

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

March 5, 2003

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### MERIT DECISIONS WITH OPINIONS

**2001-1380. State ex rel. Jennings v. Indus. Comm., 2003-Ohio-737.**

Franklin App. No. 00AP-961. Judgment affirmed.

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

**2002-0495. State ex rel. Newell v. Lankard Materials Laboratory, Inc., 2003-Ohio-738.**

Franklin App. No. 01AP-740. Judgment affirmed consistent with the opinion of the court of appeals.

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

**2002-1474. Geauga Cty. Bar Assn. v. Bruner, 2003-Ohio-736.**

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-05.

Henry B. Bruner is indefinitely suspended from the practice of law.

Moyer, C.J., Resnick, Pfeifer, Cook, Lundberg Stratton and O'Connor, JJ., concur.

F.E. Sweeney, J., dissents.

**2002-1661. Wagoner v. Gerbl, 2003-Ohio-739.**

Butler App. Nos. CA2001-10-238, 2002-Ohio-4126. Discretionary appeal allowed, judgment reversed, and cause remanded.

Moyer, C.J., Resnick, Pfeifer, Cook, Lundberg Stratton and O'Connor, JJ., concur.

F.E. Sweeney, J., dissents.

**2002-1673. State ex rel. White v. Ohio Adult Parole Auth., 2003-Ohio-773.**

Allen App. No. 1-02-60. Judgment affirmed.

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

**2002-1775. Toledo Bar Assn. v. Neller, 2003-Ohio-774.**

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-19.

Richard M. Neller is permanently disbarred.

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

**2002-1776. Disciplinary Counsel v. Garrity, 2003-Ohio-740.**

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 01-93.

Robert J. Garrity is indefinitely suspended from the practice of law.

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

**2002-1778. Disciplinary Counsel v. Heffter, 2003-Ohio-775.**

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-16.

Sarah L. Heffter is suspended from the practice of law for six months, stayed on condition.

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

**2002-1779. Disciplinary Counsel v. Allison, 2003-Ohio-776.**

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-06.

Paul Wesley Allison is permanently disbarred.

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

## MERIT DECISIONS WITHOUT OPINIONS

### **2001-1956. Citizen Power, Inc. v. Pub. Util. Comm.**

Public Utilities Commission, No. 00-2469-EL-UNC. On motions to dismiss. Motions to dismiss sustained. Cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton and O'Connor, JJ., concur.

Cook, J., not participating.

### **2002-2211. State ex rel. Tillis v. O'Neill.**

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

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

### **2002-2232. State ex rel. Campbell v. Wilkinson.**

In Mandamus. On answer of respondent and motion for summary judgment. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

O'Connor, J., would deny the motion for summary judgment.

### **2003-0063. State ex rel. Chamber of Commerce of the United States of Am. v. Court of Appeals for Franklin Cty.**

In Mandamus and Prohibition. On S.Ct.Prac.R. X(5) determination, relator's motion for emergency stay, motion to intervene of Common Cause/Ohio, motions to dismiss of respondents Franklin County Court of Appeals and Ohio Elections Commission and its members, and relator's motion for admission pro hac vice.

IT IS HEREBY ORDERED that relator's motion for emergency stay be, and hereby is, DENIED.

Resnick and Cook, JJ., not participating.

IT IS FURTHER ORDERED that the motion of Common Cause/Ohio be, and hereby is, GRANTED, and that it be, and hereby is, permitted to intervene as a respondent.

Resnick and Cook, JJ., not participating.

IT IS FURTHER ORDERED that the motions of respondents Franklin County Court of Appeals and the Ohio Elections Commission and its members be, and hereby are, GRANTED, and that the cause be, and hereby is, DISMISSED. This renders moot relator's motion for admission pro hac vice.

F.E. Sweeney, Pfeifer, Lundberg Stratton and O'Connor, JJ., concur.

Moyer, C.J., concurs except that he would grant the motion for admission pro hac vice.

Resnick and Cook, JJ., not participating.

**2003-0151. Pegg v. Ghee.**

In Habeas Corpus. On petition for writ of habeas corpus of Maurice S. Pegg. Sua sponte, cause dismissed.

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

**2003-0158. Robinson v. Lane.**

In Habeas Corpus. On petition for writ of habeas corpus of Bennie Robinson. Sua sponte, cause dismissed.

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

**2003-0208. Sevayega v. Bobby.**

In Habeas Corpus. On petition for writ of habeas corpus of Dr. Reginald Sevayega. Sua sponte, cause dismissed.

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

**2003-0248. Wright v. Rose.**

In Habeas Corpus. On petition for writ of habeas corpus of John L. Wright. Sua sponte, cause dismissed.

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

**MOTION AND PROCEDURAL RULINGS**

**2002-0247. State ex rel. Mahoney v. Team America 3, Inc.**

Franklin App. No. 01AP-374. Sua sponte, cause to be set for oral argument.

