

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

February 4, 2009

[Cite as *02/04/2009 Case Announcements, 2009-Ohio-361.*]

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## MERIT DECISIONS WITH OPINIONS

**2007-1819 and 2007-1821. Louden v. A.O. Smith Corp., Slip Opinion No. 2009-Ohio-319.**

Cuyahoga App. Nos. 90184 and 90185. Judgment affirmed.

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

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

Pfeifer, J., dissents.

**2007-2239. In re J.F., Slip Opinion No. 2009-Ohio-318.**

Greene App. No. 06-CA-123, 2007-Ohio-5652. Judgment affirmed and cause remanded to the trial court.

Moyer, C.J., and O'Connor, O'Donnell, and Cupp, JJ., concur.

Pfeifer, Lundberg Stratton, and Lanzinger, JJ., dissent.

**2007-2310 and 2007-2311. State v. Jones, Slip Opinion No. 2009-Ohio-316.**

Stark App. No. 2007-CA-00139, 2007-Ohio-5818, and Stark App. No. 2007-CA-00098, 2007-Ohio-5817. Judgments of the court of appeals reversed, and judgments of the trial court reinstated.

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

Pfeifer and O'Donnell, JJ., concur separately.

**2007-2389. State v. Thompson, Slip Opinion No. 2009-Ohio-314.**

Fairfield App. No. 2007-CA-00006, 2007-Ohio-6098. Judgment of the court of appeals reversed, and judgment of the trial court reinstated.

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

**2007-2443. State v. Pasqualone, Slip Opinion No. 2009-Ohio-315.**

Ashtabula App. No. 2007-A-0005, 2007-Ohio-6725. Judgment of the court of appeals reversed, and judgment of the trial court reinstated.

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

Pfeifer, J., concurs in judgment only.

Patrick Dinkelacker, J., of the First Appellate District, sitting for Cupp, J.

**2008-1198. Disciplinary Counsel v. Kelly, Slip Opinion No. 2009-Ohio-317.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 07-059. Kristen Lynn Kelly, Attorney Registration No. 0064964, is indefinitely suspended from the practice of law in Ohio.

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

Pfeifer, J., dissents and would suspend respondent from the practice of law in Ohio for two years.

## MERIT DECISIONS WITHOUT OPINIONS

**2008-2301. State ex rel. Elwell v. Moore.**

In Procedendo. On respondent's motion to dismiss and relator's motion for leave to file and admit brief. Motion to dismiss granted. Motion for leave to file and admit brief denied as moot.

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

**2008-2304. State ex rel. Duncan v. Deweese.**

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

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

**2008-2336. State ex rel. Bohanon v. Niemeyer.**

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

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

**2008-2340. State ex rel. McShepard v. Court of Appeals, Ninth Appellate Dist.**

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

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

**2008-2434. Pickens v. Gansheimer.**

In Habeas Corpus. On petition for emergency writ of habeas corpus of Arthur Pickens. Sua sponte, cause dismissed.

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

**2008-2444. Ealy v. Plummer.**

In Habeas Corpus. On petition and amended petition for writ of habeas corpus of Larry E. Ealy. Sua sponte, cause dismissed.

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

**2008-2446. In re Warrens.**

In Habeas Corpus. On petition for writ of habeas corpus of Leslie A. Warrens. Sua sponte, cause dismissed.

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

**2008-2454. Fraizer v. Ohio Parole Officer.**

In Habeas Corpus. On petition for writ of habeas corpus of Robert Ray Fraizer. Sua sponte, cause dismissed.

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

**MOTION AND PROCEDURAL RULINGS**

**2008-1012. State v. Clinkscale.**

Franklin App. No. 06AP-1109, 177 Ohio App.3d 294, 2008-Ohio-1677. On motion to strike portions of reply brief and attached affidavit. Motion granted.

Pfeifer and O'Donnell, JJ., dissent.

Lundberg Stratton, J., would defer ruling on the motion until after oral argument.

**2008-2377. State v. Hughley.**

Cuyahoga App. No. 90323, 2008-Ohio-6146. On motion for suspension of sentence pending appeal. Motion denied.

