

OhioLawyer

THE OHIO STATE BAR ASSOCIATION MEMBER MAGAZINE

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— *Advocacy Edition* —

Statehouse Connection

Inside a New General Assembly

Also Inside:

Biennial Public Policy Survey Results

2023 Annual Meeting Preview

Supreme Court Roundup
*Policy Implications of Major
2022 Cases*



Your Greenbook Companion Inside!

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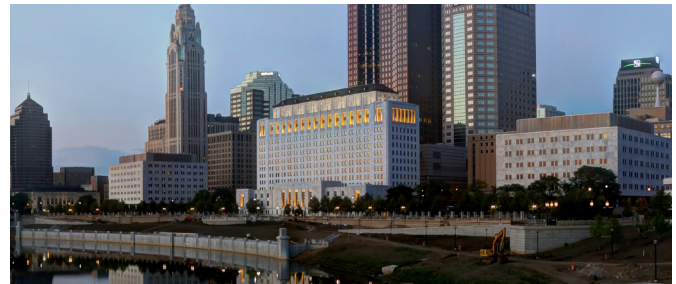
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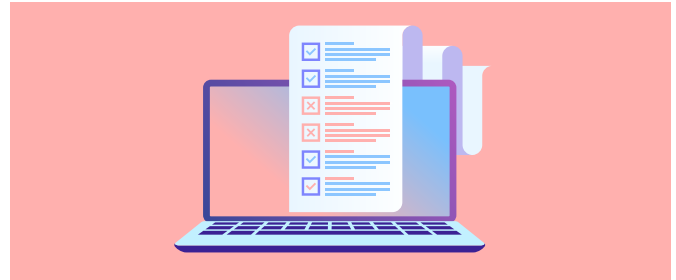
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In Memoriam

2022

James F. Kilcoyne 88, Cleveland, April 29, 2022
John Almasy 91, Lowellville, April 30, 2022
John W. Hicke 89, Cleveland, May 31, 2022
Jeremy M. Burnside 44, Portsmouth, June 14, 2022
Thomas H. Lindsey 81, Powell, July 2, 2022
Byron S. Krantz 86, Cleveland Heights, July 14, 2022
Gary L. Jones 84, Blacklick, July 26, 2022
Robert G. Leland 89, Dayton, Aug. 31, 2022
Harold L. Hom 60, Fairview Park, Sept. 5, 2022
Edmund Turk 97, Mentor, Oct. 4, 2022
Michael A. Malyuk 76, Stow, Oct. 6, 2022

Robert R. Stephenson II 63, New Philadelphia, Oct. 10, 2022

Blaine B. Hunkins 98, Columbus, Oct. 17, 2022

Marty Anderson 72, Columbus, Nov. 11, 2022

Lowell B. Garverick 90, Mt. Gilead, Nov. 11, 2022

Richard L. Loveland 91, Dublin, Nov. 14, 2022

Beverly A. Adamczyk 70, Strongsville, Dec. 7, 2022

John A. Fiocca 72, Akron, Dec. 11, 2022

2023

Hon. Matthew J. Crehan 86, Hamilton, Jan. 24, 2023

Call for Submissions

Have an idea? We'll bring it to life.

The Ohio Bar reaches a wide audience, from your fellow attorneys to members of the public. Pitch an idea or submit your work on a law-related topic today and join a distinguished group of thought leaders and published authors.

Visit ohiobar.org/writeforus to learn more about Ohio Bar publications and submission guidelines.



What's Happening at the Bar?

Updates from the CEO



Promoting justice and advancing the legal profession.

In my last Ohio Lawyer update at the end of 2022, I talked about looking to the new year with excitement and gratitude for all the ways in which we'll get to connect with our members and work to improve the legal profession in 2023. After some successful and fun winter events, spring is upon us and we're hitting the ground running. Our advocacy team is hard at work at the Statehouse advocating for our policy priorities with a new General Assembly. Coming off yet another successful round of committee and section meetings, we're now on the road to meet with members and recognize our accomplished lawyers in person at Ohio Bar spring district meetings. And we're excited to celebrate even more greatness in the legal professional at our annual meeting this May 9 at the Ohio capitol. As always, my deepest thanks goes to all our members who make our work not only possible, but also great fun.

-Mary Amos Augsburger
Ohio Bar CEO



Board of Governors

At their February meeting, the Ohio State Bar Association Board of Governors worked to further improve our member benefits and streamline our governance and policy practices. Here are some of the actions they took:

- Voted to establish a member discount for **LawYaw** – a document automation platform to replace OhioDocs.
- Adopted **roles and responsibilities** for the Board of Governors, Council of Delegates, President-Elect and President in accordance with governance best practices.
- Updated bylaws for the **Unauthorized Practice of Law Committee**.
- Enhanced the bar's policy for **speaking out in defense of the legal profession and the judiciary**.

- Updated the bar's involvement in **monitoring judicial elections** to make greater efforts to educate voters about the importance of voting for judges.
- Heard from the new **Ohio Supreme Court Chief Justice Sharon Kennedy** on her vision for the future and continuing our longstanding relationship with the high court.

Task Force Work Continues

We had some great successes at the Statehouse at the end of 2022, including the adoption of the Rural Practice Incentive Program (HB150), which was signed by the Governor in December. The program will help to recruit and retain lawyers to practice in underserved areas by offering up to \$50,000 in loan forgiveness for appointed counsel, public defenders and prosecutors.

