

I. INTRODUCTION AND BACKGROUND

Relator has filed an Original Action in Mandamus and Prohibition in order to prohibit the and the Clerk's Office of the Stark County Court of Common Pleas from submitting and Fifth District Court of Appeals from accepting for review Relator's current appeal before the Fifth District, and to compel Respondents to either delay the appeal until an in-person oral argument can be held, or in the alternative, proceed with the appeal at some future date but permit oral argument in connection therewith either by a telephone or other type of remote communication.

Relator's premise that oral argument is a vital component of our appellate system of justice goes basically unchallenged by the Respondents herein. Oral argument can be best thought of as the preliminary conference for deciding the case. As Supreme Court Justice Byron R. White once remarked:

All of us on the bench [are] working on the case, trying to decide it. . . . They think we are there just to learn about the case. Well, we are learning, but we are trying to decide it, too.¹ [I]t is then that all of the Justices are working on the case together, having read the briefs and anticipating that they will have to vote very soon, and attempting to clarify their own thinking and perhaps that of their colleagues. Consequently, we treat lawyers as a resource rather than as orators who should be heard out according to their own desires.²

Supreme Court Justice Antonin Scalia, when interviewed, also intimated that oral argument is an opportunity for a lawyer to participate in a preliminary conference of the case:

It isn't just an interchange between counsel and each of the individual Justices. What is going on is also to some extent an exchange of information among the Justices themselves. You hear the questions of the others and see how their minds are working, and that stimulates your own thinking. I use it, he added, to give

¹ Stephen M. Shapiro, *Questions, Answers, and Prepared Remarks*, 15 Litig. 33, 33 (Spring 1989) (citing *This Honorable Court* (WETA 1988) (TV broadcast)).

² *Id.* (quoting Justice Byron R. White, *The Work of the Supreme Court: A Nuts and Bolts Description*, N.Y. St. B.J. 346, 383 (Oct. 1982)).

counsel his or her best shot at meeting my major difficulty with that side of the case. “Here’s what’s preventing me from going along with you. If you can explain why that’s wrong, you have me.”³

Former Chief Justice William H. Rehnquist described the ideal oral advocate as the following:

[S]he will realize that there is an element of drama in oral argument. . . . But she also realizes that her spoken lines have substantive legal meaning. . . . She has a theme and a plan for her argument, but is quite willing to pause and listen carefully to questions. . . . She avoids table pounding and other hortatory mannerisms, but she realizes equally well that an oral argument on behalf of one’s client requires controlled enthusiasm and not an impression of *fin de siècle ennui*.⁴

Finally, the legendary Justice John M. Harlan has observed:

[T]he job of courts is not merely one of an umpire in disputes between litigants. Their job is to search out the truth, both as to the facts and the law, and that is ultimately the job of the lawyers, too. And in that joint effort, the oral argument gives an opportunity for interchange between court and counsel which the briefs do not give. For my part, there is no substitute, even within the time limits afforded by the busy calendars of modern appellate courts, for the Socratic method of procedure in getting at the real heart of an issue and in finding out where the truth lies.⁵

As such, former U.S. Supreme Justices from both ends of the political spectrum have relentlessly been major advocates of oral argument. But so have the current Justices of the U.S. Supreme Court and the Ohio Supreme Court as both bodies have elected to continue oral argument via telephone or other remote-site means even in the midst of the Coronavirus epidemic.

Most importantly for our purposes; however, is the fact that every appellate judicial district within the State of Ohio, except for the Fifth District, has elected to cancel appeals until in-person oral argument may resume or to waive oral argument, *unless* a party objects and either files a motion or communicates its intention to the court in some other designated matter. As

³ *Id.* (citing *This Honorable Court* (WETA 1988) (TV broadcast)).

⁴ Shapiro, *supra* n. 1, at 33 (quoting William H. Rehnquist, *Oral Advocacy: A Disappearing Art*, 35 Mercer L. Rev. 1015, 1024–1025 (1984)).

⁵ John M. Harlan, *What Part Does the Oral Argument Play in the Conduct of an Appeal?* 41 Cornell L.Q. 6, 7 (1955).

evidence thereof, earlier this afternoon, Relator visited the websites of each appellate district court in Ohio and extracted therefrom either a summary or the actual court order of how appeals would be handled during the Coronavirus crisis. Attached as **Exhibit #1** hereto are those extracts from Districts 1, 2, 3, 4, 6, 7, 10, 11, and 12. The official orders from Districts 8 and 9 were attached to Relator's original complaint. *All of them* will either continue with oral argument remotely or at least allow a party to object to proceeding by submission of the briefs alone.

Thus, all Ohio appellate jurisdictions, plus the U.S. and Ohio Supreme Courts, agree that the show must go on, even if one has to use a telephone or computer screen to participate in oral argument. Ironically, even the Office of the Ohio Attorney General ("OAG") seems to be on board. The first paragraph in its motion to dismiss reads: "... Ohio's court system cannot simply stop. They must continue to operate and must do so safely, while still affording all litigants the *right to be heard* (emphasis added)." The lone dissenter appears to be the Fifth District; but why? No one seems to know the answer.

