

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

October 4, 2006

[Cite as *10/04/2006 Case Announcements*, 2006-Ohio-5083.]

MERIT DECISIONS WITH OPINIONS

2003-1766. State v. Bethel, 2006-Ohio-4853.

Franklin C.P. No. 00CR-11-6600. Judgment affirmed.

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

2005-0556. Seger v. For Women, Inc., 2006-Ohio-4855.

Hamilton App. No. C-040317, 2005-Ohio-528. Judgment affirmed.

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

2005-1505. State ex rel. Oriana House, Inc. v. Montgomery, 2006-Ohio-4854.

Franklin App. Nos. 04AP-492 and 04AP-504, 2005-Ohio-3377. Judgment reversed.

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

2006-1634. Watkins v. Collins, 2006-Ohio-5082.

In Habeas Corpus. Writ denied.

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

Pfeifer, J., concurs in judgment only.
Lanzinger, J., dissents.

MERIT DECISIONS WITHOUT OPINIONS

2006-1246. State ex rel. Jones v. Collins.

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

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

2006-1257. State ex rel. Indus. Energy Users-Ohio v. Pub. Util. Comm.

In Prohibition. On motions for leave to intervene of Columbus Southern Power Company, Ohio Power Company, and Ohio Energy Group. Motions denied.

Pfeifer and O'Connor, JJ., dissent.

On motion to dismiss of Public Utilities Commission of Ohio. Motion to dismiss granted. Cause dismissed.

Resnick, Lundberg Stratton, O'Donnell and Lanzinger, JJ., concur.

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

2006-1258. State ex rel. Moore v. Cuyahoga Cty. Court of Common Pleas.

In Mandamus. On motion to dismiss and motion to amend complaint. Motion to amend complaint denied. Motion to dismiss granted. Cause dismissed.

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

2006-1274. Cotton v. Rothgery.

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

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

2006-1317. State ex rel. Waters v. Butler Cty. Clerk of Courts.

In Mandamus. On respondent's motion to dismiss and relator's motion for summary judgment. Motion for summary judgment denied. Motion to dismiss granted. Cause dismissed.

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

2006-1319. State ex rel. Hand v. Giavasis.

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

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

2006-1329. State ex rel. Niepsuj v. Summit Cty. Court of Common Pleas.

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

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

2006-1398. State ex rel. Ingram v. Ohio Adult Parole Auth.

In Mandamus. On answer of respondent. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

2006-1411. Newell v. Gaul.

In Procedendo and Prohibition. On respondent's motion to dismiss and relator's motion to strike respondent's motion to dismiss. Motion to strike denied. Motion to dismiss granted. Cause dismissed.

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

2006-1423. State ex rel. Harrison v. Nichols.

In Prohibition. On respondent's answer and motion for judgment on the pleadings. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

2006-1456. Benson v. Eberlin.

In Habeas Corpus. On petition for writ of habeas corpus of Darryl L. Benson. Sua sponte, cause dismissed.

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

2006-1460. Marshall v. Russo.

In Prohibition. On respondent's motions to dismiss and for sanctions for frivolous action, respondent's motions for issuance of an alternative writ and for injunctive relief, respondent's motion to strike relator's motions opposing motion to dismiss, for issuance of an alternative writ, and for injunctive relief, relator's motion for leave to file an amended complaint, and relator's motion for issuance of an

emergency peremptory writ. Motion to dismiss granted. Motion for sanctions granted. Motions for issuance of an alternative writ, for injunctive relief, for leave to file an amended complaint, and for issuance of an emergency peremptory writ denied. Motion to strike denied as moot. Cause dismissed.

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

2006-1461. Jones v. Eberlin.

In Habeas Corpus. On petition for writ of habeas corpus of Cecil Jones, Jr. Sua sponte, cause dismissed.

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

2006-1462. McKinney v. Eberlin.

In Habeas Corpus. On petition for writ of habeas corpus of Tony Randall McKinney. Sua sponte, cause dismissed.

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

2006-1480. State v. Tate.

Mahoning App. No. 06 MA 5. On review of order certifying a conflict. The court determines that no conflict exists. This cause is therefore dismissed.

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

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

2006-1513. Stevens v. Jeffreys.

In Habeas Corpus. On petition for writ of habeas corpus of John B. Stevens. Sua sponte, cause dismissed.

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

MOTION AND PROCEDURAL RULINGS

2003-0137. State v. Jackson.

Trumbull C.P. No. 01-CR-794. On application for reopening under S.Ct.Prac.R. XI(6). Application denied.

2003-0346. State v. Turner.

Franklin C.P. No. 01CR-06-3615. On motion to set execution date. Motion denied.

2005-1222. State ex rel. Dann v. Taft.

In Mandamus. On motion for an award of attorney fees and costs. Motion denied.
Resnick, J., dissents.

2005-2006. State ex rel. Honda of Am. Mfg., Inc. v. Indus. Comm.

Franklin App. No. 04AP-765, 2005-Ohio-4672. On request for oral argument.
Request denied.

2006-0151. State v. Carswell.

Warren App. No. CA2005-04-047, 2005-Ohio-6547. On motion for admission pro hac vice of Camilla B. Taylor by Alphonse A. Gerhardstein and motions for admission pro hac vice of Michael T. Haas, Helen Gerostathos Guyton, and Fernando R. Laguarda by Natalie Trishman Furniss. Motions granted.

