

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

October 23, 2025

[Cite as *10/23/2025 Case Announcements #2*, 2025-Ohio-4831.]

MERIT DECISIONS WITHOUT OPINIONS

2025-0882. State ex rel. Gray v. Toms.

In Mandamus. On respondent's motion to dismiss. Motion granted. Cause dismissed.

DeWine, Hawkins, and Shanahan, JJ., concur.

Brunner, J., concurs but would deny the motion as moot and sua sponte dismiss the cause for lack of prior affirmation.

Deters, J., concurs but would deny the motion and sua sponte dismiss the cause.

Kennedy, C.J., dissents, with an opinion.

Fischer, J., dissents and would grant an alternative writ.

KENNEDY, C.J., dissenting.

{¶ 1} In this mandamus action, relator, Gianni Gray, seeks an order compelling respondent, Darren Toms, Public Information Officer for the Cuyahoga County Court of Common Pleas, to produce documents related to grand juries empaneled (or not empaneled) in 2020. And if this court applied the plain terms of the Public Records Act, R.C. 149.43, the resolution of this case would be easy. Gray made his public-records request and brought his mandamus action after the enactment of 2024 Sub.H.B. No. 265 (effective Apr. 9, 2025). And R.C. 149.43(C)(2) now requires a party filing a mandamus action seeking the production of public records to include a written affirmation that he or she served the records request on the public-records custodian and allowed three days to pass before filing suit. If the relator “fails to

file [such] an affirmation . . . , the suit shall be dismissed.” *Id.* Gray failed to include that affirmation when he filed this action. Case closed.

{¶ 2} Not quite. This court’s precedent holds that requests for court records are governed by this court’s Rules of Superintendence, not the Public Records Act, *see State ex rel. Parisi v. Dayton Bar Assn. Certified Grievance Committee*, 2019-Ohio-5157, ¶ 20, and Gray alleges that the records he seeks are court records. The Rules of Superintendence do not require a relator to comply with any of the procedural requirements enacted by H.B. 265. Our rules require no three-day affirmation.

{¶ 3} In *Parisi*, a majority of this court caused immense confusion when it held that the public-access provisions of the Rules of Superintendence have displaced the Public Records Act as the vehicle through which to obtain court records. *Id.* at ¶ 20. However, this court lacks constitutional authority to promulgate superintendence rules that conflict with the substantive law of this state, and the Public Records Act is a substantive law. Therefore, the majority today should restore constitutional order, overrule *Parisi* and its progeny, and repeal Sup.R. 44 through 47.

{¶ 4} The majority does none of this, yet it grants the motion to dismiss anyway, without explaining why. Toms moved to dismiss on three different grounds: (1) Gray did not obtain permission from his sentencing judge to file his complaint under R.C. 149.43(B)(8) of the Public Records Act, (2) the records sought are confidential grand-jury records whose release is prohibited by Crim.R. 6(E), and (3) Gray sought information, not records. None of these grounds support dismissal of the complaint. The Rules of Superintendence do not require anyone to get the permission of his or her sentencing judge before requesting court records. And there are factual questions that preclude dismissal on Toms’s second and third grounds for at least some of Gray’s requests.

{¶ 5} In my view, because this court does not overrule *Parisi*, we are bound to apply it under the doctrine of stare decisis. And here, under the Rules of Superintendence, Gray states a claim for relief regarding at least some of his requests, so we are bound by precedent to grant an alternative writ and order briefing and evidence. Because the majority does otherwise, I dissent.

The Right to Access Public Records

{¶ 6} American common law recognized the right of the people to inspect and copy public records and documents, including judicial records and documents. *Nixon v. Warner*

Communications, Inc., 435 U.S. 589, 597 (1978); *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas, Juv. Div.*, 73 Ohio St.3d 19, 22 (1995). In fact, this court has long understood that the guarantee of open courts under Article I, Section 16 of the Ohio Constitution includes a qualified right to access court records that document the proceedings. *State ex rel. Cincinnati Enquirer v. Winkler*, 2004-Ohio-1581, ¶ 8-9.

