

# The Supreme Court of Ohio

---

## CASE ANNOUNCEMENTS

November 28, 2018

[Cite as *11/28/2018 Case Announcements*, 2018-Ohio-4732.]

---

## MERIT DECISIONS WITH OPINIONS

**2017-1081. Disciplinary Counsel v. Sarver, Slip Opinion No. 2018-Ohio-4717.**

On Certified Report by the Board of Professional Conduct, No. 2017-015. Jason Allan Sarver, Attorney Registration No. 0082073, last known address in Rockbridge, Ohio, suspended from the practice of law for two years with 18 months stayed on conditions.

O'Donnell, Kennedy, French, and DeWine, JJ., concur.

Fischer, J., concurs in part and dissents in part, with an opinion joined by O'Connor, C.J. and DeGenaro, JJ.

**2017-1583. State ex rel. Harris v. Pureval, Slip Opinion No. 2018-Ohio-4718.**

Hamilton App. No. C-170226. Judgment affirmed in part and reversed in part and limited writ granted.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

O'Donnell, J., dissents and would affirm the judgment of the court of appeals in all respects.

**2017-1740. Columbus Bar Assn. v. Keating, Slip Opinion No. 2018-Ohio-4730.**

On Certified Report by the Board of Professional Conduct, No. 2016-071. Bradley D. Keating, Attorney Registration No. 0076341, last known address in Gahanna, Ohio, suspended from the practice of law for 6 months all stayed on conditions.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-0810. Cleveland Metro. Bar Assn. v. Wintner, Slip Opinion No. 2018-Ohio-4731.**

On Certified Report by the Board of Professional Conduct, No. 2018-009. Jennifer Ellen Wintner, Attorney Registration No. 0014507, last known address in Cleveland, Ohio, suspended from the practice of law for one year all stayed on conditions.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

O'Donnell, J., concurs but would order full restitution in the amount of \$500.

**MERIT DECISIONS WITHOUT OPINIONS**

**2017-0204. In re Application of Dayton Power & Light Co.**

Public Utilities Commission, Nos. 08-1094-EL-SSO, 08-1095-EL-ATA, 08-1096-EL-AAM, and 08-1097-EL-UNC. Sua sponte, appeal dismissed as moot.

O'Connor, C.J., and Kennedy, Fischer, and DeWine, JJ., concur.

O'Donnell and French, JJ., dissent.

DeGenaro, J., not participating.

**2018-0965. State ex rel. Summit Gastroenterology Assocs., Inc. v. McCarty.**

In Prohibition. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

O'Donnell, J., dissents.

**2018-1113. McAdams v. Goldberg.**

In Prohibition. On respondent's amended motion to dismiss. Motion granted. Cause dismissed. Motion for stay of trial-court proceedings denied as moot.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1117. State ex rel. Hedenberg v. N. Cent. Corr. Inst.**

In Mandamus. On respondent's motion to dismiss. Motion granted. Relator's motion to strike denied as moot.

O'Connor, C.J., and O'Donnell, Kennedy, Fischer, and DeWine, JJ., concur.

French and DeGenaro, JJ., concur in the granting of respondent's motion to dismiss but would deny relator's motion to strike on the merits.

**2018-1211. State ex rel. Pearson v. Kelbley.**

In Procedendo. On S.Ct.Prac.R. 12.04 determination. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, and DeGenaro, JJ., concur.

DeWine, J., dissents and would grant an alternative writ.

**2018-1224. Tassone v. Black.**

In Mandamus. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1228. State ex rel. Galluzzo v. Weithman.**

In Prohibition. On S.Ct.Prac.R. 12.04 determination. Cause dismissed.

O'Connor, C.J., and O'Donnell, French, Fischer, and DeGenaro, JJ., concur.  
Kennedy and DeWine, JJ., would deny the petition on the merits.

