

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M. WEDNESDAY  
March 27, 1996

MERIT DOCKET

95-1536. ALLTEL Ohio, Inc. v. Pub. Util. Comm.  
Public Utilities Commission, No. 94-2012-TP-ACE. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Resnick, J., not participating.

95-1537. ALLTEL Ohio, Inc. v. Pub. Util. Comm.  
Public Utilities Commission, No. 94-2019-TP-ACE. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Resnick, J., not participating

95-2535. Phillips v. Shiplevy.  
In Habeas Corpus. On return of writ. Sua sponte, cause dismissed.

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

95-2560. State ex rel. Lewis v. Collins.  
In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Moyer, C.J., and Pfeifer, J., dissent and would grant an alternative writ.

95-2658. Comley v. Pub. Util. Comm.  
Public Utilities Commission, Nos. 94-590-TR-CSS and 94-593-TR-CSS. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

96-234. Lawson v. Fed. Correctional Inst., Inc.  
In Habeas Corpus. Sua sponte, cause dismissed.

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

96-300. State ex rel. Alois v. Cosgrove.

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

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

96-303. Walton v. Ghee.

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

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

96-310. Floyd 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 Stratton, JJ., concur.

96-318. State ex rel. Liccardi v. Cross.

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

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

96-364. State ex rel. Kienzel v. Judges of the Seventh Dist. Court of Appeals.

In Procedendo. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

96-366. State ex rel. Serow v. Reid.

In Mandamus. Sua sponte, cause dismissed.

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

96-407. Bragg v. Franklin Cty. Court of Common Pleas.

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 Stratton, JJ., concur.

96-476. Aford v. Shiplevy.

In Habeas Corpus. Sua sponte, cause dismissed.

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

DISMISSALS, SUA SPONTE, NO SUBSTANTIAL  
CONSTITUTIONAL QUESTION AND DISCRETIONARY  
APPEALS, IF APPLICABLE, NOT ALLOWED

95-2085. State v. Capone.

Cuyahoga County, No. 67971.

95-2280. H.P. Nemenz Food Stores, Inc. v. United Food & Commercial Workers Union, Local 880.

Mahoning County, No. 93 C.A. 128.

95-2290. State v. Ervin.  
Cuyahoga County, No. 68141.  
F.E. Sweeney, J., dissents.

95-2294. In re Kerry Ford, Inc.  
Franklin County, Nos. 94APE10-1569 and 94APE10-1570.  
Douglas, J., dissents.

95-2343. Kilburn v. S. Lebanon.  
Warren County, No. CA94-12-105.

95-2398. State v. Loomer.  
Cuyahoga County, No. 68103.

95-2435. Taylor v. Triple in the U.S.A., Inc.  
Belmont County, No. 93-B-51.

95-2472. State v. Collins.  
Allen County, No. 1-95-18.

95-2474. FOE Aerie 2251 v. Ohio Liquor Control Comm.  
Tuscarawas County, No. 95AP030020.

95-2475. Guk v. Cleveland Civ. Serv. Comm.  
Cuyahoga County, No. 67900.

95-2476. Karlowicz v. Die-Matic Corp.  
Cuyahoga County, No. 68563.  
Stratton, J., dissents.

95-2477. State v. Apger.  
Cuyahoga County, No. 67928.

95-2480. Dandino v. Finkbeiner.  
Lucas County, No. L-95-030.  
Douglas and Resnick, JJ., not participating.

95-2481. Wagenknecht v. Hollis Agency.  
Wayne County, No. 95CA0037.

95-2482. Cleveland Police Patrolmen's Assn. v. Cleveland.  
Cuyahoga County, No. 67896.  
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

95-2484. State v. McLucas.  
Butler County, No. CA95-01-005.

95-2486. State v. Hall.  
Cuyahoga County, No. 68073.

95-2488. State v. Dudley.  
Trumbull County, No. 93-T-4907.

95-2491. Brady v. Brady.  
Montgomery County, No. 15082.

