

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
January 20, 1999

MERIT DOCKET

98-2195. State ex rel. Ellis v. O'Neill.

In Mandamus and Procedendo. 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.

98-2196. State ex rel. Henry v. Fifth Appellate Judicial Court.

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.

98-2200. State ex rel. Miller v. Judges of the Lorain Cty. 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.

98-2289. State v. Keirns.

Lucas App. No. L-97-1414. *Sua sponte*, cause dismissed.

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

Resnick, J., not participating.

98-2373. Garrett v. Taft.

In Mandamus. On motion to dismiss of Robert A. Taft II and motion to dismiss of Ross County Board of Elections. Motions to dismiss sustained. Cause dismissed.

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

98-2385. State ex rel. Wyckhouse v. Muehlfeld.

In Procedendo. 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.

98-2434. State ex rel. Troutman v. Ninth Dist. Court of Appeals.

In Mandamus. On motion to dismiss and on motion for summary judgment. Motion to dismiss sustained. Cause dismissed.

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

98-2466. State ex rel. Hadox v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2467. State ex rel. Doyle v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2526. State ex rel. Morehouse v. Ohio Adult Parole Auth.

In Prohibition. *Sua sponte*, cause dismissed.

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

98-2552. Galloway v. Money.

In Habeas Corpus. *Sua sponte*, cause dismissed.

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

98-2597. Oden v. Carter.

In Habeas Corpus. *Sua sponte*, cause dismissed and motion for bail denied.

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**

98-1861. State v. Wren.

Richland App. No. 96CA72.

98-1948. State v. Shinkle.

Scioto App. Nos. 98CA2560 and 98CA2561.

Moyer, C.J., dissents.

98-1957. State v. Baker.

Hamilton App. No. C-970401.

98-1978. State v. Wortham.

Lucas App. No. L-98-1063.

Resnick, J., not participating.

98-1979. State v. Roe.

Cuyahoga App. No. 73306.

98-1987. State v. Lewis.

Summit App. No. 18666.

98-1989. State v. Clark.

Lucas App. No. L-97-1151.

Resnick, J., not participating.

98-1999. Burnes v. Webb.

Athens App. No. 98CA24.

98-2021. Kovalak v. Kovalak.

Cuyahoga App. No. 73100.

98-2023. State v. Cummings.

Franklin App. No. 98AP-297.

Lundberg Stratton, J., not participating.

98-2053. Henry Meyer Assoc., Inc. v. Moreland Hills.

Cuyahoga App. No. 72754.

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

98-2054. Shemo v. Mayfield Hts.

Cuyahoga App. No. 73241.

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

98-2058. State v. Bell.

Cuyahoga App. No. 73310.

98-2064. State v. Bryant.

Montgomery App. No. 16330.

98-2078. A. Doe v. First Presbyterian Church (USA).

Richland App. No. 97CA482.

98-2081. Wallace v. Geyer.

Butler App. No. CA98-04-089.

Douglas and Resnick, JJ., dissent.

98-2085. State v. Troutman.

Lorain App. No. 96CA006559.

98-2088. State v. Harris.

Franklin App. No. 97APA11-1506. (Appeal of state of Ohio and cross-appeal of Jessie R. Harris.)

98-2090. Fisher v. Univ. of Cincinnati Med. Ctr.

Franklin App. No. 98AP-142.

Douglas and Pfeifer, JJ., dissent.

98-2094. Varney v. Varney.

Jackson App. Nos. 97CA809 and 97CA810.

Cook and Lundberg Stratton, JJ., dissent.

98-2095. Hall v. Forsyth.

Montgomery App. No. 17239.

98-2097. State v. Wright.

Franklin App. No. 97APA12-1566.

98-2098. State v. Nuckols.

Wayne App. No. 97CA0076.

Moyer, C.J., would allow on Proposition of Law No. II only.

Douglas, J., would allow.

98-2103. State v. Harrington.

Erie App. No. E-98-044.

Resnick, J., not participating.

98-2113. State v. Bonnell.

Cuyahoga App. Nos. 69835 and 73177.

98-2114. State v. Gordon.

Stark App. No. 1998CA0203.

98-2115. State v. Goodballett.

Columbiana App. No. 97CO17.

98-2119. State v. Hammons.

Montgomery App. No. 16931.

98-2120. Neguse v. Collins.

Scioto App. No. 97CA2553.

98-2125. Community Ins. Co. v. Hambden Twp.
Geauga App. No. 97-G-2115.
Moyer, C.J., and Lundberg Stratton, J., dissent.

98-2149. Surber v. Keating.
Hamilton App. No. C-980253.
Pfeifer, J., dissents.