**2002-1126. Allen v. Johnson.**

Wayne App. Nos. 01CA0046 and 01CA0047, 2002-Ohio-3404. On motion to consolidate with 2002-1433, *Allen v. Johnson*. Wayne App. Nos. 01CA0046 and 01CA0047, 2002-Ohio-3404. Motion granted.

F.E. Sweeney, J., dissents.

**2002-2033. State v. Wilson.**

Lucas App. No. L-01-1196, 2002-Ohio-5920. On review of order certifying a conflict. The court determines that a conflict exists. Sue sponte, cause consolidated with 2002-2086, *State v. Wilson*, Lucas App. No. L-01-1196, 2002-Ohio-5920; causes held for the decision in 2002-0201, *State v. Fisher*, Franklin App. No. 01AP-614, 2001-Ohio-8772; and briefing schedule stayed.

Resnick, J., not participating.

**2002-2082. Midwestern Indemn. Co. v. Savage.**

Darke App. No. 02CA1584, 2002-Ohio-5593. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2002-2058, *Midwestern Indemn. Co. v. Savage*, Darke App. No. 02CA1584, 2002-Ohio-5593; cause held for the decision in *Penn Traffic Co. v. AIU Ins. Co.*, Pike App. No. 00CA653, 2001-Ohio-2567; and briefing schedule stayed.

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

**2003-0073. Jackson v. Bellomy.**

Franklin App. No. 01AP-1397, 2002-Ohio-6495. On amended motion for stay of court of appeals' judgment. Amended motion granted.

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

**2003-0085. State ex rel. Commt. for the Referendum of Ordinance 3844-02 v. Norris.**

In Mandamus. On motion of Sugar Chestnut, LLC, Pulte Homes of Ohio, LLC, and Whitlatch & Co. to intervene as respondents. Motion granted.

On motion to dismiss of intervening respondents. Motion denied.

On motion to expedite. Motion denied.

Pfeifer, J., dissents.

Sua sponte, alternative writ granted.

**2003-0110. State v. Knox.**

Lorain App. No. 99CA007420. On motion for leave to file delayed appeal. Motion denied.

**2003-0155. Mentor v. Krejsa.**

Lake App. No. 2001-L-188, 2002-Ohio-7145. On motion for stay of court of appeals' judgment. Motion denied.

**2003-0174. State v. Tuomala.**

Ashtabula App. No. 2001-A-0088, 2002-Ohio-6936. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer, J., dissents.

**2003-0187. State v. Smith.**

Union App. No. 14-2000-18, 2000-Ohio-1784. On motion for leave to file delayed appeal. Motion denied.

**2003-0190. State v. Robison.**

Licking App. No. 02CA00015, 2002-Ohio-7216. On motion for stay of court of appeals' judgment. Motion denied.

**2003-0192. State v. Bennett.**

Summit App. No. 21121, 2003-Ohio-238. On motion for stay of court of appeals' judgment of January 22, 2003. Motion denied.

Moyer, C.J., dissents.

**2003-0204. State v. Sheppard.**

Hamilton App. No. C-000553. On motion for leave to file delayed appeal. Motion denied.

**2003-0222. State v. Myles.**

Marion App. No. 9-2000-93, 2001-Ohio-2216. On motion for leave to file delayed appeal. Motion denied.

**2003-0258. Poulton v. Am. Economy Ins. Co.**

Stark App. Nos. 2002CA00038 and 2002CA00061, 2002-Ohio-7214. On motion for stay of court of appeals' judgment. Motion denied.

Moyer, C.J., Cook and O'Connor, JJ., dissent.

**APPEALS ACCEPTED FOR REVIEW**

**2002-1955. Leon v. Boardman Twp.**

Mahoning App. No. 01CA235, 2002-Ohio-5371.

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

**2002-1956. Tucker v. Wilson.**

Clermont App. No. CA2002-01-002, 2002-Ohio-5142.

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

**2002-1968. Diehl, Inc. v. Ohio Dept. of Agriculture.**

Defiance App. No. 4-02-14, 2002-Ohio-5137.

Resnick and Pfeifer, JJ., dissent.

**2002-1981. In re Estate of Worstell.**

Montgomery App. No. 19133, 2002-Ohio-5385. Discretionary appeal allowed.

Moyer, C.J., Cook and O'Connor, JJ., dissent.

On motion for admission pro hac vice of Michael G. Lambros, Thomas J. Cullen, and Paul E. Nystrom by Joseph F. Murray. Motion granted.

**2002-1986. Shaw v. State Farm Ins. Co.**

Cuyahoga App. No. 80471, 2002-Ohio-5330.