Two of our task forces are hard at work as they continue to find solutions to the access to justice gap that many Ohioans experience.

- The Ohio Bar **Rural Practice Gap Task Force** had its third meeting this winter. Look out for preliminary findings this spring as they find ways to connect more Ohioans with lawyers.
- The Ohio Bar **Indigent Defense Task Force** had its seventh meeting this winter. Members are developing recommendations to share with the Ohio General Assembly regarding the future of our indigent defense system and how best to deliver those services across the state.



Association Finance Update

The Ohio Bar has filed **IRS form 990** for fiscal year 2023. Form 990 is an informational tax form that most tax-exempt organizations must file annually. It gives the IRS an overview of the organization's activities, governance and detailed financial information.



Winter Committee and Section Meeting Highlights

Whether they met in person or virtually this winter, Ohio Bar committees and sections organized discussions and programming that did not disappoint. Here are some of the highlights:

Guest Speakers

- **Stephanie Harris** of the **Animal Legal Defense Fund** presented legislative updates to the **Animal Law Committee**.
- Speaker **Paul Binder**, formerly of the **U.S. Department of Justice (DOJ)**, spoke to the **Antitrust Law Section** on what can be learned from the DOJ's recent criminal prosecutions in the chicken broiler industry.
- **Construction Law Committee** members heard from guest speaker **Eric Elizondo** on the impacts of the plan review and approval process on economic development in Ohio.
- **Corporate Counsel Section** guest speaker **Alan S. Wernick** gave attendees a brief overview of drafting alternative dispute resolution provisions.
- **Gaming, Liquor and Cannabis Law Committee** invited speaker **John Tortora**, chief legal officer for the **Columbus Blue Jackets**, to speak about his experience now that sports gambling is on in Ohio.
- Our **Senior Lawyers Section** heard from guest speaker **John Reyes** on pro bono work in retirement.
- And in our **Young Lawyers Section** meeting, members heard from national speaker **Chasity Kuttrus** on developing an executive presence.

Legislative Updates

Committees and sections are the place to stay up to date on pending legislation and upcoming law changes relevant to your practice area. Many of our groups kept their members informed on upcoming developments in the law and discussed their own policy priorities.

- The **Criminal Justice Committee** heard from Sen. Nathan Manning, sponsor of SB288 in the 134th General Assembly – Ohio's major **criminal law overhaul**.
- Practitioners in the **Antitrust Law Section** held a group discussion on **the future of antitrust law**.
- The **Education Law Committee** kept members up to date on the implementation of **HB99**, regarding armed individuals in school zones, and other school safety proposals.
- The **Estate Planning, Trust and Probate Law Section** continues its work to fight **e-wills** in Ohio and provided **guardianship law** updates.
- **Gaming, Liquor and Cannabis Law Committee** members delved into **recreational marijuana** in Ohio and the ballot initiative that could see moves this year.



Spring committee and section meetings are coming up!

If you haven't joined a committee or section yet, sign up for yours today at ohiobar.org/myaccount.

Visit ohiobar.org/csmeetings to stay up to date on meeting schedules and registration links.



Events



Young Lawyers Winter Curling

The Ohio Bar Young Lawyers Section braved the cold this winter to host a curling night at Land Grant Brewing in Columbus. Along with winter games and cozy igloos, attendees got the chance to network and have some fun with their colleagues. Thanks to all who attended (and brought their honorary furry bar members)!



Foodbank Fundraiser and Volunteer Day

A BIG thanks to everyone who generously donated to our **3rd Annual Foodbank Fundraiser**. Together, we raised enough money to provide Ohioans in need more than 12,700 meals!

Some of you also decided to donate your time and talent. This year's volunteer day in Akron, Cincinnati and Columbus brought together dozens of Ohio Bar member volunteers who contributed nearly **90 hours of community service** and an estimated **21,000 meals** packaged!



National Conference of Bar Presidents

Ohio Bar leadership enjoyed the opportunity to connect with other bar leaders from across the county at the National Conference of Bar Presidents (NCBP) Midyear Meeting in New Orleans this February. We look forward to putting the many great ideas we brought back to good use. Up next: The NCBP annual meeting in Denver later this year.



Spring District Meetings

The latest round of district meetings kicked off in March. We're on the road, meeting members around the state through April as we celebrate our colleagues accomplishments and provide important Ohio Bar updates. View the schedule at ohio-bar.org/districtmeetings.

Ohio Bar Annual Meeting of Members at the Ohio Statehouse May 9, 2023

We're back at the Statehouse this year to celebrate excellence in the legal profession and shape the future of Ohio Bar public policy. Learn more in our [Annual Meeting Preview on pg. 14](#).