**2018-1232. State ex rel. Walker v. Adult Parole Auth.**

In Mandamus. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1244. Baldwin v. KeyCorp Corporate Offices.**

Miscellaneous case. On S.Ct.Prac.R. 12.04 determination, cause dismissed. Relator's motion to include supporting evidence for the complaint denied. Respondent's motion for leave to file motion to dismiss denied as moot.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1254. Baldwin-Nazarene v. Univ. of Cincinnati.**

Miscellaneous case. On respondents' motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1272. State ex rel. Braddy v. McDonnell.**

In Mandamus. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1280. Declaration as Notice.**

Miscellaneous case. On respondents' motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1281. Baldwin-Nazarene v. PNC Bank Corporate Headquarters.**

Miscellaneous case. On respondents' motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1288. Peoples v. Schneider.**

In Mandamus. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, Fischer, DeWine, and DeGenaro, JJ., concur.

French, J., not participating.

**2018-1294. State ex rel. Jones v. Walsh.**

In Mandamus. On relator's motion to amend court records to correct misspelling of name. Motion granted. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1304. Messenger v. Finnegan.**

In Procedendo. On S.Ct.Prac.R. 12.04 determination. Cause dismissed. Relator's motion to amend granted.

O'Connor, C.J., and O'Donnell, French, Fischer, and DeGenaro, JJ., concur. Kennedy and DeWine, JJ., would deny the petition on the merits.

**2018-1311. State ex rel. Buchanan v. Renick.**

In Mandamus. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1320. State ex rel. Boler-Bey v. McCarthy.**

In Mandamus and Prohibition. On respondent's answer and motion for judgment on pleadings. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1329. State ex rel. Kerr v. Collier.**

In Prohibition. On respondent's motion to dismiss. Motion granted. Cause dismissed. Relator's motion for leave to amend denied.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1336. Baldwin v. Procter & Gamble Corp.**

Miscellaneous case. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1352. Baldwin v. Procter & Gamble Corp.**

Miscellaneous case. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1353. Hill v. Navarre.**

In Procedendo. On S.Ct.Prac.R. 12.04 determination. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, and DeGenaro, JJ., concur.

DeWine, J., dissents and would grant an alternative writ.

**2018-1361. Baldwin v. Huntington Bank Corporate Office Headquarters.**

Miscellaneous case. On respondents' motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1367. State ex rel. Eberhardt v. Janik.**

In Habeas Corpus. Sua sponte, cause dismissed. Petitioner's emergency motion for bond and request for alternative writs denied.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1369. Sankey v. Sezon.**

In Procedendo. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1374. Baldwin v. JP Morgan Chase Bank.**

Miscellaneous case. On respondent's motion to dismiss. Motion granted. Cause dismissed. Respondent's motion to deem action frivolous granted.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1387. Baldwin v. US Bank.**

Miscellaneous case. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1398. Baldwin v. Wells Fargo Advisors.**

Miscellaneous case. On respondents' motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1459. State ex rel. McDougald v. Erdos.**

In Habeas Corpus. Sua sponte, cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

**2018-1466. Davis v. Eppinger.**

In Habeas Corpus. Sua sponte, cause dismissed.

O'Connor, C.J., and O'Donnell, Kennedy, French, Fischer, DeWine, and DeGenaro, JJ., concur.

## MOTION AND PROCEDURAL RULINGS

### **2018-1177. State v. Hawkins.**

Fayette App. No. CA2017-07-013, 2018-Ohio-1983. On appellant's motion to request bond. Motion denied.

Fischer and DeWine, JJ., dissent.

### **2018-1358. State v. Siemering.**

Hamilton App. No. C-170611, 2018-Ohio-3541. On appellant's emergency motion for stay of court of appeals' judgment. Motion denied.

### **2018-1388. State v. Ervin.**

Highland App. No. 18CA1, 2018-Ohio-3451. On appellant's amended motion to stay. Motion denied.

### **2018-1479. Moore v. Mt. Carmel Health Sys.**

Franklin App. No. 2017APE-10-754, 2018-Ohio-2831. On review of an order certifying a conflict. The court determines that a conflict exists. The parties are ordered to brief the issue stated at page 26 of the court of appeals' entry filed October 11, 2018: "Does the Ohio savings statute, R.C. 2305.19(A), apply to an action in which a plaintiff attempts, but fails to perfect service on the original complaint within one year pursuant to Civ.R. 3(A)? If so, when a plaintiff files instructions for service after the Civ.R. 3(A) one-year period, does the request act as a dismissal by operation of law and also act as the refiling of an identical cause of action so as to allow the action to continue?"

