

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

November 23, 2005

[Cite as *11/23/2005 Case Announcements*, 2005-Ohio-6124.]

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## MERIT DECISIONS WITH OPINIONS

### **2002-1604. State v. Jackson, 2005-Ohio-5981.**

Allen C. P. No. CR2002-0011. Judgment affirmed in part and reversed in part, and cause remanded.

Moyer, C.J., Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Resnick, J., concurs in part and dissents in part.

### **2004-2110. Cleveland Bar Assn. v. Washington, 2005-Ohio-5978.**

On Final Report by the Board on the Unauthorized Practice of Law, No. UPL 03-10. Nathaniel Washington is enjoined from conduct that constitutes the unauthorized practice of law.

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

### **2004-2159. Mahoning Cty. Bar Assn. v. Lavelle, 2005-Ohio-5976.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 03-110. Mark Joseph Lavelle, Attorney Registration No. 0061904, is suspended from the practice of law in Ohio for 18 months, with 12 months stayed on conditions.

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

### **2004-2164. Ohio State Bar Assn. v. Cohen, 2005-Ohio-5980.**

On Final Report by the Board on the Unauthorized Practice of Law, No. UPL 04-04. Randy Cohen is enjoined from conduct that constitutes the unauthorized practice of law.

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

Pfeifer and O'Donnell, JJ., concur but would also impose a \$10,000 civil penalty.

**2005-0180. Spivey v. Keller, 2005-Ohio-5973.**

Hardin App. No. 6-04-09, 2004-Ohio-6667. Judgment affirmed.

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

**2005-0386. Lobdell v. Lobdell, 2005-Ohio-5974.**

Licking App. No. 2004 CA 0036, 2005-Ohio-80. Sua sponte, cause dismissed as having been improvidently accepted.

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

**2005-0548. Crigger v. Crigger, 2005-Ohio-5975.**

Franklin App. No. 04AP-288, 2005-Ohio-519. Judgment affirmed.

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

## **MERIT DECISIONS WITHOUT OPINIONS**

**2005-1405. State ex rel. Banker v. Wyoming.**

In Quo Warranto. On respondents' answer and motion for judgment on the pleadings and relator's motion for judgment on the pleadings. Respondents' motion for judgment on the pleadings granted. Cause dismissed.

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

Pfeifer and O'Donnell, JJ., dissent and would grant an alternative writ.

**2005-1760. State ex rel. Rini v. Ohio Adult Parole Auth.**

In Mandamus. On answer of respondents. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

O'Donnell, J., dissents and would grant an alternative writ.

## **MOTION AND PROCEDURAL RULINGS**

**2005-0105. Pledger v. Pub. Util. Comm.**

Public Utilities Commission, No. 04-1059-WW-CSS. On motion to strike non-party brief. Motion denied.

**2005-0702. Doe v. Archdiocese of Cincinnati.**

Shelby App. No. 17-04-10, 2005-Ohio-960. On motion for admission pro hac vice of Jeffrey R. Anderson by Konrad Kircher. Motion granted.

Resnick and Lanzinger, JJ., not participating.

**2005-0734. Doe v. Archdiocese of Cincinnati.**

Shelby App. No. 17-04-10, 2005-Ohio-960. On motion for admission pro hac vice of Jeffrey R. Anderson by Konrad Kircher. Motion granted.

Resnick and Lanzinger, JJ., not participating.

**2005-0813. State ex rel. Repository v. Nova Behavioral Health, Inc.**

In Mandamus. On motion for leave to respond to merit brief of amicus curiae Ohio Council of Behavioral Health Providers. Motion granted. Brief to be filed within seven days of the date of this order.

**2005-1765. State v. Holden.**

Hamilton App. No. C-040435. On motion of appellant Roy Ervin for stay of court of appeals' judgment. Motion denied.

**2005-1870. State v. Black.**

Montgomery App. No. 20600, 2005-Ohio-2232. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2005-1879. State v. Gordon.**

Stark App. No. 2005CA00031, 2005-Ohio-3638. On motion for leave to file delayed appeal. Motion granted.

Resnick, J., dissents.

**2005-1883. State v. Prodonovich.**

Lake App. No. 2002-L-116, 2005-Ohio-3090. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2005-1892. State v. Smith.**

Cuyahoga App. No. 86565. On motion for leave to file delayed appeal. Motion granted.

O'Connor, O'Donnell and Lanzinger, JJ., dissent.

**2005-1904. State v. Welstead.**

Henry App. No. 7-05-04. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

**2005-1980. Nationsbanc Mtge. Corp. v. Davet.**

Cuyahoga App. No. 86862. On motion for stay of court of appeals' judgment. Motion denied.