2006-0799. State v. Huffman.

Hamilton App. No. C-050044, 165 Ohio App.3d 518, 2006-Ohio-1106. On motion for relief from stay of briefing schedule. Motion denied.
Lanzinger, J., dissents.

2006-1129. E. Liverpool v. Columbiana Cty. Budget Comm.

Board of Tax Appeals, Nos. 2003-T-1301, 2004-T-844 and 2005-T-1474. On motion for leave to intervene of Sherrie L. Curtis and John Torma. Motion denied.
Pfeifer, J., dissents.

2006-1276. State v. Ogletree.

Cuyahoga App. No. 86500, 2006-Ohio-2320. On motion for stay of proceedings.
Motion denied.

2006-1330. State v. Logsdon.

Seneca App. No. 13-05-29, 2006-Ohio-2938. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2006-0151, *State v. Carswell*, Warren App. No. CA2005-04-047, 2005-Ohio-6547; and briefing schedule stayed.

2006-1343. Pack v. Osborn.

Licking App. No. 05 CA 83, 2006-Ohio-2253. 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' Judgment Entry filed June 16, 2006:

“Whether the Medicaid eligibility rules are those in effect at the time of the creation of an inter vivos trust or those in effect on the date of eligibility review?”

Moyer, C.J., dissents.

The conflict cases are *Metz v. Ohio Dept. of Job & Family Servs.* (2001), 145 Ohio App.3d 304, *Martin v. Ohio Dept. of Job & Family Servs.* (1998), 130 Ohio App.3d 512, *Prior v. Ohio Dept. of Job & Family Servs.* (1997), 123 Ohio App.3d 381, and *Miller v. Ohio Dept. of Job & Family Servs.* (1995), 105 Ohio App.3d 539.

Sua sponte, cause consolidated with 2006-1207, *Pack v. Osborn*, Licking App. No. 05 CA 83, 2006-Ohio-2253.

2006-1381. Heskett v. Ohio Dept. of Adm. Servs.

Franklin App. No. 05AP-1011, 2006-Ohio-2074. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2006-0107, *Hughes v. Ohio Dept. of Commerce*, Franklin App. No. 04AP-1386, 2005-Ohio-6368; cause consolidated with 2006-1041, *Heskett v. Ohio Dept. of Adm. Servs.*, Franklin App. No. 05AP-1011, 2006-Ohio-2074; and briefing schedule stayed.

2006-1383. State v. Payne.

Franklin App. No. 05AP-517, 2006-Ohio-2552. 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’ Memorandum Decision filed July 13, 2006:

“Whether the lack of objection in the trial court waives or forfeits the *Blakely* issue for purposes of appeal when the sentencing occurred after the *Blakely* decision was announced.”

Resnick and Lanzinger, JJ., dissent.

The conflict case is *State v. Miller*, Montgomery App. No. 21054, 2006-Ohio-1138.

Sua sponte, cause consolidated with 2006-1245, *State v. Payne*, Franklin App. No. 05AP-517, 2006-Ohio-2552.

2006-1400. State v. Hinkle.

Stark App. No. 2006CA00083. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and O’Donnell, JJ., dissent.

2006-1409. State v. Vasquez.

Cuyahoga App. No. 79319. On motion for leave to file delayed appeal. Motion denied.

2006-1432. State v. Smith.

Greene App. No. 2005 CA 70, 2006-Ohio-2132. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.

2006-1435. State v. Levally.

Union App. No. 14-05-28, 2006-Ohio-1882. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2006-1459. State v. Ellison.

Hamilton App. No. C-050553, 2006-Ohio-2620. On motion for leave to file delayed appeal. Motion granted.

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

2006-1488. State v. Muttart.

Hancock App. No. 5-05-08, 2006-Ohio-2506. 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' Journal Entry filed July 12, 2006:

“Must a child victim’s statements, made for purposes of medical diagnoses and treatment (Evid.R. 804(4)), be excluded from admission at trial, pursuant to *State v. Said* (1994), 71 Ohio St.3d 473, where there has been no prior determination by the trial court that the child was competent at the time the statement was made?”

Lanzinger, J., not participating.

The conflict cases are *State v. Edinger*, Franklin App. No. 05AP-31, 2006-Ohio-1527, *State v. Rice*, Cuyahoga App. No. 82547, 2005-Ohio-3393, *State v. Brewer*, Erie App. No. E-01-053, 2003-Ohio-3423, and *State v. Ashford* (Feb. 16, 2001), Trumbull App. No. 99-T-0015.

Sua sponte, cause consolidated with 2006-1293, *State v. Muttart*, Hancock App. No. 5-05-08, 2006-Ohio-2506.

2006-1496. State v. Palmer.

Jefferson App. No. 04-JE-41, 2006-Ohio-749. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2006-1506. State v. Fuller.

Montgomery App. No. 20658, 2005-Ohio-3696. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

2006-1530. State v. Hairston.

Montgomery App. No. 20751, 2006-Ohio-2656. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2006-1543. In re Estate of Pallay.

Washington App. No. 05CA45, 2006-Ohio-3528. On motion for stay of court of appeals' judgment and motion for award of costs, expenses and fees. Motions denied.

