

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

December 28, 2005

[Cite as *12/28/2005 Case Announcements*, 2005-Ohio-6763.]

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## MERIT DECISIONS WITH OPINIONS

**2004-1063 and 2004-1065. McCrone v. Bank One Corp., 2005-Ohio-6505.**

Stark App. No. 2003CA00092, 2004-Ohio-2538. Judgment reversed and cause remanded.

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

Resnick and Pfeifer, JJ., dissent.

**2004-1678. State v. Cummings, 2005-Ohio-6506.**

Cuyahoga App. No. 83759, 2004-Ohio-4470. Sua sponte, cause dismissed as having been improvidently accepted.

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

Lundberg Stratton, J., dissents.

**2005-0230. State ex rel. Pence v. Indus. Comm., 2005-Ohio-6507.**

Franklin App. No. 04AP-124, 2004-Ohio-7052. Judgment affirmed.

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

**2005-0290. Hixson v. Callentine, 2005-Ohio-6508.**

Athens App. No. 04CA4, 159 Ohio App.3d 146, 2004-Ohio-5943. Sua sponte, the certification of conflict is dismissed as having been improvidently certified.

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

**2005-0397. Crane v. Perry Cty. Bd. of Elections, 2005-Ohio-6509.**

Perry C.P. No. 04-CV-00403. Judgment affirmed.

Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Pfeifer, J., concurs in judgment only.

Moyer, C.J., and Resnick, J., not participating.

**2005-0459. State v. Rosenberg , 2005-Ohio-6510.**

Cuyahoga App. No. 84457, 2005-Ohio-101. Sua sponte, cause dismissed as having been improvidently accepted.

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

Lundberg Stratton, J., dissents.

**2005-0503. State ex rel. Dreyer v. Anderson Twp., 2005-Ohio-6511.**

Franklin App. No. 04AP-461, 2005-Ohio-366. Judgment affirmed.

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

**2005-0562. State ex rel. Brown v. Duramed Pharmaceuticals, Inc., 2005-Ohio-6512.**

Franklin App. No. 04AP-81, 2005-Ohio-750. Judgment affirmed.

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

**2005-1167. Toledo Bar Assn. v. Hickman, 2005-Ohio-6513.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 04-061. Gregg D. Hickman, Attorney Registration No. 0020032, is suspended from the practice of law in Ohio for one year, with six months stayed on conditions.

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

Lanzinger, J., not participating.

**2005-2396. In re Complaint Against Resnick, 2005-Ohio-6800.**

Adjudication by the Supreme Court of Ohio pursuant to Rule II of the Rules for the Government of the Judiciary. Alice Robie Resnick, Attorney Registration No. 0016845, is publicly reprimanded.

Doan, Shaw, Abele, Boggins, Singer, Donofrio, Blackmon, Brown and Ford, JJ., concur.

Fain, C.J., Brogan and Young, JJ., concur separately.

Slaby, J., concurs in judgment.

Mike Fain, C.J. of the Ohio Courts of Appeals Judges Association, and of the Second Appellate District.

Rupert A. Doan, J., of the First Appellate District.

James A. Brogan, J., of the Second Appellate District.

Stephen R. Shaw, J., of the Third Appellate District.

Peter B. Abele, J., of the Fourth Appellate District.

John F. Boggins, J., of the Fifth Appellate District.

Arlene Singer, J., of the Sixth Appellate District.

Gene Donofrio, J., of the Seventh Appellate District.

Patricia Blackmon, J., of the Eighth Appellate District.

Lynn C. Slaby, J., of the Ninth Appellate District.

Susan Brown, J., of the Tenth Appellate District.

Donald R. Ford, J., of the Eleventh Appellate District.

William W. Young, J., of the Twelfth Appellate District.

