

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

February 16, 2011

[Cite as *02/16/2011 Case Announcements, 2011-Ohio-647.*]

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## MERIT DECISIONS WITH OPINIONS

**2010-0728. State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. of Commrs., Slip Opinion No. 2011-Ohio-625.**

In Mandamus. Writ denied.

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

**2010-1401. State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas, Slip Opinion No. 2011-Ohio-626.**

In Prohibition and Mandamus. Writs granted.

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

Pfeifer, J., concurs in judgment only.

**2010-1763. Disciplinary Counsel v. Simon, Slip Opinion No. 2011-Ohio-627.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 10-012. Thomas John Simon, Attorney Registration No. 0009725, is suspended from the practice of law in Ohio for one year, stayed on condition.

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

**2010-1798. Akron Bar Assn. v. Gibson, Slip Opinion No. 2011-Ohio-628.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 10-074. Ruth A. Gibson, Attorney Registration No. 0004701, is suspended from the practice of law in Ohio for one year, stayed on conditions.

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

## MERIT DECISIONS WITHOUT OPINIONS

### **2010-2118. State ex rel. Buoscio v. Horrigan.**

In Mandamus. On complaint in mandamus of Samuel Buoscio. On S.Ct.Prac.R. 10.5 determination, cause dismissed.

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

### **2010-2134. State v. Nickel.**

Ottawa App. No. OT-10-004, 2010-Ohio-5510. On review of order certifying a conflict. On the authority of our opinion in *State v. Johnson*, \_\_\_ Ohio St.3d \_\_\_, 2010-Ohio-6314, \_\_\_ N.E.2d \_\_\_, the court determines that no conflict exists. This cause is therefore dismissed as moot. Motions to dismiss and to remand denied as moot.

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

### **2010-2145. [State ex rel.] Johnson v. Ward.**

In Prohibition. On relator's amended complaint and respondents' amended motion to dismiss. Motion to dismiss granted. Relator's motions for stay, to strike, for a hearing, and for default judgment denied as moot. Cause dismissed.

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

### **2010-2161. State ex rel. Billiter v. IHS Supervisor.**

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

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

### **2010-2244. [State ex rel.] Allen v. Hamilton Cty. Common Pleas Judge.**

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

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

### **2010-2286. State v. Jordan.**

Trumbull App. No. 2009-T-0110, 2010-Ohio-5183. On review of order certifying a conflict. On the authority of our opinion in *State v. Hodge*, \_\_\_ Ohio St.3d \_\_\_, 2010-Ohio-6320, \_\_\_ N.E.2d \_\_\_, the court determines that no conflict exists. This cause is therefore dismissed as moot.

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

**2011-0064. State ex rel. King v. Court of Appeals, Ninth Appellate Dist.**

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

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

## **MOTION AND PROCEDURAL RULINGS**

**2009-1794. Ackerman v. Fortis Benefits Ins. Co.**

Montgomery App. No. 23443. On motion for leave to present constitutional question of law. Motion denied.

**2010-0674. State ex rel. Fairfield City Schools v. Indus. Comm.**

Franklin App. No. 09AP-271, 2010-Ohio-871. On request for oral argument. Request denied.

**2010-0857. Huff v. FirstEnergy Corp.**

Trumbull App. No. 2009-T-0080, 2010-Ohio-1456. On motion to dismiss. Motion to dismiss denied.

McGee Brown, J., dissents.

**2010-1490. State ex rel. Barksdale v. Sutula.**

In Procedendo. On motion to vacate the court's December 23, 2010 decision. Motion denied.

**2010-1653. State ex rel. Goshay v. Ambrose.**

In Procedendo and Prohibition. On motion to vacate the court's December 27, 2010 decision. Motion denied.

**2010-2223. State ex rel. Otten v. Henderson.**

Clermont App. No. CA2010-09-070. On relator's motions to remand and for leave to amend. Motion to remand granted, and the cause is remanded to the court of appeals to rule on appellant's motion for relief from judgment. Motion for leave to

amend denied. Sua sponte, the briefing schedule is stayed, and the parties shall notify the court within ten days of the court of appeals' ruling on the motion for relief from judgment.