 **LiveCLE**

April 3 – The Importance of the Ohio Constitution

April 14 – Introduction to Real Estate Practice

April 20-21 – 11th Annual Family Law Institute

April 25 – Pet Planning – Estate Planning for Furry and Feathered Family Members

April 27 – Gaming, Liquor and Cannabis Conference

May 5 – Ohio Business Law Institute

May 10 – 5th Annual Ohio Bar Solo and Small Firm Institute

May 12 – The Fundamentals of Employment Law

May 16 – Equity Education Series Season 3 - LGBTQ and the Law: A History
**Complimentary for members*

May 18-19 – Death Penalty Defense

May 23 – 19th Annual Advanced Labor and Employment Law Seminar

June 6 – Basics of Estate Administration

June 14 – Winning Your Case With a Better Memory

June 15 – Pet Planning – Pet Trusts From Head to Tail

June 20 – Titles to Real Estate in Ohio

June 21 – New Lawyer Connect

June 23 – 7th Annual Public Sector Labor Law Seminar

June 27 – Litigation Basics

June 30 – 34th Annual Conference on Wealth Transfer

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Visit ohio-bar.org/cle-store.



Equity Education Series

SEASON 3 OF THE OHIO BAR'S EQUITY EDUCATION SERIES CONTINUES MAY 16

Will You Join the Conversation?

Join us **May 16, 2023 at 1 p.m.** for **LGBTQ+ and the Law: A History.**

This webcast will provide an overview of the historic Marriage Equality Act, the Ohio Fairness Act and other legislation that affects the daily lives of LGBTQ+ individuals. Attendees will also be introduced to the Ohio Bar Advocacy toolkit and learn ways they can expand their legislative and community involvement.

Pricing is complimentary for Ohio Bar members.

View the series schedule and register:
ohio-bar.org/equityseries

Dean L. Wilson

President, Ohio State Bar Association



The Voice of the Legal Profession: My Window Into the Ohio Bar's Important Work at the Statehouse

While a student at Capital University Law School, I got to see firsthand how the laws I would be arguing and later, enforcing, were really made under the tutelage of former State Senator Sam Speck. Senator Speck passed away March 1 at the age of 86, leaving behind a rich legacy of service. At the time I worked for him, he represented the 20th Senate District, which included my home county of Perry. I was privileged to work as his legislative aide and couldn't have asked for a better teacher. Sam knew how to get things done in Columbus and he never forgot the people back home. From him, I learned the value of good relationships in policy making. As it turns out, you can have the most well-vetted and iron-clad proposal, but unless you've earned the trust and support of your colleagues and other advocates, that idea doesn't have a hope in hell.

As practitioners, we are impacted daily by the work of lawmakers at all levels of government. And though I'm sure we all have a long list of ideas for them on how to make the law, courts and government run better, few of us have the time or resources to be at the Statehouse day in and day out, building those essential relationships and seizing on opportunities to advance our agendas. That's where the Ohio State Bar Association comes in and why I contend that our advocacy program is one of the most important reasons to be a member.

The Ohio Bar's Team of Policy Experts
On the Ohio Bar staff, we have two full-time lobbyists — Scott Lundregan, our

director of policy and legislative counsel and Marisa Myers our government relations manager — both of whom previously worked as senior staff in the Ohio House of Representatives. McKenzie Davis, who also works closely with our policy team, was just voted by Statehouse insiders as Ohio's most effective lobbyist. Not to mention, that our CEO is an Ohio Senate, Ohio Department of Commerce and Auditor of State alum — a policy guru in her own right. In addition, we've got senior staff members leading our communications, legal and meetings and facilities departments who hail from state government. They collectively help us to keep our eyes on developments impacting the practice of law and always, to maintain the trusted reputation the Ohio Bar has long enjoyed at the Statehouse. Meet the core team on pg. 34.

Recent Legislative Victories

This investment and focus pay great dividends. When the sun set on the 134th session of the General Assembly in December, the Ohio Bar had racked up significant legislative victories. We saw passage of HB150, the Rural Practice Incentive Program, which will soon offer loan forgiveness for prosecutors, public defenders and appointed counsel who serve in counties where there aren't enough lawyers to adequately serve the population. Proposals by our Negligence Law Committee and our Estate Planning, Trust and Probate Law Section to update and streamline the wrongful death and probate codes and allow for

postnuptial agreements in Ohio, were also adopted. And the Ohio Bar played a role in securing support for online court dockets, notary law updates and funding for legal aid and indigent defense. We also continued to successfully block some bills that would be harmful to the clients we serve, including bills that would remove the long-standing consumer protection that a last will and testament be witnessed in person, that would open the door to debt-settlement companies and the unauthorized practice of law and that would shift the focus away from the best interests of the child in child custody disputes (via so-called "equal parenting" legislation).

And it was not so long ago when our advocacy team effectively mobilized our membership to fight back and reverse a state budget provision that would have unfairly excluded attorneys from being able to claim the business income deduction on their state taxes. At that time, having previously served on the Board of Governors and as chair of the Government Affairs Committee, it was my great honor to be called back into service as part of this effort and to talk to key lawmakers about why this policy was not only unfair and an affront to our profession, but also a bad economic decision for the state considering the jobs and economic activity generated by Ohio lawyers. Here I really got to see the Ohio Bar's power as the voice of the legal profession in Ohio and frankly, this experience played a big role in my decision to run for president so I could do my part to both preserve and build upon this strong foundation.



