

## SUPREME COURT OF OHIO

## COLUMBUS

## ANNOUNCEMENT

9:00 A.M.

WEDNESDAY  
March 11, 1998

## MERIT DOCKET

95-550. State ex rel. George v. Internal Revenue Serv.  
In Mandamus. On response to show cause order and on motion for  
temporary restraining order and preliminary injunction. Sua  
sponte, cause dismissed.

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

Douglas, J., dissents.

97-849. Dayton Power & Light Co. v. Pub. Util. Comm.  
Public Utilities Commission, No. 96-406-EL-COI. On motion to  
dismiss. Motion to dismiss sustained. Cause dismissed.

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

Douglas and Pfeifer, JJ., dissent.

98-115. State ex rel. Anderson v. Gaul.  
In Mandamus. Sua sponte, cause dismissed.

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

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

98-141. State ex rel. Spikes v. Lorain Cty. Court of Common  
Pleas.

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.

98-142. State ex rel. Adams v. Eighth Appellate Dist. Court of  
Appeals.

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.

98-144. Burnett 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.

98-146. State ex rel. Clark v. State.

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.

98-202. State ex rel. Klostermeyer v. Fuerst.

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.

98-220. Gawloski v. Anderson.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-347. Dues Dairy Farm v. Ohio Dept. of Agriculture.

On Petition for Review. 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

97-2590. Williams v. Isgro.

Richland App. No. 97CA262.

97-2612. State v. Stone.

Scioto App. No. 97CA2496.

97-2613. State v. Davis.

Hamilton App. No. C-970063.

97-2625. State v. Blankenship.

Butler App. Nos. CA97-03-062 and CA97-03-063.

Douglas, J., dissents.

97-2655. In re Boone/Staton Children.

Stark App. No. 1996CA00428.

97-2659. State v. Melon.

Stark App. No. 97CA00155.

97-2663. State v. Marte.

Cuyahoga App. No. 71311.

97-2666. State v. West.

Montgomery App. No. 16300.

97-2679. Crenshaw v. Lucas Cty. Dept. of Human Serv.

Lucas App. No. L-97-1358.

97-2681. In re Dunham.  
Hamilton App. Nos. C-960399 and C-960400.  
Pfeifer, J., dissents.

97-2686. State v. Maldonado.  
Erie App. No. E-96-052.  
Resnick, J., not participating.

97-2689. State v. Creasy.  
Cuyahoga App. No. 73184.

97-2691. State v. Johnson.  
Allen App. No. 1-97-62.

97-2693. State v. Estep.  
Montgomery App. No. 16279.

97-2697. Bank One, Columbus, NA v. Plaza East, Inc.  
Franklin App. No. 97APE02-184. (Appeal of Plaza East, Inc. and  
appeal of Michael J. Young.)

97-2699. State v. Jordan.  
Cuyahoga App. No. 70783.  
Moyer, C.J., dissents.

97-2703. State v. Henry.  
Hamilton App. No. C-9600807.

97-2704. State v. Li.  
Greene App. No. 96CA162.

97-2707. State v. Carter.  
Hamilton App. No. C-960718.

97-2710. State v. Jackson.  
Lorain App. No. 96CA006560.

97-2711. State v. Carpenter.  
Coshocton App. No. 95CA16.

97-2712. State v. McGuire.  
Franklin App. No. 97APA02-180.

97-2715. State v. Morris.  
Franklin App. No. 97APA03-412.

97-2716. State v. Smith.  
Montgomery App. No. 16262.  
Moyer, C.J., and Pfeifer, J., dissent.

97-2720. State v. Franklin.  
Franklin App. No. 97APA04-558.

97-2728. State v. Richey.  
Putnam App. No. 12-97-7.  
Moyer, C.J., dissents.

97-2729. State v. Smith.  
Cuyahoga App. Nos. 69799, 70451 and 71643.

98-3. State v. Parker.  
Cuyahoga App. No. 71260.

98-6. Hurt v. Ohio Liquor Control Comm.  
Montgomery App. No. 16232.  
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

98-8. Bedford Hts. v. Solkowski.  
Cuyahoga App. No. 72465.  
Cook, J., dissents.