98-2151. State v. Smith.
Butler App. No. CA97-12-223.

98-2154. State v. Cairelli.
Clark App. No. 98CA76.

98-2155. State v. Stapleton.
Perry App. No. 97CA62.

98-2158. State v. Wade.
Franklin App. No. 97APA10-1393.

98-2163. State v. Leggett.
Williams App. No. WM-97-029.
Moyer, C.J., and Douglas, J., dissent.

98-2165. Doe v. Flair Corp.
Cuyahoga App. No. 73423.
Moyer, C.J., F.E. Sweeney and Cook, JJ., dissent.

98-2167. State v. Roberts.
Hamilton App. No. C-970980.
Moyer, C.J., would allow on Proposition of Law No. II only.

98-2171. State v. Sherrills.
Cuyahoga App. No. 56777.

98-2173. State v. Linehan.
Montgomery App. No. 16841.

98-2174. Spence v. Westfield Natl. Ins. Co.

Monroe App. No. 797.

Cook and Lundberg Stratton, JJ., dissent.

98-2175. State v. Moore.

Cuyahoga App. No. 73899.

98-2176. State v. Lee.

Hamilton App. No. C-971110.

Moyer, C.J., and Cook, J., would allow on Propositions of Law Nos. III and V.

98-2179. State v. Lee.

Franklin App. No. 97APA12-1629.

98-2180. In re Disposition of Property Held by Geauga Cty. Sheriff.

Geauga App. No. 97-G-2091.

98-2183. State v. Kaszas.

Cuyahoga App. Nos. 72546 and 72547.

Douglas and Resnick, JJ., dissent.

98-2185. State v. Hill.

Hamilton App. No. C-970966.

98-2186. Charvat v. Colorado Prime, Inc.

Franklin App. No. 97APG09-1277. (Appeal of Philip J. Charvat and cross-appeal of Colorado Prime, Inc.)

Douglas and Lundberg Stratton, JJ., dissent.

98-2199. State v. Am. Bail Bond Agency.

Franklin App. No. 97APC10-1400.

Douglas and Pfeifer, JJ., dissent.

98-2209. Marsh v. Lampert.

Butler App. No. CA98-04-071.

98-2211. State v. Clark.

Tuscarawas App. No. 1998AP010002.

98-2219. McClelland v. Clemson Trucking, Inc.

Geauga App. No. 97-G-2077.

Moyer, C.J., dissents.

Cook, J., not participating.

98-2230. State v. Tyler.

Cuyahoga App. No. 71785.

98-2233. State v. Daniels.

Lorain App. No. 98CA007205.

98-2235. Medlen v. Alternative Lending Mtge. Corp.

Cuyahoga App. No. 73253.

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

98-2237. State v. Ali.

Summit App. No. 18841.

98-2240. State v. Benjamin.

Cuyahoga App. No. 73017.

98-2241. Dayton v. Moser.

Montgomery App. No. 16773.

98-2242. Baker v. Spinning Rd. Baptist Church, Inc.

Montgomery App. No. 17052.

Douglas and Pfeifer, JJ., dissent.

98-2244. Stover v. Erie Islands Resort & Marina.

Ottawa App. No. OT-97-056.

Resnick, J., not participating.

98-2245. State v. Lake.

Franklin App. No. 98AP-844.

98-2248. Grange Mut. Cas. Co. v. Darst.

Miami App. No. 97CA59.

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

98-2255. State v. Sherrills.

Cuyahoga App. No. 53535.

98-2256. State v. Sherrills.

Cuyahoga App. No. 61882.

98-2257. State v. Sherrills.

Cuyahoga App. No. 60622.

98-2258. State v. Sherrills.

Cuyahoga App. No. 35912.

98-2259. State v. Sherrills.

Cuyahoga App. No. 62067.

98-2260. State v. Sherrills.

Cuyahoga App. No. 62068.

98-2270. State v. Detweiler.

Stark App. No. 1998CA00054.

98-2271. State v. Steverson.

Franklin App. No. 97APA11-1466.

98-2272. State v. Pope.

Lake App. No. 97-L-153.

98-2278. State v. DeRito.

Lake App. No. 97-L-052.

98-2279. State v. Haddix.

Stark App. No. 1998CA0096.

98-2296. State v. Ashley.

Hamilton App. No. C-970639.

98-2299. State v. Novak.

Cuyahoga App. No. 72849.

98-2304. Cox v. Petty.

Richland App. No. 98CA27.

98-2313. State v. Sanders.

Hamilton App. Nos. C-971043 and C-971044.

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

98-2315. State v. Moore.

Hamilton App. No. C-970353.

