court of Common Pleas, Franklin Cty.

In Mandamus and Habeas Corpus. Sua sponte, cause dismissed.

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

97-1412. State ex rel. Lunsford v. Wingard.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1425. Doss v. Anderson.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1468. State ex rel. Pierce v. Wingard.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1471. Askew v. Anderson.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1481. State ex rel. Bob Evans Farms, Inc. v. Licking Cty. Bd. of Elections.

In Mandamus. On answer of respondent, motion to dismiss, motion for leave to intervene of Carl Wilkenfield, James R. Jump and Mary V. Fellabaum, and answer of intervening respondents. Motion for leave to intervene granted; motion to dismiss sustained; cause dismissed.

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

Resnick, J., not participating.

97-1487. In re Gilliam.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-1491. Sauers v. Ohio Supreme Court.

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

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

97-1529. State ex rel. Broomfield v. Ghee.
In Habeas Corpus. Sua sponte, cause dismissed.

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

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

97-323. State v. Roe.
Preble App. No. CA96-07-009.

97-326. Granville v. Dalton.
Licking App. No. 95CA00026.

97-471. State v. Dearmitt.
Wayne App. No. 96CA0021.

97-496. State v. McMullen.
Hamilton App. No. C-960088.

97-648. State v. King.
Summit App. No. 18295.

97-659. State v. Blackshear.
Montgomery App. No. 15812.
Moyer, C.J., dissents.

97-689. Jenkins v. Hughes.
Vinton App. No. 97CA508.

97-736. State v. Ritchie.
Lorain App. No. 95CA006211.

97-757. State v. Sanders.
Madison App. No. CA96-01-002.

97-798. Koeck v. Boyle.
Athens App. Nos. 95CA1705 and 95CA1731.

97-823. Green Twp. Bd. v. Kleve.
Hamilton App. No. C-960731.

97-828. State v. Dixon.
Cuyahoga App. No. 68338. (Appeal of state of Ohio and cross-
appeal of Tyson Dixon.)
Moyer, C.J., Resnick and Lundberg Stratton, JJ., dissent.

97-898. State v. Ulrey.
Lorain App. No. 96CA006610.
Pfeifer, J., dissents.

97-935. State v. Buzzard.
Crawford App. No. 3-97-10.
Lundberg Stratton, J., dissents.

97-941. State v. Russell.
Lucas App. No. L-96-335.
Resnick, J., not participating.

97-942. State v. Crosby.
Hamilton App. No. C-950903.

97-944. State v. Alvarez.
Lorain App. No. 96CA006595.

97-945. State v. Cruz.
Delaware App. No. 96CAA06038. (Appeal of state of Ohio and
cross-appeal of Indalecio Cruz.)
Lundberg Stratton, J., would allow the state's appeal.
Moyer, C.J., would allow the appeal and the cross-appeal.

97-949. Pulver v. Rookwood Highland Tower Invest.
Hamilton App. Nos. C-950361 and C-950492.
Pfeifer, J., dissents.

97-962. State v. Zobel.
Tuscarawas App. No. 96AP060051.
Lundberg Stratton, J., dissents.

97-972. State ex rel. R.T.G., Inc. v. Ohio Dept. of Natural
Resources.
Franklin App. No. 95APE05-662. (Appeal of Ohio Department of
Natural Resources et al. and cross-appeal of R.T.G., Inc. et
al.)
Moyer, C.J., Douglas and Pfeifer, JJ., dissent.

97-973. Reyes v. McCabe.
Franklin App. No. 96APE05-690.

97-978. State v. Tippens.
Lorain App. No. 96CA006594.

97-983. Columbus v. Duling.
Franklin App. No. 96APC07-859.
Resnick and Cook, JJ., dissent.

97-984. In re Howard.
Butler App. No. CA96-08-173.
Moyer, C.J., dissents.

97-985. Afjeh v. Judson.
Lucas App. No. L-96-254.