The Four-Part Test

As the new General Assembly kicks off in earnest, the Ohio Bar's policy dance card is getting full once again (see Marisa's preview on pg. 10). I think it's important for all members to understand that in order for the Ohio Bar to continue to be effective, it takes prioritization, good strategy and your continued support. Here's what I mean. While you could argue that any law change proposed or adopted impacts the practice of law, we have to make smart decisions about where to invest our resources and political capital to have the most impact. Our Board of Governors and its Government Affairs Committee, chaired by Governor Chris Brown of Mansfield, continues to employ a four-point test in determining whether we should take a position on behalf of the organization:

- Does the bill materially affect the administration of justice, the operation of the Ohio court system or the practice of law in Ohio?
- Does the bill affect the interests of Ohio Bar members and clients in such a way that the Ohio Bar should get involved?
- Is this a bill for which the Ohio Bar has an institutional interest or is uniquely equipped to address?
- Does the bill address a largely social issue that is better left to the legislature to decide?

In addition to this four-part test, of course, we provide opportunities for you to give us your feedback through our public policy survey (see the results of the 2023-2024 edition on pg. 24) and rely heavily on the collective expertise of Ohio Bar committees and sections to fully understand the impact of legislation on individual practice areas.

Committees, Sections and the Ohio Bar Council of Delegates

In addition, it is from our committees and sections where the vast majority of Ohio Bar initiated proposals are conceived. If you are not already, I encourage you to get involved in

committees and sections to be part of these discussions. I also highly recommend that you make it a point to come to this year's Annual Meeting of Members on May 9, 2023 at the Ohio Statehouse, where the Ohio Bar's Council of Delegates will take up the latest batch of proactive legislative proposals from committees and sections. The council is made up of Ohio Bar members elected from each of our 18 districts, as well as at-large members and all members of the Board of Governors. When a majority of them support a legislative proposal, it becomes a priority bill for the Ohio Bar.


Nobody Does It Better Than the Ohio Bar

Fully vetted and approved, it is then that our advocacy team springs into action. They find a bill sponsor from among our friends in the Ohio General Assembly, facilitate and submit testimony from our member experts for legislative hearings, participate in interested party meetings, monitor legislative activities at all times and rely on the Ohio Bar's good reputation and those all-important relationships we have developed over many years to get things done, just like Senator Sam Speck taught me to do so many years ago. It's a winning formula and in my humble opinion, nobody executes it better than the Ohio Bar.

Resources to "Be Your Own Advocate"

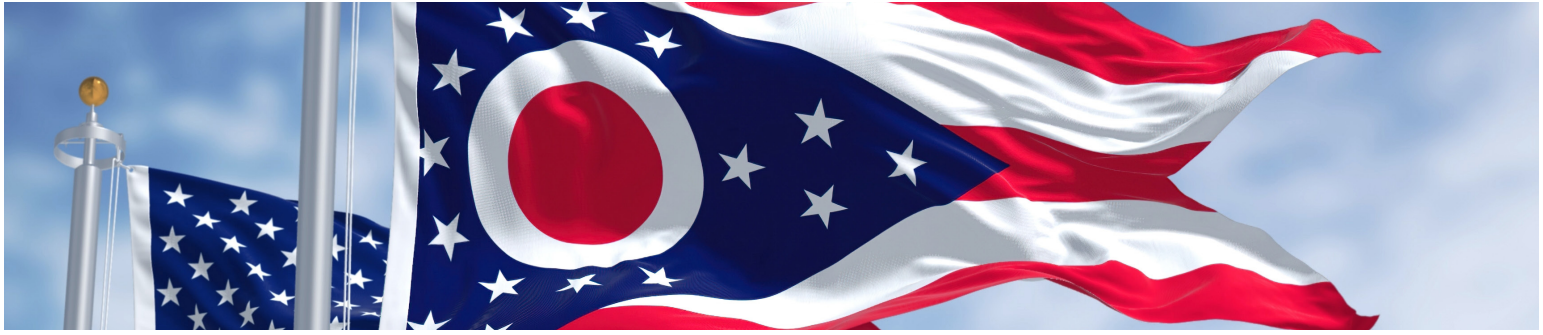
Because the Ohio Bar can't weigh in on every issue you might like us to, we also want to ensure you have the resources and know-how to do your own advocacy on issues important to you. And so our team has also developed a new online toolkit for just that reason. Learn more on pg. 30.

Stay Connected

You will continue to hear more about this work in 2023 and beyond. As always, we'd love to hear your thoughts about these and other topics. Contact us at osba@ohio-bar.org 

Ways You Can Support the Ohio Bar's Advocacy Work

- Remain a member in good standing — our strength is in our numbers.
- Join and actively participate in Ohio Bar committees and sections for your practice area(s), maybe even pursue a leadership post therein. Learn more at ohio-bar.org/committeesandsections.
- Contribute to LAW PAC our political action committee — a voluntary annual contribution of \$25 donation (on top of your membership dues), which supports lawyers running for the General Assembly as well legislators who help us advance our policy priorities.
- Attend the Annual Meeting at the Statehouse on May 9, 2023. Register here: ohio-bar.org/annualmeeting.
- Consider running for a position on the Council of Delegates (ohio-bar.org/councilofdelegates) or Board of Governors (ohio-bar.org/boardofgovernors).
- Provide your feedback through future policy surveys and questions of the week or just drop us a line at osba@ohio-bar.org with ideas or concerns you may have about pending legislation.
- Keep up with legislative developments through the OSBA Report "Greenbook" (ohio-bar.org/greenbook) where we report on legislative enactments and bill effective dates, the Weekly Legislative Report (published in the "Greenbook" on Fridays), real-time practice-specific legislative reports on our website (ohio-bar.org/practice-area-updates), not to mention our Quarterly Legislative Update CLE (ohio-bar.org/legislative-updates), which is always complimentary for Ohio Bar members.