The Public Records Act

{¶ 7} In 1963, “the General Assembly codified the public’s right to access of government records” by enacting R.C. 149.43. *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79, 81 (1988). The Public Records Act reflects the state’s policy that “open government serves the public interest and our democratic system,” *State ex rel. Dann v. Taft*, 2006-Ohio-1825, ¶ 20, and “reinforce[s] the understanding that open access to government papers is an integral entitlement of the people, to be preserved with vigilance and vigor,” *Kish v. Akron*, 2006-Ohio-1244, ¶ 17. The General Assembly included “any court or judicial agency,” R.C. 149.011(B), in the definition of “state agency” as a public office subject to the Public Records Act. So court records are public records subject to release under R.C. 149.43 unless a statutory exception in the Public Records Act applies.

{¶ 8} One exception is found in R.C. 149.43(B)(8), which states:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction . . . to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution . . . unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

We have described R.C. 149.43(B)(8) as “limit[ing] an incarcerated person’s right to obtain records that concern a criminal investigation or prosecution,” *State ex rel. Ware v. O’Malley*,

2025-Ohio-1855, ¶ 18, and as “set[ting] forth heightened requirements for *inmates* seeking public records” (emphasis in original), *State ex rel. Russell v. Thornton*, 2006-Ohio-5858, ¶ 14.

{¶ 9} In addition, recent amendments to the Public Records Act establish new requirements for filing a mandamus action to compel the production of public records. *See* 2024 Sub.H.B. No. 265. Before filing the complaint, the relator must first serve it on the public-records custodian and allow three days for the custodian to respond before filing suit. R.C. 149.43(C)(1). The complaint “shall” be dismissed if the relator fails to submit a written affirmation that he or she complied with this requirement when filing the complaint. R.C. 149.43(C)(2).

{¶ 10} “A substantive law is one that creates duties, rights, and obligations.” *Pivonka v. Corcoran*, 2020-Ohio-3476, ¶ 27. The Public Records Act provides a right to access public records and imposes duties and obligations on records custodians to respond appropriately to public-records requests. And the Public Records Act makes that right to access public records legally enforceable through a writ of mandamus and the availability of statutory damages, attorney fees, and court costs in some circumstances. R.C. 149.43(C).

{¶ 11} The Public Records Act is therefore the substantive law of this State.

The Rules of Superintendence

{¶ 12} Against this backdrop, this court adopted rules governing court records in the Rules of Superintendence. In *Parisi*, 2019-Ohio-5157, at ¶ 16, the majority stated:

Prior to the promulgation of Sup.R. 44 through 47 in 2009, this court followed the Public Records Act in resolving public-records requests for court records. . . . This court, however, recognized the need to promulgate its own rules to govern the release of public records held by the judiciary. Former Chief Justice Moyer acknowledged in a letter to Ohio attorneys that “[w]hile the courts in Ohio [had] always acted in accordance with the Public Records Act, the act does not govern the courts.” Moyer, *A message from the Chief Justice: Openness is foundation of Ohio Government*, 81 Ohio St. Bar Assn. Report 170, 171 (2008).

{¶ 13} In a fit of judicial arrogance, this court said, “In promulgating Sup.R. 44 through 47, we announced to the other branches of government that this court would determine how

records held by the judicial branch would be made accessible to the public.” *Id.* at ¶ 18. It added, “If a party seeks to obtain judicial records through means other than Sup.R. 44 through 47, the party is not entitled to a writ of mandamus, as the Rules of Superintendence are the sole vehicle by which a party may seek to obtain such records.” *Id.* at ¶ 20.

{¶ 14} Sup.R. 45(A) makes “case documents” presumptively available to the public. However, “[a] document or information in a document exempt from disclosure under state, federal, or the common law,” Sup.R. 44(C)(2)(a), is excluded from the definition of “case documents.”

{¶ 15} Sup.R. 45(E) allows a court to restrict access to all or a part of a case document if the court finds that the presumption of public access is outweighed by a “higher interest” after considering the following:

- (a) Whether public policy is served by restricting public access;
- (b) Whether any state, federal, or common law exempts the document or information from public access;
- (c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.