Pfeifer, J., dissents.

2006-1552. State v. Griffin.

Summit App. No. 23306. On motion for stay of court of appeals' judgment. Motion denied.

2006-1560. State v. Lewis.

Cuyahoga App. No. 87276. On motion for leave to file delayed appeal. Motion denied.

O'Donnell and Lanzinger, JJ., dissent.

2006-1567. State v. Taylor.

Cuyahoga App. No. 86449, 2006-Ohio-3019. On motion for leave to file delayed appeal. Motion denied.

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

2006-1588. State ex rel. Gordon v. Murphy.

Summit App. No. 23295. On motion for stay of further execution of sentence and motion for release on personal recognizance pending appeal. Motions denied.

Moyer, C.J., dissents.

2006-1620. Watson v. Thompson.

Muskingum App. No. CT2005-0060, 2006-Ohio-3828. On motion for stay of court of appeals' judgment. Motion denied.

2006-1627. In re Beatty.

Tuscarawas App. No. 2006AP040022, 2006-Ohio-3698. 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' Judgment Entry filed August 21, 2006:

“Whether a trial court is authorized to grant legal custody of a child to a relative of the child at the center of a permanent custody action where several months prior to the final permanent custody hearing the court determined that the home was appropriate for consideration of relative placement, and the DJFS had conducted a home study and facilitated visitation in the home of the relative, when the relative has not filed a motion pursuant to R.C. 2151.353(A)(3) requesting custody.”

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

The conflict cases are *In re Perez*, 135 Ohio App.3d 494, and *In re Farace* (Dec. 31, 1997), Scioto App. No. 96CA2469.

2006-1645. State v. Moore.

Cuyahoga App. No. 86630, 2006-Ohio-3680. On motion for stay of court of appeals' judgment. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2006-1041. Heskett v. Ohio Dept. of Adm. Servs.

Franklin App. No. 05AP-1011, 2006-Ohio-2074. Discretionary appeal accepted, cause held for the decision in 2006-0107, *Hughes v. Ohio Dept. of Commerce*, Franklin App. No. 04AP-1386, 2005-Ohio-6368; cause consolidated with 2006-1381, *Heskett v. Ohio Dept. of Adm. Servs.*, Franklin App. No. 05AP-1011, 2006-Ohio-2074; and briefing schedule stayed.

2006-1061. Minster Farmer's Coop. Exchange Co., Inc. v. Meyer.

Shelby App. No. 17-05-32, 2006-Ohio-1886. Discretionary appeal and cross-appeal accepted.

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

2006-1069. Minster Farmer's Coop. Exchange Co., Inc. v. Dues.

Shelby App. No. 17-05-28, 2006-Ohio-1887. Discretionary appeal and cross-appeal accepted.

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

2006-1074. In re Spears.

Licking App. No. 2005-CA-93, 2006-Ohio-1920.

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

2006-1137. In re Guardianship of Hollins.

Cuyahoga App. Nos. 86412 and 86574, 2006-Ohio-1543. Discretionary appeal accepted.

Pfeifer and Lundberg Stratton, JJ., dissent.

Amended motion for summary reversal and motion to strike amended motion for summary reversal denied.

2006-1155. Doe v. Archdiocese of Cincinnati.

Hamilton App. No. C-050438, 2006-Ohio-2221.

Pfeifer, J., dissents.

Resnick and Lanzinger, JJ., not participating.

2006-1166. Gliozzo v. Univ. Urologists of Cleveland, Inc.

Cuyahoga App. No. 86371, 2006-Ohio-1726.

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

2006-1174. United Tel. Credit Union, Inc. v. Roberts.

Franklin App. Nos. 05AP-827 and 05AP-870, 2006-Ohio-2198. Discretionary appeal accepted on Proposition of Law Nos. I and II.

Pfeifer and Lundberg Stratton, JJ., would also accept the appeal on all other Propositions of Law.

On motion for admission pro hac vice of Scott Mendeloff and Gabriel Aizenberg by Fordham E. Huffman. Motion granted.

2006-1201. Bryan-Wollman v. Domonkos.

Cuyahoga App. No. 86429, 2006-Ohio-2318.

O'Connor and Lanzinger, JJ., would accept the appeal on Proposition of Law No. I only.

Pfeifer, J., dissents.

2006-1207. Pack v. Osborn.

Licking App. No. 05 CA 83, 2006-Ohio-2253. Discretionary appeal accepted and cause consolidated with 2006-1343, *Pack v. Osborn*, Licking App. No. 05 CA 83, 2006-Ohio-2253.

Lanzinger, J., would accept the appeal on Proposition of Law No. II only.

Resnick, J., dissents.

2006-1245. State v. Payne.

Franklin App. No. 05AP-517, 2006-Ohio-2552. Discretionary appeal accepted and cause consolidated with 2006-1383, *State v. Payne*, Franklin App. No. 05AP-517, 2006-Ohio-2552.

Resnick, J., dissents.

2006-1247. McLeod v. Mt. Sinai Med. Ctr.

Cuyahoga App. Nos. 85286, 85574 and 85605, 2006-Ohio-2206. Discretionary appeal accepted.