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

98-2321. State v. Sims.

Jefferson App. No. 96JE38.

Lundberg Stratton, J., dissents.

98-2324. State v. Holloway.

Franklin App. No. 97APA05-622.

Moyer, C.J., dissents.

98-2325. State v. Wilburn.

Lawrence App. No. 97CA53.

98-2344. State v. Cady.

Crawford App. No. 3-98-8.

98-2380. State v. Rivers.

Summit App. No. 18340.

98-2381. State v. Williams.

Lucas App. No. L-98-1306.

Resnick, J., not participating.

98-2387. State v. Toles.
Stark App. No. 97CA0139.

98-2390. State v. Deel.
Lake App. No. 97-L-154.

MOTION DOCKET

96-2352. State ex rel. Libecap v. Indus. Comm.
Franklin App. No. 96APD01-29. On motion for order to show cause. Motion denied.

F.E. Sweeney, J., dissents.

98-675. State ex rel. Haylett v. Ohio Bur. of Workers' Comp.
In Mandamus and Prohibition. On request for oral argument. Request granted.
Cook, J., dissents.

98-837. State ex rel. Dist. 1199, Health Care & Social Serv. Union, SEIU, AFL/CIO v. Lawrence Cty. Gen. Hosp.

In Mandamus. On bill and documentation in support of request for attorney fees.

IT IS ORDERED by the court that relators' counsel submit evidence of the actual hourly rate for attorney fees they charged to relators within ten days of the date of this entry. See, *e.g.*, *State ex rel. Gannett Satellite Info. Network, Inc. v. Petro* (1998), 81 Ohio St.3d 1234, 690 N.E.2d 11.

98-1059. Lancaster v. Fairfield Cty. Budget Comm.

Board of Tax Appeals, Nos. 97-D-1172 and 97-D-1173. On motion to dismiss. Motion denied.

98-1494. Pingue v. Franklin Cty. Bd. of Revision.

Board of Tax Appeals, No. 96-P-263. On motion for oral argument. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

98-2006. State v. Loomer.

Cuyahoga App. No. 72302. On motion for leave to file delayed appeal. Motion denied.

98-2494. State v. Appling.

Cuyahoga App. No. 72719. On motion for leave to file delayed appeal. Motion denied.

98-2496. State v. Draughon.

Franklin App. No. 97APA11-1536. On motion for leave to file delayed appeal. Motion denied.

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

98-2508. State v. Cuevas.

Lorain App. No. 91CA005043. On motion for leave to file delayed appeal. Motion denied.

98-2528. State v. McDade.

Lake App. No. 97-L-059. On motion for leave to file delayed appeal. Motion denied.

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

98-2534. State v. Campbell.

Cuyahoga App. No. 62216. On motion for leave to file delayed appeal. Motion denied.

98-2586. State v. Ference.

Portage App. No. 97-P-0073. On motion for leave to file delayed appeal. Motion denied.

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

98-2603. State v. Edmonson.

Portage App. No. 97-P-0067. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 4 of the court of appeals' Judgment Entry filed December 2, 1998:

“Whether explicit findings are necessary to satisfy the requirements of R.C. 2929.14(B) and (C).”

F.E. Sweeney, J., dissents.

DISCRETIONARY APPEALS ALLOWED

98-219. Pretty v. Mueller.

Hamilton App. Nos. C-970011 and C-970332.

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

98-1992. State v. Craig.

Lucas App. No. L-98-1137. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 98-1779, *State v. Conyers*, Lucas App. No. L-97-1327, and 98-1929, *State v. Schultz*, Hamilton App. No. C-970954; briefing schedule stayed.

Resnick, J., not participating.

98-2044. State v. Snowder.

Licking App. No. 98CA22. Discretionary appeal allowed; *sua sponte*, cause consolidated with 98-1779, *State v. Conyers*, Lucas App. No. L-97-1327, and 98-1929, *State v. Schultz*, Hamilton App. No. C-970954.

98-2102. Chicago Title Ins. Co. v. Huntington Natl. Bank.

Delaware App. No. 97CA006836. (Appeal of Huntington National Bank and cross-appeal of Chicago Title Company.)

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

DISCRETIONARY APPEALS NOT ALLOWED

98-1163. Pritchard v. Ohio Bur. of Workers' Comp.

Tuscarawas App. No. 97APD080053.

98-1930. Spencer v. Spalla.

Trumbull App. No. 97-T-0065.

98-1944. State v. Pinnock.

Hamilton App. No. C-980607.

98-1981. State v. Cash.

Fulton App. No. F-98-008.

98-2034. State v. Brooks.

Lorain App. No. 98CA007200.