**2008-2417. State v. Skorvanek.**

Lorain App. No. 07CA009229, 2008-Ohio-4937. On motion for leave to file delayed appeal. Motion granted.

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

**2008-2455. State v. Wagner.**

Portage App. No. 2007-P-0001, 2007-Ohio-7122. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2008-2456. State v. Garrett.**

Cuyahoga App. No. 90218, 2008-Ohio-3038. On motion for leave to file delayed appeal. Motion denied.

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

**2008-2458. State v. Nelson.**

Lake App. No. 2008-L-072, 2008-Ohio-5535. On motion for leave to file delayed appeal. Motion denied.

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

**2008-2463. State v. Lanier.**

Clark App. No. 2007 CA 77, 2008-Ohio-4018. On motion for leave to file delayed appeal. Motion granted.

Moyer, C.J., and O'Donnell and Cupp, JJ., dissent.

**2008-2505. In re Keytack.**

Trumbull App. No. 2008-T-0039, 2008-Ohio-6563. On motion for stay of court of appeals judgment. Motion denied.

**APPEALS ACCEPTED FOR REVIEW**

**2008-1926. In re G.E.S.**

Summit App. No. 24079, 2008-Ohio-4076. Discretionary appeal accepted; cause held for the decision in 2008-1624, *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234; and briefing schedule stayed.

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

**2008-1944. Rinderle v. Whispering Pines Health Care Ctr.**

Fayette App. No. CA2007-12-041, 2008-Ohio-4168. Discretionary appeal accepted; cause held for the decision in 2008-0784, *Hayes v. Oakridge Home*, Cuyahoga App. No. 89400, 2008-Ohio-787; and briefing schedule stayed.

Pfeifer and Lanzinger, JJ., dissent.

**2008-1972. State v. Evans.**

Cuyahoga App. No. 90520, 2008-Ohio-4102. Discretionary appeal accepted; cause held for the decision in 2008-0661, *State v. Hunter*, Cuyahoga App. No. 89456, 2008-Ohio-794; and briefing schedule stayed.

Pfeifer, J., dissents.

**2008-1980. Estate of Hall v. Akron Gen. Med. Ctr.**

Summit App. No. 24066, 2008-Ohio-4332.

Pfeifer, Lanzinger, and Cupp, JJ., dissent.

**2008-2009. State v. Downing.**

Franklin App. No. 08AP-48, 2008-Ohio-4463. Discretionary appeal accepted; cause held for the decisions in 2007-0693, *State v. Bloomer*, Fulton App. No. F-06-012, 2007-Ohio-1039, 2007-1415, *State v. Mosmeyer*, Hamilton App. No. C-060747, and 2007-1439, *State v. Barnes*, Portage App. No. 2006-P-0089, 2007-Ohio-3362; and briefing schedule stayed.

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

**2008-2018. Ohio Grocers Assn. v. Levin.**

Franklin App. No. 07AP-813, 178 Ohio App.3d 145, 2008-Ohio-4420. Discretionary appeal accepted.

Pfeifer, J., dissents.

Motion for admission pro hac vice of Michael Dominic Meuti by Benjamin C. Mizer granted.

**2008-2037. State v. Williams.**

Cuyahoga App. No. 89726, 2008-Ohio-5149 and 2008-Ohio-5286. Discretionary appeal not accepted.

Lundberg Stratton, J., dissents.

Discretionary cross-appeal accepted. Motion to withdraw waiver of memorandum in response granted.

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

**2008-2047. State v. Palmer.**

Hamilton App. No. C-010583, 178 Ohio App.3d 192, 2008-Ohio-4604. Discretionary appeal accepted; cause held for the decision in 2007-1812, *State v. Harris*, Hamilton App. No. C-060587; and briefing schedule stayed.

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

**APPEALS NOT ACCEPTED FOR REVIEW**

**2008-1706. State v. Brewer.**

Montgomery App. Nos. 22159 and 22160, 2008-Ohio-2715.

**2008-1914. State v. Mattison.**

Cuyahoga App. No. 90155, 2008-Ohio-4090.