95-2493. State v. Launer.  
Franklin County, No. 95APA05-526.  
Moyer, C.J., Douglas and Cook, JJ., dissent.

95-2499. Tessler v. Ayer.  
Hamilton County, Nos. C-940574, C-940632, C-940780 and C-940849.  
Stratton, J., not participating.

95-2502. State v. Valentine.  
Franklin County, No. 95APC04-486.

95-2503. State v. Hall.  
Hamilton County, No. C-950554.  
Moyer, C.J., dissents.

95-2504. State v. Sawyer.  
Franklin County, No. 95APA03-256.

95-2513. Frys v. Cleveland.  
Cuyahoga County, No. 68273.

95-2516. State v. Grissom.  
Lucas County, No. L-94-220.  
Resnick, J., not participating.

95-2517. Logan v. Quillen.  
Hocking County, No. 94CA26.

95-2518. McMaster v. Akron.  
Summit County, No. 17133.

95-2519. State v. Purcell.  
Hamilton County, No. C-940051.

95-2521. Cheren v. Fitch.  
Summit County, No. 17181.

95-2522. State v. Messer.  
Lorain County, No. 94CA006020.

95-2523. Gallaher v. Manpower Internatl., Inc.  
Hamilton County, No. C-940912.  
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

95-2526. State v. Luna.  
Huron County, No. H-95-063.  
Resnick, J., not participating.

95-2527. State v. Brown.  
Hamilton County, No. C-940771.

95-2566. Reimund v. Brown.  
Franklin County, No. 95APE04-487.

95-2642. State v. Peters.

Sandusky County, No. S-95-010. On motion for order to show cause. Motion denied.

95-2678. State v. Ivy.  
Montgomery County, No. 15029.

96-11. State v. Worlds.  
Hamilton County, No. C-950800.

#### MOTION DOCKET

94-1538. State v. Bies.  
Hamilton County, No. C-920841. On motion for stay of execution pending disposition of petition for writ of certiorari by United States Supreme Court. Motion granted.

F.E. Sweeney, J., dissents.

94-1675. State ex rel. Newman v. Indus. Comm.  
Franklin County, No. 93AP-486. On request for oral argument. Request granted.  
Cook, J., dissents.

94-1689. State ex rel. McGonegle v. Indus. Comm.  
Franklin County, No. 93APD03-441. On request for oral argument by the C.W. Zumbiel Company. Request denied.  
F.E. Sweeney, J., dissents.

94-2537. State v. Wilson.  
Lorain County, No. 92CA005396. On motion for stay of execution pending disposition of petition for writ of certiorari by United States Supreme Court. Motion granted.  
F.E. Sweeney, J., dissents.  
Cook, J., not participating.

94-2752 and 95-170. In re Adoption of Zschach.  
Fairfield County, Nos. 1994CA14 and 1994CA19. On Johnson's motion to vacate entry of February 1, 1996, and on Barnebey's motion to vacate February 1, 1996 entry. Motions denied.  
Resnick and Pfeifer, JJ., dissent.  
Stratton, J., not participating.

95-2224 and 95-2356. State ex rel. WHIO-TV-7 v. Lowe.  
In Mandamus. On request for oral argument. Request granted.  
Resnick and Cook, JJ., dissent.

95-2375. McConnell v. Ohio Bur. of Emp. Serv.  
Franklin County, No. 95APE03-262. On motion for an order of reference to the Franklin County Court of Common Pleas. Motion denied.  
Moyer, C.J., and Douglas, J., dissent.

96-61. State ex rel. Russell v. Indus. Comm.  
In Mandamus and Prohibition. On answer of respondent and on motion to dismiss by Coventry Township Trustees. Motion to dismiss denied. Sua sponte, alternative writ granted and oral argument denied.

96-141. WLWT-TV5 v. Leis.  
In Mandamus. On motion for issuance of peremptory writ or alternative writ, motion to dismiss, motion for leave to amend complaint, and motion for leave to

supplement the pleadings. Alternative writ granted; motion to dismiss denied; motion for leave to amend complaint granted; and motion for leave to supplement the pleadings denied.