Pfeifer, J., would deny the motion to remand.

**2010-2225. State v. Miller.**

Clark App. No. 08CA0090, 2010-Ohio-4760. On motion for leave to file delayed appeal. Motion granted.

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

**2010-2232. State v. Lampkin.**

Lucas App. No. L-09-1270, 2010-Ohio-4934 and 2010-Ohio-5988. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2010-1007 and 2010-1372, *State v. Lester*, Auglaize App. No. 2-10-20; cause consolidated with 2010-1975, *State v. Lampkin*, Lucas App. No. L-09-1270, 2010-Ohio-4934 and 2010-Ohio-5988; and briefing schedule stayed.

**2010-2247. State v. Howard.**

Cuyahoga App. No. 95303. On motion for leave to file delayed appeal. Motion denied.

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

**2010-2253. Essman v. Portsmouth.**

Scioto App. No. 09CA3325, 2010-Ohio-4837. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 3 of the court of appeals' Entry filed December 13, 2010:

“Does a political subdivision's failure to upgrade an inadequate sewer system constitute a proprietary function within the meaning of R.C. 2744.01(G)(2)(d) so as to subject a political subdivision to liability under R.C. 2744.02(B)(2)?”

O'Donnell, J., dissents.

The conflict case is *H. Hafner & Sons, Inc. v. Cincinnati Metro. Sewer Dist.* (1997), 118 Ohio App.3d 792, 694 N.E.2d 111.

Sua sponte, cause consolidated with 2010-1970, *Essman v. Portsmouth*, Scioto App. No. 09CA3325, 2010-Ohio-4837.

**2010-2268. State v. Zachery.**

Stark App. No. 2008-CA-00187, 2009-Ohio-715. On motion for leave to file delayed appeal. Motion denied.

**2011-0021. State v. McCrary.**

Hamilton App. No. C-100300. On motion for leave to file delayed appeal. Motion granted.

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

**APPEALS ACCEPTED FOR REVIEW**

**2010-1911. Young v. State.**

Hamilton App. No. C-090771. Discretionary appeal accepted on Proposition of Law Nos. I, II, III, and IV; cause held for the decision in 2009-0088, *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195; and briefing schedule stayed.

Pfeifer and Lundberg Stratton, JJ., would also accept the appeal on Proposition of Law Nos. V and VI without holding.

**2010-1914. Feltha v. State.**

Hamilton App. No. C-090796. Discretionary appeal accepted on Proposition of Law Nos. I, II, III, and IV; cause held for the decision in 2009-0088, *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195; and briefing schedule stayed.

Pfeifer and Lundberg Stratton, JJ., would also accept the appeal on Proposition of Law Nos. V-VIII without holding.

**2010-1915. Beck v. State.**

Hamilton App. No. C-090891. Discretionary appeal accepted on Proposition of Law Nos. I, II, III, and IV; cause held for the decision in 2009-0088, *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195; and briefing schedule stayed.

Pfeifer and Lundberg Stratton, JJ., would also accept the appeal on Proposition of Law Nos. V-VIII without holding.

**2010-1917. Phifer v. State**

Hamilton App. No. C-090861. Discretionary appeal accepted on Proposition of Law Nos. I, II, III, and IV; cause held for the decision in 2009-0088, *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195; and briefing schedule stayed.

Pfeifer and Lundberg Stratton, JJ., would also accept the appeal on Proposition of Law Nos. V-VIII without holding.

**2010-1925. State v. Ginley.**

Cuyahoga App. No. 95593.

O'Connor, C.J., and Pfeifer and Lanzinger, JJ., dissent.

**2010-1942. Sparks v. State.**

Hamilton App. No. C-100063. Discretionary appeal accepted on Proposition of Law Nos. I, II, III, and IV; cause held for the decision in 2009-0088, *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195; and briefing schedule stayed.