97-986. In re Trust Created by Item III of the Will of Andrew
W. Zmuda.
Lucas App. No. L-96-073.
Resnick, J., not participating.

97-994. In re Jones.
Lorain App. No. 97CA006708.

97-995. State v. Lewis.
Greene App. No. 96CA12.

97-1003. State v. Murphy.
Cuyahoga App. No. 70400.

97-1004. State v. Calhoun.
Geauga App. No. 96-G-1971.

97-1005. State v. Wesley.
Lucas App. No. L-97-1080.

97-1006. Carpenter v. United Ohio Ins. Co.
Crawford App. No. 3-96-16. (Notice of appeal of Paula and Douglas Carpenter and cross-appeal of United Ohio Insurance Company.)

Douglas, J., would allow the appeal only.

Resnick, J., would allow the appeal and the cross-appeal.

97-1008. State v. Vroman.
Ross App. No. 96CA2258.

97-1016. State v. Broome.
Geauga App. No. 97-G-2047.

97-1018. Bachman v. Helmer.
Hamilton App. No. C-960367.
Moyer, C.J., dissents.

97-1019. State v. Rountree.
Summit App. No. 15388.

97-1024. State v. Young.
Lawrence App. No. 89CA1898.

97-1026. State v. Davis.
Hamilton App. No. C-970068.

97-1028. State v. Vinson.
Franklin App. No. 96APA08-1004.

97-1029. State v. Wooten.
Franklin App. No. 96APA10-1379.

97-1030. State v. Luna.
Huron App. No. H-97-011.

97-1033. State v. Washington.
Portage App. No. 95-P-0025.

97-1034. State v. Novel.
Licking App. No. 96CA113.
F.E. Sweeney and Pfeifer, JJ., dissent.

97-1036. State v. Crosby.
Richland App. No. 96CA68.
Lundberg Stratton, J., dissents.

97-1037. State v. Akers.
Portage App. No. 95-P-0073.
Lundberg Stratton, J., dissents.

97-1040. Rak-Ree Ent., Inc. v. Timmons.
Pickaway App. No. 96CA46.

97-1041. Wolf v. Siglar.
Franklin App. No. 97APF02-188.

97-1043. Riley v. Northeast Family Health Care.
Summit App. No. 17814.
Douglas and F.E. Sweeney, JJ., dissent.

97-1045. Gurr v. Broshear.
Butler App. No. CA96-10-201.

97-1046. State v. Edwards.
Franklin App. No. 96APA09-1146.

97-1047. State v. Swarey.
Wayne App. No. 96CA0037.

97-1051. Gorman-Rupp Co. v. Mullin.
Richland App. No. 96CA1012.

97-1052. Smith v. Smith.
Summit App. No. 17964.

97-1056. Galasso v. Columbus Civ. Serv. Comm.
Franklin App. No. 96APE08-1096.
Douglas and Resnick, JJ., dissent.

97-1057. State v. Williams.
Cuyahoga App. No. 69936.

97-1059. State v. Hawkins.
Hamilton App. No. C-960682.
Lundberg Stratton, J., dissents.

97-1060. State v. Clay.
Summit App. No. 17787.

97-1061. State v. Bernaciak.
Coshocton App. No. 96CA28.

97-1062. State v. Gee.
Putnam App. No. 12-96-14.

97-1063. State v. Barrett.
Hamilton App. No. C-960598.

97-1064. State v. Green.

Lorain App. No. 96CA006609.

97-1066. State v. Brabson.
Pike App. No. 96CA571.
F.E. Sweeney, J., dissents.

97-1075. State v. Johnson.
Cuyahoga App. No. 59820.

97-1079. State v. Howard.
Cuyahoga App. No. 70987.

97-1084. State v. Ward.
Coshocton App. No. 96CA26.

97-1090. State v. McClain.
Cuyahoga App. No. 67785.

97-1095. Sunday v. Greene.
Cuyahoga App. No. 72170.
Lundberg Stratton, J., dissents.