On motion for in camera review. Motion granted.

F.E. Sweeney, J., dissents.

96-164. Watson v. Miami Cty. Mun. Court.

Miami County, No. 95-CA-71. On renewed motion for stay of execution. Motion denied.

96-276. Massie v. Gahanna-Jefferson Pub. Schools Bd. of Edn.

In Mandamus. On motion for issuance of alternative writ, motion to dismiss, and motion to amend complaint. Alternative writ granted, motion to dismiss denied, and motion to amend granted.

Stratton, J., dissents and would grant the motion to dismiss.

96-331. State v. Parsons.

Montgomery County, No. 14423. On motion for stay of execution. Motion denied.

96-384. State v. Williams.

Licking County, No. 95CA00020. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

96-387. State v. McGee.

Logan County, No. 8-94-38. 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 January 22, 1996:

"Upon motion to certify filed by appellant, the judges of this court find that the judgment in this case, upon which they have agreed, is in conflict with the judgments of the First, Fourth, Sixth, Ninth, Tenth and Eleventh District Courts of Appeals in the cases State v. Barton (1991), 71 Ohio App.3d 455 [594 N.E.2d 702]; State v. Meeker (Sept. 15, 1986), Ross App. No. 1146, unreported [\_\_\_ WL \_\_\_]; State v. Gray (April 29, 1988), Lucas App. No. L-87-204, unreported [\_\_\_ WL \_\_\_]; State v. Williams (1984), 21 Ohio App.3d [12] [21 OBR 13, 486 N.E.2d 113]; State v. Wright (1986), 31 Ohio App.3d 232 [31 OBR 515, 510 N.E.2d 827]; and State v. Schoolcraft (May 29, 1992), Portage App. No. 91-P-2340, unreported [\_\_\_ WL \_\_\_].

"It is therefore ORDERED, under the provisions of Section 3(B)(5), Article IV, Ohio Constitution, that the record of this case be, and the same hereby is, certified to the Supreme Court of Ohio for review and final determination of the following rule of law: Negligence is the culpable mental state that the prosecution must prove beyond a reasonable doubt to obtain a conviction for Endangering Children in violation of R.C. 2919.22(A)."

Sua sponte, cause consolidated with 96-210, infra.

96-397. State v. Turner.

Erie County, No. E-94-063. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

96-409. State v. Nelson.

Montgomery County, No. 14775. On motion for leave to file delayed appeal. Motion denied.

Resnick and Pfeifer, JJ., dissent.

96-452. State v. Davie.  
Trumbull County, No. 92-T4693. On motion for leave to file delayed appeal.  
Motion granted.

96-457. State v. Landis.  
Perry County, No. 95CA2. On motion for leave to file delayed appeal of December 13, 1995 court of appeals decision. Motion denied.  
Resnick and Pfeifer, JJ., dissent.

#### DISCRETIONARY APPEALS ALLOWED

95-2468. State v. Weber.  
Franklin County, Nos. 95APC05-534, 95APC05-545 and 95APC06-717. On motion to consolidate case with 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 C.A. 232. Sua sponte, cause held for the decision in 95-1377 and 95-1466; briefing schedule stayed.  
Stratton, J., not participating.

95-2495. Asbury Apts. v. Dayton Bd. of Zoning Appeals.  
Montgomery County, No. 15109.  
Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

95-2497. Jones v. Hartranft.  
Franklin County, No. 95APE02-139.  
Resnick and Pfeifer, JJ., dissent.

95-2647. State v. Thompkins.  
Hamilton County, No. C-940513. On motions for discretionary appeal and cross-appeal. Discretionary appeal and cross-appeal allowed.  
Resnick and F.E. Sweeney, JJ., dissent.  
Stratton, J., not participating.

96-210. State v. McGee.  
Logan County, No. 8-94-38. Discretionary appeal allowed on Proposition of Law No. I only.  
Pfeifer, J., would allow all propositions of law.  
Douglas and F.E. Sweeney, JJ., dissent.