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

On motion for admission pro hac vice of Brett M. Wood and Deborah E. Berliner by Jack Beam. Motion granted.

2006-1250. Davis v. Davis.

Geauga App. No. 2005-G-2646, 2006-Ohio-2393.

O'Donnell and Lanzinger, JJ., dissent.

O'Connor, J., not participating.

2006-1255. State v. Robinson.

Greene App. No. 2005 CA 62, 2006-Ohio-2650. Discretionary appeal accepted; cause held for the decision in 2006-0151, *State v. Carswell*, Warren App. No. CA2005-04-047, 2005-Ohio-6547; and briefing schedule stayed.

2006-1256. State v. Davis.

Greene App. No. 2005 CA 60, 2006-Ohio-2633. Discretionary appeal accepted; cause held for the decision in 2006-0151, *State v. Carswell*, Warren App. No. CA2005-04-047, 2005-Ohio-6547; and briefing schedule stayed.

2006-1262. Houck v. Bd. of Park Commrs., Huron Cty. Park Dist.

Huron App. No. H-05-018, 2006-Ohio-2488. Discretionary appeal accepted on Proposition of Law No. I.

Pfeifer and Lundberg Stratton, JJ., would also accept the appeal on all other Propositions of Law.

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

O'Donnell, J., not participating.

2006-1263. Manley v. Marisco.

Clinton App. No. CA2006-04-013. Discretionary appeal accepted on Proposition of Law No. I.

Moyer, C.J., Lundberg Stratton and O'Connor, JJ., would also accept the appeal on all other Propositions of Law.

Resnick, Pfeifer and Lanzinger, JJ., dissent.

2006-1292. State v. Douglas.

Cuyahoga App. Nos. 86567 and 86568, 2006-Ohio-2343. Discretionary appeal accepted; cause held for the decision in 2006-0151, *State v. Carswell*, Warren App. No. CA2005-04-047, 2005-Ohio-6547; and briefing schedule stayed.

2006-1293. State v. Muttart.

Hancock App. No. 5-05-08, 2006-Ohio-2506. Discretionary appeal accepted and cause consolidated with 2006-1488, *State v. Muttart*, Hancock App. No. 5-05-08, 2006-Ohio-2506.

Lanzinger, J., not participating.

APPEALS NOT ACCEPTED FOR REVIEW

2006-0173. State v. Parks.

Carroll App. No. 04 CA 803, 2005-Ohio-6926.

2006-0174. State v. Parks.

Columbiana App. No. 04 CO 19, 2005-Ohio-6926.

2006-0423. State v. Abney.

Cuyahoga App. No. 84190, 2006-Ohio-273.

2006-0604. State v. Shelton.

Hamilton App. No. C-040658, 165 Ohio App.3d 142, 2006-Ohio-182.

2006-0724. State v. Lewis.

Summit App. No. 22534, 2006-Ohio-654.

2006-1044. State v. Butts.

Licking App. No. 05-CA-88, 2006-Ohio-1918.

2006-1047. State v. Patterson.

Washington App. No. 05CA16, 2006-Ohio-1902.

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

2006-1049. State v. Fogel.

Cuyahoga App. No. 87035, 2006-Ohio-1613.

2006-1050. Scelza v. Mikhael.

Summit App. No. 22859, 2006-Ohio-1821.

2006-1052. State v. Avery.

Sandusky App. No. S-05-017, 2006-Ohio-1862.

2006-1053. Smith v. Sebastiani.

Mahoning App. No. 05 MA 57, 2006-Ohio-2189.

2006-1054. Wells v. C.J. Mahan Constr. Co.

Franklin App. Nos. 05AP-180 and 05AP-183, 2006-Ohio-1831.

Moyer, C.J., and Resnick, J., dissent and would accept the appeal on Proposition of Law No. II.

Pfeifer, J., dissents.

2006-1062. MBNA Am. Bank, N.A. v. Anthony.

Tuscarawas App. No. 05AP090059, 2006-Ohio-2032.

Pfeifer, J., dissents.

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

2006-1063. Silver v. Statz.

Cuyahoga App. No. 86384, 166 Ohio App.3d 148, 2006-Ohio-1727.

2006-1065. Sumser-Armstrong v. Armstrong.

Stark App. No. 2005-CA-00245, 2006-Ohio-1924.

2006-1066. Ahlers v. Pettinelli.

Cuyahoga App. No. 86257, 2006-Ohio-1199.

Moyer, C.J., dissents.

2006-1072. State v. Lashley.

Stark App. No. 2004CA00246, 2006-Ohio-1921.

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

Lundberg Stratton, J., dissents and would accept the appeal on Proposition of Law No. I.

2006-1073. Middletown v. Whipp.

Butler App. No. CA2005-06-154, 2006-Ohio-1899.

2006-1075. Maynard v. H.A.M. Landscaping, Inc.

Cuyahoga App. No. 86191, 166 Ohio App.3d 76, 2006-Ohio-1724.

Resnick and Pfeifer, JJ., dissent.

2006-1076. Abrams v. Siegel.

Cuyahoga App. Nos. 86386 and 86659, 166 Ohio App.3d 230, 2006-Ohio-1728.

2006-1078. State v. Bragg.

Franklin App. No. 05AP-100, 2006-Ohio-1903.

