

**SUPREME COURT OF OHIO**

**COLUMBUS**

**ANNOUNCEMENT**

1:00 P.M.

WEDNESDAY  
February 2, 2000

**MERIT DOCKET**

**99-2061. State ex rel. Sevayega v. Mason.**

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

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

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

**99-2129. State ex rel. Wilkerson v. Cuyahoga Cty. Common Pleas Court.**

In Mandamus. On motion to compel discovery and 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.

**99-2323. State ex rel. Left Fork Mining Co. v. Fuerst.**

Cuyahoga App. No. 77405. On motion for issuance of alternative writ, motion of *amicus curiae* for leave to file memorandum in opposition to motion for alternative writ, and motion to dismiss application for alternative writ. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.  
Lundberg Stratton, J., would grant the motion of *amicus curiae* for leave to file and deny the motion for issuance of alternative writ.

**00-3. State ex rel. Walker v. Bagley.**

In Habeas Corpus. On petition for writ of habeas corpus by J.W. Walker. *Sua sponte*, cause dismissed.

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

**00-24. Van Cura v. Stieroff.**

In Habeas Corpus. On petition for writ of habeas corpus by Edward Lee Van Cura, Sr. *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**

**99-1815. Gladieux v. Ohio State Med. Bd.**

Franklin App. No. 98AP-1296.

**99-1970. State v. Sparling.**

Marion App. No. 9-99-25.

**99-1971. In re Dissolution of Marriage of Weber.**

Geauga App. No. 99-G-2217.

**99-1976. Ashiegbu v. Anaba.**

Franklin App. No. 98AP-1637.

**99-1982. State v. Tonne.**

Hamilton App. No. C-980710.

Resnick, J., dissents.

**99-1994. Sethi v. WFMJ Television, Inc.**

Mahoning App. No. 97CA232.

Pfeifer, J., dissents.

**99-1998. State v. Shaw.**

Franklin App. No. 98AP-1338.

**99-1999. State v. Smith.**

Trumbull App. Nos. 98-T-0097 and 98-T-0098.

**99-2004. State v. Smith.**

Hamilton App. No. C-990058.

Moyer, C.J., and Cook, J., would allow on Proposition of Law No. II and hold the cause for the decision in 98-2301, *State v. Gowdy*, Hamilton App. No. C-970359.

Lundberg Stratton, J., would allow on Propositions of Law Nos. II and III and hold the cause for the decision in 99-764, *State v. Worthy*, Portage App. No. 97-P-0059.

**99-2008. State v. Wilson.**

Hamilton App. No. C-990061.

Moyer, C.J., and Cook, J., would allow on Proposition of Law No. II and hold the cause for the decision in 98-2301, *State v. Gowdy*, Hamilton App. No. C-970359.

Lundberg Stratton, J., would allow on Propositions of Law Nos. II and III and hold the cause for the decision in 99-764, *State v. Worthy*, Portage App. No. 97-P-0059.

**99-2016. State v. Hudach.**

Trumbull App. No. 98-T-0071.

**99-2017. State v. Mills.**

Franklin App. No. 98AP-1273.

**99-2019. Rose v. Rose.**

Morrow App. No. CA870.

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

**99-2020. Dupuy v. Ohio Bur. of Emp. Serv.**

Franklin App. No. 98AP-1376.

Pfeifer, J., dissents.

**99-2023. Goodyear Tire & Rubber Co. v. Ohio Bur. of Workers' Comp.**

Franklin App. No. 98AP-1153.

**99-2025. In re Special Grand Jury Investigation of Workers' Comp. Fraud.**

Franklin App. No. 98AP-1362.

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

**99-2029. McGinnis v. Three Rivers Convalescent Ctr.**

Hamilton App. No. C-990028.

Douglas, J., dissents.

**99-2030. Boggs v. Conrad.**

Mahoning App. No. 98CA120.

**99-2031. State v. Jackson.**

Clinton App. No. CA99-03-006.

**99-2040. State v. Clark.**

Franklin App. No. 98AP-1650.

Resnick and Lundberg Stratton, JJ., dissent.

**99-2043. Wilde v. Ohio Veterinary Med. Licensing Bd.**

Licking App. Nos. 98CA00025 and 98CA00138.

**99-2044. State v. Wilkins.**

Summit App. No. 19315.

Resnick and Lundberg Stratton, JJ., dissent.