#### DISCRETIONARY APPEALS NOT ALLOWED

95-2387. In re Estate of Bohrer.  
Brown County, No. CA95-01-001.  
Resnick, J., dissents.

95-2473. McGlothin v. LTV Steel Co.  
Cuyahoga County, No. 68522.  
Douglas and Resnick, JJ., dissent.

95-2478. Hillside Rehab. Hosp. v. St. Paul Fire & Marine Ins. Co.  
Trumbull County, No. 95-T-5195.

95-2479. Lewis v. Ohio Dept. of Transp.  
Franklin County, No. 95API05-628.  
Douglas, J., dissents.

95-2483. Tittle v. Mauer.  
Shelby County, No. 17-95-5.  
Resnick, J., dissents and would grant the appeal only.  
F.E. Sweeney, J., dissents.

95-2485. Easley v. Butler.  
Lucas County, No. L-94-367.  
Resnick, J., not participating.

95-2489. Eichenberger v. Eichenberger.  
Franklin County, No. 95APF04-456.  
Stratton, J., not participating.

95-2494. Hamilton v. Hamilton.  
Lucas County, No. L-94-292.  
Resnick, J., not participating.

95-2498. Fischer v. Sciotto.  
Franklin County, No. 95APE04-490.

95-2500. Gregory v. Ohio Dept. of Transp.  
Franklin County, No. 95API04-483.

95-2510. State v. Baker.  
Montgomery County, No. 14861.  
Moyer, C.J., Douglas and Stratton, JJ., dissent.

95-2514. State v. Stieber.  
Huron County, No. H-95-017.  
Stratton, J., dissents.  
Resnick, J., not participating.

95-2544. Hammonck v. Calo.  
Clermont County, No. CA95-03-022.

95-2545. Pullins v. Vallery.  
Pike County, No. 94CA544.

95-2606. Wilson v. Wilson.  
Washington County, No. 94CA25.  
Douglas, J., dissents.

95-2627. Natl. City Bank, Dayton v. Peery.  
Montgomery County, No. 15117.

95-2630. Brakora v. Haudenschild.  
Hardin County, No. 6-95-9.

95-2650. Huggins v. Fed. Equip. Co.  
Cuyahoga County, No. 68428.  
F.E. Sweeney and Cook, JJ., dissent.

#### RECONSIDERATION DOCKET

95-2097. Cincinnati v. May.



Hamilton County, No. C-940862. Reported at 74 Ohio St.3d 1522, \_\_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.  
Stratton, J., not participating.

95-2134. Donnell v. Donnell.  
Sandusky County, No. S-94-031. Reported at 74 Ohio St.3d 1524, \_\_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.  
Douglas, Resnick and Stratton, JJ., not participating.

95-2143. State v. Reddy.  
Lorain County, No. 94CA005972. Reported at 74 Ohio St.3d 1522, \_\_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration and motion to continue bond. Motions denied.  
Moyer, C.J., dissents.  
Stratton, J., not participating.

#### DISCIPLINARY DOCKET

94-2701. Disciplinary Counsel v. Pagac.  
On emergency motion to withdraw motion for order to show cause. Sua sponte,  
cause dismissed.  
Resnick, J., would deny the motion.  
Douglas, J., would grant withdrawal.

96-486. In re Resignation of Maurer.  
On affidavit of resignation. The resignation as an attorney of Earl H. Maurer  
of Columbus, Ohio, Attorney Registration No. 0006694, is accepted.  
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,  
JJ., concur.

96-500. In re Eyerman.  
Pursuant to the provisions of Gov.Bar R. V(5)(A)(3), Beth A. Eyerman of Tucson,  
Arizona, Attorney Registration No. 0023644, is indefinitely suspended from the  
practice of law.  
Stratton, J., not participating.

96-564. In re Sweeney.  
Pursuant to the provisions of Gov.Bar R. V(5)(A)(3), Antonio Sweeney of  
Cleveland, Ohio, Attorney Registration No. 0006003, is indefinitely suspended  
from the practice of law.