Statehouse Connection: Inside a New General Assembly

Marisa Myers
Ohio Bar Government
Relations Manager



The 135th General Assembly is in full swing and there hasn't been a dull moment in the first few weeks of 2023. Here's a preview of the new General Assembly and a forecast of what we might see in the first six months of the year.

Battle for the Speaker's Dais

Let's start with the elephant in the room: the House of Representatives was engaged in a massive battle for the speaker's gavel, which has effects lingering over the chamber even weeks later. As you may know, Speaker Jason Stephens (R-Kitts Hill) was elected by his peers on Jan. 3 over Rep. Derek Merrin (R-Monclova), who was elected in an informal caucus vote in November 2022. Speaker Stephens was elected with 22 Republican votes and all 32 Democrat votes (all members vote in the Speaker's election on the House floor) and Rep. Merrin received 43 Republican votes (with two members absent).

Therefore, Speaker Stephens received votes from roughly one-third of the 67-member Republican majority.

Since then, many members who supported Rep. Merrin for Speaker have worked in a separate group from the Republicans supporting Speaker Stephens, culminating in additional battles over the House leadership team and establishing House rules. While the leadership team and rules were put in place, many on Capitol Square are wondering how the dynamics of these factions will play out in the months to come. For now, the House seems poised to continue with business, albeit with added tension in the chamber.

While this environment is significant for us politicians, we're confident the House will be working to advance important policies for the state and the Ohio Bar will continue to work with all members on our priorities.

New Members of the General Assembly

Speaking of the members, there are plenty of new faces in the Ohio General Assembly, including new lawyer legislators. Here's a breakdown of each chamber.

Ohio House of Representatives *Lawyer Legislators of the 135th General Assembly*

Returning:



Rep. Scott Oelslager
(R-North Canton)



Rep. Bill Seitz
(R-Cincinnati)



Rep. Tavia Galonski
(D-Akron)



Rep. Richard Brown
(D-Canal Winchester)



Rep. Jamie Callender
(R-Concord)



Rep. Al Cutrona
(R-Canfield)



Rep. Brett Hillyer
(R-Denison)
**Chair of the House Civil Justice
Committee*



Rep. Adam Miller
(D-Columbus)
**Past Chair of the Ohio Bar
Education Law Committee*



Rep. Michael Skindell
(D-Lakewood)



Rep. Brian Stewart
(R-Ashville)



Rep. DJ Swearingen
(R-Huron)

New This GA:



Rep. Richard Dell'Aquila
(D-Seven Hills)



Rep. Elliott Forhan
(D-South Euclid)



Rep. Dani Isaacsohn
(D-Cincinnati)



Rep. Adam Mathews
(R-Lebanon)
**Chair of the Ohio Bar
Intellectual Property
Law Section*



Rep. Ismail Mohamed
(D-Columbus)



Rep. Jim Thomas
(R-Canton)



Rep. Josh Williams
(R-Oregon)

The rest of the House majority leadership team includes Speaker Pro Tempore Scott Oelslager (R-North Canton), Majority Floor Leader Bill Seitz (R-Cincinnati), Assistant Majority Floor Leader Jon Cross (R-Kenton), Majority Whip Jim Hoops (R-Napoleon) and Assistant Majority Whip Sharon Ray (R-Wadsworth). Reps. Oelslager and Seitz are both attorneys and long-time members of the Legislature.

The House minority caucus will be led by Minority Leader Allison Russo (D-Upper Arlington), Assistant Minority Leader Dontavius Jarrells (D-Columbus), Minority Whip Jessica Miranda (D-Forest Park) and Assistant Minority Whip Tavia Galonski (D-Akron), who is an attorney and will serve as ranking minority member of the House Civil Justice Committee.

Ohio Senate

*Lawyer Legislators of the 135th
General Assembly*

Returning:



President Matt Huffman
(R-Lima)



Sen. Rob McColley
(R-Napoleon)



Sen. Theresa Gavarone
(R-Bowling Green)



Sen. Paula Hicks-Hudson
(D-Toledo)
**Former Ohio Bar Governor*



Sen. Nathan Manning
(R-North Ridgeville)
**Chair of the Senate Judiciary Committee*



Sen. Matt Dolan
(R-Chagrin Falls)
Chair of the Senate Finance Committee

New This GA:



Sen. Michele Reynolds
(R-Canal Winchester)
**Law student, University of
Dayton School of Law*

The Ohio Senate will continue to be led by President Matt Huffman (R-Lima), a practicing attorney from Allen County. His leadership team includes President Pro Tempore Kirk Schuring (R-Canton), Majority Floor Leader Rob McColley (R-Napoleon) and Majority Whip Theresa Gavarone (R-Bowling Green). Both Sens. McColley and Gavarone are attorneys.

The Democrats are led by Minority Leader Nickie Antonio (D-Lakewood), Assistant Minority Leader Hearcel Craig (D-Columbus), Minority Whip Kent Smith (D-Euclid) and Assistant Minority Whip Paula Hicks-Hudson (D-Toledo). Sen. Hicks-Hudson is ranking minority member of the Senate Judiciary Committee.