**99-2045. State v. Dyson.**

Cuyahoga App. No. 74734.

**99-2051. State v. Latson.**

Cuyahoga App. No. 72921.

Resnick and Lundberg Stratton, JJ., dissent.

**99-2054. State v. Cullen.**

Van Wert App. No. 15-99-05.

**99-2055. State v. Stires.**

Franklin App. No. 99AP-80.

**99-2056. Hadick v. Jones.**

Summit App. No. 19427.

**99-2059. In re Knight.**

Cuyahoga App. No. 74268.

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

**99-2060. State v. Sosa.**

Lucas App. No. L-98-1355.

**99-2063. State v. Hamman.**

Huron App. No. H-98-015.

Resnick, J., not participating.

**99-2065. State v. Josso.**

Cuyahoga App. No. 74553.

**99-2070. Fenicle v. Cent. Ins. Co.**

Fulton App. No. F-99-006.

**99-2076. Donsante v. Wickliffe.**

Lake App. Nos. 98-L-046 and 98-L-047.

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

**99-2081. State v. Hayes.**

Ashtabula App. No. 97-A-0067.

**99-2083. Murray v. Welch.**

Portage App. No. 98-P-0030.

**99-2085. State v. Williams.**

Cuyahoga App. No. 74840.

**99-2097. Johnson v. Allied Signal, Inc.**

Portage App. No. 98-P-0063.

Pfeifer, J., dissents.

**99-2100. State v. Mason.**

Hamilton App. No. C-990060.

Moyer, C.J., and Cook, J., would allow on Proposition of Law No. II and hold the cause for the decisions in 98-2301, *State v. Gowdy*, Hamilton App. No. C-970359, and 99-765, *State v. Suffecool*, Stark App. No. 1998CA00101.

Lundberg Stratton, J., would allow on Propositions of Law Nos. II and III and hold the cause for the decision in 99-764, *State v. Worthy*, Portage App. No. 97-P-0059.

**99-2119. State v. Taylor.**

Cuyahoga App. No. 69843.

**99-2131. State v. Christman.**

Monroe App. No. 786.

**MOTION DOCKET**

**91-1795. State v. Thrower.**

Summit App. No. 14967. On motion for *nunc pro tunc* order correcting order. Motion denied.

Cook, J., not participating.

**97-1390. State v. Cornwell.**

Mahoning C.P. No. 96CR525. On application for reopening under S.Ct.Prac.R. XI(5). Application denied.

**98-1714. State ex rel. LTV Steel Co. v. Indus. Comm.**

Franklin App. No. 97APD06-859. On request for oral argument. Request denied.

Lundberg Stratton, J., dissents.

**99-1198. State ex rel. Grendell v. Davidson.**

In Mandamus. This cause came on for consideration upon respondents' itemization of attorney fees and expenses and submission of additional evidence. Upon consideration thereof,

IT IS ORDERED that relators' attorneys, Timothy J. Grendell and Gerald W. Phillips, pay respondents \$6,366.33 for reasonable expenses and the approximate amount of compensation and fringe benefits for legal services incurred by respondents in defending against their frivolous claims. S.Ct.Prac.R. XIV(5).

**99-1696. Mun. Micro Computer Sys., Inc. v. Madonia.**

Cuyahoga App. No. 76380. On motion for perpetual injunction. Motion denied.

**99-2046. State v. Duncan.**

Fairfield App. No. 99CA32. On review of order certifying a conflict. The court determines that a conflict exists; *sua sponte*, cause consolidated with 99-2012, *State v. Duncan*, Fairfield App. No. 99CA32; cause held for the decision in 99-1855 and 99-1960, *State v. Moore*, Fairfield App. No. 99CA24; and briefing schedule stayed.

Cook, J., dissents.

**99-2186. Shealy v. Phillips.**

Crawford App. No. 3-99-15. 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 November 30, 1999, at page 1:

"The issue upon which the conflict exists is whether, in a case involving a claim of negligence *per se* based upon a violation of Ohio's Assured Clear Distance statute, a defendant is entitled to a jury instruction with regard to the defense of comparative negligence based upon evidence that the plaintiff suddenly entered the path or lane of travel of the defendant."

Moyer, C.J., dissents.

Pfeifer, J., not participating.

The conflict case is *Hooven v. Four Star Produce, Inc.* (Dec. 10, 1992), Cuyahoga App. No. 63628, unreported, 1992 WL 369203.