Pfeifer and Lundberg Stratton, JJ., would also accept the appeal on Proposition of Law Nos. V-VIII without holding.

**2010-1946. Williams v. Ormsby.**

Medina App. No. 09CA0085-M, 2010-Ohio-4664.

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

**2010-1970. Essman v. Portsmouth.**

Scioto App. No. 09CA3325, 2010-Ohio-4837. Discretionary appeal accepted on Proposition of Law Nos. I and II, and cause consolidated with 2010-2253, *Essman v. Portsmouth*, Scioto App. No. 09CA3325, 2010-Ohio-4837.

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

Cupp, J., would accept the appeal on Proposition of Law No. I only.

Pfeifer and O'Donnell, JJ., dissent.

**2010-1975. State v. Lampkin.**

Lucas App. No. L-09-1270, 2010-Ohio-4934 and 2010-Ohio-5988. Discretionary appeal not accepted. Discretionary cross-appeal accepted; cause held for the decision in 2010-1007 and 2010-1372, *State v. Lester*, Auglaize App. No. 2-10-20; cause consolidated with 2010-2232, *State v. Lampkin*, Lucas App. No. L-09-1270, 2010-Ohio-4934 and 2010-Ohio-5988; and briefing schedule stayed.

**2010-2088. State v. Hughes.**

Hamilton App. No. C-090842. Discretionary appeal accepted; cause held for the decision in 2010-0819, *State v. Mbodji*, Hamilton App. No. C-090384; and briefing schedule stayed.

Pfeifer, J., dissents.

**2010-2157. Mitchell v. State.**

Hamilton App. No. C-100061. Discretionary appeal accepted on Proposition of Law Nos. I, II, III, and IV; cause held for the decision in 2009-0088, *State v.*

*Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195; and briefing schedule stayed.

Pfeifer and Lundberg Stratton, JJ., would also accept the appeal on Proposition of Law Nos. V-VIII without holding.

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

**2010-1652. Strasburg v. Strasburg.**

Auglaize App. No. 2-10-12, 2010-Ohio-3672.

**2010-1817. State v. Bunce.**

Lucas App. No. L-08-1237, 2010-Ohio-3629.

**2010-1855. State v. Lane.**

Allen App. No. 1-10-10, 2010-Ohio-4819. Discretionary appeal not accepted. Motion for leave to amend denied as moot.

O'Donnell, J., would grant the motion for leave to amend.

**2010-1870. Cincinnati Ins. Co. v. Oblates of St. Francis de Sales, Inc.**

Lucas App. No. L-09-1146, 2010-Ohio-4382. Discretionary appeal and cross-appeal not accepted.

Pfeifer, J., dissents.

Lanzinger, J., not participating.

**2010-1905. State v. Cornette.**

Montgomery App. No. 23805, 2010-Ohio-3647.

**2010-1908. State v. Hankison.**

Scioto App. No. 09CA3326, 2010-Ohio-4617.

**2010-1910. State v. Hundley.**

Hamilton App. Nos. C-090760 and C-090761, 2010-Ohio-4640.

**2010-1921. State v. Murphy.**

Scioto App. No. 09CA3311, 2010-Ohio-5031.

**2010-1922. State v. Smead.**

Summit App. No. 24903, 2010-Ohio-4462.

**2010-1923. Westlake v. Filiaggi.**

Cuyahoga App. No. 93599, 2010-Ohio-4481.

**2010-1929. In re L.W.**

Hamilton App. No. C-090628.

**2010-1930. State v. McGlothin.**

Hamilton App. No. C-060145, 2007-Ohio-4707.

**2010-1931. State v. May.**

Morrow App. No. 2010 CA 1, 2010-Ohio-4594.

Lanzinger, J., dissents.

**2010-1935. State v. Brown.**

Summit App. No. 25077, 2010-Ohio-4453.