{¶ 16} So while the Public Records Act delineates records that are categorically exempt from the definition of “public record”—for example, all records relating to adoption proceedings, *see* R.C. 149.43(A)(1)(d)—the Rules of Superintendence provide a broad right of access while permitting a court to weigh policy and other interests in deciding on a case-by-case basis whether to release those documents.

Differences between the Public Records Act and the Rules of Superintendence

{¶ 17} Although both the Rules of Superintendence and the Public Records Act create a remedy in mandamus for someone aggrieved by the denial of access to court records, their provisions conflict in various ways. For example, the Public Records Act creates a right to statutory damages, attorney fees, and court costs in some circumstances; the public-access

provisions of the Rules of Superintendence do not provide for statutory damages, attorney fees, or court costs in any circumstances.

{¶ 18} The case before us provides two more examples of differences between the Public Records Act and the Rules of Superintendence. First, Gray, who is incarcerated, filed a complaint for a writ of mandamus to compel production of court records related to grand-jury proceedings. As noted above, R.C. 149.43(B)(8) states that a public office—including a court—is not required to produce public records concerning a criminal prosecution to incarcerated people without the prior approval of their sentencing judge. On the other hand, the Rules of Superintendence generally require the production of case documents from a criminal proceeding, with no exception specific to incarcerated people like the one found in R.C. 149.43(B)(8).

{¶ 19} Second, the Public Records Act imposes requirements for filing a mandamus action to compel the production of public records. R.C. 149.43(C)(1). Before filing the complaint, the relator must have first served the records request on the public-records custodian and have allowed three days to pass before filing suit. R.C. 149.43(C)(1). And when filing suit after those three days, R.C. 149.43(C)(2) requires that the relator include a written affirmation that he or she has complied with R.C. 149.43(C)(1)’s requirements. If the relator “fails to file an affirmation pursuant to this division, the suit shall be dismissed.” R.C. 149.43(C)(2). No such filing requirement exists in the Rules of Superintendence. After the General Assembly enacted H.B. 265, this court did not amend the Rules of Superintendence to impose a similar requirement on those seeking court records.

{¶ 20} The question, then, is which public-records scheme really controls? In my view, the answer can be found in the constitutional authority granted to the General Assembly and this court.

Constitutional Authority to Regulate Court Records

{¶ 21} “In framing the Ohio Constitution, the people of this state conferred on the General Assembly the legislative power. This lawmaking prerogative cannot be delegated to or encroached upon by the other branches of government.” *Toledo v. State*, 2018-Ohio-2358, ¶ 26. The General Assembly therefore has plenary power to enact *any law* that does not conflict with the United States Constitution or the Ohio Constitution. *Id.* at ¶ 17. That includes the Public Records Act.

{¶ 22} This court’s rulemaking authority is more limited. Article IV, Section 5 of the Ohio Constitution gives this court the power to promulgate two distinct sets of rules: the Rules of Superintendence under Article IV, Section 5(A)(1), and rules of practice and procedure under Article IV, Section 5(B).

{¶ 23} Section 5(A)(1) states: “In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the supreme court.”

{¶ 24} As commentators have noted, the purpose of this provision was to remedy case-management problems that had caused backlogs in resolving cases. Marburger & Idsvoog, *Access with Attitude: An Advocate’s Guide to Freedom of Information in Ohio*, 151-152 (2011); Milligan & Pohlman, *The 1968 Modern Courts Amendment to the Ohio Constitution*, 29 Ohio St.L.J. 811, 821-822 (1968). Similarly, we have recognized that the Rules of Superintendence “are designed ‘(1) to expedite the disposition of both criminal and civil cases in the trial courts of this state, while at the same time safeguarding the inalienable rights of litigants to the just processing of their causes; and (2) to serve that public interest which mandates the prompt disposition of all cases before the courts.’” *State v. Steffen*, 1994-Ohio-111, ¶ 54, quoting *State v. Singer*, 50 Ohio St.2d 103, 109-110 (1977).