**99-2216. Mayer v. Bristow.**

Crawford App. No. 3-98-29. On motion for preliminary injunction pursuant to Ohio Civ.R. 65(B). Motion denied.

**99-2219. State v. Castillo.**

Mercer App. No. 10-99-06. On motion for leave to file delayed appeal. Motion denied.

**99-2220. State v. Linton.**

Licking App. No. 99CA10. On motion for leave to file delayed appeal. Motion granted.

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

**99-2311. State v. Miller.**

Ross App. No. 98CA2467. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**99-2316. State v. Lozada.**

Portage App. No. 98-P-0098. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer, J., dissents.

**99-2318. State v. Scuba.**

Geauga App. No. 98-G-2176. On motion for leave to file delayed appeal. Motion granted.

**99-2324. State v. Lomak.**

Franklin App. No. 98AP-708. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., dissents.

**00-28. State v. Swingle.**

Summit App. No. 19746. On motion for leave to file delayed appeal. Motion denied.

**00-33. State v. Prichard.**

Hamilton App. No. C-990148. On motion for stay of court of appeals' judgment. Motion denied.

Moyer, C.J., dissents.

**00-41. State v. Miller.**

Butler App. No. CA98-06-129. On motion for stay of appellate court judgment. Motion denied.

**00-47. 382 Capital, Inc. v. Corso.**

Franklin App. No. 99AP-156. On motion for stay of court of appeals' judgment pending appeal. Motion granted and bond set at \$100,000.

Pfeifer, J., dissents.

**DISCRETIONARY APPEALS ALLOWED**

**99-1881. State v. Jones.**

Cuyahoga App. No. 74247. Discretionary appeal allowed and cause held for the decisions in 98-2694, *State ex rel. Bray v. Russell*, Warren App. No. CA98-06-068; 99-273, *Haddad v. Russell*; 99-542, *White v. Konteh*, Trumbull App. No. 99-T-0020; and 99-1419, *Woods v. Telb*, Lucas App. No. L-99-1083; *sua sponte*, briefing schedule stayed.

Cook, J., would allow and hold the cause only for the decision in 99-1419, *Woods v. Telb*.

**99-1890. In re Baby Boy Blackshear.**

Stark App. No. 1999CA00018. Discretionary appeal allowed and motion for admission *pro hac vice* by Susan B. Gellman for Lynn Paltrow, Susan Frietsche, and David S. Cohen granted.

**99-1930. Muenchenbach v. Preble Cty.**

Preble App. No. CA98-07-009.

Cook and Lundberg Stratton, JJ., dissent.

**99-1940. State v. Nutt.**

Pickaway App. No. 98CA36. Discretionary appeal allowed and cause held for the decisions in 98-2694, *State ex rel. Bray v. Russell*, Warren App. No. CA98-06-068; 99-273, *Haddad v. Russell*; 99-542, *White v. Konteh*, Trumbull App. No. 99-T-0020; and 99-1419, *Woods v. Telb*, Lucas App. No. L-99-1083; *sua sponte*, briefing schedule stayed.

Cook, J., would allow the cause but would not hold it for the decisions in the above cases.

**99-2012. State v. Duncan.**

Fairfield App. No. 99CA32. Discretionary appeal allowed; cause consolidated with 99-2046, *State v. Duncan*, Fairfield App. No. 99CA32; cause held for the decision in 99-1855 and 99-1960, *State v. Moore*, Fairfield App. No. 99CA24; and briefing schedule stayed.

Cook, J., dissents to the consolidation with 99-2046, *State v. Duncan*.

**DISCRETIONARY APPEALS NOT ALLOWED**

**99-1968. Martin v. Todt.**

Stark App. No. 1999CA144.

**99-1972. Chadwell v. Ohio State Racing Comm.**

Franklin App. No. 99AP-275.

**99-1997. DH-KL Corp. v. Corbin.**

Franklin App. No. 98AP-1172.

**99-2015. Willis v. Lightning Rod Mut. Ins. Co.**

Fairfield App. No. 99CA14.

Lundberg Stratton, J., dissents.

**99-2024. Sinea v. Denman Tire Corp.**

Trumbull App. No. 98-T-0036.

**99-2026. Coleman v. APCOA, Inc.**

Franklin App. No. 99AP-60.

Resnick and Pfeifer, JJ., dissent.

**99-2036. Russell v. Franklin Cty. Aud.**

Franklin App. No. 98AP-1502.