**APPEALS ACCEPTED FOR REVIEW**

**2005-1423. State v. Baccus.**

Hamilton App. No. C-040028, 2005-Ohio-3704. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1434. State v. Connell.**

Huron App. No. H-03-026, 2005-Ohio-3202. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

Lundberg Stratton, J., would accept on Propositions of Law Nos. I and II only.

Lanzinger, J., would accept on Proposition of Law No. I only.

**2005-1461. Ohio Govt. Risk Mgt. Plan v. Harrison.**

Auglaize App. Nos. 2-04-37 and 2-04-38, 161 Ohio App.3d 726, 2005-Ohio-3235. Discretionary appeal accepted; cause held for the decision in 2004-1735, *Sharonville v. Am. Employers Ins. Co.*, Hamilton App. No. C-030905, 158 Ohio App.3d 576, 2004-Ohio-4664; and briefing schedule stayed.

Pfeifer, J., dissents.

Resnick, J., not participating.

**2005-1471. State v. Linville.**

Franklin App. No. 04AP-917, 2005-Ohio-3150. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1482. State v. Valasquez.**

Cuyahoga App. Nos. 85135 and 85136, 2005-Ohio-3021. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1488. State v. Abdelshahid.**

Cuyahoga App. Nos. 84579 and 84580, 2005-Ohio-3001. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1489. State v. Pridgen.**

Stark App. No. 2004 CA 00313, 2005-Ohio-3291. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1503. State v. Pina.**

Hancock App. No. 5-04-55, 2005-Ohio-3231. Discretionary appeal accepted on Proposition of Law Nos. I and II; cause held on Proposition of Law No. I for the decisions in 2004-1171, *State v. Mathias*, Cuyahoga App. No. 83311, 2004-Ohio-2982, and 2004-1267, *State v. Fair*, Cuyahoga App. No. 82278, 2004-Ohio-2971; cause held on Proposition of Law No. II for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

Lanzinger, J., would accept the appeal on Proposition of Law No. II only.

**2005-1515. State v. Bates.**

Cuyahoga App. No. 84654, 2005-Ohio-3411.

Pfeifer and O'Donnell, JJ., dissent.

**2005-1522. State v. Thomas.**

Wayne App. No. 04CA0073, 2005-Ohio-3307. Discretionary appeal accepted on Proposition of Law Nos. II and III; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1523. State v. Head.**

Lake App. No. 2001-L-228, 2005-Ohio-3407. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

O'Connor, J., would also accept the appeal on Proposition of Law No. IV.

**2005-1534. State v. Hinton.**

Cuyahoga App. No. 84582, 2005-Ohio-3427. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

O'Connor, J., dissents.

**2005-1541. State v. Kravochuk.**

Cuyahoga App. No. 85261, 2005-Ohio-3161. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1550. State v. Whitt.**

Cuyahoga App. No. 84895, 2005-Ohio-3162. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1651. State v. Terry.**

Hamilton App. No. C-040261, 2005-Ohio-4140. Discretionary appeal accepted on Proposition of Law Nos. I and II; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1671. State v. Brooks.**

Cuyahoga App. No. 83668, 2005-Ohio-3567. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v.*

*Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed. O'Connor, J., dissents.

### **APPEALS NOT ACCEPTED FOR REVIEW**

**2005-1066. State v. Bajaj.**

Columbiana App. No. 03 CO 16, 2005-Ohio-2931. Discretionary appeal and cross-appeal not accepted.

**2005-1320. In re Adoption of Baby Girl E.**

Franklin App. No. 04AP-932, 2005-Ohio-3565.  
O'Donnell and Lanzinger, JJ., dissent.

**2005-1388. PIE Internatl., Inc. v. Versatile Tool & Die.**

Medina App. No. 04CA0058-M, 2005-Ohio-2971.

**2005-1416. In re Bailey.**

Hamilton App. Nos. C-040014 and C-040479, 2005-Ohio-3039.

**2005-1426. State v. Henry.**

Licking App. No. 04 CA 00062, 2005-Ohio-3191. Discretionary appeal not accepted. Motion for appointment of counsel denied as moot.  
Lundberg Stratton, J., dissents.

**2005-1432. In re Guardianship of Schneider.**

Medina App. No. 05CA0050-M. Discretionary appeal not accepted. Motions for disciplinary action, for remand and change of venue, and to certify a conflict denied.

**2005-1435. In re Speaks.**

Licking App. No. 2004 CA 0090, 2005-Ohio-3256.

**2005-1440. Stricharczuk v. Ohio Motorists Assn.**

Cuyahoga App. No. 85169, 2005-Ohio-2835.

**2005-1444. McDaniel v. Rollins.**

Allen App. No. 1-04-82, 2005-Ohio-3079.  
Pfeifer, J., dissents.