O'Connor, C.J., not participating.

**2010-1936. State v. Moulton.**

Cuyahoga App. No. 93726, 2010-Ohio-4484.

Lanzinger and Cupp, JJ., dissent and would accept the appeal and remand the cause for application of *State v. Johnson*, \_\_\_ Ohio St.3d \_\_\_, 2010-Ohio-6314, \_\_\_ N.E.2d \_\_\_.

**2010-1940. State v. Barnes.**

Cuyahoga App. No. 94025, 2010-Ohio-4674.

**2010-1941. State v. Palmer.**

Richland App. No. 2009-CA-122, 2010-Ohio-4628.

**2010-1952. Stewart v. Forum Health.**

Mahoning App. No. 09-MA-129, 2010-Ohio-4855.

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

**2010-1955. Kendall Group, Ltd. v. Fifth Third Bank.**

Franklin App. No. 09AP-772, 2010-Ohio-4733.

Pfeifer, J., dissents.

McGee Brown, J., not participating.

**2010-1956. Duncan v. Wheeler.**

Scioto App. No. 09CA3296, 2010-Ohio-4836.



**2010-1957. State v. Clements.**

Butler App. No. CA2009-11-277, 2010-Ohio-4801.

**2010-1958. Reed v. Reed.**

Allen App. No. 1-09-63, 2010-Ohio-4550.

**2010-1959. Hughes v. Ohio Dept. of Rehab. & Corr.**

Franklin App. No. 09AP-1052, 2010-Ohio-4736.

**2010-1962. Brown v. CDS Transport, Inc.**

Franklin App. No. 10AP-46, 2010-Ohio-4606.

**2010-1964. Ford Motor Credit Co. v. Ryan.**

Franklin App. Nos. 09AP-501 and 10AP-263, 189 Ohio App.3d 560, 2010-Ohio-4601.

**2010-1965. Harrison v. Doerner.**

Cuyahoga App. No. 94270, 2010-Ohio-4682.

**2010-1967. State v. Mills.**

Williams App. No. WM-09-014, 2010-Ohio-4705.

**2010-1972. State ex rel. Holloway v. Huber Hts.**

Montgomery App. No. 23836, 2010-Ohio-4754.

**2010-1976. State ex rel. DeWine v. Basinger.**

Mahoning App. No. 09 MA 119, 2010-Ohio-4870.

**2010-1978. State v. Justice.**

Fairfield App. No. 09-CA-66, 2010-Ohio-4781.

**2010-1980. State v. Wild.**

Clark App. No. 2009 CA 83, 2010-Ohio-4751.

**2010-1981. State v. Stevens.**

Franklin App. No. 10AP-207, 2010-Ohio-4747.

**2010-1982. State v. Daley.**

Cuyahoga App. No. 95689.

Lundberg Stratton and McGee Brown, JJ., dissent.

**2010-1983. Cleveland Taxpayers for Ohio Constitution v. Cleveland.**  
Cuyahoga App. No. 94327, 2010-Ohio-4685.

**2010-1989. Deutsche Bank Natl. Trust Co. v. Sexton.**  
Butler App. No. CA2009-11-288, 2010-Ohio-4802.  
Pfeifer, J., dissents.

**2010-1990. Barrera v. Ins. Co. of the State of Pennsylvania.**  
Defiance App. No. 4-10-06, 2010-Ohio-4829.  
Lundberg Stratton and O'Donnell, JJ., dissent.

**2010-1993. Georgalis v. Ohio Turnpike Comm.**  
Cuyahoga App. No. 94478, 2010-Ohio-4898.

**2010-1998. State v. Greene.**  
Hamilton App. No. C-090835.

**2010-2000. State v. McDaniel.**  
Vinton App. No. 09CA677, 2010-Ohio-5215.

**2010-2001. Ohio Valley Associated Builders & Contrs. v. Indus. Power Sys., Inc.**  
Lucas App. No. L-10-1099, 2010-Ohio-4930.  
O'Donnell and Lanzinger, JJ., dissent.

