

## SUPREME COURT OF OHIO

## COLUMBUS

## ANNOUNCEMENT

9:00 A.M.

WEDNESDAY  
June 18, 1997

## MERIT DOCKET

97-644. State ex rel. Strong v. Killbuck Valley Mosquito Abatement Sanitary Dist.  
Wayne App. No. 96CA0054. On amended motion to dismiss. Amended motion to dismiss sustained. Cause dismissed.

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

Cook, J., dissents.

97-674. State ex rel. Sherrell v. Lile.  
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Lundberg Stratton, J., dissents and would grant the writ.

97-677. Binns v. Ghee.  
In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

97-723. State ex rel. Cox v. Porter.  
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.

97-731. State ex rel. Hamilton v. Court of Appeals, Eighth Dist.

In Mandamus. Sua sponte, cause dismissed.

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

97-776. State ex rel. Strothers v. Sweeney.  
In Mandamus. On motion to dismiss and on answer of respondent. Motion to dismiss sustained. Cause dismissed.

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

Pfeifer, J., would grant an alternative writ.

Lundberg Stratton, J., would grant the writ and order that copying be done "at cost."

97-865. Justice v. Cuyahoga Cty. Prosecutor.

In Prohibition. On answer of respondent Gregory A. White and on answer of respondent Stephanie Tubbs Jones. Answers treated as motions to dismiss. Motions to dismiss sustained. Cause dismissed.

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

97-866. Cook v. Anderson.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-910. State ex rel. Gatlin v. Ohio Adult Parole Auth.

In Mandamus. Sua sponte, cause dismissed.

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

97-919. Whittington v. Coyle.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-920. Valentine v. State.

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

97-151. State v. Dillon.

Monroe App. No. 725.

97-521. State v. Doss.

Cuyahoga App. No. 66636.

97-524. State v. Hattie.

Stark App. No. 1996CA00220.

97-529. Brown v. Wick.

Erie App. No. E-96-030.

97-538. State v. Hall.

Lorain App. No. 96CA006539.

97-584. State v. Frost.

Montgomery App. No. 15058.

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

97-611. State v. Drake.

Cuyahoga App. No. 70275.

97-612. State v. Fortner.  
Stark App. No. 1996CA00073.

97-613. State v. Whitaker.  
Defiance App. No. 4-96-28.  
F.E. Sweeney, J., dissents.

97-614. State v. Pasturzak.  
Scioto App. No. 96CA2449.

97-618. State v. Fuqua.  
Hardin App. No. 6-96-17.

97-626. State v. Tran.  
Franklin App. No. 96APA07-882.

97-633. Smith v. Servaportion.  
Hamilton App. No. C-961105.

97-635. Smith v. Servaportion.  
Hamilton App. No. C-970071.

97-636. Smith v. Servaportion.  
Hamilton App. No. C-970024.

97-638. In re Guardianship of Smead.  
Warren App. No. CA96-07-067.

97-642. Christian v. Ohio Dept. of Human Serv.  
Lawrence App. No. 97CA6.

97-645. St. Francis Community Urban Redev. Corp. v. Rhodes.  
Hamilton App. No. C-960514.

Moyer, C.J., and Douglas, J., dissent.

97-651. Beckman v. Yellow Freight Sys., Inc.  
Summit App. No. 17845.

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

97-652. Blessing v. Blessing.  
Ottawa App. No. OT-96-016.

97-655. State v. Hampton.  
Seneca App. No. 13-96-35.

97-663. State v. Pierce.  
Summit App. No. 17684.  
Douglas, J., dissents.

97-664. State v. Thrower.  
Summit App. No. 18315.  
Cook, J., not participating.

97-669. State v. Quiles.  
Lorain App. No. 97CA006685.

97-671. Raceway Video & Bookshop, Inc. v. Cleveland Bd. of Zoning Appeals.

Cuyahoga App. Nos. 70637 and 70639.

F.E. Sweeney, J., dissents.

97-676. In re Estate of Cullen.

Butler App. No. CA96-07-0140.

Douglas and Lundberg Stratton, JJ., dissent.

97-678. State v. Brown.

Montgomery App. No. 15492.

97-679. State v. Smith.

Cuyahoga App. No. 69932.

97-680. State v. Browner.

Hamilton App. No. C-960479.

97-684. State v. Sims.

Franklin App. Nos. 96APA05-676 and 96APA05-677.

97-687. Aydin Co. Exchange, Inc. v. Marting Realty.

Summit App. No. 17852.

Lundberg Stratton, J., dissents.

97-690. Gross v. Ohio Dept. of Adm. Serv.

Franklin App. No. 96APE05-646.

Resnick, J., dissents.

97-691. Ford v. Ohio State Univ. Hosp.

Franklin App. No. 96API06-800.

Douglas and Resnick, JJ., dissent.

97-693. State v. Smith.

Hamilton App. No. C-970096.

97-695. State v. Slider.

Washington App. No. 96CA38.

97-697. State v. Wood.

Tuscarawas App. No. 95AP120117.

97-698. Swenton v. Gorden.