The OAG attempts to suggest one reason is that "social distancing must be observed during the emergency period in all court proceedings and in each court to mitigate the spread of COVID-19." [OAG Motion to Dismiss, p. 2]. Agreed. In fact, Relator has *never* suggested doing away with social distancing or that the Fifth District be forced to entertain oral argument with multiple persons crammed into their closet-size courtroom. Relator has only suggested that his and other similarly-situated appeals be delayed until in-person attendance is deemed safe or the Court of Appeals can arrange for remote transmissions.

Oddly, the OAG then suggests on page 3 that "the Fifth District remained cognizant that not all litigants before it have access to such technology. Thus, in order to avoid the inequities

such lack of access poses, the Fifth District issued its own order waiving all oral arguments in the cases pending before it.” While sounding incredibly egalitarian, the problem with such theory is that it is nowhere to be found in any order, notice or release of the Fifth District. The concept almost appears to have been made up by the OAG in order to give the Fifth District some “cover” for its actions.

And while it is true that not all litigants have access to technology, it is hard to believe that their lawyers, even if underfunded public defenders, would not have a computer or tablet available to them these days. Finally, if economic disenfranchisement is such a major problem for appellant-litigants, one has to wonder why the neither the Ohio Supreme Court nor any other Appellate Court in Ohio failed to observe the same problem and choose the same solution.

II. LAW AND ARGUMENT

A. Relator is not suing the Fifth District.

On page 4 of its motion to dismiss, the OAG suggests Relator’s writ must be dismissed because the Fifth District Court of Appeals can never be sued. The problem with this argument is that Relator is not suing the Fifth District in the traditional sense of the word. Rather, Relator he has applied to the Ohio Supreme Court asking the State’s highest judicial authority to issue a writ “to an inferior tribunal” as permitted by R.C. 2731.01.⁶

B. The OAG misstates the pre-requisites for a writ of mandamus to succeed.

The requirements for a writ of mandamus are well established under Ohio law: (1) relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to provide the requested relief, and (3) there must be no adequate remedy in the ordinary

⁶ R.C. 2731.01 provides: “Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.”

course of the law. Respondent writes at the bottom of page 4 of its Motion to Dismiss that “Relator does not have a clear legal right to the oral argument that he demands, nor does the Fifth District have a corresponding legal duty to provide it.” In advancing such contention, the OAG never addresses Relator’s analysis from its original complaint to the effect that App. R. 21 is clear on this issue.

The use of the word “shall” therein obligates the Appellate Court to afford a party oral argument, unless the court has adopted a local rule requiring a party to specifically request oral argument first, in which case such request must be honored. The only exception is for appeals involving a party who is *both* incarcerated and proceeding *pro se*. Such exception does not apply to Relator or the case at bar. The Local Rules of the Fifth District provide for no other exception.

Respondent next argues on page 7 of its motion that “[a] writ of mandamus ‘will not issue if there is a plain and adequate remedy in the ordinary course of law,’” and, in this case, posits Relator could simply have filed a discretionary appeal with the Ohio Supreme Court seeking to overturn the Court of Appeals’ “no oral argument” directive. What Respondent misses; however, is that the Ohio Supreme Court has specifically held that a remedy is not adequate for purposes of denying a writ of mandamus unless it affords complete, beneficial and speedy relief. See *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St.3d 322, 2009-Ohio-4900.

As Relator discussed in his original complaint, while technically subject to scrutiny by the Ohio Supreme Court, appellate decisions in Ohio are not automatically eligible for a “second look” by the State’s highest court. Rather, review is discretionary and an appellant must first demonstrate either the existence of a Constitutional issue or a matter of great import to the people of the State of Ohio. Such stringent barriers result in less than 8% of discretionary appeals

ever being accepted by the Ohio Supreme Court. More importantly, since Relator's appeal is scheduled to be submitted for review to the Fifth District on May 12, 2020, time is of the essence in seeking review by the Ohio Supreme Court.

In addition, there is substantial doubt whether the decision to deny Relator oral argument could even be appealed at this juncture, because it is not a final appealable order. Most likely it could only be submitted after the Court of Appeals issued its opinion in the matter as a whole. Obviously, by that time an adverse decision against Relator would be extremely difficult to even garner a discretionary review of.

C. The Fifth District Court of Appeals has abused its discretion.

On pages 5 and 6 of its Motion to Dismiss, Respondent argues that a mandamus action must fail in this case because it is well settled that a writ of mandamus cannot "control the exercise of discretion." While Respondent is correct that a legitimate exercise of discretion is permissible, an *abuse* of discretion is not. . The Ohio Supreme Court has held "[m]andamus is an appropriate remedy where no statutory right of appeal is available to correct an abuse of discretion by an administrative body." *State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 2002-Ohio-2219, 767 N.E.2d 719, ¶ 14.

It is, of course, understood that "the legislative branch of government may confer on an administrative officer or body certain discretion in order to carry out the policy of the law in specific cases, provided the legislative enactment defines the policy of the law and contains sufficient criteria and standards to guide the administrative officer or tribunal in the exercise of its limited discretion." *State ex rel. v. Gottfried*, 163 Ohio St. 469, 470 (1955).