**2010-2003. Herron v. Brunsman.**  
Warren App. No. CA2010-06-058.

**2010-2006. State v. Brown.**  
Summit App. No. 25206, 2010-Ohio-4863.

**2010-2010. State v. Lenoir.**  
Delaware App. No. 10CAA010011, 2010-Ohio-4910.  
Lanzinger and McGee Brown, JJ., dissent.

**2010-2012. Jackson v. Jackson.**  
Morrow App. No. 09CA0013, 2010-Ohio-4912.

**2010-2014. Berner v. Soddors.**

Clark App. No. 2010 CA 40, 2010-Ohio-4914.

**2010-2018. Lynda Hughes Dawson Lumber, Inc. v. Hummel.**

Darke App. No. 09-CA-7, 2010-Ohio-4918.

O'Connor, C.J., dissents.

**2010-2022. State v. Blalock.**

Cuyahoga App. No. 94198, 2010-Ohio-4494.

**2010-2023. State v. Madera.**

Cuyahoga App. No. 93764, 2010-Ohio-4884.

O'Donnell, J., dissents.

**2010-2024. Gall v. Mariemont Windsor Square Condominium Assn.**

Hamilton App. No. C-100107.

**2010-2027. Fisher v. Stonelick Twp.**

Clermont App. No. CA2010-05-037, 2010-Ohio-4944.

Lundberg Stratton and McGee Brown, JJ., dissent.

**2010-2028. State v. Williams.**

Hamilton App. No. C-090873.

**2010-2032. State v. Warner.**

Portage App. No. 2008-P-0052, 2010-Ohio-4940.

O'Donnell and Cupp, JJ., dissent.

**2010-2036. State v. Smith.**

Hamilton App. No. C-100034.

**2010-2042. Parkview Fed. Sav. Bank v. Grimm.**

Cuyahoga App. No. 93899, 2010-Ohio-5005.

**2010-2043. Barrow v. Miner.**

Lucas App. No. L-09-1227, 2010-Ohio-5022.

**2010-2046. State v. Clarke.**

Cuyahoga App. No. 94207, 2010-Ohio-5010.

**2010-2049. State v. Valsadi.**

Wood App. No. WD-09-064, 2010-Ohio-5030.

**2010-2055. Lima v. Bowersock.**

Allen App. No. 1-10-53.

**2010-2061. Mt. Orab v. Loop.**

Brown App. No. CA2009-10-040.

**2010-2069. Cooper v. Chateau Estate Homes, L.L.C.**

Warren App. No. CA2010-07-061, 2010-Ohio-5186.

**2010-2070. State v. Rowe.**

Franklin App. No. 10AP-150, 2010-Ohio-5082.

**2010-2071. State v. Thompson.**

Franklin App. Nos. 10AP-86 and 10AP-91, 2010-Ohio-5154.

**2010-2074. State v. Smith.**

Franklin App. No. 09AP-981, 2010-Ohio-5077.

**2010-2086. State v. Benard.**

Cuyahoga App. No. 93987, 2010-Ohio-5128.

**2010-2087. State v. Humes.**

Clermont App. No. CA2009-10-057.

**2010-2095. State v. Neff.**

Franklin App. No. 09AP-360.

McGee Brown, J., not participating.

**2010-2101. State v. Ferguson.**

Hamilton App. No. C-090769.

**2010-2102. State v. Gary.**

Hamilton App. No. C-090643, 2010-Ohio-5321.

**2010-2107. Riley v. Brimfield Twp.**

Portage App. No. 2009-P-0036, 2010-Ohio-5181.

Pfeifer, J., dissents.

**2010-2108. State v. Buoscio.**

Summit App. No. 25647.

O'Donnell, J., dissents.

**2010-2114. State v. Richardson.**

Medina App. No. 09CA0097-M, 2010-Ohio-4397.