98-9. Stubbers v. Wilhelm.  
Hamilton App. No. C-970016.  
Douglas, J., dissents.

98-11. State v. Keenan.  
Clermont App. No. CA96-11-105.  
Moyer, C.J., and Pfeifer, J., dissent.  
Lundberg Stratton, J., dissents and would allow this cause  
and hold it for the decision in 97-1778, State v. Rush, Stark  
App. No. 96CA419.

98-13. State v. Dennis.  
Summit App. No. 18410.  
Lundberg Stratton, J., dissents.

98-15. State v. Dunn.  
Pickaway App. No. 97CA19.  
Pfeifer and Lundberg Stratton, JJ., dissent.

98-16. State v. Mills.  
Clermont App. No. CA96-11-098.  
Pfeifer, J., dissents.

98-22. State v. Hill.  
Hamilton App. No. C-961052.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

98-24. Cossett v. Ohio Cas. Ins. Co.  
Clark App. No. 1797.

98-25. State v. Dotson.  
Clark App. No. 97CA0071.

98-29. Robinson v. Robinson.  
Lucas App. No. L-97-1131.  
Resnick, J., not participating.

98-39. State v. Ward.  
Cuyahoga App. No. 73348.

98-40. State v. Parks.  
Trumbull App. No. 94-T-5137.

98-47. Globe Am. Cas. Co. v. Feterle.  
Portage App. No. 96-P-0220.

98-49. Waugh v. Tri-Star Packaging Products Corp.  
Auglaize App. No. 2-97-22.  
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

98-52. State v. Eads.  
Cuyahoga App. No. 73524.

98-54. State v. Talani.  
Cuyahoga App. No. 72031.

98-64. State v. Shilling.  
Franklin App. No. 97APA01-43.

98-92. State v. Green.  
Fayette App. No. CA89-04-006.

98-113. State v. Giles.  
Portage App. No. 97-P-0022.

98-119. Dubeansky v. Mentor.  
Lake App. No. 96-L-049.  
Pfeifer, J., dissents.

98-208. State v. Maggard.  
Hamilton App. Nos. C-970146 and C-970147.

#### MOTION DOCKET

96-2641. In re Hitchcock.  
Cuyahoga App. Nos. 69291 and 69292. On motion for stay of  
proceedings in appellate and probate courts. Motion denied.  
Resnick, J., dissents.

97-187. State ex rel. Strothers v. Wertheim.  
Cuyahoga App. No. 71185. On motion to clarify court decision.  
Motion denied.  
Resnick, J., dissents.

97-1111. State v. Stojetz.  
Madison C.P. No. 96CR10086. On motion to remand to trial court  
for in-camera review of grand jury transcript. Motion denied.  
On motion to supplement record. Motion granted in part.

IT IS ORDERED by the court that the clerk of the common  
pleas court do the following:

1. Exhibits not used in other co-defendant cases should be  
forwarded to the Clerk of this court.

2. A videotape used as evidence in the trial of this case  
and in the co-defendant cases shall be duplicated and forwarded  
to the Clerk of this court.

3. Copies of paper exhibits, if any, being used in co-  
defendant cases should be made and forwarded to the Clerk of  
this court.

4. Photographs of physical exhibits used in co-defendant

cases shall be taken in the presence of both parties. The photographs shall include all items being used in the co-defendant trials and be adequate substitutes for the evidence. The photographs shall be enlarged if necessary to ensure identification of individual items. Counsel for appellee shall be responsible for providing the means of taking the photographs, developing the film, filing the photographs with the Clerk, and serving duplicate photographs on opposing counsel.

5. An index identifying the item(s) in each photograph shall be prepared.

6. After counsel for appellant has had an opportunity to review the photographs and the index, and the Clerk of the common pleas court has determined that the photographs are sufficient substitutes, the Clerk shall forward the photographs and index to the Clerk of this court.

97-1530. State ex rel. Leister v. Shaw.  
In Mandamus. On evidence and brief in support of request for attorney fees. Request for attorney fees denied.

97-2178. State v. Gawloski.  
Cuyahoga App. No. 71659. On motion for relief from judgment and on request for findings of fact and conclusions of law. Motion and request denied.