Acts of refusal by municipal officers or boards which are in derogation of the powers vested in such officers or boards, ordinarily present sufficient grounds for mandamus. The

statutes and ordinances from which such powers are derived will be strictly construed. *State, ex rel. Gulf Refining Co. v. DeFrance*, 89 Ohio App. 1, 45 Ohio Ops. 315, 100 N.E.2d 689 (1950).

Some acts in excess of legally vested authority arise from abuses of discretion. An important case in this area is *State, ex rel. The Killeen Realty Co. v. City of East Cleveland*, 169 Ohio St. 375, 160 N.E.2d 1 (1959) where although relator's land was zoned for apartment use, it was surrounded on three sides by commercial-retail zones and on the fourth by a railroad track. The only means of ingress and egress for the proposed shopping center was over another's land. The court found that by failing to grant relator's permit, his land could not be economically utilized in relation to the surrounding development.

In *Killeen*, mandamus compelled the permit to be issued because, under the particular circumstances, the refusal was an abuse of discretion. Such abuse may be found where municipal officials exercise their legislative function in an arbitrary, unreasonable and unlawful manner, for such acts bear no reasonable relation to the exercise of delegated powers. *Schlagheck v. Winterfeld*, 108 Ohio App. 299, 9 Ohio Ops.2d 277, 161 N. E.2d 498 (1958). *See also* 55 C. J. S., Mandamus at Sec. 156.

Here, all the appellate courts in the State of Ohio were given clear directives by the Ohio Supreme Court. In its *Guidance to Local Courts regarding the COVID-19 Public Health Emergency*, issued on March 30, 2020, the Ohio Supreme Court instructed that “it is imperative that the judiciary, the bar, and all justice system partners work together to ensure access to the courts while also minimizing COVID-19 transmission to the public, litigants, bar, and court staff,” while specifically recommending that Ohio courts “[l]everage technology, such as video conferencing, web-based meeting platforms, and telephone.”

Somehow, every appellate district within the State of Ohio, *sans* one, was able to interpret the message and opted to, at a minimum, give litigants a chance to be afforded oral argument if they so chose and notified the court in the manner prescribed. Incredibly, the OAG excuses the decision of the Fifth District to not even set up a 30-minute telephone conference between a 3-person panel and two lawyers on the grounds “there is no one solution that will be appropriate for every court...[t]hus, the Fifth District issued the most appropriate solution for the unique needs of its District.”

Not since the denial of the Holocaust has revisionist history been so blatant. The “unique needs” of the citizens of the Fifth District appear to relegate them to be the only people in the state to lose their due process rights. What are those unique needs, by the way? They are nowhere to be found in the writings of the Court of Appeals or the briefs of the OAG. Are Fifth Districtians, unlike other human beings, somehow susceptible to contracting the coronavirus over the telephone or via an Internet connection? Are they so impoverished that not only can they not afford a ride to the Court of Appeals, they cannot even borrow a cell phone from one their grandchildren?

Frankly, the members of the OAG’s office have no idea what the “unique needs” of the residents of the Fifth District are, or for that matter, whether such special needs even exist. More importantly, they have no clue whether the members of the local Court of Appeals ever discussed these “needs” or simply chose to eliminate oral argument for reasons having nothing to do with their constituents.

D. Relator’s Request for a Writ of Prohibition is appropriate.

Relator meets all three tests required for issuance of a writ of prohibition because the Fifth District is about to exercise judicial power that is not authorized by law. Such is the case

because the unilateral denial of oral argument is not permitted by the Appellate Rules, the Local Rules, or the Emergency COVID-19 Order of the Ohio Supreme Court. The denial of Relator's application for prohibition would also result in irreparable harm because Relator's case is to be submitted to the Court of Appeals on May 12, 2020, after which there is no mechanism to have it withdrawn from the Fifth District's consideration. Any appeal after an opinion is issued is discretionary at best, with no guarantee would ever be taken up by the Ohio Supreme Court.

- E. The Ohio Supreme Court has proper subject matter jurisdiction over Relator's constitutional claims.

Finally, Respondents suggest the Supreme Court lacks jurisdiction over Relator's constitutional claims because the Court's original jurisdiction is supposedly limited to writs of various types, admission to the practice of law, and attorney discipline. The undersigned believes the Ohio Supreme Court would be surprised to learn it is devoid of jurisdiction anytime a writ is intertwined with a constitutional issue.

For instance, Relator finds it hard to fathom that his writ to be released from the Stark County Jail and/or be given a trial after spending three years there, without bail, over a parking violation, would be summarily dismissed by the Ohio Supreme Court because it involves speedy trial and due process issues. Similarly, Relator would find it equally astonishing that his writ of prohibition precluding the Fifth District Court of Appeals from sentencing him to life imprisonment over a speeding ticket would be summarily dismissed because it involves "cruel and unusual punishment" under the 8th Amendment.