**99-2042. Erie Ins. Co. v. Maxwell.**

Wayne App. No. 98CA0011.

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

**99-2048. Ralston v. Chrysler Credit Corp.**

Lucas App. No. L-98-1312.

F.E. Sweeney and Lundberg Stratton, JJ., dissent.

**99-2050. Insura Prop. & Cas. Co. v. Birdfeeders of Am., Inc.**

Franklin App. No. 98AP-1506.

**99-2057. Swiggum v. Ameritech Corp.**  
Franklin App. Nos. 98AP-1031 and 98AP-1040.  
Pfeifer, J., dissents.

**99-2066. Raines v. Florence.**  
Wayne App. No. 98CA0044.

**99-2067. Wagner v. Ohio Cas. Group.**  
Butler App. No. CA99-03-058.

**99-2068. State v. Wooldridge.**  
Montgomery App. No. 17708.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

**99-2082. Karlovich v. Nicholson.**  
Lake App. No. 98-L-097.  
F.E. Sweeney, J., dissents.

**99-2088. State v. Tipton.**  
Summit App. No. 19355.

**99-2091. Erie Ins. Exchange v. Pugh.**  
Miami App. No. 98CA53.  
Lundberg Stratton, J., dissents.

**99-2092. Stewart v. State Auto. Ins. Co.**  
Franklin App. No. 98AP-1601. On discretionary appeal. Appeal denied.  
Lundberg Stratton, J., dissents.  
On discretionary cross-appeal. Appeal denied.  
Cook, J., would allow on Propositions of Law Nos. I and II and hold the  
cause for the decision in 98-2445, *Stickney v. State Farm Mut. Auto. Ins. Co.*,  
Richland App. No. 98CA7.  
Lundberg Stratton, J., dissents.

**99-2094. Majestic Steel Serv., Inc. v. DiSabato.**  
Cuyahoga App. No. 76540.

**99-2098. Rhoades v. Harris.**

Hamilton App. No. C-981000.

Moyer, C.J., dissents.

**99-2120. State v. Logan.**

Cuyahoga App. No. 74629.

**99-2125. Warren v. Warner Realty.**

Trumbull App. No. 98-T-0117.

**99-2127. Shealy v. Phillips.**

Crawford App. No. 3-99-15.

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

Pfeifer, J., not participating.

**99-2153. Curtsinger v. Penn.**

Clermont App. No. CA98-12-115.

**RECONSIDERATION DOCKET**

**98-2718. Sammarco v. Anthem Ins. Cos., Inc.**

Hamilton App. No. C-971074. Reported at 87 Ohio St.3d 1227, \_\_\_ N.E.2d \_\_\_.

On motion for reconsideration. Motion denied.

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

**99-1711. Slawson v. Erie Islands Resort & Marina.**

Ottawa App. No. OT-98-042. Reported at 87 Ohio St.3d 1458, \_\_\_ N.E.2d \_\_\_.

On motion for reconsideration. Motion denied.

Resnick, J., not participating.

**99-1797. Hammer v. Lumbermens Mut. Cas. Co.**

Lucas App. No. L-98-1283. Reported at 87 Ohio St.3d 1462, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

Douglas and Pfeifer, JJ., dissent.

Resnick, J., not participating.

**99-1825. State v. Erwin.**

Licking App. No. 99CA54. Reported at 87 Ohio St.3d 1475, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

Cook, J., would grant on Propositions of Law Nos. I and IV and hold the cause for the decision in 99-765, *State v. Suffecool*, Stark App. No. 1998CA00101.

Moyer, C.J., would grant.

**99-1831. Rakowski v. Fais.**

Franklin App. Nos. 99AP-917, 99AP-918 and 99AP-919. Reported at 87 Ohio St.3d 1478, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

**99-1833. Cervone v. Boris.**

Mahoning App. No. 96CA191. Reported at 87 Ohio St.3d 1475, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

**99-1863. State ex rel. Walls v. Second Dist. Court of Appeals.**

In Procedendo. Reported at 87 Ohio St.3d 1474, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

**99-1955. State ex rel. Cripps v. Court of Appeals, Twelfth Appellate Dist.**

In Procedendo. Reported at 87 Ohio St.3d 1474, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

**99-1977. Cotton v. Wilkinson.**

In Prohibition. Reported at 87 Ohio St.3d 1466, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration and request for findings of fact/conclusions of law. Motion and request denied.