

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

October 14, 2009

[Cite as *10/14/2009 Case Announcements, 2009-Ohio-5340.*]

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## MERIT DECISIONS WITH OPINIONS

**2005-0422. Columbus Bar Assn. v. Am. Family Prepaid Legal Corp., Slip Opinion No. 2009-Ohio-5336.**

On Final Report by the Board on the Unauthorized Practice of Law, Nos. UPL 02-10 and UPL 05-02. American Family Prepaid Legal Corporation, Heritage Marketing and Insurance Services, Inc., Jeffrey Norman, Stanley Norman, Paul Chiles, Harold Miller, Eric Peterson, Luther Mack Gordon, Chris Miller, Patty Soos, Anthony Sullivan, Jeff Alten, William Downs, Steve Grote, Jack Riblett, Ken Royer, Dennis Quilan, Alexander Scholp, Jerrold Smith, Joseph Ehlinger, Paul Morrison, David Helbert, and Richard Rompala and their successors, assigns, subsidiaries, and affiliates, and Joseph Hamel, Timothy Holmes, Adam Hyers, and Timothy Clouse are enjoined from acts constituting the practice of law in Ohio, and civil penalties are imposed.

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

## MERIT DECISIONS WITHOUT OPINIONS

**2009-1409. [State ex rel.] Wheeler v. Connor.**

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.

**2009-1570. Black v. Beightler.**

In Habeas Corpus. On petition for writ of habeas corpus of James D. Black and petitioner's motions to supplement petition for habeas corpus and for summary judgment. Sua sponte, cause dismissed. Motions to supplement petition and for summary judgment denied as moot.

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

**2009-1586. Lathan v. Duffey.**

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

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

**MOTION AND PROCEDURAL RULINGS**

**2007-2327. State v. Martin.**

Cuyahoga App. No. 89030, 2007-Ohio-6062. On motion for leave to vacate judgment for lack of final, appealable order. Motion denied.

**2008-1822. Stammco, L.L.C. v. United Tel. Co. of Ohio.**

Fulton App. No. F-07-024, 2008-Ohio-3845. On motion for admission pro hac vice of Stephen Gardner by Ronald L. Burdge. Motion granted.

**2008-2502. State v. Bodyke.**

Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387. On motion for admission pro hac vice of David M. Lieberman by Alexandra T. Schimmer. Motion granted.

**2009-0189. In re Adrian R.**

Licking App. No. 08-CA-17, 2008-Ohio-6581. On motion to dismiss appeal as improvidently allowed. Motion denied.

O'Donnell and Cupp, JJ., dissent.

**2009-0605. State v. Prade.**

Summit App. No. 24296, 2009-Ohio-704. On motion for admission pro hac vice of Michele Hirshman by David Booth Alden. Motion granted.

O'Connor, J., not participating.

**2009-0892. State ex rel. Lohn v. Medina Cty. Bd. of Cty. Commrs.**

In Mandamus. On answer of respondent. Sua sponte, an alternative writ is granted and the following schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. X:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relator shall file a brief within ten days of the filing of the evidence; respondents shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within seven days after filing of respondents' brief.

**2009-1369. Scott v. Houk.**

Certified Question of State Law, United States District Court, Northern District of Ohio, Eastern Division, No. 4:07-CV-0753. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following question:

“Is there a post-conviction or other forum to litigate the issue of whether Ohio's lethal injection protocol is constitutional under *Baze v. Rees*, 533 U.S. \_\_\_, 128 S.Ct. 1520 (2008), or under Ohio law?”

Motion to strike district court order denied as moot. Petitioner shall file a merit brief within 40 days of the date of this entry and the parties shall otherwise proceed in accordance with S.Ct.Prac.R. VI and S.Ct.Prac.R. XVIII(7).