IV. CONCLUSION

For all of the foregoing reasons, Relator respectfully requests that his Writ of Prohibition and Writ of Mandamus directed at the Fifth District Court of Appeals and the Clerk's Office of the Stark County Court of Common Pleas **BE GRANTED.**

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing ***Reply Brief of Relator to Respondent Fifth District Court of Appeals' Motion to Dismiss Actions in Mandamus and Prohibition*** was sent via Electronic and Regular U.S. Mail this 8th day of May, 2020, to:

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ENTERED
MAY 01 2020

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: ADMINISTRATIVE ORDER
REGARDING THE OPERATION OF
THE COURT DURING THE COVID-
19 PUBLIC HEALTH EMERGENCY

CASE NO. M20-00005

JOURNAL ENTRY

In response to the COVID-19 public health emergency, on March 9, 2020, Ohio Governor Mike DeWine issued executive order 2020-01D. Since the time of that initial order, Governor DeWine has issued several subsequent orders which modify or change some of the conditions of emergency response.

In accordance with the directives of the Governor's orders, the Court orders as follows:

1. The First District Court of Appeals shall continue to conduct business.
2. The Court hereby vacates its order of March 19, 2020, regarding the changes to its operations.
3. All cases previously scheduled for oral argument through May 20, 2020, have been submitted on briefs only or have had the scheduled oral argument vacated and rescheduled.
4. Beginning on May 26, 2020, the Court will resume the hearing of live oral arguments. The arguments will be conducted in accordance with the guidelines for general office environments set forth by the Ohio Department of Health.

To The Clerk:

Enter upon the Journal of the Court on MAY 01 2020 per order of the Court.

By: RJ Mock
Presiding Judge



D128684065

EXHIBIT #1



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As part of its effort to minimize the spread of COVID-19, the Second District Court of Appeals is conducting its oral arguments by telephone.

Members of the public interested in listening to an argument in real time may do so by contacting the court at OhioSecondDistrict@mcohio.org at least 24 hours in advance of the argument to obtain dial-in instructions.

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Ohio Second District
Court of Appeals

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Ohio Third District Court of Appeals

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News

Effective 4/6/2020

**SPECIAL NOTICE PURSUANT TO THE RECENT ORDERS OF GOVERNOR
DEWINE AND THE CHIEF JUSTICE:**

- 1) The Third District Court of Appeals remain in operation during regular business hours, with essential staff on site, and with other precautions in place, such as being temporarily closed to the public, in the interests of the health and safety of Court staff and the public.
- 2) The Court is directing all appellate counsel to proceed on the basis that all regular filing deadlines remain intact, subject to the normal practice of contacting the Court directly by phone, or filing a motion with the proper Clerk of Courts on a case-by-case basis, regarding the need for any extensions or continuances.
- 3) Cases that are set for hearing through April and May are currently being scheduled with consent of counsel for submission for written decision of the Court on the record and the briefs without oral argument. For the time being, requests for oral argument

are being honored with the understanding that those cases will be postponed indefinitely until further notice.

4) However, in order to proceed with all cases in a timely manner and maintain the interests of public health and safety, a decision may be made by the Court at any time to order submission of any pending case to the Court on the record and the briefs for decision without oral argument, or to utilize alternate means such as phone or video hearings, depending on the urgency of circumstances in a given case, any applicable statutory mandates to expedite certain cases, prevailing public health circumstances in the State and/or any additional Orders from the Governor and the Chief Justice.

FOURTH DISTRICT COURT OF APPEALS CASE ASSIGNMENTS

Presiding Judge Jason P. Smith
Administrative Judge Michael D. Hess
Judge Peter B. Abele

Cases **submitted on the briefs** are listed in the **first** table below and are assigned to a panel throughout the month.

Cases **scheduled for oral argument** are listed in the **second** table below and the parties and/or counsel have been notified by Magistrate's Order.

Arguments begin promptly at **9:30 a.m.**, unless otherwise noted. Panels and/or hearing dates are subject to change.

Information concerning oral argument location is listed underneath the oral argument scheduling table.

Questions or concerns should be directed to the Court.

CASES SUBMITTED ON BRIEFS

COUNTY	CASE NUMBER	CASENAME	ASSIGNMENT DATE	PANEL
ADAMS				
Adams	19CA1104	State v. Conn	February 24, 2020	Abele, Hess, Smith
Adams	19CA1105	State v. Jordan	March 30, 2020	Abele, Hess, Smith
ATHENS				
Athens	18CA7	State v. Jackson	December 9, 2019	Abele, Hess, Smith
GALLIA				
Gallia	19CA4	State v. McCoy	November 18, 2019	Abele, Hess, Smith
Gallia	19CA7	Zweifel v. Myers	December 23, 2019	Abele, Hess, Smith
HIGHLAND				
Highland	19CA15	PCA Acquisitions V LLC v. Parson	November 4, 2019	Abele, Hess, Smith