97-1099. State v. Steele.
Hamilton App. No. C-960873.

97-1104. State v. Stover.
Lorain App. No. 96CA006461.

97-1105. State v. Abreu.
Cuyahoga App. No. 70450.

97-1115. Fairway Assoc. v. Lesnick.
Summit App. No. 17840.

97-1116. State v. Legros.
Seneca App. No. 13-97-7.
Moyer, C.J., and Cook, J., dissent.

97-1118. State v. Harmon.
Hamilton App. No. C-960676.

97-1119. State v. Brown.
Summit App. No. 18492.

97-1121. State v. Goudy.
Knox App. No. 96CA25.

97-1123. State v. Cullers.
Montgomery App. No. 15936.

97-1127. Lenhof v. New York Life Ins. Co.
Hamilton App. No. C-950957.

97-1129. State v. Spraggins.
Franklin App. No. 96APA10-1337.

97-1135. Smith v. F.E. Schumacher Co.

Stark App. No. 1996CA00160.

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

97-1140. State v. Whitley.

Hamilton App. No. C-960286.

97-1141. Stillman v. Murray.

Cuyahoga App. No. 71042.

97-1144. State v. Simms.

Summit App. No. 18535.

97-1155. State v. Pinnock.

Hamilton App. No. C-950882.

97-1156. State v. Ramos.

Ashtabula App. No. 96A0008.

97-1157. State v. Barnes.

Summit App. No. 18443.

97-1158. State v. Craddock.

Hamilton App. No. C-960896.

97-1166. State v. Campbell.

Hamilton App. No. C-960531.

97-1184. State ex rel. Eckstein v. Video Express.

Fayette App. No. CA96-05-014.

Douglas, J., would allow on Proposition of Law No. V only.

97-1213. State v. Martin.

Franklin App. Nos. 96APA04-450 and 96APA04-459.

97-1237. State v. Carter.

Stark App. No. 1997CA00011.

97-1242. State v. Smith.

Hamilton App. No. C-960748.

97-1346. State v. Valentine.

Franklin App. No. 88AP-435.

MOTION DOCKET

86-425. State v. Post.

Lorain App. No. 3868. On motion to set execution date. Motion granted.

Moyer, C.J., Douglas and F.E. Sweeney, JJ., dissent.

97-352. State v. Hymes.

Mahoning App. No. 93 C.A. 182. On motion for leave to file delayed appeal. Motion granted.

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

97-395. State v. Houser.

Cuyahoga App. No. 69639. On motion for leave to file delayed

appeal. Motion denied.

97-668. State v. Mayfield.
Summit App. No. 18231. On motion for leave to file delayed
appeal. Motion denied.

97-683. State v. Mitchell.
Cuyahoga App. No. 70121. On motion for leave to file delayed
appeal. Motion denied.
Pfeifer and Lundberg Stratton, JJ., dissent.

97-765. Simmons v. Cuyahoga Cty. Bd. of Revision.
Board of Tax Appeals, No. 95-B-951. On motion for order
construing notice of appeal as adequate notice to appellees.
Motion granted.
Moyer, C.J., Douglas and Cook, JJ., dissent.

97-931. State v. Brady.
Summit App. No. 17750. On motion for leave to file delayed
appeal. Motion denied.
Pfeifer, J., dissents.

97-1013. State ex rel. The Toledo Blade Co. v. Hancock Cty. Bd.
of Commrs.
In Mandamus. On motion for issuance of peremptory writ and on
answer of respondent. Sua sponte, alternative writ granted.
Pfeifer, J., dissents and would grant a peremptory writ and
attorney fees.

97-1124. State v. Chavis.
Franklin App. No. 96APA09-1158. On motion for leave to file
delayed appeal. Motion denied.
Pfeifer and Lundberg Stratton, JJ., dissent.