## **MERIT DECISIONS WITHOUT OPINIONS**

### **2005-1946. State ex rel. KNG Energy, Inc. v. Court of Common Pleas of Cuyahoga Cty.**

In Prohibition. On respondents' motion to dismiss and the amended motion for leave to intervene as respondent, and proposed motion to dismiss, of North Coast Gas Transmission, LLC. Motion for leave to intervene granted. Motions to dismiss granted. Cause dismissed.

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

Lundberg Stratton, J., concurs as to the motion to intervene but would deny the motions to dismiss.

### **2005-1978. State ex rel. Bozsik v. Fortney.**

In Mandamus. On relator's motion for temporary restraining order, respondent's answer and motion to dismiss, and relator's motion to strike. Motion to dismiss granted. Motions for temporary restraining order and to strike denied. Cause dismissed.

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

### **2005-2094. Cerrone v. Money.**

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

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

**2005-2170. Richardson v. Wolfe.**

In Habeas Corpus. On petition for writ of habeas corpus of Charles E. Richardson. Sua sponte, cause dismissed.

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

**MOTION AND PROCEDURAL RULINGS**

**1987-1614. State v. Benner.**

Summit App. No. 12664. On motion to set execution date. Motion granted. Execution to be carried out on February 7, 2006.

O'Connor, J., not participating.

**1988-0351. State v. Cooley.**

Summit App. No. CA12943. On amended motion to set execution date. Motion denied.

O'Donnell, J., dissents.

O'Connor, J., not participating.

**2003-1653. In re All Kelley & Ferraro Asbestos Cases.**

Cuyahoga App. Nos. 78158, 78159, 78299, 78301, 80083, 80332, 80673, and 81576, 153 Ohio App.3d 458, 2003-Ohio-3936. On notice of lifting of stay as to Quigley Company, Inc. and motion for order acknowledging application of this court's decision to Quigley Company, Inc. Motion granted.

Pfeifer, J., dissents.

**2004-0373. In re All Kelley & Ferraro Asbestos Cases v. Amchem Products, Inc.**

Cuyahoga App. No. 82424, 2003-Ohio-7239. On notice of lifting of stay as to Quigley Company, Inc. and motion for order acknowledging application of this court's decision to Quigley Company, Inc. Motion granted.

Pfeifer, J., dissents.

**2005-1210. Norwood v. Horney.**

Hamilton App. No. C-040683, 161 Ohio App.3d 316, 2005-Ohio-2448. On motions for admission pro hac vice of Garrett W. Wotkins and Brian P. Brooks by William Browning, motion for admission pro hac vice of Jeffrey A. Wadsworth by

Rachel Zwolinski, motion for admission pro hac vice of Douglas Smith, Larry Obhof, and Andrew Bautista by William Batchelder, motion for admission pro hac vice of Matthew R. Miller by Peter W. Hahn, motion for admission pro hac vice of Derek Gaubatz, Anthony Picarello, Jr., and Jared Ledland by Mary Beth Young, and motion for admission pro hac vice of Barbara Morley by Donald Gallick. Motions granted.

**2005-1211. Norwood v. Horney.**

Hamilton App. No. C-040783, 161 Ohio App.3d 316, 2005-Ohio-2448. On motions for admission pro hac vice of Garrett W. Wotkyns and Brian P. Brooks by William Browning, motion for admission pro hac vice of Jeffrey A. Wadsworth by Rachel Zwolinski, motion for admission pro hac vice of Douglas Smith, Larry Obhof, and Andrew Bautista by William Batchelder, motion for admission pro hac vice of Matthew R. Miller by Peter W. Hahn, motion for admission pro hac vice of Derek Gaubatz, Anthony Picarello, Jr., and Jared Ledland by Mary Beth Young, and motion for admission pro hac vice of Barbara Morley by Donald Gallick. Motions granted.

**2005-1505. State ex rel. Oriana House, Inc. v. Montgomery.**

Franklin App. Nos. 04AP-492 and 04AP-504, 2005-Ohio-3377. On request for oral argument. Request granted.