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

**2002-1994. Dobran v. Franciscan Med. Ctr.**

Montgomery App. No. 19218, 2002-Ohio-5378.

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

**2002-2054. Munoz v. Nationwide Fire Mut. Ins. Co.**

Lucas App. No. L-02-1105, 2002-Ohio-6186.

Pfeifer and Lundberg Stratton, JJ., dissent.

Resnick, J., not participating.

**2002-2058. Midwestern Indemn. Co. v. Savage.**

Darke App. No. 02CA1584, 2002-Ohio-5593. Discretionary appeal allowed; cause consolidated with 2002-2082, *Midwestern Indemn. Co. v. Savage*, Darke App. No. 02CA1584, 2002-Ohio-5593; causes held for the decision in 2001-1891 and 2002-0262, *Penn Traffic Co. v. AIU Ins. Co.*, Pike App. No. 00CA653, 2001-Ohio-2567; and briefing schedule stayed.

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

**2002-2086. State v. Wilson.**

Lucas App. No. L-01-1196, 2002-Ohio-5920. Discretionary appeal allowed on Proposition of Law No. I; cause consolidated with 2002-2033, *State v. Wilson*, Lucas App. No. L-01-1196, 2002-Ohio-5920; causes held for the decision in 2002-0201, *State v. Fisher*, Franklin App. No. 01AP-614, 2001-Ohio-8772; and briefing schedule stayed.

F.E. Sweeney, Pfeifer and Lundberg Stratton, JJ., concur except that they would allow all Propositions of Law.

Resnick, J., not participating.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2002-2192. State v. Williams.**

Mahoning App. No. 98CA74.

**2002-2195. State v. Twitty.**

Montgomery App. No. 18749, 2002-Ohio-5595. Appeal not allowed and motion to strike denied as moot.

**2002-2240. State v. Bryant.**

Mahoning App. No. 99CA135, 2002-Ohio-3466 and 2002-Ohio-6522.

**2003-0050. State v. Dubose.**

Mahoning App. No. 00CA60, 2002-Ohio-3020 and 2002-Ohio-6613.

**2003-0075. State v. Fisher.**

Franklin App. No. 01AP-1199, 2002-Ohio-3324.

**RECONSIDERATION OF PRIOR DECISIONS**

**2002-1644. Krost v. Baltz.**

Cuyahoga App. No. 80252, 2002-Ohio-3110. Reported at 98 Ohio St.3d 1409, 2003-Ohio-60, 781 N.E.2d 1081. On motion for reconsideration. Motion denied.

**2002-1646. Moses v. Sterling Commerce Am., Inc.**

Franklin App. No. 02AP-161, 2002-Ohio-4327. Reported at 98 Ohio St.3d 1409, 2003-Ohio-60, 781 N.E.2d 1018. On motion for reconsideration, motion of Ohio Civil Rights Commission to strike motion for reconsideration, motion of Sterling Commerce America, Inc., Steven T. Catlett et al. to strike motion for reconsideration, and motion to strike Ohio Civil Rights Commission's motion to strike pursuant to S.Ct.Prac.R. XIV(2)(D)(1). Motion for reconsideration denied and motions to strike denied as moot.

**2002-1719. Fancher v. Portsmouth City Police Dept.**

Scioto App. No. 02CA2848. Reported at 98 Ohio St.3d 1411, 2003-Ohio-60, 781 N.E.2d 1019. On motion for reconsideration and motion to strike the motion for reconsideration. Motions denied.

**2002-1758. Coryell v. Bank One Trust Co.**

Franklin App. No. 02AP-191, 2002-Ohio-4443. Reported at 98 Ohio St.3d 1414, 2003-Ohio-125, 781 N.E.2d 1021. On motion for reconsideration. Motion granted and discretionary appeal allowed.

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

**2002-1766. Wright v. Davies.**

Summit App. No. 20876, 2002-Ohio-4404. Reported at 98 Ohio St.3d 1412, 2003-Ohio-60, 781 N.E.2d 1020. On motion for reconsideration. Motion denied.

**2002-1782. State v. Earle.**

Lake App. No. 2001-L-159, 2002-Ohio-4510. Reported at 98 Ohio St.3d 1412, 2003-Ohio-60, 781 N.E.2d 1020. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

**2002-1833. Ohio Academy of Nursing Homes, Inc. v. Ohio Dept. of Job & Family Serv.**

Franklin App. No. 01AP-933, 2002-Ohio-4721. Reported at 98 Ohio St.3d 1415, 2003-Ohio-125, 781 N.E.2d 1021. On motion for reconsideration. Motion denied.

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

**2002-2043. State v. Curtis.**

Jefferson App. No. 01JE16, 2002-Ohio-3054. Reported at 98 Ohio St.3d 1408, 2003-Ohio-60, 781 N.E.2d 1017. On motion for reconsideration. Motion denied.