HOCKING				
JACKSON				
LAWRENCE				
Lawrence	19CA6 & 19CA7	State v. Jenkins	October 14, 2019	Abele, Hess, Smith
Lawrence	19CA25 & 19CA26	In the Mtr of: The Adoption of: C.B.B.B. & R.B.M.B. (PROIRITY)	April 27, 2020	Abele, Hess, Smith
MEIGS				
Meigs	19CA9	State v. McClure	February 10, 2020	Abele, Hess, Smith
PICKAWAY				
Pickaway	19CA15	State v. Greeno	September 30, 2019	Abele, Hess, Smith
Pickaway	19CA18	Billman v. Smith, Warden	September 30, 2019	Abele, Hess, Smith
PIKE				
Pike	19CA900	State v. Martin	April 27, 2020	Abele, Hess, Smith
Pike	19CA902	In the Matter of: I.W. & A.W. (PRIORITY)	March 24, 2020	Abele, Hess, Smith
ROSS				
Ross	19CA3683	State v. Campbell	November 4, 2019	Abele, Hess, Smith
Ross	19CA3693	In the Matter of: Z.C.	March 30, 2020	Abele, Hess, Smith
SCIOTO				
Scioto	19CA3866	State v. Trout	October 28, 2019	Abele, Hess, Smith
Scioto	19CA3868	State v. Powers	October 28, 2019	Abele, Hess, Smith
Scioto	19CA3871	State v. Anderson	November 18, 2019	Abele, Hess, Smith
Scioto	19CA3883	Auto Now Acceptance Co. v. Brickey	February 10, 2020	Abele, Hess, Smith
Scioto	19CA3897	In the Mtr of: B.M., K.M., B.M. PRIORITY	January 13, 2020	Abele, Hess, Smith
VINTON				
WASHINGTON				
Washington	19CA9	State v. Macintyre	February 24, 2019	Abele, Hess, Smith

2020 ORAL ARGUMENT SCHEDULE

DATE	COUNTY/LOCATION	CASE COUNTY/NUMBER/NAME	PANEL
March 5	Athens Court of Appeals Courtroom	Hocking 19CA8 – Brand v. Ogle Washington 19CA14 – State v. McPherson Washington 19CA20 Clough v. Watkins	Abele, Hess, Smith
✓ March 12	Adams/Highland Common Pleas Courtroom #1	✓ CANCELLED	
✓ March 19	Scioto Common Pleas Courtroom	✓ CANCELLED	
✓ March 26	Pickaway Common Pleas Courtroom	✓ CANCELLED	
✓ April 2	Ross Common Pleas Courtroom #1	✓ CANCELLED	
April 9	Vinton/Hocking Common Pleas Courtroom		
April 16	Lawrence Common Pleas Courtroom		
April 30	Washington Common Pleas Courtroom		
May 7	Ross Common Pleas Courtroom #1		
May 14	Athens Common Pleas Courtroom		
May 21	Meigs/Gallia Court of Appeals Courtroom		
June 4	Scioto Common Pleas Courtroom		
June 11	Jackson/Pike Common Pleas Courtroom		
June 25	Ross Common Pleas Courtroom #1		
July 9	Athens Common Pleas Courtroom		
July 16	Scioto		

	Court of Appeals Courtroom		
July 30	Hocking/Vinton Common Pleas Courtroom		
August 13	Lawrence Common Pleas Courtroom		
August 20	Gallia/Meigs Common Pleas Courtroom		
Sept 3	Washington Common Pleas Courtroom		
Sept 17	Highland/Adams Common Pleas Courtroom		
Oct 1	Athens Common Pleas Courtroom		
Oct 8	Pike Common Pleas Courtroom		
Oct 15	Pickaway Common Pleas Courtroom		
Nov 5	Ross Common Pleas Courtroom #1		
Nov 12	Scioto Court of Appeals Courtroom		

ORAL ARGUMENT HEARING LOCATIONS

Adams County Common Pleas Courtroom
Adams County Courthouse
110 West Main Street
West Union, Ohio 45693

Athens County Common Pleas Courtroom
Athens County Courthouse
1 South Court Street
Athens, Ohio 45701

Gallia County Common Pleas Courtroom
Gallia County Courthouse
18 Locust Street
Gallipolis, Ohio 45631

Highland County Common Pleas Courtroom
Highland County Courthouse
105 North High Street
Hillsboro, Ohio 45133

Hocking County Common Pleas Courtroom
Hocking County Courthouse
1 East Main Street
Logan, Ohio 43138

Jackson County Common Pleas Courtroom
Jackson County Courthouse
226 East Main Street
Jackson, Ohio 45640

Lawrence County Common Pleas Courtroom
Lawrence County Courthouse
111 South 4th Street
Ironton, Ohio 45638

Meigs County Common Pleas Courtroom
Meigs County Courthouse
100 Second Street
Pomeroy, Ohio 45769

Pickaway County Common Pleas Courtroom
Pickaway County Courthouse
207 South Court Street, 2nd Floor
Circleville, Ohio 43113

Pike County Common Pleas Courtroom
Pike County Courthouse
100 East Second Street
Waverly, Ohio 45690

Ross County Common Pleas Courtroom #1
Ross County Courthouse
2 North Paint Street
Chillicothe, Ohio 45601