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

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

**2005-1966. In re A.B.**

Summit App. No. 22659, 2005-Ohio-4936. 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 October 17, 2005:

“After a child agency is granted temporary custody of a child and files a motion for permanent custody, does a juvenile court have the authority to place the child in a planned permanent living arrangement when the agency does not request this disposition?”

The conflict case is *In re M.W.*, Cuyahoga App. No. 83390, 2005-Ohio-1302.

**2005-2032. Elston v. Howland Local Schools.**

Trumbull App. No. 2004-T-0092, 2005-Ohio-4765. 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 judgment entry filed October 6, 2005:

“Whether a political subdivision’s immunity from liability under R.C. 2744.03(A)(5) applies only to the acts of the political subdivision and not to the acts of the employees of the political subdivision.”

Pfeifer, J., dissents.

The conflict cases are *Pope v. Trotwood-Madison City School Dist. Bd. of Edn.*, Montgomery App. No. 20072, 2004-Ohio-1314; *Hughes v. Wadsworth City School Dist.* (Mar. 29, 2000), Medina App. No. 2961-M; *Thompson v. New Miami Local School Dist.* (Sept. 8, 1998), Butler App. No. CA98-03-051; *Moore v. Southeastern Local School Dist.* (Mar. 29, 1996), Clark App. No. 95-CA-23; *Harland v. W. Clermont Local School Dist.* (Aug. 1, 1994), Clermont App. No. CA94-01-006; and *Mosely v. Dayton City School Dist.* (July 6, 1989), Montgomery App. No. 11336.

Sua sponte, cause consolidated with *Elston v. Howland Local Schools*, Trumbull App. No. 2004-T-0092, 2005-Ohio-4765.

**2005-2102. State v. Vondenhuevel.**

Shelby App. No. 17-05-18. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2005-2110. State v. Walls.**

Richland App. No. 2005CA0019, 2005-Ohio-4406. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2005-2114. State v. Cress.**

Marion App. No. 9-04-42, 163 Ohio App.3d 46, 2005-Ohio-4620. 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 October 24, 2005:

“Does a criminal charge of intimidation in violation of R.C. 2921.04(B) require the state to prove that the defendant has made a threat to engage in unlawful conduct?”

Pfeifer, J., dissents.

The conflict cases are *State v. Hoying*, Greene App. No. 2004-CA-71, 2005-Ohio-1366, and *State v. Lutz*, Cuyahoga App. No. 80241, 2003-Ohio-275.

Sua sponte, cause consolidated with 2005-1965, *State v. Cress*, Marion App. No. 9-04-42, 163 Ohio App.3d 46, 2005-Ohio-4620.

**2005-2124. State v. Rivers.**

Trumbull App. No. 2003-T-0170, 2005-Ohio-1100. On motion for leave to file delayed appeal. Motion denied.

**2005-2130. State ex rel. Russo v. McMonagle.**

In Prohibition. On answer of respondent and motion for judgment on the pleadings. Sua sponte, the court orders that oral argument be heard.

Pfeifer, Lundberg Stratton and O'Donnell, JJ., dissent.

**2005-2140. State v. Foster.**

Portage App. No. 2004-P-0104, 2005-Ohio-5281. On motion for stay of court of appeals' judgment. Motion denied.

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

**2005-2165. State v. Black.**

Hamilton App. No. C-050666. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

**2005-2171. State v. Russell.**

Franklin App. No. 04AP-1149, 2005-Ohio-4063. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**2005-2173. State v. Blue.**

Lucas App. No. L-05-1236. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.

**2005-2176. State v. Short.**

Cuyahoga App. No. 83804, 2005-Ohio-4578. On motion for stay of court of appeals' decision. Motion granted.

**2005-2216. State v. Abboud.**

Cuyahoga App. No. 85750, 2005-Ohio-5847. On motion for stay of court of appeals' judgment and motion for appeal bond. Motions denied.

O'Donnell, J., not participating.

**2005-2241. C.J. Mahan Constr. Co. v. Mohawk Re-Bar Serv., Inc.**

Stark App. No. 2004CA0387, 2005-Ohio-5427. On motion for stay of court of appeals' judgment. Motion denied.