97-1142. Sutowski v. Eli Lilly & Co.
Certified State Law Question, No. 1:97CV1283. On preliminary
memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will
answer the following question found at page 10 of the
Certification Order of the United States District Court for the
Northern District of Ohio, Eastern Division, filed June 5, 1997:
"Whether market share exists in Ohio as a viable theory of
liability in a DES products liability action."
Moyer, C.J., and Lundberg Stratton, J., dissent.
On motion for admission pro hac vice of Sheila AnnMarie
Moeller and on motion for admission pro hac vice of A. Edward
Grashof. Motions granted.

97-1152. State v. Walker.
Hamilton App. No. C-960736. On motion for leave to file delayed
appeal. Motion denied.
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

97-1159. State v. Dye.
Richland App. No. 95CA80. On motion for leave to file delayed
appeal. Motion granted.
Douglas, F.E. Sweeney and Cook, JJ., dissent.

97-1176. State v. Kinney.
Cuyahoga App. No. 71353. 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' Certificate of Conflict filed May 1, 1997:

"Sua sponte. The judges of the Court of Appeals of the Eighth District of the State of Ohio hereby find that the judgment entered in this case is in conflict with the judgment pronounced upon the same question by another Court of Appeals, the same being the Court of Appeals for Sandusky County in the case of State v. Tucker (1994), 98 Ohio App.3d 308 [648 N.E.2d 557].

"Wherefore, the record in this cause, State v. Kinney, is hereby certified to the Supreme Court of Ohio for review and final determination. The issue for certification is:

"Whether [a] search warrant is invalid as to provision authorizing search of `all persons' that were at residence during execution of search warrant, as it did not name or particularly describe any person or place."

Resnick, J., not participating.

Sua sponte, cause consolidated with 97-1175, infra.

Resnick, J., not participating.

97-1202. State v. Evans.
Lucas App. No. L-95-393. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

Resnick, J., not participating.

97-1222. State v. Alderman.
Licking App. No. 96CA10. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

97-1230. State v. Parks.
Clark App. No. 96CA99. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

97-1247. State v. Snyder.
Summit App. No. 18333. On motion for leave to file delayed appeal. Motion denied.

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

97-1255. State v. Teamer.
Cuyahoga App. No. 70466. 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' Journal Entry filed July 2, 1997:

"This court concludes that Gary Teamer's motion to clarify is well taken. We thus issue the following order: Several decisions issued by this court conflict with State v. Susser (Dec. 5, 1990), Montgomery App. No. 11787, unreported [1990 WL 197958]. The Susser court held Susser's `conviction for drug abuse [could] not stand as a matter of law where he possessed such a minute quantity of cocaine, that its very presence must be confirmed by extraordinary microscopic analysis.' This court

rejected this principle and held most recently in this case that 'it is not the amount of the controlled substance, but whether the accused knowingly possessed, obtained, or used the drug that guides our inquiry.' State v. Teamer (May 23, 1997), Cuyahoga App. No. 70466, unreported [1997 WL 232709]; State v. Duganitz (May 5, 199[4]), Cuyahoga App. No. 65328, unreported [1997 WL 173521]. We supported this position by citing our decision in State v. Newsome (1990), 71 Ohio App.3d 73 [593 N.E.2d 40], and Hamilton County's decision in State v. Daniels (1985), 26 Ohio App.3d 101 [26 OBR 276, 498 N.E.2d 227]. Accordingly, the only issue we certify to the Supreme Court is whether the amount is a factor in determining the crime of drug abuse."

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

Sua sponte, cause consolidated with 97-1244, *infra*.

97-1349. State v. Thomas.

Cuyahoga App. Nos. 63719 and 63720. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

97-1373. State v. Evans.

Richland App. No. 96CA31. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Cook, JJ., dissent.

97-1379. State v. Daniels.

Lorain App. No. 96CA006424. On motion for leave to file delayed appeal. Motion denied.

Resnick, Pfeifer and Lundberg Stratton, JJ., dissent.