O'Connor, J., dissents and would accept the discretionary appeal on Proposition of Law No. II and hold the cause for the decision in 2005-0103, *Lorince v. Universal Underwriters*, Cuyahoga App. No. 83711, 2004-Ohio-6287.

**2005-1448. Alden v. Phifer Wire Prod., Inc.**

Cuyahoga App. No. 85064, 2005-Ohio-3014.

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

**2005-1450. State v. Riley.**

Darke App. No. 05CA1664. Discretionary appeal not accepted. Motion for order to transmit journal entry denied as moot.

**2005-1452. Baddam-Reddy v. Baddam-Reddy.**

Cuyahoga App. No. 85038, 2005-Ohio-3432.

**2005-1454. Marti v. Predmesky.**

Medina App. No. 04CA0044-M, 2005-Ohio-3115.

**2005-1455. Dunkelberger v. Hay.**

Franklin App. No. 04AP-773, 2005-Ohio-3102.

**2005-1468. State v. Melton.**

Cuyahoga App. No. 86123.

**2005-1470. State v. Pinchback.**

Cuyahoga App. No. 86494.

**2005-1474. Dailey v. First Bank of Ohio.**

Franklin App. No. 04AP-1309, 2005-Ohio-3152.

**2005-1479. State v. Dunihue.**

Clinton App. No. CA2004-06-014, 161 Ohio App.3d 731, 2005-Ohio-3223.

O'Connor, J., dissents and would accept the discretionary appeal on Proposition of Law No. I.

**2005-1485. State v. Ahmed.**

Cuyahoga App. No. 84220, 2005-Ohio-2999.

**2005-1486. Yoho-Smith v. Santmyer Oil Co., Inc.**

Wayne App. No. 04CA0058, 2005-Ohio-3295.

**2005-1487. Klaue v. Ohio Ins. Guar. Assn.**

Cuyahoga App. No. 84762, 2005-Ohio-3003.

**2005-1491. Daniel v. Motorcars Infiniti, Inc.**

Cuyahoga App. No. 85005, 2005-Ohio-3008.

**2005-1494. Goines v. Lyndon Ins. Group, L-2.**

Muskingum App. No. CT2004-0042, 2005-Ohio-3522.

Resnick, J., dissents.

**2005-1495. State v. Reiley.**

Clinton App. Nos. CA2004-12-028 and CA2004-12-029, 2005-Ohio-3224.

Pfeifer, J., dissents.

**2005-1497. State v. Wintrow.**

Preble App. No. CA2003-10-021, 2005-Ohio-3447.

**2005-1499. State v. Flores.**

Wood App. Nos. WD-04-012 and WD-04-050, 2005-Ohio-3355.

**2005-1500. Wright v. Suzuki Motor Corp.**

Meigs App. Nos. 03CA2, 03CA3 and 03CA4, 2005-Ohio-3494.

**2005-1501. Huntsman v. Perry Local School Dist. Bd. of Edn.**

Stark App. No. 2004CA00347, 2005-Ohio-3294.

**2005-1502. State v. King.**

Auglaize App. No. 2-05-08, 2005-Ohio-3234.

**2005-1507. State v. Knopp.**

Wood App. No. WD-04-024, 2005-Ohio-3358.

Lanzinger, J., dissents.

Moyer, C.J., and O'Donnell, J., dissent and would accept the discretionary appeal on Proposition of Law No. III.

**2005-1511. Tucker v. Life Line Screening of Am., Inc.**

Henry App. No. 7-04-05, 2005-Ohio-3236.

**2005-1514. Mentor v. Norfolk S. Ry. Co.**

Lake App. No. 2003-L-086, 2005-Ohio-3410.

Lundberg Stratton, J., dissents.

O'Connor, J., dissents and would accept the discretionary appeal on Proposition of Law No. I.

**2005-1516. State v. Moore.**

Summit App. Nos. 22146 and 22216, 2005-Ohio-3304.

**2005-1517. Protzman v. Painesville.**

Lake App. No. 2004-L-069, 2005-Ohio-3404.

**2005-1518. Mentor v. Battersby.**

Lake App. Nos. 2003-L-186 and 2003-L-188, 2005-Ohio-3387.

**2005-1519. Aouad v. Bethesda Hosp., Inc.**

Hamilton App. No. C-040630.

**2005-1525. State v. Lanning.**

Athens App. No. 04CA29, 161 Ohio App.3d 853, 2005-Ohio-3484.

**2005-1526. Mentor v. CSX Transp., Inc.**

Lake App. No. 2003-L-088, 2005-Ohio-3385.

Lundberg Stratton, J., dissents.

O'Connor, J., dissents and would accept the discretionary appeal on Proposition of Law No. I.

On motion for admission pro hac vice of James A. Washburn by Jamie Callender. Motion granted.