Early Policy To Keep an Eye On

First on the policy agenda in odd numbered years is the state's biennial budget process. Governor DeWine introduced his budget priorities during his State of the State address on Jan. 31. The Governor's budget focuses on children and families, outlining new tax incentives, plans to reduce infant mortality, changes to education and the creation of a new state agency – the Department of Children and Youth Services. The executive proposal also prioritizes mental health and addiction initiatives and new economic development programs.

Traditionally, the House takes up budget deliberations first, so we'll see what changes they make to the executive proposal ahead of Senate considerations. For us at the bar, we'll be watching closely for any tax changes in the state budget, particularly changes to the business income deduction and extensions of sales tax to legal services. We'll also be advocating for legal aid, indigent defense and funding for the Ohio Center for Law-Related Education – critical access to justice initiatives.

Also related to indigent defense, the Ohio Bar convened The Future of Indigent Defense Task Force, led by President Dean Wilson, in June 2022 to review the indigent defense system in Ohio. We hope to have policy recommendations in the coming months. Additionally, the Ohio Bar assembled the Rural Practice Gap Task Force, led by President-elect Michelle Kranz, to take a holistic look at where attorneys are practicing and what incentives might be offered to encourage attorneys to establish their practice in rural areas. This task force had its kickoff meeting in December 2022.

Outside of the state budget, a few high-profile items that we'll likely see attracting attention at the Ohio General



Assembly include restructuring the role of the State Board of Education and changes to marijuana law. Both of these items are included in the Senate's top 10 bills, Senate Bill 1 and Senate Bill 9, respectively. In the House, lawmakers are prioritizing House Bill 1, which would lower and flatten taxes, and a universal school voucher bill in the form of House Bill 11, among 10 other top priorities.


The discussion of constitutional amendment changes also continues to circulate at the Statehouse, but since the current proposal altering the vote threshold from 50 to 60 percent requires a constitutional amendment itself, it remains to be seen if the General Assembly can gather the consensus of the three-fifths majority needed to place that issue on the ballot. What we know at this point is that the proposal will not make the May ballot, as it must be passed and filed with the Secretary of State at least 90 days before the election. The next deadline is Aug. 10 for the November election.

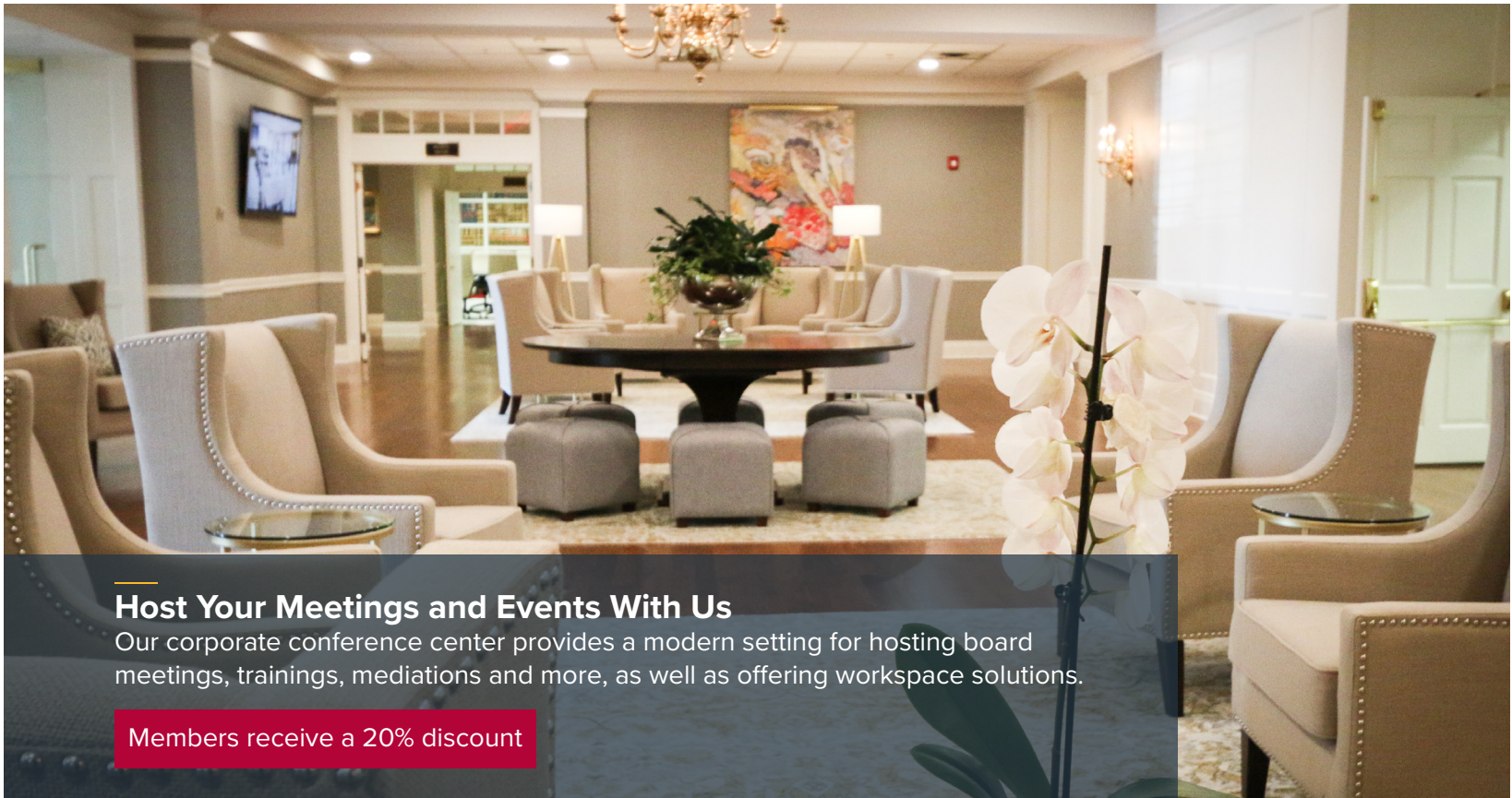
As for Ohio Bar priorities, we'll be working on several initiatives on behalf of our members, including (but not limited to):