97-2491. Mullins v. Rio Algom, Inc.  
Certified State Law Question, No. C19773. On motion for leave to intervene by Attorney General Betty Montgomery. Motion granted.

97-2723. Johnson v. BP Chemicals, Inc.  
Allen App. No. 1-97-32. On motion for stay of case No. 97-2491, Mullins v. Rio Algom, Inc., Certified State Law Question, No. C19773. Motion granted.

98-89. State ex rel. Orth v. Christiansen.  
In Mandamus. Sua sponte, alternative writ granted.  
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent and would dismiss the cause.

98-94. Campanelli v. AT&T Wireless Serv.  
Stark App. Nos. 1997CA00109 and 1997CA00110. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue whether cellular telecommunication providers have public utility status for township zoning purposes. Sua sponte, cause consolidated with 98-46, infra.

F.E. Sweeney and Cook, JJ., dissent.  
Resnick, J., not participating.

The conflict case is Adam v. Bath Twp. Bd. of Zoning Appeals (July 23, 1997), Summit App. No. 18144, unreported, 1997 WL 423040.

98-98. In re Davis.  
Paulding App. No. 11-97-6. 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 December 24, 1997:

"On motion of the appellants to certify a conflict, the judges of this court find that the judgment in this case, upon which they have agreed, is in conflict with the judgment pronounced upon the same question by the Court of Appeals for the Eleventh Appellate District in the case of *In re [Omosun] Children* (1995), 106 Ohio App.3d 813 [667 N.E.2d 431].

"The rule of law on which the conflict exists is whether the seven-day limit within which a juvenile court must enter its disposition of a child adjudicated as abused, neglected or dependent under R.C. 2151.35 also applies to motions filed by an agency under R.C. 2151.414 prior to the September 1996 amendment to that statute."

Sua sponte, cause consolidated with 98-50, *infra*.  
F.E. Sweeney, J., dissents.

98-183. *State v. Walker*.  
Lorain App. No. 97CA006958. On motion for leave to file delayed appeal. Motion denied.

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

98-194. *State v. Johnson*.  
Hamilton App. No. C-961099. On motion for leave to file delayed appeal. Motion denied.

98-196. *State v. Beatty*.  
Fairfield App. No. 95CA0068. On motion for leave to file delayed appeal. Motion denied.

Resnick and Pfeifer, JJ., dissent.

98-237. *State v. Garczynski*.  
Wood App. No. WD-97-016. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause held for the decision in 97-1778, *State v. Rush*, Stark App. No. 96CA419; briefing schedule stayed.

#### DISCRETIONARY APPEALS ALLOWED

97-2653. *Davidson v. BP Am., Inc.*  
Cuyahoga App. Nos. 70170 and 71812.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

97-2698. *Community Advocate, Inc. v. Ohio Elections Comm.*  
Franklin App. No. 97APE06-816.  
Cook, J., dissents.

98-1. *Specht v. BP Am., Inc.*  
Cuyahoga App. No. 71899.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

98-18. *State v. Greber*.  
Delaware App. No. 97CAA07023. Discretionary appeal allowed; sua sponte, cause held for the decision in 97-1778, *State v. Rush*, Stark App. No. 96CA419; briefing schedule stayed.  
Douglas and Resnick, JJ., dissent.

98-46. Campanelli v. AT&T Wireless Serv.  
Stark App. Nos. 1997CA00109 and 1997CA00110.  
F.E. Sweeney and Cook, JJ., dissent.  
Resnick, J., not participating.

98-50. In re Davis.  
Paulding App. No. 11-97-6.  
F.E. Sweeney, J., dissents.

98-71. State v. Marker.  
Seneca App. No. 13-97-39. Discretionary appeal allowed; sua sponte, cause held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

98-175. State v. Bartis.  
Franklin App. No. 97APA05-600. Discretionary appeal allowed on Proposition of Law No. II only; sua sponte, cause held for the decision in 97-1985, State v. Cook, Allen App. No. 1-97-21; briefing schedule stayed.