**2005-1535. State v. Pointer.**

Cuyahoga App. No. 85195, 2005-Ohio-3587.

**2005-1536. Shehata v. Shehata.**

Montgomery App. No. 20612, 2005-Ohio-3659.

**2005-1537. Daniels v. Fraternal Order of Eagles Aerie of Tecumseh #979.**

Champaign App. No. 2004-CA-17, 162 Ohio App.3d 446, 2005-Ohio-3657.

**2005-1538. Carlo v. Nayman.**

Cuyahoga App. No. 84542, 2005-Ohio-3130.

Pfeifer, J., dissents.

**2005-1540. State v. Martin.**

Madison App. No. CA2004-07-026, 2005-Ohio-3511.

**2005-1548. Jones v. Gram.**

Franklin App. No. 05AP-389.

Lundberg Stratton, J., dissents.

**2005-1553. Vickers v. Wren Industries, Inc.**

Montgomery App. No. 20914, 2005-Ohio-3656.

Pfeifer, J., dissents.

**2005-1554. State v. Williams.**

Cuyahoga App. No. 85180, 2005-Ohio-3023.

**2005-1557. Whisler v. Merrico, Inc.**

Richland App. No. 2004CA70, 2005-Ohio-3680.

**2005-1561. NCS Healthcare, Inc. v. Fifth Third Bank.**

Cuyahoga App. No. 85198, 2005-Ohio-3125.

Resnick, J., not participating.

**2005-1576. State v. Madsen.**

Cuyahoga App. No. 85439, 2005-Ohio-3850.

**2005-1584. Johnson v. Munther.**

Richland App. No. 04-CA-99, 2005-Ohio-3641.

Moyer, C.J., and Resnick, J., dissent.

**2005-1591. State v. Lynch.**

Cuyahoga App. No. 84637, 2005-Ohio-3392.

**2005-1594. State v. Clark.**

Cuyahoga App. No. 86456.

**2005-1596. State v. Logan.**

Cuyahoga App. No. 85313, 2005-Ohio-3712.

Lundberg Stratton, J., dissents and would accept the discretionary appeal and hold the cause for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App.

No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209.

**2005-1599. State v. Muncy.**  
Montgomery App. No. CA21115.

**2005-1607. State v. Gibson.**  
Summit App. No. 22782.

**2005-1626. State v. Shropshire.**  
Cuyahoga App. No. 85063, 2005-Ohio-3588.

**2005-1637. State v. Harmon.**  
Summit App. No. 22399, 2005-Ohio-3631.

**2005-1644. State v. Kelley.**  
Franklin App. No. 04AP-694, 2005-Ohio-3620.

**2005-1697. State v. Robinson.**  
Cuyahoga App. No. 85266, 2005-Ohio-4154.

**2005-1701. State v. Holder.**  
Huron App. No. H-00-006, 2002-Ohio-399.

**2005-1714. State v. Grissom.**  
Erie App. No. E-99-029.  
Resnick, J., not participating.

**2005-1782. State v. Unrue.**  
Summit App. No. 21105, 2002-Ohio-7002.

**2005-1785. State v. Wright.**  
Mahoning App. No. 03 MA 112, 2004-Ohio-6802 and 2005-Ohio-4501.

## **RECONSIDERATION OF PRIOR DECISIONS**

**2003-1973. State v. Mayl.**  
Montgomery App. No. 19549, 154 Ohio App.3d 717, 2003-Ohio-5097. Reported at 106 Ohio St.3d 207, 2005-Ohio-4629, 833 N.E.2d 1216. On motion for reconsideration. Motion denied.

Resnick, Lundberg Stratton and O'Connor, JJ., dissent.

**2004-0892. Fostoria v. Ohio Patrolmen's Benevolent Assn.**

Seneca App. No. 13-03-26, 2004-Ohio-1945. Reported at 106 Ohio St.3d 194, 2005-Ohio-4558, 833 N.E.2d 720. On motion for reconsideration. Motion granted to the following extent. The opinion announced on September 14, 2005, is modified as follows:

¶ 29 is modified to read as follows:

{¶29} Accordingly, the judgment is reversed, and the arbitration award is reinstated to the extent it was applied to the group or class of aggrieved workers.

**2005-1028. Moro v. Abdel-Rahman.**

Franklin App. No. 04AP-723, 2005-Ohio-1022. Reported at 106 Ohio St.3d 1534, 2005-Ohio-5146, 835 N.E.2d 383. On motion for reconsideration. Motion denied.

**2005-1039. Ohio Dept. of Taxation v. Kunkle.**

Fulton App. No. F-04-025, 2005-Ohio-2092. Reported at 106 Ohio St.3d 1535, 2005-Ohio-5146, 835 N.E.2d 383. On motion for reconsideration. Motion denied.