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

**APPEALS ACCEPTED FOR REVIEW**

**2005-1629. Cramer v. Auglaize Acres.**

Auglaize App. No. 2-04-39, 2005-Ohio-3609.

**2005-1685. State ex rel. Butler Twp. Bd. of Trustees v. Montgomery Cty. Bd. of Cty. Commrs.**

Montgomery App. No. 20725, 162 Ohio App.3d 394, 2005-Ohio-3872.

**2005-1693. State v. Webb.**

Cuyahoga App. No. 85318, 2005-Ohio-3839. Discretionary appeal accepted; cause held for the decision in 2004-1877, *State v. Saxon*, Cuyahoga App. No. 83889, 2004-Ohio-5017; and briefing schedule stayed.

**2005-1698. Dugan & Meyers Constr. Co., Inc. v. Ohio Dept. of Adm. Serv.**

Franklin App. No. 03AP-1194, 162 Ohio App.3d 491, 2005-Ohio-3810.

**2005-1705. State v. Johnson.**

Washington App. No. 04CA23, 2005-Ohio-3943. 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.

**2005-1708. State v. Crim.**

Cuyahoga App. No. 85290, 2005-Ohio-4129. Discretionary appeal accepted on Proposition of Law Nos. I, II and III; cause held on Proposition of Law Nos. I and 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; cause held on Proposition of Law No. III 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; and briefing schedule stayed.

**2005-1722. State v. Wright.**



Clermont App. No. CA2004-08-061, 2005-Ohio-3907. 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.

**2005-1754. Hoffman v. State Med. Bd. of Ohio.**

Franklin App. No. 04AP-839, 2005-Ohio-3682.

Pfeifer and Lanzinger, JJ., dissent.

**2005-1772. State v. Greitzer.**

Portage App. No. 2003-P-0110, 2005-Ohio-4037. Discretionary appeal accepted on Proposition of Law No. 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.

**2005-1775. State v. McQueen.**

Cuyahoga App. No. 85330, 2005-Ohio-4013. Discretionary appeal accepted on Proposition of Law Nos. I, II, and III; cause held on Proposition of Law Nos. I and 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; cause held on Proposition of Law No. III 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; and briefing schedule stayed.

**2005-1778. State v. Bailey.**

Clermont App. No. CA2005-04-024. 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.

**2005-1780. State v. Cunningham.**

Cuyahoga App. No. 85342, 2005-Ohio-3840.

Resnick, Pfeifer and Lanzinger, JJ., dissent.

**2005-1828. Rose v. Garfield Hts.**

Cuyahoga App. Nos. 85420 and 85426, 2005-Ohio-4165. Discretionary appeal accepted on Proposition of Law No. II.

Resnick, Pfeifer and O'Donnell, JJ., dissent.

**2005-1852. State v. Skinner.**

Stark App. No. 2004-CA-00283, 2005-Ohio-4273. Discretionary appeal accepted on Proposition of Law No. 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.

**2005-1965. State v. Cress.**

Marion App. No. 9-04-42, 163 Ohio App.3d 46, 2005-Ohio-4620. Discretionary appeal accepted on Proposition of Law No. I and cause consolidated with 2005-2114, *State v. Cress*, Marion App. No. 9-04-42, 163 Ohio App.3d 46, 2005-Ohio-4620.

O'Donnell, J., would also accept the appeal on Proposition of Law No. II.  
Pfeifer, J., dissents.

**2005-1993. Elston v. Howland Local Schools.**

Trumbull App. No. 2004-T-0092, 2005-Ohio-4765. Discretionary appeal accepted on Proposition of Law Nos. I and II and cause consolidated with 2005-2032, *Elston v. Howland Local Schools*, Trumbull App. No. 2004-T-0092, 2005-Ohio-4765.

Moyer, C.J., Resnick and Lundberg Stratton, JJ., would also accept the appeal on Proposition of Law Nos. III and IV.