Scioto County Court of Appeals Courtroom
Scioto County Courthouse
602 7th Street, 3rd Floor
Portsmouth, Ohio 45662

Vinton County Common Pleas Courtroom
Vinton County Courthouse
100 East Main Street
McArthur, Ohio 45651

Washington County Common Pleas Courtroom
Washington County Courthouse
205 Putnam Street
Marietta, Ohio 45750

FILED
COURT OF APPEALS

MAR 18 2020

GARY A. KOHLI, CLERK OF COURTS
OTTAWA COUNTY, OHIO
RECORDED AND JOURNALIZED

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT

DECISION AND JUDGMENT

Decided: MAR 18 2020

* * * * *

**ORDER IN RESPONSE TO THE COVID-19
(CORONAVIRUS) PUBLIC HEALTH CRISIS**

In response to the Governor Mike DeWine's Executive Order 2020-01D Declaring a State of Emergency regarding the COVID-19 public health emergency, on March 17, 2020, the Sixth District Court of Appeals filed a "Temporary Order in Response to COVID-19 (Coronavirus) Public Health Crisis." Pursuant to that Temporary Order, the Court orders as follows:

1. The Sixth District Court of Appeals shall continue its normal business hours and daily operations conducting court business.

2. Effective March 18, 2020, through April 22, 2020, all oral arguments previously scheduled are converted to non-oral submissions and the Judges will decide cases on the briefs only. There will be no oral argument unless leave is granted.

3. The Court will continue to schedule non-oral submissions of case after April 22, 2020, until further notice. The Judges will decide cases on the briefs only. There will be no oral argument unless leave is granted.

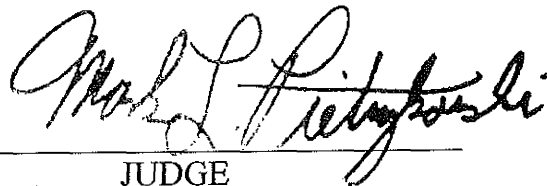
4. Pursuant to motion, the Court may grant leave, for good cause shown, to hold oral argument on a case. Such oral argument may be conducted pursuant to alternative oral argument arrangements as determined appropriate by the Court. Leave will be determined on a case by case basis. If granted leave, the parties shall contact the Court Administrator for further instructions regarding alternative oral argument arrangements.

5. The Court also suspends all in-person mediations. The Court will continue to schedule mediations. However, until further notice, all mediations will be conducted via telephone or video conferencing.

6. Local Rules may be amended and modified pursuant to Ohio Appellate Rule

41(B) as necessary to effectuate this entry.

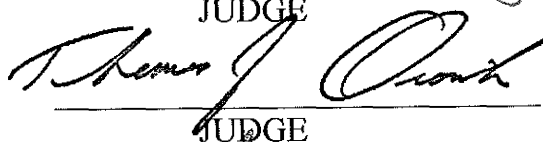
Mark L. Pietrykowski, J.


JUDGE

Arlene Singer, J.


JUDGE

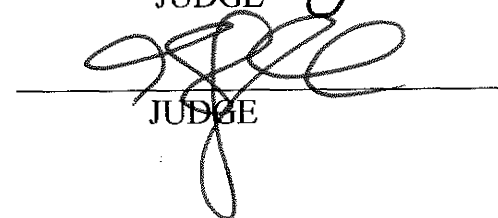
Thomas J. Osowik, J.


JUDGE

Christine E. Mayle, J.


JUDGE

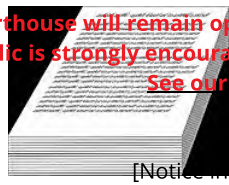
Gene A. Zmuda, P.J.
CONCUR.


JUDGE

Effective immediately, the Seventh District Court of Appeals is instituting emergency measures due to the Covid-19 coronavirus crisis.

Oral arguments scheduled for April and May 2020 are canceled and will be rescheduled, unless oral argument has been waived.

Our courthouse will remain open if possible, but walk-in public contact will be limited to the outer foyer public is strongly encouraged to call us for information and to file by mail or by electronic filing.



See our Emergency Order [HERE](#) and Amendment1 [HERE](#) and Amendment2 [HERE](#) and Amendment3 [HERE](#)

HAS AN OPINION BEEN ISSUED?
 If you'd like to know whether an opinion has been issued you can either contact the clerk of courts in the respective county and/or obtain a copy at the Supreme Court's website.

[Notice in response to Ohio Supreme Court order 2020-Ohio-1166]

YOU DO NOT NEED TO FILE YOUR NOTICE OF APPEAL OR BRIEF AT THIS TIME, although you may voluntarily file any document if you are able. All filing deadlines have been "tolled" until the date the period of emergency ends or July 30, 2020, whichever is sooner, or unless we issue an order requiring immediate attention, pursuant to order of the Chief Justice of the Supreme Court of Ohio. The tolling period is retroactive to March 9, 2020.