O'Donnell, J., dissents.

**2008-1916. State v. Owens.**

Allen App. No. 1-07-66, 2008-Ohio-4161.

Cupp, J., not participating.

**2008-1917. State v. Frock.**

Clark App. Nos. 07CA102 and 07CA103, 2008-Ohio-4533.

**2008-1925. State v. Cooper.**

Cuyahoga App. No. 90144, 2008-Ohio-3459.

Moyer, C.J., and Lanzinger, J., dissent and would accept the appeal on Proposition of Law Nos. I, II, III, and IV and hold the cause for the decisions in 2007-0693, *State v. Bloomer*, Fulton App. No. F-06-012, 2007-Ohio-1039, 2007-1415, *State v. Mosmeyer*, Hamilton App. No. C-060747, and 2007-1439, *State v. Barnes*, Portage App. No. 2006-P-0089, 2007-Ohio-3362.

Cupp, J., dissents and would accept the appeal on Proposition of Law Nos. I, II, III, IV, VI, and VII and hold the cause for the decisions in *State v. Bloomer*, *State v. Mosmeyer*, and *State v. Barnes*.

**2008-1934. State v. Ushery.**

Hamilton App. No. C-010613.

**2008-1937. Goins v. Stewart.**

Morgan App. No. 08CA002, 2008-Ohio-4206.

O'Connor, J., dissents and would accept the appeal on Proposition of Law Nos. I and II.

**2008-1939. State v. Constable.**

Washington App. No. 08CA1, 2008-Ohio-4341.

**2008-1940. State v. Luks.**

Cuyahoga App. No. 89869, 2008-Ohio-3974.

**2008-1947. Christescu v. Christescu.**

Cuyahoga App. No. 90304, 2008-Ohio-3540.

Moyer, C.J., dissents.

**2008-1948. Cincinnati v. York Masons Bldg. Assn.**

Hamilton App. Nos. C-080003 and C-080019, 2008-Ohio-4271.

Pfeifer, J., dissents.

**2008-1951. Ohio Democratic Party v. Ohio Elections Comm.**

Franklin App. No. 07AP-876, 2008-Ohio-4256.

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

Cupp, J., not participating.

**2008-1952. State v. Vinzant.**

Montgomery App. No. 22383, 2008-Ohio-4399.

**2008-1953. Caldwell v. Petersburg Stone Co.**

Mahoning App. No. 08 MA 126.

**2008-1957. State v. Brown.**

Summit App. No. 23637, 2008-Ohio-2670.

**2008-1958. Walls v. Toledo.**

Lucas App. No. L-07-1324, 2008-Ohio-4274.

**2008-1959. State v. El-Berri.**

Cuyahoga App. No. 89477, 2008-Ohio-3539.

**2008-1961. Murdock v. Hyde.**

Butler App. No. CA2007-11-289, 2008-Ohio-4313.

**2008-1964. Haddox v. Ohio Attorney Gen.**

Franklin App. No. 07AP-857, 2008-Ohio-4355.

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

**2008-1965. Frisch's Restaurants, Inc. v. Fortney & Weygandt, Inc.**

Cuyahoga App. No. 89802, 2008-Ohio-4121.

**2008-1967. Duncan v. Ohio Liquor Control Bd.**

Franklin App. No. 08AP-236, 2008-Ohio-4550.

**2008-1968. Charvat v. Farmers Ins. Columbus.**

Franklin App. No. 07AP-1078, 178 Ohio App.3d 118, 2008-Ohio-4353.

Moyer, C.J., dissents.

**2008-1971. Norman v. Serta Mattress Co.**

Hamilton App. No. C-070503.

**2008-1973. State v. Lewis.**

Cuyahoga App. No. 90413, 2008-Ohio-4101.

**2008-1974. State v. Stepp.**

Butler App. No. CA2007-05-117, 2008-Ohio-4305.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law Nos. I and II.

**2008-1978. State v. Ford.**

Franklin App. No. 07AP-803, 2008-Ohio-4373.

**2008-1984. State v. Smith.**

Cuyahoga App. No. 88371, 2008-Ohio-3657.