O'Connor, J., would accept the appeal on Proposition of Law No. II only.

O'Donnell, J., would accept the appeal on Proposition of Law No. I only.

Pfeifer, J., dissents.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2004-1939. State v. Jackson.**

Allen App. No. 1-04-31, 2004-Ohio-5350.

**2005-1153. State v. McDermott.**

Lucas App. No. L-03-1110, 2005-Ohio-2095.

**2005-1208. State v. DiCarlo.**

Mahoning App. No. 02 CA 228, 2004-Ohio-5118.

**2005-1216. State v. Lorraine.**

Trumbull App. No. 2003-T-0159, 2005-Ohio-2529.

Resnick, J., dissents.

**2005-1665. State v. Armetta.**

Cuyahoga App. No. 84366, 2005-Ohio-3689.  
Lundberg Stratton, J., dissents.

**2005-1666. In re Estate of Rickels.**

Paulding App. No. 11-05-11.

**2005-1677. State v. Coleman.**

Clark App. Nos. 04CA43 and 04CA44, 2005-Ohio-3874.

**2005-1680. State v. Gonzalez.**

Cuyahoga App. No. 85205, 2005-Ohio-4012.  
Lundberg Stratton, J., dissents.

**2005-1682. Kintyhtt v. Barberton.**

Summit App. No. 22468, 2005-Ohio-3799.  
Pfeifer, J., dissents.

**2005-1688. State v. Thompson.**

Lorain App. No. 04CA008603, 2005-Ohio-3802.  
Pfeifer, J., dissents.

**2005-1691. Kaplan v. Meridian Condominium, Inc.**

Cuyahoga App. No. 86711.  
Resnick, J., dissents.

**2005-1695. Baal v. E. Ohio Gas Co.**

Mahoning App. No. 04 MA 17.  
Lundberg Stratton, J., dissents.

**2005-1700. Collins v. Flowers.**

Lorain App. No. 04CA008594, 2005-Ohio-3797.  
Pfeifer, J., dissents.

**2005-1702. State v. Hruby.**

Ottawa App. No. OT-04-026, 2005-Ohio-3863.

**2005-1706. State v. Doyle.**

Pickaway App. No. 04CA23, 2005-Ohio-4072.

**2005-1709. State v. Wilson.**

Cuyahoga App. No. 85598, 2005-Ohio-4285.

Moyer, C.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.

**2005-1710. Masten v. Phalen.**

Fairfield App. No. 04CA76, 2005-Ohio-4076.

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

**2005-1715. Conway v. Euclid Chem. Co.**

Cuyahoga App. No. 85384, 2005-Ohio-3843.

Resnick, J., dissents.

**2005-1716. Callentine v. Arnold.**

Tuscarawas App. No. 2004AP110070, 2005-Ohio-3979.

Pfeifer, J., dissents.

**2005-1719. Adkins v. Welch.**

Franklin App. No. 05AP-482.

**2005-1720. State v. Hill.**

Clark App. No. 04CA0047, 2005-Ohio-3877.

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

**2005-1723. Hoffman v. CHSHO, Inc.**

Clermont App. No. CA2004-09-072, 2005-Ohio-3909.

**2005-1726. Ferchill v. Beach Cliff Bd. of Trustees.**

Cuyahoga App. No. 84131, 162 Ohio App.3d 144, 2005-Ohio-3475.

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

O'Donnell, J., dissents and would accept the appeal on Proposition of Law No. II.

**2005-1727. Masek v. Gehring.**

Geauga App. No. 2004-G-2569, 2005-Ohio-3900.

Moyer, C.J., dissents.

**2005-1728. State v. Beaugregard.**

Cuyahoga App. Nos. 85402, 85403, 85404 and 85405, 2005-Ohio-3722.

Moyer, C.J., and O'Connor, J., dissent and would accept the appeal on Proposition of Law No. I.

Lundberg Stratton, J., dissents.