Seventh District Court of Appeals
 130 West Federal Street
 Youngstown, Ohio 44503

JUDGES
 Judge Gene Donomio
 Judge Cheryl L. Griffin
 Judge Carol Ann Robb

CLERK OF COURTS
 Belmont
 Carroll
 Columbiana
 Harrison
 Jefferson
 Mahoning
 Monroe
 Noble

From court line 330-740-2180 is not answering during normal working hours (8 am - 4 pm Monday through Friday) call 330-787-8004 as an alternate number

Telephone: (330)-740-2180
 Facsimile: (330)-740-2181

email: seventhdistrictco@ohio.gov



Disclaimer: The material published on this website shall not be held liable for damages of any kind concerning the material.

The information on this website is accurate and current. The Court makes no warranties or guarantees of any kind.



WELCOME

Welcome to the Seventh District Court of Appeals website. The Seventh District Court of Appeals is one of twelve appellate districts in the State of Ohio. The Court has jurisdiction over 8 counties within the State of Ohio (Belmont, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Monroe and Noble).

The Court consists of four judges who are all elected by popular vote, serving terms of six years. Each case on appeal is reviewed by a panel of 3 judges, one of whom is randomly assigned to write a decision after reviewing the record and the briefs filed in the case. The decision, once released, can be appealed further to the Ohio Supreme Court.

This Court and its personnel are committed to serving the citizens in our jurisdiction.

On our website, you will be able to learn about our Court and its Judges, search cases, review and retrieve our rules and forms, etc.



10th District Court of Appeals for the State of Ohio

(/Home)



DOCKET
(/docket)

OPINIONS
(<http://www.supremecourt.ohio.gov/rod/docs/details?source=10/Opinions>)

PANELS

Notices

The Tenth District Court of Appeals continues to serve the people of Franklin County during this COVID-19 public health emergency.

The judges are continuing to consider and decide cases.

The judges are available to address cases requiring immediate attention.

In consideration of the Governor's declaration of public health emergency, in order to protect our staff's health and yours, we have temporarily modified our on-site and in-court operations as noted below:

If you have questions or require assistance, please call our office

(mailto:cjsgalla@franklincountyohio.gov).

Many of our staff are conducting work remotely, but we will be available to get back to you and address your questions.

If you require in-person assistance, please observe guidance from the CDC and consider contacting the court by phone or email:

- if you are sick;
- have been exposed to family/acquaintances who have been sick;
- or recently have been travelling internationally.

We will be glad to assist you by telephone or email.

All oral arguments have been converted to non-oral submissions on a date certain ("submission date"). Now cases will be decided on the written briefs only, unless a party requests oral argument. Requests shall be made at least 10 days prior to the submission date. If timely requested, the oral argument will be held on the previously scheduled submission date of the case. Oral arguments will be conducted telephonically. Parties will be notified by the court with instructions on how to participate. When oral argument is scheduled, information regarding how the public and the media can listen-in will be posted on the **Docket** (<https://tenthdistrictcourt.org/docket>) page of this website. See **Journal Entry 20AP-01 (/CTAP-website/media/Documents/PDF/20AP-01-amended-4-16-2020.pdf)** (Apr. 16, 2020) and **Journal Entry 20AP-01 (/CTAP-website/media/Documents/PDF/20AP-1-3-16.pdf)** (Mar. 16, 2020).

If you have a case that requires **IMMEDIATE ATTENTION** please contact 614-525-3580 or Court Administrator **Doug Eaton** (<mailto:dweaton@franklincountyohio.gov>) or **Cindy Sgalla** (<mailto:cjsgalla@franklincountyohio.gov>) for further guidance.

Otherwise, for now, YOU DO NOT NEED TO FILE YOUR NOTICE OF APPEAL OR BRIEF AT THIS TIME. All filing deadlines have been

of the Supreme Court of Ohio ([http://www.supremecourt.ohio.gov/STATE-website/media/Documents/PDF/Supreme-Court-of-Ohio-COVID-19-\(Tolling-Order\).pdf](http://www.supremecourt.ohio.gov/STATE-website/media/Documents/PDF/Supreme-Court-of-Ohio-COVID-19-(Tolling-Order).pdf)), or unless this Court determines the case requires immediate attention. Please note the tolling order does not prohibit the parties from filing notices of appeal or briefs. Please contact 614-525-3580 or **Doug Eaton** (<mailto:dweaton@franklincountyohio.gov>) and **Cindy Sgalla** (<mailto:cjsgalla@franklincountyohio.gov>) for further information. For frequently asked questions about this order, please click **here** (<http://www.supremecourt.ohio.gov/tolling/default.asp>).

"Tolling Order - Frequently Asked Questions (<http://www.supremecourt.ohio.gov/tolling/default.asp>)"

published by the Supreme Court of Ohio states: "Tolling serves to effectively freeze time from the date the tolling begins, which is March 9, 2020, until the expiration of the order." The Supreme Court further explains "[h]ow tolling applies is fact dependent, [and] tolling simply pauses the time requirements." Please see **"Tolling Order - Frequently Asked Questions** (<http://www.supremecourt.ohio.gov/tolling/default.asp>)" for examples of how tolling applies.