2006-1084. Warmack v. One Beacon Ins. Co.

Hamilton App. No. C-050410, 2006-Ohio-1954.

Lundberg Stratton, J., dissents.

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

O'Donnell, J., not participating.

2006-1085. State v. Brown.

Summit App. No. 22770, 2006-Ohio-1905.

2006-1087. State v. Ralph.

Muskingum App. No. CT060019.

2006-1088. State v. Stephens.

Hamilton App. No. C-060255.

2006-1094. McLaughlin v. Firelands Community Hosp.

Erie App. No. E-05-011, 2006-Ohio-1984.

2006-1096. State v. Cayson.

Trumbull App. No. 2004-T-0118, 2006-Ohio-2011.

2006-1099. State v. Funk.

Franklin App. No. 05AP-230, 2006-Ohio-2068.

2006-1100. State v. Ausborn.

Miami App. No. 2005 CA 25, 2006-Ohio-2105.

- 2006-1101. Overly v. Columbiana Cty. Engineer.**
Columbiana App. No. 05-CO-9, 2006-Ohio-2188.
- 2006-1103. Euclid v. Gage-Vaughn.**
Cuyahoga App. No. 86498, 2006-Ohio-1941.
- 2006-1104. State v. Hlavsa.**
Cuyahoga App. No. 97939.
- 2006-1105. Duffy v. Nourse Family of Dealerships-Chillicothe, Inc.**
Ross App. No. 05CA2846, 2006-Ohio-2057.
- 2006-1106. State v. Wilson.**
Putnam App. No. 12-05-20, 2006-Ohio-2000.
Moyer, C.J., dissents.
- 2006-1107. McDonald v. Motorists Mut. Ins. Co.**
Cuyahoga App. No. 86625, 2006-Ohio-1843.
Lundberg Stratton and O'Donnell, JJ., dissent.
- 2006-1109. Fairand v. Urology Surgeons, Inc.**
Franklin App. No. 05AP-1066, 2006-Ohio-2266.
- 2006-1117. State v. Millette.**
Licking App. No. 05 CA 79, 2006-Ohio-2099.
- 2006-1119. State v. Smith.**
Stark App. No. 2006CA00075.
- 2006-1120. State v. Cox.**
Delaware App. Nos. 05CAA060041 and 05CAA070043, 2006-Ohio-2097.
- 2006-1123. JRC Holdings, Inc. v. Samsel Servs. Co.**
Portage App. No. 2005-P-0028, 166 Ohio App.3d 328, 2006-Ohio-2148.
- 2006-1125. McGuffin v. Zaremba Contracting.**
Cuyahoga App. No. 86594, 166 Ohio App.3d 142, 2006-Ohio-1734.
Moyer, C.J., and Pfeifer, J., dissent.

Resnick, J., dissents and would accept the appeal on Proposition of Law No. I.

2006-1127. Walls v. Toledo.

Lucas App. No. L-05-1185, 166 Ohio App.3d 349, 2006-Ohio-2111.

2006-1128. Kremer v. Rowse.

Montgomery App. No. 21311, 2006-Ohio-992 and 2006-Ohio-2336.
Moyer, C.J., dissents.

2006-1131. Zenfa Labs, Inc. v. Big Lots Stores, Inc.

Franklin App. No. 05AP-343, 2006-Ohio-2069.

2006-1133. State v. Butler.

Hamilton App. No. C-050693.

2006-1135. Steele v. Towne Air Freight.

Stark App. No. 2005CA00276, 2006-Ohio-2187.
Moyer, C.J., Resnick and Pfeifer, JJ., dissent.

2006-1136. State v. Stoner.

Ottawa App. No. OT-05-042, 2006-Ohio-2122.
Moyer, C.J., dissents and would accept the appeal on Proposition of Law No. I.

2006-1138. Columbus v. Ellyson.

Franklin App. No. 05AP-573, 2006-Ohio-2075.

2006-1139. State v. Powers.

Cuyahoga App. No. 86381, 2006-Ohio-1942.

2006-1141. Case v. Harrison Cty. Court of Common Pleas.

Franklin App. No. 05AP-792, 2006-Ohio-2444. Discretionary appeal not accepted. Motion to consolidate denied as moot.

2006-1142. Kimble Mixer Co. v. St. Vincent.

Tuscarawas App. No. 2005 AP 09 0068, 2006-Ohio-2258.

2006-1143. State v. Woods.

Allen App. No. 1-05-82, 2006-Ohio-2368.

2006-1151. Taliaferro v. S. Pointe Hosp.

Cuyahoga App. No. 86999, 2006-Ohio-1611.

2006-1154. State v. Strodes.

Clark App. No. 05CA0070, 2006-Ohio-2335.

2006-1157. State v. James.

Hamilton App. Nos. C-040376 and C-040389, 2006-Ohio-2478.

2006-1158. State v. Ortega.

Lorain App. No. 05CA008657, 2006-Ohio-2177.

2006-1160. Marron v. USAA Cas. Ins. Co.

Butler App. No. CA2005-07-204, 2006-Ohio-2247.

Pfeifer, J., dissents.

2006-1168. State v. Williams.

Franklin App. No. 05AP-339, 2006-Ohio-2197.

2006-1170. State v. Luther.