On motion to reinstate appeal bond. Motion denied.

97-1381. State v. Saffell.

Clark App. No. 3116. On motion for leave to file delayed appeal. Motion denied.

97-1406. State v. Albrecht.

Stark App. No. 1996CA00165. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

97-1411. O'Beirne v. Geauga Cty. Bd. of Elections.

In Mandamus. On answer of respondent and on motion for leave to intervene by Timberwood Farms, Ltd., and answer of intervening respondent. Motion for leave to intervene granted; motion for leave to amend granted; sua sponte, alternative writ granted and briefing expedited.

Moyer, C.J., and Pfeifer, J., dissent and would dismiss the cause.

97-1417. State v. Webb.

Hamilton App. No. C-970091. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

97-1423. State v. Komadina.

Lorain App. No. 94CA005782. On motion for leave to file delayed appeal. Motion denied.

97-1427. Risk v. Woeste Eastside Motors, Inc.
Clermont App. No. CA96-10-088. On motion for stay of court of appeals' order. Motion denied.

F.E. Sweeney, J., dissents.

97-1464. State v. Burgan.
Summit App. No. 17842. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

97-1476. State v. Earle.
Lake App. No. 96-L-051. On motion for leave to file delayed appeal. Motion granted.

Moyer, C.J., Resnick and F.E. Sweeney, JJ., dissent.

97-1488. Cater v. Cleveland.
Cuyahoga App. No. 70674. 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' Journal Entry filed July 7, 1997:

"The conflict in question is whether a governmental function and the absolute immunity provided it under R.C. 2744.01(C)(2)(u) is still subject to the exceptions to immunity provided in R.C. 2744.02(B)(3) and (4). The decisions in conflict with the opinion sub judice include Hall v. Bd. of Edn. (4th App. Dist 1996), 111 Ohio App.3d 690 [676 N.E.2d 1241], and Siebenaler v. Village of Montpelier (July 26, 1996), Williams App. No. WM-95-035, unreported [1996 WL 420873.]"

Lundberg Stratton, J., dissents.

Cook, J., not participating.

Sua sponte, cause consolidated with 97-1261, infra.

Cook, J., not participating.

97-1490. State v. Taggart.
Butler App. No. CA96-09-175. On motion for stay of execution of sentence imposed by court of appeals. Motion denied.

97-1508. Forsyth v. Forsyth.
Clark App. No. 97CA0071. On motion for injunctive relief. Motion denied.

97-1601. Carey v. Boone.
Lucas App. No. L-96-274. On motion for stay of judgment pending appeal. Motion granted.

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

Resnick, J., not participating.

97-1604. State v. Auge.
Franklin App. No. 96APA12-1753. On motion for stay of court of appeals' judgment. Motion denied.

97-1666. Breen v. H & K, Inc.
Cuyahoga App. No. 71018. On motion for stay of mandate. Motion granted.

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

DISCRETIONARY APPEALS ALLOWED

97-936. Hocking Technical College v. Hocking Technical College
Edn. Assn.

Athens App. No. 96CA1750. (Appeal of Hocking Technical College
Education Association, OEA/NEA, and appeal of Joan Bartow.)

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

97-991. Petrilla v. Ajax Magnethermic Corp.

Trumbull App. No. 96-T-5446.

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

97-998. State v. Droste.

Franklin App. No. 96APC07-906.

Cook and Pfeifer, JJ., dissent.

97-1022. State v. Adamson.

Brown App. No. CA96-05-012. (Appeal of state of Ohio and cross-
appeal of Diane Christine Adamson.)

Douglas, Pfeifer and Cook, JJ., dissent.

97-1089. In re Trust U/W of Mary G. Brooke.

Preble App. No. CA96-10-017.

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

97-1128. Zivich v. Mentor Soccer Club, Inc.

Lake App. No. 95-L-184.

Douglas, Resnick and Pfeifer, JJ., dissent.