Individuals, law firms, or other entities wishing to be added to the 10th District's email list for general notices, proposed rules changes, and other general matters may submit a request by email to **Kristie Frank** (<mailto:kdfrank@franklincountyohio.gov>? **subject=10th%20District%20Email%20List%20Request**).

Please do all you can to keep you and your families healthy and to prevent the spread of COVID-19.

<https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>

(<https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>)

The Courts of Appeals of Ohio are located within twelve distinct jurisdictional districts throughout the state. Though most of these districts encompass multiple counties, the jurisdictional boundary of the Tenth District Court of Appeals encompasses only Franklin County.



8 ELECTED JUDGES

3 JUDGE PANEL

The Court hears appeals from all divisions of the Franklin County Court of Common Pleas, the Franklin County Municipal Court, the Ohio Court of Claims, and numerous state agencies. The Tenth District Court of Appeals also has original jurisdiction over the extraordinary writs of Mandamus, Habeas Corpus, Procedendo, Prohibition, and Quo Warranto.

COURTHOUSE

373 S High St - 24th Floor

Columbus, OH 43215

View Map (<https://www.google.com/maps?ll=39.95365,-82.999537&z=16&t=m&hl=en-US&gl=US&mapclient=embed&q=373+S+High+St+Columbus,+OH+43215>)

PHONE

(614) 525-3580

FAX (614) 525-7249



(<https://get.adobe.com/reader/>)

LINKS

Ohio Supreme Court (<http://www.supremecourt.ohio.gov/>)

Franklin County Clerk of Courts (<https://Clerk.FranklinCountyOhio.gov>)

Franklin County Court of Common Pleas (<https://www.fccourts.org/>)

Franklin County (<https://www.franklincountyohio.gov/>)

STATE OF OHIO)
)SS.
COUNTY OF PORTAGE)

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

2020MS00028

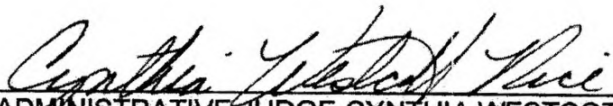
IN RE:
ORDER REGARDING OPERATIONS
OF THE COURT DUE TO COVID-19
PANDEMIC

JUDGMENT ENTRY



The Eleventh District Court of Appeals has been working diligently on COVID-19 planning as it relates to our court operations. Over the past week, significant developments have occurred, such as Governor DeWine declaring a state of emergency and the first identified cases of community spread COVID-19 occurring in the district. As your elected judges, we are taking steps to help the courts and the general public during these challenging times.

The court has cancelled all appellate oral arguments through April and will consider all cases scheduled through April as submitted on the briefs. If there is an objection to this cancellation of oral argument, the case will be rescheduled to the week of June 8, 2020. At the end of April, we will reassess the circumstances and the Governor's recommendations and determine if that date will be extended. Please access the court's website www.11thcourt.co.trumbull.oh.us for further updates. Our court is fully functioning and will address all cases and filings as we would under normal circumstances.


ADMINISTRATIVE JUDGE CYNTHIA WESTCOTT RICE
FOR THE COURT

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO

: ORDER DETAILING COURT
: OPERATIONS DURING COVID-19
: PUBLIC HEALTH EMERGENCY

:

:

The Twelfth District Court of Appeals will continue to serve the citizens of Butler, Brown, Clinton, Clermont, Madison, Fayette, Preble and Warren counties during the COVID-19 public health emergency. The court will remain open for business and the judges will continue to consider and decide cases. The court is available to address emergency situations as necessary.

Consistent with the orders of Governor DeWine and the tolling order filed by Ohio Supreme Court Chief Justice O'Connor on March 27, 2020, the court will take all steps necessary to insure the health and safety of the public, litigants, attorneys, judges and court staff, including but not limited to the following:

1. The 12th District Courthouse is temporarily closed to the public, but will remain open and staffed as necessary to conduct the business of the court.
2. All mediations will be conducted remotely to limit physical contact while allowing parties to continue to use the court's mediation program;
3. Briefs and motions, as always, must be filed with the clerk of the appropriate county court of appeals. Clerks will continue to deliver filings to the court;
4. All cases currently scheduled for oral argument will be submitted to the court for decision on the briefs unless, pursuant to motion, oral argument is granted;

5. Many questions can be answered by visiting the court's website. The court is also available by telephone at (513) 425-6609;
6. Questions regarding the operation of the offices of the 12th District clerks of court should be directed to the office of the clerk of the court of appeals of the particular county.

Although filing deadlines have been "tolled" until this period of emergency ends or July 30, 2020 pursuant to orders of the Ohio legislature and the Chief Justice, the court will continue to decide cases that are fully briefed and ready to be submitted, and continue to issue scheduling orders and handle cases as usual as far as possible. Parties may move for extensions of time based on the tolling orders; the court will strive to uniformly apply the language and intent of the tolling orders and any other applicable orders or directives which may be in effect now or in the future as a result of the COVID-19 public health crisis.

IT IS SO ORDERED.



Mike Powell, Administrative Judge