**2009-1530. State v. McQueen.**

Cuyahoga App. No. 91370, 2009-Ohio-1085. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2009-1532. State v. Infante.**

Cuyahoga App. No. 91782, 2009-Ohio-2585. On motion for leave to file delayed appeal. Motion denied.

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

**2009-1546. Smith v. Inland Paperboard & Packaging, Inc.**

Portage App. No. 2008-P-0072, 2009-Ohio-3148. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2008-0857, *Kaminski v. Metal & Wire Prods. Co.*, Columbiana App. No. 07-CO-15, 175 Ohio App.3d 227, 2008-Ohio-1521; cause consolidated with 2009-1471, *Smith v. Inland Paperboard & Packaging, Inc.*, Portage App. No. 2008-P-0072, 2009-Ohio-3148; and briefing schedule stayed.

**2009-1549. State v. Ball.**

Franklin App. No. 07AP-818, 2008-Ohio-2648. On motion for leave to file delayed appeal. Motion denied.

**2009-1551. State v. Ware.**

Cuyahoga App. No. 90051, 2008-Ohio-2788. On motion for leave to file delayed appeal. Motion denied.

**2009-1556. State v. J.G.**

Franklin App. Nos. 08AP-921 and 08AP-972, 2009-Ohio-2857. On motion for leave to file delayed appeal. Motion granted. Motion to supplement the record denied as moot.

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

**2009-1566. State v. Edwards.**

Lucas App. No. L-06-1345, 2008-Ohio-4029. On motion for leave to file delayed appeal. Motion denied.

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

**2009-1574. State v. Flowers.**

Stark App. No. 2009CA00054. On motion for leave to file delayed appeal. Motion denied.

**2009-1576. State v. Conkel.**

Franklin App. No. 08AP-845, 2009-Ohio-2852. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**2009-1577. State v. McGrath.**

Cuyahoga App. No. 92971. On motion for leave to file delayed appeal. Motion denied.

**2009-1579. State v. McGrath.**

Cuyahoga App. No. 93110. On motion for leave to file delayed appeal. Motion denied.

**2009-1587. State v. Hicks.**

Montgomery App. No. 22786, 2009-Ohio-2740. On motion for leave to file delayed appeal. Motion denied.

**2009-1591. State v. Majid.**

Cuyahoga App. No. 90491, 2009-Ohio-3075. On motion for stay pending jurisdictional determination. Motion denied.

**2009-1611. State v. Barnes.**

Clermont App. No. CA2008-10-090, 2009-Ohio-3684. On motion to stay execution of sentence pending appeal. Motion denied.

Moyer, C.J., and Cupp, J., dissent.

**2009-1633. In re Kafantaris.**

Columbiana App. No. 07-CO-28, 2009-Ohio-4814. On motion for stay of execution pending appeal. Motion denied.

Cupp, J., dissents.

**2009-1682. Naples v. State.**

Trumbull App. No. 2008-T-0092, 2009-Ohio-3938. On motion for stay. Motion granted.

Pfeifer and O'Donnell, JJ., dissent.

**APPEALS ACCEPTED FOR REVIEW**

**2009-1213. Spangler v. State.**

Lake App. No. 2008-L-062, 2009-Ohio-3178. Discretionary appeal accepted; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed.

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

**2009-1227. State v. Franklin.**

Franklin App. No. 08AP-900, 2009-Ohio-2664. Discretionary appeal accepted on Proposition of Law Nos. I and II; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed.

Pfeifer, Lundberg Stratton, and O'Donnell, JJ., would also accept the appeal on Proposition of Law No. III.

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

**2009-1282. Zanesville v. Rouse.**

Muskingum App. No. CT08-0035, 2009-Ohio-2689.

Pfeifer and O'Donnell, JJ., dissent.

**2009-1290. State v. Ettenger.**

Lake App. No. 2008-L-054, 2009-Ohio-3525. Discretionary appeal accepted; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed.