**2005-1729. State v. McClain.**

Hamilton App. No. C-040647.

Lundberg Stratton, J., dissents.

**2005-1732. State v. Coffey.**

Clermont App. No. CA2004-09-070, 2005-Ohio-3908.

**2005-1733. Cleveland v. Burks.**

Cuyahoga App. No. 86080, 2005-Ohio-3688.

**2005-1734. State v. Henry.**

Franklin App. No. 04AP-1061, 2005-Ohio-3931.

Moyer, C.J., dissents.

**2005-1736. Harper v. Harper.**

Franklin App. No. 04AP-685, 2005-Ohio-3989.

**2005-1740. Nursing Home Group Rehab. Serv., LLC v. Suncrest Healthcare, Inc.**

Summit App. No. 22046, 162 Ohio App.3d 577, 2005-Ohio-3945.

Resnick and Lundberg Stratton, JJ., dissent.

**2005-1743. State v. Bliss.**

Franklin App. No. 04AP-216, 2005-Ohio-3987.

**2005-1748. Schwarber v. Wenninger.**

Brown App. No. CA2004-09-026.

Resnick, J., dissents.

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

Hamilton App. No. C-040435.

**2005-1767. Williams v. Guarnieri.**

Trumbull App. No. 2004-T-0033, 2005-Ohio-4044.

**2005-1771. Berry v. Patrick.**

Cuyahoga App. No. 85255, 2005-Ohio-3708.

Lanzinger, J., not participating.

**2005-1773. State v. Riddle.**

Mahoning App. No. 99 CA 147, 2001-Ohio-3484.

**2005-1776. State v. Shoop.**

Hancock App. No. 5-05-11.

**2005-1777. Palmieri v. Palmieri.**

Franklin App. No. 04AP-1305, 2005-Ohio-4064.

Resnick, J., dissents.

**2005-1781. Mohammadpour v. Thomas.**

Cuyahoga App. No. 85474, 2005-Ohio-3853.

**2005-1786. Miles Landing Homeowner Assn. v. Bikkani.**

Cuyahoga App. No. 86747.

**2005-1796. State v. Fatica.**

Lake App. No. 2004-L-078, 2005-Ohio-4209.

**2005-1797. State v. Harris.**

Hamilton App. No. C-050555.

**2005-1801. Houston v. Liberty Mut. Fire Ins. Co.**

Lucas App. No. L-04-1161, 2005-Ohio-4177.

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

**2005-1803. State v. Jordan.**

Greene App. No. 2004 CA 115, 2005-Ohio-4202.

**2005-1804. State v. Alexander.**

Cuyahoga App. No. 85326, 2005-Ohio-4156.

**2005-1805. State v. Artino.**

Cuyahoga App. No. 86681.

Lundberg Stratton, J., dissents.

**2005-1811. State v. Miller.**

Montgomery App. No. 20513, 2005-Ohio-4203.

**2005-1826. State v. Pettijohn.**

Hamilton App. No. C-040794.

**2005-1835. Gross Builders v. Tallmadge.**

Summit App. No. 22484, 2005-Ohio-4268.

**2005-1836. Bahr v. Bahr.**

Medina App. No. 04CA0088-M, 2005-Ohio-4253.

**2005-1839. State v. Qualls.**

Meigs App. No. 05CA12.

Pfeifer, 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.

**2005-1850. State v. Hale.**

Hamilton App. No. C-040624.

**2005-1854. State v. Johnson.**

Franklin App. No. 04AP-539, 163 Ohio App.3d 132, 2005-Ohio-4243.

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

**2005-1859. State v. Rayl.**

Summit App. No. 22496, 2005-Ohio-4263.

**2005-1861. State v. Pordash.**

Lorain App. No. 05CA008673, 2005-Ohio-4252.

**2005-1869. State v. Sanders.**

Summit App. No. 22457, 2005-Ohio-4267.

**2005-1873. State v. King.**

Lorain App. No. 04CA008577, 2005-Ohio-4259.