**2010-2115. State v. Irizarry.**

Cuyahoga App. No. 93353, 2010-Ohio-5117.

**2010-2117. State v. Hayes.**

Cuyahoga App. No. 93785, 2010-Ohio-5234.

**2010-2119. State v. Noble.**

Hamilton App. No. C-100049, 2010-Ohio-5493.

O'Donnell, Lanzinger, and Cupp, JJ., dissent and would accept the appeal and remand the cause for application of *State v. Johnson*, \_\_\_ Ohio St.3d \_\_\_, 2010-Ohio-6314, \_\_\_ N.E.2d \_\_\_.

**2010-2120. Ohio Attorney Gen. v. Whiteside.**

Franklin App. No. 10AP-517.

**2010-2130. State v. Thomas.**

Cuyahoga App. No. 94042, 2010-Ohio-5237.

**2010-2136. JPMorgan Chase Bank v. Murphy.**

Montgomery App. No. 23927, 2010-Ohio-5285.

**2010-2149. Huber v. State.**

Montgomery App. No. 23890, 2010-Ohio-5284.

**2010-2160. State v. Quinones.**

Cuyahoga App. No. 94082, 2010-Ohio-5240.

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

McGee Brown, J., dissents and would accept the appeal on Proposition of Law No. VI.

**2010-2162. State v. Deal.**

Cuyahoga App. No. 93969, 2010-Ohio-4490.

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

**2010-2163. State v. Crump.**  
Franklin App. No. 10AP-151.

**2010-2275. In re A.B.**  
Butler App. Nos. CA2010-04-097 and CA2010-04-098, 2010-Ohio-5651.  
Discretionary appeal not accepted. Motion for stay denied as moot.

### **RECONSIDERATION OF PRIOR DECISIONS**

**2009-1936. Kincaid v. Erie Ins.Co.**

Cuyahoga App. No. 92101, 183 Ohio App.3d 748, 2009-Ohio-4372. Reported at \_\_\_ Ohio St.3d \_\_\_, 2010-Ohio-6036, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion for reconsideration granted to the following extent:

Paragraph 20 of the opinion issued in this case is modified to read as follows:

“{¶ 20} We hold that there is no actual controversy between adverse parties in this case because Erie has not refused to pay Kincaid for expenses that may be covered by the “additional payments” provision of the policy. Unless and until the insured has presented a claim to his or her insurer and (where appropriate) proof of how much is owed, and the insurer has either (1) denied the claim or (2) failed to respond to the claim after having had an adequate opportunity and reasonable time within which to respond, then there is no controversy and the insured has no standing to file a complaint in litigation. A court may not issue an advisory opinion on whether an insured is entitled to insurance coverage, and an advisory opinion is what is being sought in this case, since no loss has been identified and no claim has been made for payment. Upon review of the pleadings, we hold that no material factual issues exist and that Erie was entitled to judgment as a matter of law. Therefore, Civ.R. 12(C) dismissal was appropriate. See *State ex rel. Midwest Pride IV, Inc. v. Pontius* (1996), 75 Ohio St.3d 565, 570, 664 N.E.2d 931.”

McGee Brown, J., not participating.

**2009-2293. State ex rel. Mahajan v. State Med. Bd. of Ohio.**

In Mandamus. Reported at \_\_\_ Ohio St.3d \_\_\_, 2010-Ohio-5995, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

Lanzinger, J., dissents.

McGee Brown, J., not participating.

**2010-1561. Sampson v. Cuyahoga Metro. Hous. Auth.**

Cuyahoga App. No. 93441, 188 Ohio App.3d 250, 2010-Ohio-3415. Reported at 127 Ohio St.3d 1460, 2010-Ohio-6008, 938 N.E.2d 362. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

McGee Brown, J., not participating.

**2010-1568. State v. Sanders.**

Franklin App. No. 09AP-983, 188 Ohio App.3d 452, 2010-Ohio-3433. On motion for reconsideration. Motion denied.

McGee Brown, J., not participating.