**2009-1302. State v. Hammond.**

Hamilton App. No. C-080394. Discretionary appeal accepted; cause held for the decision in 2008-2037, *State v. Williams*, Cuyahoga App. No. 89726, 2008-Ohio-5149 and 2008-Ohio-5286; and briefing schedule stayed.

Pfeifer, J., dissents.

**2009-1332. State v. Sawyer.**

Hamilton App. No. C-080433, 2009-Ohio-3097. Discretionary appeal accepted; cause held for the decision in 2008-2133 and 2008-2228, *State v. Underwood*, Montgomery App. No. 22454, 2008-Ohio-4748; and briefing schedule stayed.

Pfeifer, J., dissents.

**2009-1414. State v. Luna.**

Cuyahoga App. No. 91271, 2009-Ohio-2712. Discretionary appeal accepted; cause held for the decision in 2008-0711 and 2008-1005, *State v. Joseph*, Allen App. No. 1-07-50, 2008-Ohio-1138; and briefing schedule stayed.

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

**2009-1471. Smith v. Inland Paperboard & Packaging, Inc.**

Portage App. No. 2008-P-0072, 2009-Ohio-3148. Discretionary appeal accepted on Proposition of Law No. II; cause held for the decision in 2008-0857, *Kaminski v. Metal & Wire Prods. Co.*, Columbiana App. No. 07-CO-15, 175 Ohio App.3d 227, 2008-Ohio-1521; cause consolidated with 2009-1546, *Smith v. Inland Paperboard & Packaging, Inc.*, Portage App. No. 2008-P-0072, 2009-Ohio-3148; and briefing schedule stayed.

Moyer, C.J., would also accept the appeal on Proposition of Law No. I without holding.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2009-1130. Rielinger v. Rielinger.**

Cuyahoga App. No. 90614, 2009-Ohio-1236.

**2009-1131. State v. Rogers.**

Cuyahoga App. No. 91380, 2009-Ohio-2252.

**2009-1139. State v. Echeverria.**

Lucas App. No. L-07-1321, 2009-Ohio-2285.

**2009-1165. State v. Haugabook.**

Hamilton App. No. C-080366.

**2009-1178. State v. North.**

Hamilton App. No. C-080322.

**2009-1180. State v. Bell.**

Clermont App. No. CA2008-05-044, 2009-Ohio-2335.

Lanzinger and Cupp, JJ., dissent and would accept the appeal on Proposition of Law No. X and hold the cause for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387.

**2009-1182. Bowers v. Craven.**

Summit App. No. 24422, 2009-Ohio-2222.

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

**2009-1188. State v. Hill.**

Muskingum App. No. CT09-0023.

**2009-1190. State v. Jackson.**

Cuyahoga App. No. 91613, 2009-Ohio-2388.

**2009-1200. Wagar v. Brinkman.**

Montgomery App. No. 23019, 2009-Ohio-2421.

**2009-1202. State v. Brunk.**

Warren App. No. CA2008-11-147.

**2009-1208. State v. Schwieterman.**

Mercer App. No. 10-08-17, 2009-Ohio-2304.

**2009-1215. Mathys v. Kuhlman.**

Ottawa App. No. OT-08-037, 2009-Ohio-2420. Discretionary appeal not accepted. Motions to strike notice of appeal and to dismiss the appeal denied as moot.

**2009-1217. Ohio Concrete Constr. Assn. v. Ohio Dept. of Transp.**

Franklin App. No. 08AP-905, 2009-Ohio-2400.

Moyer, C.J., dissents.

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

**2009-1218. Kern v. Mentor.**

Lake App. No. 2008-L-157, 2009-Ohio-2437.

**2009-1236. Mihelich v. Active Plumbing Supply Co.**

Cuyahoga App. No. 90965, 2009-Ohio-2248.

**2009-1238. State ex rel. Doe v. Register.**

Clermont App. No. CA2008-08-081, 2009-Ohio-2448.