**2005-1880. State v. Florence.**

Montgomery App. No. 20439, 2005-Ohio-4508.

**2005-1902. State v. Brown.**

Mahoning App. No. 03 MA 231, 2005-Ohio-4502.

**2005-1912. Abrams-Rodkey v. Summit Cty. Children Serv.**

Summit App. No. 22358, 163 Ohio App.3d 1, 2005-Ohio-4359.

O'Donnell, J., dissents and would accept the appeal and hold the cause for the decision in 2004-1594, *M. Conley Co. v. Arthur Anderson*, Stark App. No. 2003CA00386, 2004-Ohio-4216.

**2005-1957. State v. McQueen.**

Cuyahoga App. No. 84095.

**2005-2041. State v. Smith.**

Hamilton App. No. C-040348, 2005-Ohio-1325.

**2005-2181. In re C.C.**

Franklin App. Nos. 04AP-887, 04AP-889, 04AP-890, 04AP-891 and 04AP-892, 2005-Ohio-5163.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law No. IV.

Resnick, J., dissents.

## **RECONSIDERATION OF PRIOR DECISIONS**

**2004-0193. Sarmiento v. Grange Mut. Ins. Co.**

Cuyahoga App. No. 82807, 2003-Ohio-6485. Reported at 106 Ohio St.3d 403, 2005-Ohio-5410, 835 N.E.2d 692. On motion for reconsideration. Motion denied.

Resnick, Pfeifer and Lanzinger, JJ., dissent.

On motion for clarification. The motion for clarification is granted. The opinion issued on October 26, 2005, is clarified as follows:

The last sentence of ¶ 20 is corrected to read as follows: The insured is not foreclosed from commencing an action for UM/UIM coverage so long as the insured satisfies the policy's conditions precedent to coverage, including commencing an action against the insurer within the contractual limitation period.

**2005-1218. Franklin-Rengan v. Rengan.**



Montgomery App. No. 20705, 2005-Ohio-2763. Reported at 106 Ohio St.3d 1556, 2005-Ohio-5531, 836 N.E.2d 581. On motion for reconsideration. Motion denied.

**2005-1365. Poulton v. Am. Economy Ins. Co.**

Stark App. Nos. 2004CA00226 and 2004CA00228, 2005-Ohio-3123. Reported at 107 Ohio St.3d 1408, 2005-Ohio-5859, 836 N.E.2d 1229. On motion for reconsideration. Motion denied.

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

O'Connor, J., dissents and would hold the cause for the decision in 2005-0078 and 2005-0457, *Sheaffer v. Westfield Ins. Co.*, Holmes App. No. 03CA006, 2004-Ohio-6755.

**2005-1407. Horning v. Ohio Dept. of Job & Family Serv.**

Tuscarawas App. No. 2004 AP 11 0069, 2005-Ohio-3249. Reported at 107 Ohio St.3d 1410, 2005-Ohio-5859, 836 N.E.2d 1229. On motion for reconsideration. Motion denied.

Resnick, Pfeifer and O'Connor, JJ., dissent.

**2005-1456. Hillis v. Humphrey.**

Perry App. No. 05CA6, 2005-Ohio-3459. Reported at 107 Ohio St.3d 1410, 2005-Ohio-5859, 836 N.E.2d 1230. On motion for reconsideration. Motion denied.

**2005-1793. State ex rel. Internatl. Union of Operating Engineers, Local 18 v. State Emp. Relations Bd.**

In Prohibition. Reported at 107 Ohio St.3d 1403, 2005-Ohio-5859, 836 N.E.2d 1225. On motion for reconsideration and request for oral argument. Motion denied. Request for oral argument denied as moot.

O'Donnell, J., dissents.

**2005-1884. In re Moon.**

Hamilton App. No. C-050280. Reported at 107 Ohio St.3d 1411, 2005-Ohio-5859, 836 N.E.2d 1230. On motion for reconsideration. Motion denied.

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