- Nonprofit corporation law updates (Corporation Law Committee).
- Changes to driver's license suspensions (Access to Justice Committee).
- Expanded criminal justice analysis for pending legislation (Criminal Law Committee/Young Lawyer Section).
- Limited authority for guardians to apply for Medicaid benefits (Elder and Special Needs Section).
- Transfer on death for tangible personal property (Estate Planning, Trust and Probate Law Section).
- Defining "unsuitability" in the code (Family Law Committee).

- Shared specialty dockets (Military and Veterans' Affairs Committee).
- And removing or lowering the per se limit for marijuana OVI (Traffic Law Committee).

Stay In Touch

As always, we encourage you to keep in touch with the Ohio Bar advocacy team via our weekly legislative reports in your Greenbook every Friday, committee and section meetings and our quarterly legislative updates (presented as complimentary webcasts for Ohio Bar members). We also hope our new Advocacy Toolkit serves as a resource to you if you'd like to get involved in the legislative process this General Assembly. Learn more about the toolkit on pg. 30. Please feel free to reach out if you have questions on the happenings at the Ohio General Assembly. 



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2023 Annual Meeting

— Preview —

The Bar's Biggest Bash of the Year

The Ohio Bar returns to the Statehouse for our 2023 Annual Meeting of Members. This is your opportunity to weigh in on the direction of the association and help set the bar's public policy agenda for the year to come. The day offers members everything from CLE credit to the opportunity to connect directly with state legislators and judges during an evening reception.

Throughout the day, members will vote on amendments to the Ohio Bar Constitution, offer input on the latest batch of legislative proposals from Ohio Bar committees and sections and celebrate excellence in the legal profession with the 2023 awards presentations. Get all you need to know about the day in this preview and then...

Join us at the Statehouse on May 9, 2023.



And the Award Goes To...

Join us as we recognize the contributions of these Ohio attorneys to the legal profession and add them to the distinguished ranks of past award winners throughout the day.



**The Ohio Bar Medal –
Justice Patrick F. Fischer**

The Ohio Bar Medal, the Ohio State Bar Association's highest honor, is awarded to those who have given unselfishly of their time and talent by taking prominent leadership roles on the bench and in the organized bar, and to those who have worked quietly to earn the deep admiration and respect of the community.

Ohio Supreme Court Justice Patrick Fischer has dedicated himself to the practice of law for nearly 40 years. A past president of the Ohio Bar now in his second term on the state's high court, Justice Fischer has demonstrated not only a lifelong commitment to public service, but also an abiding zeal for ethics, professionalism and the continuous improvement of our justice system.

For his many years of dedicated service to the legal profession and his enduring work to improve Ohio's judicial system, Justice Fischer is the 2023 recipient of the Ohio Bar Medal.

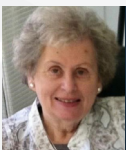


**Eugene R. Weir Award –
Jonathan E. Coughlan**

In 1998, the Ohio Bar Board of Governors established the Weir Award to recognize one lawyer annually who demonstrates an exceptional commitment to professional responsibility in the mold of Eugene R. Weir, a former member of the board who advanced professionalism and legal ethics throughout his career.

Jonathan Coughlan is an experienced attorney who has worked as a public defender, in private practice and as a prosecutor. He served as Disciplinary Counsel of the Supreme Court of Ohio and on numerous Supreme Court task forces before dedicating his practice, in its entirety, to helping lawyers and judges navigate ethics and professional responsibility requirements.

For his extensive and continued dedication to the highest levels of lawyer professional responsibility, Coughlan is the recipient of the 2023 Eugene R. Weir Award.



**Nettie Cronise Lutes Award –
Evelyn Bachman (Posthumously)**

The Nettie Cronise Lutes Award is named after the first woman licensed to practice law in Ohio. The Ohio State Bar Association Women in the Profession Section established the Nettie Award to honor Lutes and to recognize woman lawyers who have improved the legal profession through their own high level of professionalism, opening doors for other

women and girls. This year, the committee will recognize the achievements of two woman attorneys.

Evelyn Bachman's legal career spanned 59 years before she passed away in spring 2022 at the age of 84. From being one of only two women in her law school graduating class to becoming the first woman assistant county prosecutor in Wood County, Bachman blazed a trail for fellow women in the legal profession through her own professional achievements and her dedication to her community. For her legacy and lifelong devotion to her community and the advancement of fellow women, Bachman is the posthumous recipient of the 2023 Nettie Cronise Lutes Award.