98-2040. Rinicella v. Rubino.

Cuyahoga App. No. 73105.

Moyer, C.J., dissents.

98-2043. In re Thomas.

Franklin App. No. 98AP-22.

Pfeifer, J., dissents.

98-2047. State v. Chinn.

Montgomery App. No. 16764. (Appeal of state of Ohio and cross-appeal of Davel V. Chinn.)

Douglas, J., dissents.

98-2050. State v. Byerly.

Portage App. No. 97-P-0034. On motion for admission *pro hac vice* of Paul C. Looney. Motion denied as moot.

98-2055. Gilkey v. Gibson.

Franklin App. No. 97APE11-1477.

Douglas and Resnick, JJ., dissent.

98-2056. State v. Gaiter.

Lucas App. No. L-97-1187.

98-2068. Estate of Gammell v. Modern Fin. Co.

Logan App. No. 8-97-37.

98-2073. Veloski v. State Farm Mut. Auto Ins. Co.

Cuyahoga App. No. 74059.

Pfeifer, J., dissents.

98-2080. Latson v. Blanchard.

Summit App. No. 18867.

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

98-2082. Isaacs v. Larkin Elec. Co.

Montgomery App. No. 16948.

Douglas, Resnick and Cook, JJ., dissent.

98-2087. Schneider v. Gunnerman.

Fayette App. Nos. CA97-07-017 and CA97-12-034.

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

98-2089. Koterba v. Holiday Inn-Cincinnati.

Hamilton App. No. C-970769.

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

98-2104. McQuire v. K & G Mgt. Co.

Licking App. No. 98CA35.

Douglas, J., dissents.

98-2108. Prudential Ins. Co. of Am. v. Robinson.

Stark App. No. 1998CA0150.

98-2124. Natl. Grange of the Order of Patrons of Husbandry v. Lahmon.

Licking App. No. 98CA28.

98-2126. Nauth v. Sharon Twp. Bd. of Zoning Appeals.

Medina App. No. 2754-M.

98-2147. Muray v. The Limited Stores, Inc.

Franklin App. No. 97APE10-1433.

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

98-2148. Brenizer v. Ohio Bur. of Emp. Serv.

Cuyahoga App. No. 73093.

98-2161. Fogaras v. Univ. Hosp. of Cleveland.

Cuyahoga App. Nos. 72617 and 72618.

Pfeifer and Cook, JJ., dissent.

- 98-2169. Winbolt v. Bi-Con Serv., Inc.**
Guernsey App. No. 98CA7.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.
- 98-2228. State ex rel. Cahill v. Lake Cty. Dept. of Utilities.**
Lake App. No. 97-L-112.
- 98-2243. State v. Morgan.**
Cuyahoga App. No. 72593.
Lundberg Stratton, J., dissents.
- 98-2274. State v. Tessanne.**
Stark App. No. 1997CA00416.
- 98-2284. Spalding v. Coulson.**
Cuyahoga App. Nos. 70524 and 70538.
- 98-2297. State v. Byrne.**
Richland App. No. 98CA13.
Pfeifer, J., dissents.
- 98-2307. Westerfield v. Metro. Ins. Co.**
Cuyahoga App. No. 73356.
Douglas, Resnick and Pfeifer, JJ., dissent.
- 98-2311. Vinnece v. Motorists Ins. Co.**
Montgomery App. No. 16997.
Pfeifer and Lundberg Stratton, JJ., dissent.
- 98-2316. Elfvin v. Tuscarawas Cty. Health Dept.**
Tuscarawas App. No. 98AP010001.
Pfeifer, J., dissents.
- 98-2377. Sisco's On Sight Excavation v. Prater.**
Licking App. No. 98CA51.

RECONSIDERATION DOCKET

95-2633. State ex rel. R. Bauer & Sons Roofing & Siding, Inc. v. Indus. Comm.

Franklin App. No. 94APD06-865. Reported at 84 Ohio St.3d 62, ___N.E.2d ___.
On motion for reconsideration. Motion denied.

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

97-1231. State ex rel. Tubbs Jones v. Suster.

In Prohibition. Reported at 84 Ohio St.3d 70, ___ N.E.2d ___. On motion for reconsideration. The motion fails for want of four votes on the following vote:

Moyer, C.J., Cook and Lundberg Stratton, JJ., vote no.

Douglas, Resnick and F.E. Sweeney, JJ., vote yes.

Pfeifer, J., not participating.

98-378. Cincinnati Bar Assn. v. Haas.

Reported at 84 Ohio St.3d 85, ___ N.E.2d ___. On motion for reconsideration.
Motion denied.

Lundberg Stratton, J., dissents.