Lorain App. No. 05CA008771, 2006-Ohio-2414.

2006-1171. State v. Luther.

Lorain App. No. 05CA008770, 2006-Ohio-2280.

2006-1172. State v. Roseborough.

Ashland App. No. 04 COA 085, 2006-Ohio-2254.

2006-1173. State v. Fisher.

Delaware App. No. 05 CAA 04 020, 2006-Ohio-2201.

Lundberg Stratton, J., dissents and would accept the appeal on Proposition of Law No. II.

2006-1175. In re Estate of Howard.

Lorain App. No. 05CA008730, 2006-Ohio-2176.

Pfeifer, J., dissents.

2006-1180. State v. Jackson.

Cuyahoga App. No. 86755, 2006-Ohio-2468.

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

2006-1185. Minshall v. Cleveland Illum. Co.

Lake App. No. 2004-L-156, 2006-Ohio-2241.

Lundberg Stratton, J., dissents.

2006-1194. State v. Towler.

Franklin App. No. 05AP-387, 2006-Ohio-2441.

2006-1195. State v. Wright.

Hamilton App. No. C-050020.

2006-1196. Chestnut v. Progressive Cas. Ins. Co.

Cuyahoga App. No. 84376, 166 Ohio App.3d 299, 2006-Ohio-2080.

Pfeifer, J., dissents.

2006-1203. Vargas v. Columbus Pub. Schools.

Franklin App. No. 05AP-658.

2006-1204. State v. Peoples.

Hamilton App. No. C-050620, 2006-Ohio-2614.

2006-1208. Watterson v. King.

Stark App. No. 2005-CA-00283, 2006-Ohio-2305.

2006-1213. Atlantic Richfield Co. v. McClellan.

Trumbull App. No. 2005-T-0053, 2006-Ohio-1701.

2006-1214. State v. Butts.

Franklin App. No. 05AP-732, 2006-Ohio-2538.

2006-1215. State v. Riley.

Pike App. No. 06CA747.

2006-1217. State v. Noland.

Washington App. Nos. 02CA28 and 04CA9, 2003-Ohio-1386 and 2004-Ohio-5944.

2006-1218. Mike McGarry & Sons, Inc. v. Gross.

Cuyahoga App. No. 86603, 2006-Ohio-1759.

2006-1220. Lingo v. Ohio Cent. RR., Inc.
Franklin App. No. 05AP-206, 2006-Ohio-2268.

2006-1221. Long v. Long.
Hamilton App. No. C-050567, 2006-Ohio-2341.
Moyer, C.J., dissents.

2006-1222. State v. Dailey.
Hamilton App. No. C-050145.

2006-1223. State v. Peoples.
Hamilton App. Nos. C-050167 and C-050168.
O'Connor, J., dissents and would accept the appeal on Proposition of Law No. I.

2006-1225. State v. Schlee.
Lake App. No. 2004-L-207, 2006-Ohio-2391.

2006-1226. Bay Coast Properties, Inc. v. Natl. City Bank.
Huron App. No. H-05-015, 2006-Ohio-2348.

2006-1227. State v. Gaskins.
Hamilton App. No. C-050631.

2006-1228. State v. Evans.
Scioto App. No. 05CA3002, 2006-Ohio-2564.

2006-1231. Sky Properties, LLC v. Cincinnati.
Hamilton App. No. C-050051.

2006-1232. State v. Elijah.
Montgomery App. No. 21085, 2006-Ohio-2635.

2006-1233. State v. Robinson.
Summit App. No. 22941, 2006-Ohio-2283.

2006-1234. Frederick v. Cocca Dev., Ltd.
Mahoning App. No. 05 MA 107.
Pfeifer and O'Donnell, JJ., dissent.

2006-1236. State v. Jenkins.

Lawrence App. No. 05CA7, 2006-Ohio-2546.

Pfeifer, J., dissents.

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

2006-1237. State v. Meadows.

Lucas App. No. L-05-1321, 2006-Ohio-2622 and 2006-Ohio-3375. Discretionary appeal not accepted. Motion for stay denied.

2006-1238. State v. Baez.

Franklin App. No. 06AP-254.

2006-1239. Interstate Diesel Serv., Inc. v. Kurz-Kasch, Inc.

Cuyahoga App. No. 87943. Discretionary appeal not accepted. On motion for admission pro hac vice of G. Thomas Williams by George W. Rooney, Jr. Motion granted.

2006-1242. Proctor v. Kardassilaris.

Trumbull App. No. 2005-T-0026, 2006-Ohio-2385.

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

2006-1243. Proctor v. Blank.

Trumbull App. No. 2005-T-0027, 2006-Ohio-2386.

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

2006-1244. State v. McDowell.

Montgomery App. No. 21156, 2006-Ohio-2642.

2006-1248. Zappola v. Leibinger.

Cuyahoga App. Nos. 86038 and 86102, 2006-Ohio-2207.

Lundberg Stratton, J., dissents and would accept the appeal on Proposition of Law Nos. I and II.

O'Donnell, J., dissents.

2006-1251. State v. Bowling.

Knox App. No. 05 CA 28, 2006-Ohio-2567.

2006-1252. Ohio Dept. of Taxation v. Freeman.