**2009-1241. Citibank (S. Dakota), N.A. v. Eckmeyer.**

Portage App. No. 2008-P-0069, 2009-Ohio-2435.

**2009-1243. State v. Jeffries.**

Lake App. No. 2005-L-057, 2009-Ohio-2440.

**2009-1246. State v. Marrero.**

Lorain App. No. 08CA009467, 2009-Ohio-2430.

**2009-1247. Lindsey v. Summit Cty. Children Servs. Bd.**

Summit App. No. 24352, 2009-Ohio-2457.

**2009-1248. Dean v. Consol. Equities Realty #3, L.L.C.**

Hamilton App. No. C-080931, 2009-Ohio-2480.

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

**2009-1249. In re Estate of Buckner.**

Clermont App. No. CA2008-07-074, 2009-Ohio-2447.

**2009-1251. Rispo Invest. Co. v. Cleveland.**

Cuyahoga App. No. 91284, 2009-Ohio-2250.

Moyer, C.J., dissents.

**2009-1252. State v. Porter.**

Pickaway App. No. 08CA26, 2009-Ohio-3112.

Lundberg Stratton, O'Connor, and O'Donnell, JJ., dissent and would accept the appeal on Proposition of Law No. II and hold the cause for the decision in 2008-1255, *State v. Singleton*, Cuyahoga App. No. 90042, 2008-Ohio-2351.

**2009-1254. State v. Lieser.**

Stark App. No. 2008CA00202, 2009-Ohio-2502.

Lundberg Stratton, J., dissents.

**2009-1260. Hopper v. Elyria.**

Lorain App. No. 08CA009421, 2009-Ohio-2517.

Moyer, C.J., dissents.

**2009-1261. Segedy v. Cardiothoracic & Vascular Surgery of Akron, Inc.**

Summit App. No. 24219, 2009-Ohio-2460.

**2009-1262. Leiter v. Pentair Pump Group, Inc.**

Ashland App. No. 08-COA-032, 2009-Ohio-2528.

**2009-1264. Hollins v. Shaffer.**

Cuyahoga App. No. 91639, 182 Ohio App.3d 282, 2009-Ohio-2136. Discretionary appeal and cross-appeal not accepted.

O'Connor, J., not participating.

**2009-1270. State v. Mickens.**

Franklin App. Nos. 08AP-743, 08AP-744, and 08AP-745, 2009-Ohio-2554.

**2009-1272. State ex rel. Kolkowski v. Bd. of Commrs. of Lake Cty.**

Lake App. No. 2008-L-138, 2009-Ohio-2532.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law Nos. II and III.

**2009-1274. State v. Abbott.**

Warren App. No. CA2008-10-127.

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

**2009-1275. Blauvelt v. Hamilton.**

Butler App. No. CA2008-07-174, 2009-Ohio-2801.