{¶ 25} Article IV, Section 5(B) authorizes a second type of court rules: “The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. . . . All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.” Section 5(B) expressly empowers this court to adopt *procedural* rules that supersede enactments of the General Assembly. *Morris v. Morris*, 2016-Ohio-5002, ¶ 30. But the Modern Courts Amendment of 1968, through the addition of Section 5(B) to Article IV, Am.Sub.H.J.R. No. 42, 132 Ohio Laws, Part II, 2878, 2882, placed two important limitations on our authority to supplant the enactments of the General Assembly: first, our procedural rules “may not abridge, enlarge, or modify any substantive right”; and second, the General Assembly has oversight because the legislature by joint resolution may disapprove any proposed procedural rule prior to its taking effect.

{¶ 26} Nothing in Article IV, Section 5(A)(1) grants this court a similar power to preempt the lawful enactments of the legislative branch of government by adopting a rule under our authority to supervise the lower courts. Unlike Section 5(B), Section 5(A)(1) does not provide that the Rules of Superintendence supersede laws, procedural or otherwise, that are in conflict with them, nor does it contain any requirement to submit proposed superintendence rules to the General Assembly for review. “Therefore, the Superintendence Rules do not have the same force of law as our procedural rules or a statute.” *State ex rel. Parker Bey v. Byrd*, 2020-Ohio-2766, ¶ 40 (Kennedy, J., concurring in judgment only in part and dissenting in part). Rather, as explained in the preface to the Rules of Superintendence, those rules were adopted to ensure the “prompt disposition of all causes, at all times, in all courts of this state.”

{¶ 27} Simply put, “[t]he Rules of Superintendence are not designed to alter basic substantive rights. . . .” *Singer*, 50 Ohio St.2d at 110. They do not give this court carte blanche authority to enact any substantive law related to the judicial system simply by adopting a rule. Nor do they give this court the power to exempt the courts of this State from generally applicable laws. *See Parker Bey*, 2020-Ohio-2766, at ¶ 63 (DeWine, J., concurring in judgment only in part and dissenting in part.) (“If the Public Records Act doesn’t apply to the courts, what other laws can this court exempt itself from?”). It is manifest, then, that the Rules of Superintendence do not displace the statutory law of this state. Our rules of practice can do so—but only on matters of procedure and only after they have been accepted by the General Assembly.

{¶ 28} Therefore, in my view, the requirements of the Public Records Act should control when public court records are requested. For this reason, I would overrule our decisions to the contrary, including *Parisi*, 2019-Ohio-5157, and its progeny.

Application to this Case

{¶ 29} Applying the Public Records Act in the case before us would require the court to dismiss Gray’s mandamus action. Gray made his public-records request and filed his mandamus action after the amendments to R.C. 149.43(C) took effect in April 2025. *See* 2024 Sub.H.B. No. 265. He was therefore required to submit a written affirmation showing that he complied with R.C. 149.43(C)(1). Gray failed to do so. Under the Public Records Act, the complaint must be dismissed.

{¶ 30} However, until *Parisi* and the cases following it are overruled, they are binding precedent on this court. And since *Parisi* says that the Superintendence Rules control access to

court records, the consistent vote is for the court to issue an alternative writ and order briefing and the presentation of evidence. Our Rules of Superintendence do not include the procedural requirements enacted by H.B. 265, nor do they contain an exception comparable to R.C. 149.43(B)(8)'s limitation on incarcerated people obtaining public records concerning a criminal prosecution. So neither is a basis to dismiss the complaint.

{¶ 31} It is true that the Rules of Superintendence do not require the release of “[a] document or information in a document exempt from disclosure under state, federal, or the common law.” Sup.R. 44(C)(2)(a). And Crim.R. 6(E) prohibits the disclosure of grand-jury deliberations and limits the disclosure of other matters “occurring before the grand jury.” But a fair reading of the complaint shows that Gray requested records that are not covered by Crim.R. 6(E) or that at least could be redacted. For example, he sought documents showing the names of the judge who presided over certain grand juries, the bailiff who took the grand jurors’ attendance, and the court reporter who transcribed the proceedings. This is not a request for information, and those records, if they exist, do not necessarily document proceedings before the grand jury.

{¶ 32} To follow our binding precedent, this court should grant an alternative writ and order the filing of briefs and evidence. Because the majority does not do that, I dissent.