Lundberg Stratton, J., dissents.

**2008-1988. State v. Westerfield.**

Franklin App. No. 07AP-1072, 2008-Ohio-4458.

Lundberg Stratton, J., dissents.

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

**2008-1989. In re Contempt of English.**

Cuyahoga App. No. 90417, 2008-Ohio-3671.

**2008-1993. State v. Watts.**

Cuyahoga App. No. 90435, 2008-Ohio-3792.

**2008-1994. Karwowski v. St. Michael Hosp.**

Cuyahoga App. No. 90041, 2008-Ohio-4235.

Moyer, C.J., and Lundberg Stratton and O'Donnell, JJ., dissent.

**2008-1995. State v. Bruce.**

Franklin App. No. 07AP-355, 2008-Ohio-4370.

**2008-1998. Hosta v. Chrysler.**

Greene App. No. 2008 CA 35, 2008-Ohio-4392.

**2008-1999. State v. Testerman.**

Hamilton App. No. C-070573.

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

**2008-2003. State Farm Fire & Cas. Co. v. Holland.**

Madison App. No. CA2007-08-025, 2008-Ohio-4436.

**2008-2010. In re Boyles.**

Hamilton App. No. C-070847.

**2008-2016. State v. Hammond.**

Franklin App. No. 08AP-176, 2008-Ohio-4459.

**2008-2017. State v. Silva.**

Butler App. No. CA2008-01-007, 2008-Ohio-4430.

**2008-2019. State v. Baker.**

Butler App. No. CA2007-06-152, 2008-Ohio-4426. Discretionary appeal not accepted. Motion to strike memorandum in support of jurisdiction denied as moot.

**2008-2020. State v. White.**

Cuyahoga App. No. 90544, 2008-Ohio-4228.

**2008-2021. State v. Kennedy.**

Cuyahoga App. No. 90231, 2008-Ohio-4237.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law Nos. I and II.

**2008-2023. State v. Parks.**

Cuyahoga App. No. 90368, 2008-Ohio-4245.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law No. I.

**2008-2025. State v. Carver.**

Montgomery App. No. 21328, 2008-Ohio-4631.

**2008-2026. State v. Morrison.**

Adams App. No. 07CA854, 2008-Ohio-4913. Discretionary appeal not accepted. Motion to amend notice of appeal denied as moot.

**2008-2029. State v. Vanover.**

Clark App. No. 2007 CA 30, 2008-Ohio-4749.

**2008-2030. Cincinnati v. Walker.**

Hamilton App. No. C-070770, 2008-Ohio-4473.

**2008-2031. Norton v. Environsafe Servs. of Ohio, Inc.**

Lucas App. No. L-07-1266, 2008-Ohio-4483.

**2008-2033. Schaller v. Cordray.**

Franklin App. No. 08AP-591, 2008-Ohio-4464.

Moyer, C.J., and O'Donnell, J., dissent.

**2008-2034. Reno v. Bethel Village Condominium Assn.**

Franklin App. No. 08AP-10, 2008-Ohio-4462.

Pfeifer and O'Donnell, JJ., dissent.

**2008-2036. State v. Ndoji.**

Cuyahoga App. No. 90181, 2008-Ohio-3551.

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

**2008-2044. State v. Buggs.**

Mahoning App. No. 07-MA-187, 2008-Ohio-4809.

**2008-2045. State v. Sprauer.**

Warren App. No. CA2007-12-144, 2008-Ohio-4957.

**2008-2053. State v. Brown.**

Union App. No. 14-08-11, 2008-Ohio-4649.

**2008-2055. State v. Mobley.**

Montgomery App. No. 22427, 2008-Ohio-4641.

**2008-2062. State v. Moore.**

Franklin App. No. 07AP-914, 2008-Ohio-4546.

**2008-2063. State v. Graewe.**

Tuscarawas App. No. 2007 AP 10 0070, 2008-Ohio-5143.

**2008-2064. State v. Dubose.**

Hamilton App. No. C-070397, 2008-Ohio-4983.

**2008-2066. State v. Kent.**

Preble App. No. CA2007-11-026.