Cuyahoga App. Nos. 70860 and 70864.

Moyer, C.J., dissents.

97-704. State v. Luna.

Huron App. No. H-93-24.

Resnick, J., not participating.

97-706. Milazzo v. Rudolph Foods Co.

Allen App. No. 1-96-60.

97-708. Simpson v. White.

Clermont App. No. CA96-09-078.

97-711. State v. Walder.

Allen App. No. 1-96-45.

97-713. State v. Mack.  
Sandusky App. No. S-96-004.  
F.E. Sweeney and Lundberg Stratton, JJ., dissent.  
Resnick, J., not participating.

97-715. State v. Smith.  
Cuyahoga App. No. 69359.

97-716. Stone v. Riffe.  
Scioto App. No. 96CA2408.

97-719. In re Good.  
Butler App. Nos. CA96-02-026 and CA96-03-036.

97-720. Rumpke Rd. Dev. Corp. v. Union Twp. Bd. of Zoning Appeals.  
Clermont App. No. CA96-11-099.  
Douglas, J., dissents.

97-722. State v. Blackshere.  
Clark App. No. 95CA120.  
Lundberg Stratton, J., dissents.

97-725. Grubb v. Columbus Community Hosp.  
Franklin App. No. 96APE05-663.

97-727. Condit v. Planned Parenthood Assn. of Cincinnati.  
Hamilton App. No. C-960126.

97-733. Grado v. College of Mt. St. Joseph.  
Hamilton App. No. C-960504.

97-735. State v. Murray.  
Summit App. Nos. 18338 and 18345.

97-753. State v. Boddie.  
Franklin App. No. 96APA10-1377.  
Lundberg Stratton, J., not participating.

97-755. State v. Hogan.  
Cuyahoga App. No. 72061.

97-781. State v. Massie.  
Lawrence App. No. 96CA29.

97-799. State v. Vaughn.  
Butler App. No. CA96-11-237.

97-883. State v. Gaskins.  
Seneca App. No. 13-96-52.

MOTION DOCKET

96-1809. State ex rel. Buchman v. Wayne Trace Local School Dist. Bd. of Edn.  
In Mandamus. On motion for stay of proceedings. Motion

granted.

96-2095. Weiker v. Motorists Mut. Ins. Co.  
Ottawa App. No. OT-96-012. Sua sponte, the parties are to brief the merits, and the case shall be scheduled for oral argument.  
Cook and Lundberg Stratton, JJ., dissent.

96-2761. State ex rel. Eaton Corp. v. Indus. Comm.  
Franklin App. No. 95APD11-1550. On motion to dismiss. Motion denied.

97-312. Williamson v. Ameritech Corp.  
Franklin App. No. 96APE07-860. On motion to dismiss. Motion denied.  
Cook and Lundberg Stratton, JJ., dissent.

Resnick, J., not participating.  
97-424. State ex rel. Williams v. Brigano.  
Warren App. No. CA96-10-108. On motion to strike. Motion denied.

97-792. State v. Poole.  
Franklin App. No. 96APA06-731. On motion for leave to file delayed appeal. Motion denied.  
Douglas, Cook and Lundberg Stratton, JJ., dissent.

97-801. State v. Cummings.  
Cuyahoga App. No. 69966. On motion for leave to file delayed appeal. Motion denied.  
Moyer, C.J., Resnick and Pfeifer, JJ., dissent.

97-861. State v. Jordan.  
Licking App. No. 96CA36. On motion for leave to file delayed appeal. Motion denied.  
Pfeifer, J., dissents.

97-876. State v. Heath.  
Warren App. No. CA96-04-035. On motion for leave to file delayed appeal. Motion denied.  
Douglas, Cook and Lundberg Stratton, JJ., dissent.

97-888. Schade v. Bur. of Workers' Comp.  
Cuyahoga App. No. 70950. 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 May 9, 1997:

"The court hereby renders the following nunc pro tunc order clarifying entry #82071 rendered on 4/4/97. The order is amended to read: Motion by appellant LTV Steel Company to certify a conflict granted. This court's determination that the claimant, Larry Schade, may dismiss his complaint pursuant to Civ.R. 41(A)(1)(a) is in direct conflict with the decision of the Franklin County Court of Appeals in Rhynehardt v. Sears Logistics Services (1995), 103 Ohio App.3d 327, 659 N.E.2d 375, and the Miami County Court of Appeals in Anderson v. Sonoco Products (July 26, 1995), Miami App. No. 95-CA-58, 1996 Ohio App.Lexis 3165, unreported [1996 WL 416992], both of which determined that the claimant was not entitled to

dismiss his complaint pursuant to Civ.R. 41(A)(1)(A). Pursuant to Section 3(B)(4), Article IV, Ohio Constitution, the record of this case is certified to the Supreme Court of Ohio for review and final determination upon the following question: "In an appeal pursuant to R.C. 4123.512 from the Industrial Commission to a court of common pleas brought by an employer, is the claimant entitled to dismiss his or her complaint pursuant to Civ.R. 41(A)(1)(A)?"