The conflict cases are *Anderson v. Borg-Warner*, 8th Dist. Cuyahoga Nos. 80551 and 80926, 2003-Ohio-1500; *Pewitt v. Roberts*, 8th Dist. Cuyahoga No. 85334, 2005-Ohio-4298; *Sheldon v. Burke*, 8th Dist. Cuyahoga No. 103576, 2016-Ohio-941; *Khatib v. Peters*, 2017-Ohio-95, 77 N.E.3d 461 (8th Dist.); *Bently v. Miller*, 9th Dist. Summit No. 25039, 2010-Ohio-2735; and *Gibson v. Summers*, 11th Dist. Portage No. 2008-P-0032, 2008-Ohio-2995.

Sua sponte, cause consolidated with 2018-1233, *Moore v. Mt. Carmel Health Sys.*, and briefing in Nos. 2018-1233 and 2018-1479 shall be consolidated. The parties shall file two originals of each of the briefs permitted under S.Ct.Prac.R. 16.02 through 16.04 and include both case numbers on the cover page

of the briefs. The parties shall otherwise comply with the requirements of S.Ct.Prac.R. 16.01 through 16.04.

O'Donnell, Kennedy, French, and DeWine, JJ., concur.

Fischer, J., would accept the certified conflict as to *Bently v. Miller*, 9th Dist. Summit No. 25039, 2010-Ohio-2735, only.

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

**2018-1530. State v. Gibson.**

Muskingum App. No. CT2017-0094, 2018-Ohio-4013. On appellant's motion to stay proceedings. Motion denied.

O'Donnell, J., dissents.

**APPEALS ACCEPTED FOR REVIEW**

**2018-1233. Moore v. Mt. Carmel Health Sys.**

Franklin App. No. 2017APE-10-754, 2018-Ohio-2831. First appeal of Mount Carmel Health System accepted. Second appeal of Eric Humphreys and Central Ohio Anesthesia, Inc., accepted. Sua sponte, cause consolidated with 2018-1479, *Moore v. Mt. Carmel Health Sys.*, and briefing in Nos. 2018-1233 and 2018-1479 shall be consolidated. The parties shall file two originals of each of the briefs permitted under S.Ct.Prac.R. 16.02 through 16.04 and include both case numbers on the cover page of the briefs. The parties shall otherwise comply with the requirements of S.Ct.Prac.R. 16.01 through 16.04.

Fischer, J., dissents in part and would not accept the second appeal.

O'Donnell and DeGenaro, JJ., dissent.

**2018-1262. LRC Realty, Inc. v. B.E.B. Properties.**

Geauga App. No. 2016-G-0076, 2018-Ohio-2887. First appeal of 112 Parker Court L.L.C., accepted on proposition of law No. I. Second appeal of LRC Realty, Inc., accepted on proposition of law Nos. I and II.

Kennedy, Fischer, and DeWine, JJ., would accept both appeals on all propositions of law.

O'Connor, C.J., and O'Donnell and DeGenaro, JJ., dissent.

**RECONSIDERATION OF PRIOR DECISIONS**

**2018-1432. State ex rel. Livingston v. Cherry.**

In Mandamus and Prohibition. Reported at 153 Ohio St.3d 1500, 2018-Ohio-4240,



109 N.E.3d 1257. On motion for reconsideration. Motion denied. Motion to consolidate, motion to strike, and motion for alternative writ denied.

### **PETITIONS TO TRANSFER**

**2018-1266. Viola Assocs., L.L.C. v. Lorain Cty. Bd. of Revision.**

Lorain App. Nos. 18CA011386 and 18CA011387, and Board of Tax Appeals, Nos. 2016-1273, 2016-1274, and 2016-1275. On petition to transfer jurisdiction. Petition denied.

Kennedy and French, JJ., dissent.

**2018-1299. Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision.**

Franklin App. No. 18AP-622 and Board of Tax Appeals No. 2016-2365. On petition to transfer jurisdiction of Palmer House Borrower, L.L.C. Petition granted. The clerk shall issue an order for the transmittal of the records from the Court of Appeals for Franklin County and the Board of Tax Appeals, and the parties shall brief this case in accordance with the Rules of Practice of the Supreme Court of Ohio.

O'Donnell, J., dissents.