**2008-2067. State v. Fairbanks.**

Hamilton App. No. C-070789.

**2008-2070. State v. Reuschling.**

Ashtabula App. No. 2008-A-0004, 2008-Ohio-4970.

**2008-2071. State v. Ferguson.**

Ashtabula App. No. 2008-A-0043.

**2008-2072. Cleveland v. Abrams.**

Cuyahoga App. Nos. 89904 and 89929, 2008-Ohio-4589.

**2008-2073. State v. Carlisle.**

Cuyahoga App. No. 90223, 2008-Ohio-3818.

O'Donnell, J., dissents.

**2008-2075. Peffer v. Cleveland Clinic Found.**

Cuyahoga App. No. 90194, 177 Ohio App.3d 403, 2008-Ohio-3688.

Lundberg Stratton and O'Connor, JJ., dissent.  
O'Donnell, J., dissents and would accept the appeal on Proposition of Law  
No. I.

**2008-2076. Stancourt v. Worthington City School Dist.**

Franklin App. Nos. 07AP-835 and 07AP-836, 2008-Ohio-4548.

**2008-2079. State v. Foti.**

Lake App. No. 2007-L-152, 2008-Ohio-4767.

**2008-2083. State v. Beamon.**

Hamilton App. No. C-080769.

**2008-2084. State v. Adkins.**

Lucas App. No. L-08-1229.

Lanzinger, J., not participating.

**2008-2086. State v. Sklare.**

Summit App. No. 24070, 2008-Ohio-4553.

**2008-2089. State v. Moncrief.**

Franklin App. No. 08AP-153, 2008-Ohio-4594.

**2008-2092. Englewood v. Turner.**

Montgomery App. No. 22270, 178 Ohio App.3d 179, 2008-Ohio-4637.

Moyer, C.J., dissents.

**2008-2094. State v. Fretwell.**

Cuyahoga App. No. 92115.

**2008-2095. State v. Finley.**

Hamilton App. No. C-080733.

**2008-2099. State v. Gerike.**

Hamilton App. No. C-070461, 2008-Ohio-4722.

**2008-2101. State v. Hines.**

Cuyahoga App. No. 90125, 2008-Ohio-4236.

**2008-2107. Huskonen v. Avis Rent-A-Car Sys., Inc.**

Lorain App. No. 08CA009334, 2008-Ohio-4652.  
Pfeifer, J., dissents.

**2008-2112. State v. Morris.**

Clark App. No. 07-CA-112, 2008-Ohio-4744.

**2008-2116. Riggs v. Richard.**

Stark App. No. 2007CA00328, 2008-Ohio-4697.

**2008-2121. State v. Patel.**

Summit App. No. 24030, 2008-Ohio-4693.

**2008-2126. King v. Jewish Home.**

Hamilton App. No. C-070833, 178 Ohio App.3d 387, 2008-Ohio-4724.

**2008-2128. Fidler v. Fidler.**

Franklin App. No. 08AP-284, 2008-Ohio-4688.

**2008-2129. In re Black.**

Franklin App. No. 08AP-37, 2008-Ohio-4687.  
O'Connor and Lanzinger, JJ., dissent.

**2008-2131. State v. White.**

Clark App. No. 2008CA78.

**2008-2138. State v. Oweis.**

Delaware App. No. 07 CAA 10 0051, 2008-Ohio-4698.

**2008-2141. Clemens v. Clemens.**

Greene App. No. 07CA73, 2008-Ohio-4730.

**2008-2143. Tablack v. Bd. of Mahoning Cty. Commrs.**

Mahoning App. No. 07 MA 197, 2008-Ohio-4804.

**2008-2275. State v. Williams.**

Butler App. No. CA2007-04-087, 2008-Ohio-3729.

**2008-2467. In re G.N.**

Clermont App. No. CA2008-09-086.

## RECONSIDERATION OF PRIOR DECISIONS

**2005-2264. State v. Diar.**

Lorain C.P. No. 04CR065248. Reported at \_\_\_ Ohio St.3d \_\_\_, 2008-Ohio-6266, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.