DISCRETIONARY APPEALS NOT ALLOWED

97-2396. In re Testamentary Trust of Hamm.  
Geauga App. No. 96-G-2022. (Cross-appeal of Patricia J. Schraff.)  
Moyer, C.J., Douglas and Lundberg Stratton, JJ., dissent.

97-2438. In re Testamentary Trust of Hamm.  
Geauga App. No. 96-G-2023. (Cross-appeal of Patricia J. Schraff.)  
Moyer, C.J., Douglas and Lundberg Stratton, JJ., dissent.

97-2608. State v. Dennis.  
Allen App. No. 1-97-42.  
Douglas, J., dissents.

97-2622. In re Testamentary Trust of Hamm.  
Geauga App. No. 96-G-2022.  
Moyer, C.J., Douglas and Lundberg Stratton, JJ., dissent.

97-2623. In re Testamentary Trust of Hamm.  
Geauga App. No. 96-G-2023.  
Moyer, C.J., Douglas and Lundberg Stratton, JJ., dissent.

97-2651. Banks v. Greater Cleveland Regional Transit Auth.  
Cuyahoga App. No. 72468.

97-2658. Wilkenfeld v. Granville.  
Licking App. No. 97CA42.

97-2690. Grabow v. Larned.  
Summit App. No. 18365.

97-2692. Bratton v. Church of the Living Word.  
Summit App. No. 18664.

97-2700. Cincinnati Ins. Co. v. Keneco Distrib., Inc.

Franklin App. No. 97API04-459.  
Resnick, J., dissents.  
Cook, J., not participating.

97-2713. Leighton v. Am. Economy Ins. Co.  
Stark App. No. 1997CA0197.  
Moyer, C.J., Pfeifer and Cook, JJ., dissent.

97-2722. Hamilton Mut. Ins. Co. v. Perry.  
Ottawa App. No. OT-97-010.  
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

98-12. Huntington Trust Co. v. Chubet.  
Franklin App. Nos. 97APF01-130 and 97APF01-131.  
Pfeifer, J., dissents.

98-14. State ex rel. Fant v. Tober.  
Cuyahoga App. No. 71616.

98-26. Madvad v. Russell.  
Lorain App. No. 96CA006652.

98-27. Miller v. State.  
Lucas App. No. L-97-1009.  
Douglas, J., not participating.

98-56. State v. Troyer.  
Wayne App. No. 97CA0015.  
Moyer, C.J., and Pfeifer, J., dissent.

98-80. State v. Harrison.  
Portage App. No. 96-P-0240.  
Resnick and Pfeifer, JJ., dissent.

98-97. Eberwine v. Coshocton Cty. Bd. of Mental Retardation &  
Dev. Disabilities.  
Coshocton App. No. 97CA3.  
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

98-155. Prudential Prop. & Cas. Ins. Co. v. Koby.  
Trumbull App. No. 97-T-0039.

#### RECONSIDERATION DOCKET

96-1211. Jim's Steak House v. Cleveland.  
Cuyahoga App. Nos. 68456 and 68506. Reported at 81 Ohio St.3d  
18, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion  
denied.  
Cook and Lundberg Stratton, JJ., dissent.  
On motion to strike. Motion denied.  
Cook, J., dissents.

97-765. Simmons v. Cuyahoga Cty. Bd. of Revision.  
Board of Tax Appeals, No. 95-B-951. Reported at 81 Ohio St.3d  
47, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion  
denied.

97-2331. State v. Zerla.  
Franklin App. No. 96APA11-1583. Reported at 81 Ohio St.3d 1427,  
\_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Lundberg Stratton, J., not participating.

97-2363. State ex rel. Pollock v. Kenston Local School Dist.  
In Mandamus. Reported at 81 Ohio St.3d 1425, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.

97-2412. Dillard v. Canton Drop Forge, Inc.  
Stark App. No. 1997CA00114. Reported at 81 Ohio St.3d 1428, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

97-2449. State v. Cantrell.  
Ross App. No. 96CA2255. Reported at 81 Ohio St.3d 1429, \_\_\_  
N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Lundberg Stratton, J., dissents and would grant the motion  
for reconsideration and hold this cause for the decision in 97-  
1778, State v. Rush, Stark App. No. 96CA419.