97-1143. Conley v. Brown Corp. of Waverly, Inc.

Pike App. No. 96CA583.

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

97-1175. State v. Kinney.

Cuyahoga App. No. 71353.

Pfeifer, J., dissents.

Resnick, J., not participating.

97-1244. State v. Teamer.

Cuyahoga App. No. 70466. The discretionary appeal is allowed on
Proposition of Law No. I only.

Moyer, C.J., F.E. Sweeney and Cook, JJ., would allow all
propositions of law.

Resnick, Pfeifer and Lundberg Stratton, JJ., dissent.

97-1261. Cater v. Cleveland.

Cuyahoga App. No. 70674.

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

Cook, J., not participating.

DISCRETIONARY APPEALS NOT ALLOWED

97-163. State v. Patrick.

Licking App. No. 96CA42.

97-275. State v. Wagner.

Hamilton App. No. C-960312.

97-570. State v. Wimberly.

Summit App. No. 17693.

97-672. Kleve v. Wenstrup.
Hamilton App. No. C-960422.

97-746. State v. Bass.
Stark App. No. 1995CA00347.
97-825. Hayes v. Goldstein.
Cuyahoga App. No. 70791.

97-834. Abrams v. Bailey Controls Co.
Lake App. No. 96-L-046. (Appeal of Bailey Controls Company and
cross-appeal of Edward Abrams.)

97-895. Bargo v. Gen. Casting Co.
Delaware App. No. 96CAE07039. (Appeal of Haston and Claudine
Bargo and cross-appeal [conditional] of DeFabco, Inc.)
Resnick and Pfeifer, JJ., dissent.

97-932. Bratton v. Summit Cty. Home Weatherization.
Summit App. No. 18402.

97-952. State v. Gonzalez.
Lorain App. No. 96CA006358.

97-961. In re Adoption of DeLong.
Richland App. No. 96CA96.
Moyer, C.J., and Douglas, J., dissent.

97-974. Comprehensive Offender Program Effort, Inc. v. Columbus
Bd. of Zoning Adjustments.
Franklin App. No. 96APE10-1298.
Lundberg Stratton, J., dissents.

97-982. Talbott v. M.A. Untch Ent., Inc.
Stark App. No. 1996CA00294.
Douglas and Resnick, JJ., dissent.

97-989. Mandato v. Horton.
Cuyahoga App. No. 70560.

97-990. Brown v. Univ. Hosp. of Cleveland.
Cuyahoga App. No. 71087.
Resnick, J., dissents.
97-1000. Stepp v. Freeman.
Greene App. No. 96CA125.

97-1010. Miami Valley Hosp. v. Combs.
Montgomery App. No. 16178.
F.E. Sweeney, J., dissents.

97-1012. Citizens Fed. Bank, FSB v. Zierolf.
Montgomery App. No. 16090.
Moyer, C.J., and Cook, J., dissent.

97-1044. Michaels v. Berliner.
Summit App. No. 17905.

Moyer, C.J., F.E. Sweeney and Lundberg Stratton, JJ.,
dissent.

97-1048. Wirtz v. Wirtz.
Hamilton App. No. C-960497.
Resnick, J., dissents.

97-1053. State v. Manley.
Licking App. No. 96CA136.

97-1067. Temple v. John Galt Co.
Franklin App. No. 96APE10-1364.
Douglas, J., dissents.

97-1071. Mancini v. Mt. Carmel Health.
Franklin App. Nos. 96APE08-1049 and 96APE09-1152.
Douglas, F.E. Sweeney and Lundberg Stratton, JJ., dissent.

97-1081. Conway v. Calbert.
Franklin App. No. 96APE08-1095.
Douglas, J., dissents.

97-1091. Parkersburg v. Camden-Clark Mem. Hosp.
Washington App. No. 96CA31.

97-1103. Grone v. Lake Seneca Prop. Owners Assn.
Williams App. No. WM-96-012.
Douglas and Resnick, JJ., dissent.