Hancock App. No. 5-05-17, 2006-Ohio-2372.

2006-1254. Tolliver v. Liberty Mut. Group.

Franklin App. No. 05AP-753, 2006-Ohio-2443.

2006-1264. Grimm v. Summit Cty. Children Servs. Bd.

Summit App. No. 22702, 2006-Ohio-2411. Discretionary appeal and cross-appeal not accepted.

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

2006-1265. Kienzle v. Myers.

Wood App. Nos. WD-05-068 and WD-05-078, 2006-Ohio-2765.

2006-1266. State v. Green.

Mahoning App. No. 05 MA 116, 2006-Ohio-3097.

2006-1267. Small's Sand & Gravel, Inc. v. Howard Twp. Bd. of Zoning Appeals.

Knox App. No. 05CA0021, 2006-Ohio-2451.

2006-1268. Union Savings Bank v. White Family Cos., Inc.

Montgomery App. No. 21137, 2006-Ohio-2629.

2006-1269. State v. Lathan.

Lucas App. No. L-03-1188, 2006-Ohio-2490.

Lanzinger, J., not participating.

2006-1270. State v. Carson.

Franklin App. No. 05AP-13, 2006-Ohio-2440.

2006-1271. State v. Crisp.

Allen App. No. 1-05-45, 2006-Ohio-2509.

2006-1272. State v. Shie.

Cuyahoga App. No. 86464, 2006-Ohio-2314.

2006-1273. Stevens v. Creative Controls, Inc.

Montgomery App. No. 21240, 2006-Ohio-2660.

2006-1277. Dater v. Charles H. Dater Found., Inc.

Hamilton App. No. C-050262, 2006-Ohio-2479.

Resnick, J., dissents.

2006-1280. State v. Cockrell.

Cuyahoga App. Nos. 86701 and 86703, 2006-Ohio-2301.

Lundberg Stratton, J., dissents.

2006-1281. State v. Hamilton.

Cuyahoga App. No. 86520, 2006-Ohio-1949.

2006-1282. State v. Cockrell.

Franklin App. No. 04AP-487, 2005-Ohio-2432.

2006-1283. State v. Nicholson.

Cuyahoga App. No. 82825, 2004-Ohio-2394.

2006-1285. State v. Whatley.

Cuyahoga App. No. 86267, 2006-Ohio-2465.

2006-1291. State v. Harriel.

Hamilton App. No. C-040771, 2006-Ohio-2616.

2006-1294. State v. Ip.

Cuyahoga App. No. 86243, 2006-Ohio-2303.

2006-1298. Keaton v. Gordon Biersch Brewery Restaurant Group, Inc.

Franklin App. No. 05AP-110, 2006-Ohio-2438.

2006-1299. State v. Bennett.

Scioto App. No. 05CA2997, 2006-Ohio-2757.

2006-1309. Ottawa Hills v. Afjeh.

Lucas App. No. L-04-1297, 2006-Ohio-2618.

Lanzinger, J., not participating.

2006-1311. St. Nikola Macedonian Orthodox Church v. Zoran.

Summit App. No. 22666, 2006-Ohio-2561. Discretionary appeal and cross-appeal not accepted.

2006-1313. State v. Smith.

Lorain App. No. 05CA008772, 2006-Ohio-2045.

2006-1314. State v. Congress.

Cuyahoga App. No. 86553, 2006-Ohio-2081.

2006-1316. State v. Molnar.

Summit App. No. 22714, 2006-Ohio-2981.

2006-1320. State v. Pierce.

Montgomery App. No. 21561.

2006-1323. State v. Feagin.

Richland App. No. 05 CA 1, 2006-Ohio-676.

2006-1335. State v. Hall.

Montgomery App. No. 21491.

2006-1337. State v. Reynolds.

Allen App. No. 1-02-70, 2003-Ohio-2067.

2006-1342. State v. Smith.

Clark App. No. 2004-CA-10, 2005-Ohio-7071.

2006-1345. In re J.B.

Butler App. Nos. CA2005-06-176, CA2005-07-193 and CA2005-08-377, 2006-Ohio-2715.

2006-1351. State v. Moses.

Richland App. No. 05 CA 130, 2006-Ohio-3029.

2006-1354. State v. Razo.

Lorain App. No. 03CA008263, 2004-Ohio-3405.

2006-1357. State v. Fitts.

Stark App. No. 2005CA00092, 2006-Ohio-678.

2006-1362. State v. Miller.

Butler App. No. CA2005-02-048, 2006-Ohio-2799.

2006-1363. State v. Joseph.
Hamilton App. No. C-050363.

2006-1364. State v. Sides.
Lake App. No. 2005-L-175, 2006-Ohio-2778.

2006-1365. Featherstone v. Columbus.
Franklin App. No. 06AP-89, 2006-Ohio-3150.

2006-1390. State v. Karasek.
Montgomery App. Nos. 19565, 20253, 20316, 20399, 20868 and 20935.

2006-1438. State v. Hampton.
Franklin App. No. 04AP-806, 2005-Ohio-7023.

2006-1503. State v. Carr.
Clermont App. No. CA2004-01-006, 2005-Ohio-417.

RECONSIDERATION OF PRIOR DECISIONS

2003-1441. State v. Roberts.
Trumbull C.P. 01-CR-793. Reported at 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168. On motion for reconsideration. Motion denied.