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

**2009-1281. Kuhar v. Marc Glassman, Inc.**  
Cuyahoga App. No. 91989, 2009-Ohio-2379.

**2009-1285. State v. Fair.**  
Cuyahoga App. No. 84498, 2009-Ohio-2382.

**2009-1286. State v. Norris.**  
Cuyahoga App. No. 90896, 2009-Ohio-2372.

**2009-1289. State v. Tribble.**  
Mahoning App. No. 08 MA 145, 2009-Ohio-2651.

**2009-1305. State v. Levette.**  
Richland App. No. 2008CA109, 2009-Ohio-2864.

**2009-1307. In re Antwon C.**  
Hamilton App. No. C-080847, 182 Ohio App.3d 237, 2009-Ohio-2567.

**2009-1308. State v. Lake.**  
Columbiana App. No. 08 CO 26, 2009-Ohio-3057.  
O'Donnell, J., dissents.

**2009-1311. State v. McQueen.**  
Cuyahoga App. No. 92089, 2009-Ohio-2386.

**2009-1312. State v. Jones.**  
Franklin App. No. 09AP-550.

**2009-1316. State v. Rigdon.**  
Warren App. No. CA2008-10-130.

**2009-1319. JJAM Mgt., Inc. v. Lloyd's.**  
Cuyahoga App. No. 93010.

**2009-1320. Gilham v. Cambridge Home Health Care, Inc.**  
Stark App. No. 2008 CA 00211, 2009-Ohio-2842.

**2009-1327. State v. Wolff.**  
Mahoning App. No. 07 MA 166, 2009-Ohio-2897.

**2009-1334. State v. Powers.**

Warren App. No. CA2008-06-071, 2009-Ohio-2625.

**2009-1338. State v. Snider.**

Stark App. No. 2008 CA 00147, 2009-Ohio-3427. Discretionary appeal not accepted. Motion for copy of transcript denied as moot.

**2009-1339. State v. Meadows.**

Hamilton App. No. C-961045.

**2009-1340. State v. Husband.**

Franklin App. No. 08AP-917, 2009-Ohio-2900.

**2009-1345. State v. Matthews.**

Mahoning App. No. 08-MA-49, 2009-Ohio-3254.

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

**2009-1348. State v. Smith.**

Hamilton App. No. C-080607, 2009-Ohio-3258.

**2009-1352. State v. Jordan.**

Cuyahoga App. No. 91869, 2009-Ohio-3078.

**2009-1358. Avila v. Cincinnati.**

Hamilton App. No. C-080837, 2009-Ohio-2734.

**2009-1362. Walsh v. Mayfield.**

Cuyahoga App. No. 92309, 2009-Ohio-2377.

**2009-1365. State v. Franklin.**

Summit App. No. 22771.

**2009-1371. State v. Gibson.**

Butler App. No. CA2009-01-007.

**2009-1372. State v. Johnson.**

Mahoning App. No. 08-MA-118, 2009-Ohio-2959.

**2009-1374. State v. Johnson.**

Franklin App. No. 08AP-652, 2009-Ohio-3383.

**2009-1383. State v. Hudson.**

Cuyahoga App. No. 89588, 2009-Ohio-3069.

Moyer, C.J., dissents.

**2009-1389. Hartman v. Ohio Dept. of Transp.**

Franklin App. No. 08AP-599, 2009-Ohio-469.

**2009-1391. State v. Cook.**

Franklin App. Nos. 09AP-144 and 09AP-145, 2009-Ohio-2858.

**2009-1398. State v. Couch.**

Hamilton App. No. C-080636.

**2009-1399. State v. Patel.**

Summit App. No. 24645, 2009-Ohio-3184.

**2009-1401. State v. Parker.**

Stark App. No. 2008CA00223.

**2009-1402. State v. Miniffee.**

Cuyahoga App. No. 91017, 2009-Ohio-3089.

**2009-1404. State v. Degaro.**

Butler App. No. CA2008-09-227, 2009-Ohio-2966.

**2009-1411. State v. Braxton.**

Cuyahoga App. No. 91881, 2009-Ohio-2724.

**2009-1421. State v. Smith.**

Franklin App. No. 09AP-46, 2009-Ohio-3244.

**2009-1435. State v. Thomas.**

Lucas App. No. L-06-1331.

**2009-1514. State v. Strickland.**

Hamilton App. No. C-080120.

## RECONSIDERATION OF PRIOR DECISIONS

**2008-1248. Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision.**

Board of Tax Appeals, Nos. 2005-T-441 and 2005-T-443. Reported at 122 Ohio St.3d 447, 2009-Ohio-3479, 912 N.E.2d 560. On motions for reconsideration and for sanctions for frivolous action. Motions denied.

**2009-0099. State v. Jackson.**

Ashtabula App. No. 2007-A-0079, 2008-Ohio-6976. Reported at 122 Ohio St.3d 1235, 2009-Ohio-4087, 913 N.E.2d 453. On motion for reconsideration. Motion denied.