97-1136. Muskingum Valley Bancshares, Inc. v. Tonti.
Washington App. No. 95CA31.
Douglas, J., dissents.

97-1138. Gerdes v. Super Am. Group.
Butler App. No. CA96-08-171.

97-1139. State v. Edwards.
Cuyahoga App. No. 71009.
Douglas, J., dissents.

97-1148. Auto-Owners Ins. Co. v. United Home Comfort.
Wood App. No. WD-96-053.

97-1150. Kamenar v. Radiology Assoc. of Barberton, Inc.
Summit App. No. 17957.

97-1151. Poskocil v. Cleveland Inst. of Music.
Cuyahoga App. No. 71425.
Lundberg Stratton, J., dissents.

RECONSIDERATION DOCKET

95-1924. Hill v. Urbana.
Champaign App. No. 94CA22. Reported at 79 Ohio St.3d 130, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

96-526. In re Hayes.
Hancock App. No. 5-95-19. Reported at 79 Ohio St.3d 46, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Douglas, Cook and Lundberg Stratton, JJ., dissent.

96-1114. Whitehurst v. Perry Twp.
Franklin App. No. 95APE09-1180. Reported at 79 Ohio St.3d 1209,
___ N.E.2d ___. On motion for reconsideration. Motion denied.
Douglas, Resnick and Pfeifer, JJ., dissent.

97-644. State ex rel. Strong v. Killbuck Valley Mosquito
Abatement Sanitary Dist.
Wayne App. No. 96CA0054. Reported at 79 Ohio St.3d 1415, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Cook, J., dissents.

97-652. Blessing v. Blessing.
Ottawa App. No. OT-96-016. Reported at 79 Ohio St.3d 1417, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Lundberg Stratton, J., dissents.

97-677. Binns v. Ghee.
In Mandamus. Reported at 79 Ohio St.3d 1415, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

97-706. Milazzo v. Rudolph Foods Co.
Allen App. No. 1-96-60. Reported at 79 Ohio St.3d 1418, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

97-716. Stone v. Riffe.
Scioto App. No. 96CA2408. Reported at 79 Ohio St.3d 1418, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

97-727. Condit v. Planned Parenthood Assn. of Cincinnati.
Hamilton App. No. C-960126. Reported at 79 Ohio St.3d 1418, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

97-728. Cleveland Police Patrolmen's Assn. v. Cleveland.
Cuyahoga App. No. 70380. Reported at 79 Ohio St.3d 1449, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Cook and Lundberg Stratton, JJ., dissent.

97-731. State ex rel. Hamilton v. Court of Appeals, Eighth
Dist.
In Mandamus. Reported at 79 Ohio St.3d 1415, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

97-756. Miller v. Loveland.
Hamilton App. No. C-961090. Reported at 79 Ohio St.3d 1445, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Moyer, C.J., and Douglas, J., dissent.

97-773. McKean v. Journal News, Inc.
Tuscarawas App. No. 96APO40036. Reported at 79 Ohio St.3d 1449,
___ N.E.2d ___. On motion for reconsideration. Motion denied.
Moyer, C.J., and Pfeifer, J., dissent.

97-775. Reid v. Esprit Contractors, Inc.
Summit App. No. 17870. Reported at 79 Ohio St.3d 1449, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
F.E. Sweeney, J., dissents.

97-788. Mueller v. Vandalia.
Montgomery App. No. 16158. Reported at 79 Ohio St.3d 1457, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Douglas and F.E. Sweeney, JJ., dissent.
On renewed motion for sanctions. Motion denied.
Cook, J., dissents.

97-843. State v. Licitri.
Summit App. No. 17981. Reported at 79 Ohio St.3d 1446, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

97-960. State ex rel. Wallace v. Cuyahoga Cty. Court Clerk.
In Mandamus. Reported at 79 Ohio St.3d 1444, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.
Lundberg Stratton, J., dissents.