97-1017. Ogrizek v. Ogrizek.  
Summit App. No. 18074. On motion for stay. Motion denied.  
Douglas and Resnick, JJ., dissent.

97-1027. Windham Foods, Inc. v. Fleming Cos., Inc.  
Trumbull App. Nos. 96-T-5515 and 96-T-5519. On motion for stay.  
Motion denied.

97-1087. Reese v. Mitchell.  
Trumbull App. No. 96-T-5622. On motion for stay. Motion denied.

#### DISCRETIONARY APPEALS ALLOWED

97-641. Apel v. Katz.  
Cuyahoga App. No. 68294.  
Pfeifer and Cook, JJ., dissent.

97-654. Gum v. Cleveland Elec. Illum. Co.  
Cuyahoga App. No. 70833.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

97-707. Landis v. Grange Mut. Ins. Co.  
Erie App. No. E-96-034. (Appeal of Grange Mutual Casualty Company and cross-appeal of Frederick Owen Landis et al.)  
Moyer, C.J., and Cook, J., dissent.

97-714. Long Beach Assn., Inc. v. Jones.  
Ottawa App. No. OT-96-032.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

#### DISCRETIONARY APPEALS NOT ALLOWED

97-523. State v. Moorehead.  
Franklin App. No. 95APA09-1116.

97-535. State v. Carter.  
Cuyahoga App. Nos. 70260 and 70261.

97-579. State v. Love.  
Hamilton App. Nos. C-960498 and C-960499.  
Cook, J., would grant the motion to dismiss.

97-601. Credit Acceptance Corp. v. France.  
Cuyahoga App. No. 70960.  
Douglas, J., dissents.

97-639. Ingles v. Ingles.  
Madison App. No. CA96-07-029.

97-656. Rhubright v. Wigest Corp.  
Lucas App. No. L-96-068.  
Douglas and F.E. Sweeney, JJ., dissent.  
Resnick, J., not participating.

97-658. State v. Schoonover.  
Allen App. No. 1-96-77.

97-661. Bettis v. Bettis.  
Medina App. No. 2565-M.  
F.E. Sweeney, J., dissents.

97-665. McKinney v. Schlatter.  
Butler App. No. CA96-05-100.  
Douglas and F.E. Sweeney, JJ., dissent.

97-670. Vitelli v. Vitelli.  
Greene App. No. 96CA80.  
Resnick, J., dissents.

97-700. Bell v. Goodrum.  
Hamilton App. No. C-950901.

97-705. Wilner v. State Farm Mut. Auto. Ins. Co.  
Cuyahoga App. No. 70720.  
Cook, J., dissents.

97-717. Ashiegbu v. Summers.  
Franklin App. No. 96APE08-1114.

97-718. Columbus v. Ashiegbu.  
Franklin App. No. 96APC02-240.

97-724. Erb Lumber Co. v. C&J Hardwood Flooring, Inc.  
Hamilton App. No. C-950501.

97-743. Hal Artz Lincoln-Mercury, Inc. v. Ohio Motor Vehicle  
Dealers Bd.  
Franklin App. Nos. 96APE02-247, 96APE02-248 and 96APE04-478.  
Douglas, J., dissents.  
Lundberg Stratton, J., not participating.

97-813. State v. Woodson.  
Lucas App. No. L-96-320.  
Resnick, J., not participating.

97-856. Mattoni v. Mattoni.  
Lucas App. No. L-96-270.  
Cook, J., dissents.  
Resnick, J., not participating.

#### RECONSIDERATION DOCKET

95-595. State ex rel. Capitol Materials Co. v. Trimble.  
Franklin App. No. 94APD02-138. Reported at 78 Ohio St.3d 298,  
\_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

95-650. Kulch v. Structural Fibers, Inc.  
Geauga App. No. 93-G-1824. Reported at 78 Ohio St.3d 134, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

95-2375. Disciplinary Counsel v. Vazquez.  
Reported at 78 Ohio St.3d 295, \_\_\_ N.E.2d \_\_\_. On motion for  
reconsideration. Motion denied.

97-180. Heath v. Hutchinson.  
Licking App. No. 96CA25. Reported at 78 Ohio St.3d 1463, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

97-220. State v. Wescott.  
Lake App. No. 96-L-016. Reported at 78 Ohio St.3d 1464, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

97-253. State v. Childers.  
Franklin App. No. 96APA05-640. Reported at 78 Ohio St.3d 1465,  
\_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Moyer, C.J., Douglas and Cook, JJ., dissent.

97-282. State v. Rountree.  
Summit App. No. 18168. Reported at 78 Ohio St.3d 1465, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

97-374. State ex rel. Timson v. Petro.  
In Mandamus and Procedendo. Reported at 78 Ohio St.3d 1462, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

97-404. State ex rel. Giles v. Ohio Gen. Assembly.  
In Mandamus. Reported at 78 Ohio St.3d 1462, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.

97-571. Yelling v. Mitchell.  
In Habeas Corpus. Reported at 78 Ohio St.3d 1462, \_\_\_ N.E.2d  
\_\_\_. On motion for reconsideration. Motion denied.