2004-1619. Valentine v. Conrad.
Pickaway App. No. 03CA17, 158 Ohio App.3d 615, 2004-Ohio-4521. Reported at 110 Ohio St.3d 42, 2006-Ohio-3561, 850 N.E.2d 683. On motion for reconsideration. Motion denied.

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

2005-1105. State ex rel. Stevens v. Indus. Comm.
Franklin App. No. 04AP-919, 2005-Ohio-2804. Reported at 110 Ohio St.3d 32, 2006-Ohio-3456, 850 N.E.2d 55. On motion for reconsideration. Motion denied.

Resnick and Pfeifer, JJ., dissent.

2005-1223. State ex rel. Estate of Hards v. Klammer.
Lake App. No. 2004-L-189, 2005-Ohio-2655. Reported at 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197. On motion for reconsideration and motion to strike memorandum opposing motion for reconsideration. Motion for reconsideration denied. Motion to strike denied as moot.

2005-1582. State ex rel. Kroger Co. v. Paysen.

Franklin App. No. 04AP-810, 2005-Ohio-3787. Reported at 109 Ohio St.3d 515, 2006-Ohio-3057, 849 N.E.2d 289. On motion for reconsideration. Motion denied.

2005-2030. Mahoning Cty. Bar Assn. v. Olivito.

Board of Commissioners on Grievances & Discipline, No. 04-082. Reported at 110 Ohio St.3d 64, 2006-Ohio-3564, 850 N.E.2d 702. On motion for reconsideration. Motion denied.

2006-0664. Lynch v. Natl. City Bank.

Cuyahoga App. No. 87352. Reported at 110 Ohio St.3d 1411, 2006-Ohio-3306, 850 N.E.2d 72. On motion for reconsideration. Motion denied.

2006-0758. State ex rel. Petro v. Gold.

Franklin App. No. 04AP-863, 2006-Ohio-943. Reported at 110 Ohio St.3d 1439, 2006-Ohio-3862, 852 N.E.2d 188. On motion for reconsideration. Motion denied.

2006-0859. Indiana Ins. Co. v. Murphy.

Allen App. No. 1-05-40, 165 Ohio App.3d 812, 2006-Ohio-1264. Reported at 110 Ohio St.3d 1441, 2006-Ohio-3862, 852 N.E.2d 189. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

2006-0868. State v. Parks.

Montgomery App. No. 20905, 2005-Ohio-6395. Reported at 110 Ohio St.3d 1413, 2006-Ohio-3306, 850 N.E.2d 73. On motion for reconsideration. Motion denied.

2006-0885. Northern v. Med. Mut. of Ohio.

Cuyahoga App. No. 86527, 2006-Ohio-1075. Reported at 110 Ohio St.3d 1442, 2006-Ohio-3862, 852 N.E.2d 189. On motion for reconsideration. Motion denied.

2006-0894. State v. Dudukovich.

Lorain App. No. 05CA008729, 2006-Ohio-1309. Reported at 110 Ohio St.3d 1442, 2006-Ohio-3862, 852 N.E.2d 189. On motion for reconsideration. Motion denied.

Lundberg Stratton and O'Donnell, JJ., dissent and would hold the cause for the decision in 2006-1245 and 2006-1383, *State v. Payne*, Franklin App. No. 05AP-517, 2006-Ohio-2552.

2006-0900. State v. Guess.

Franklin App. No. 06AP-151. Reported at 110 Ohio St.3d 1442, 2006-Ohio-3862, 852 N.E.2d 190. On motion for reconsideration. Motion denied.

2006-0964. Storer v. Sharp.

Cuyahoga App. No. 86525, 2006-Ohio-1577. Reported at 110 Ohio St.3d 1443, 2006-Ohio-3862, 852 N.E.2d 190. On motion for reconsideration. Motion denied.
Lundberg Stratton, J., dissents.

2006-0976. State v. Gonzales.

Cuyahoga App. No. 87412. Reported at 110 Ohio St.3d 1409, 2006-Ohio-3306, 850 N.E.2d 71. On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.

2006-0977. State ex rel. King v. Ohio Dept. of Taxation.

In Mandamus. Reported at 110 Ohio St.3d 1433, 2006-Ohio-3862, 852 N.E.2d 184. On motion for reconsideration. Motion denied.

2006-0986. State v. Simms.

Athens App. No. 05CA10, 165 Ohio App.3d 83, 2005-Ohio-5681. Reported at 110 Ohio St.3d 1409, 2006-Ohio-3306, 850 N.E.2d 71. On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.

2006-1004. Keaveney v. Parrott.

In Habeas Corpus. Reported at 110 Ohio St.3d 1408, 2006-Ohio-3306, 850 N.E.2d 70. On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.

2006-1059. Martin v. Eberlin.

In Habeas Corpus. Reported at 110 Ohio St.3d 1434, 2006-Ohio-3862, 852 N.E.2d 184. On motion for reconsideration. Motion denied.

2006-1205. Everett v. Eberlin.

In Habeas Corpus. Reported at 110 Ohio St.3d 1435, 2006-Ohio-3862, 852 N.E.2d 185. On motion for reconsideration. Motion denied.