**Nettie Cronise Lutes Award –
J. Kristin Burkett**

J. Kristin Burkett is managing partner of Burkett & Sanderson Inc. and an active member of the Ohio Bar where she has served on the association's Board of Governors. She is a past president of the Ohio State Bar Foundation and, throughout her career, has served on many criminal justice and rehabilitation related committees, not to mention her service

as a mentor and role model for young woman attorneys entering the profession.

For her dedication and service to women lawyers and her work to improve criminal justice in Ohio, Burkett is the recipient of the 2023 Nettie Cronise Lutes Award.



Lawyer Legislator Distinguished Service Award – Representative Brett Hillyer

The bar association established the Lawyer Legislator Distinguished Service Award in 2014 to recognize Ohio lawyers who also provide exceptional service as Ohio legislators.

Representative Brett Hillyer serves the 51st District in the Ohio House of Representatives, which includes Tuscarawas County and a portion of southern Stark County. As a practicing attorney at the law firm of Connolly, Hillyer & Ong and former Uhrichsville City law director and prosecutor, Rep. Hillyer has extensive knowledge of and practical experience in the legal profession. His support of Ohio Bar priority legislation has led to several improvements to Ohio law.

For his commitment to improving access to justice and his deep understanding of the practice of law, Representative Hillyer is the recipient of the 2023 Lawyer Legislator Distinguished Service Award.



John and Ginny Elam Pro Bono Award – Allison Kropp

The John and Ginny Elam Pro Bono Award was established and endowed by Ginny Elam in honor of her husband John C. Elam, a Columbus attorney who generously donated his own time and talents to support the Legal Aid Society of Columbus, as well as other groups working to provide access to the courts for the poor and disadvantaged.

This award recognizes an attorney who selflessly donates their time and talent to pro bono causes – not exclusively legal services – that assist persons of limited means, charitable and community organizations.

Allison Kropp serves as vice president of the Pro Bono Partnership of Ohio, which she helped found in 2015 and where she serves on the Executive Committee and Governance Committee. She has devoted her career not only to volunteerism, but also to the education and training nonprofit board members and leaders.

For her singular dedication to pro bono service and her commitment to creating a ripple effect of service in her community, Allison Kropp is the recipient of the 2023 John and Ginny Elam Pro Bono Award.



Ohio Access to Justice Foundation Presidential Award – Misty Connors

The Ohio Access to Justice Foundation's Presidential Award annually recognizes attorneys who provide their professional expertise to increase access to justice in Ohio by serving those most in need.

Misty Connors, a private practitioner in Beavercreek, is an attorney who has made a substantial difference for more than 100 low-income Ohioans in Beavercreek and the surrounding rural community. Connors volunteers with Legal Aid of Western Ohio (LAWO), where she provides legal help through brief advice, pro se assistance and full representation to Ohioans experiencing civil legal challenges. Since 2015, Connors has steadily expanded her pro bono work with LAWO, offering encouragement, support and pro bono help to a remarkable 160 Ohioans and counting.

For her commitment to justice and service to her community, Misty Connors is the recipient of the 2023 Presidential Award.



Ohio Access to Justice Foundation Voice of Justice Award – Senator Matt Dolan

The Ohio Access to Justice Foundation's Voice of Justice Award recognizes a person or organization who demonstrates outstanding leadership and advocacy on behalf of Ohioans who may need legal assistance to live stable, healthy and financially secure lives.

Senator Matt Dolan serves the 24th District in the Ohio Senate, which includes portions of Cuyahoga County. As a partner at the law firm of Thrasher, Dinsmore & Dolan, a former assistant prosecutor and assistant attorney general, Senator Dolan applies his extensive knowledge of the law to his leadership roles as chairman of the Senate Finance Committee and as a member of Ohio's Controlling Board. His leadership, especially through the pandemic, has been life-changing for low-income Ohioans.

For his advocacy and leadership, Senator Dolan is the recipient of the 2023 Voice of Justice Award.



Have Your Say

Weigh In on 2023 Policy Proposals

As part of the annual meeting, the Ohio Bar Council of Delegates will take up the latest batch of proposals from the Board of Governors and our committees and sections as we shape the future of the association's public policy agenda. Up for consideration this year are changes to the election for Ohio State Bar Association president-elect and three proposals from committees and sections that would update and clarify Ohio's commercial code and laws governing trust administration.

Board of Governors Proposal

Moving the Ohio State Bar Association Election for President-Elect

The constitution of the Ohio State Bar Association provides that the position of president-elect of the Ohio State Bar Association is elected annually in order to allow the next president at least one year to work alongside the current president, so they can learn what they need to know to hit the ground running when they begin their term as president. In order to allow the president-elect to have even more time to onboard to the position, the Board of Governors is recommending a proposal to move the timing of the election for president-elect from April/May to December/January. All members in good standing can vote on this Board of Governors proposal.


Committee and Section Proposals

Ohio Bar committees and sections have an excellent track record of improving Ohio law. Recent successes have led to the creation of a statute of repose for legal malpractice claims, a rural practice incentive program to address the access to justice gap in rural communities and the modernization of Ohio's LLC code. This year's committee and section proposals include:

A proposal from the **Banking, Commercial and Bankruptcy Law Committee** to adopt the 2022 amendments to Article 2 and 9 of the Uniform Commercial Code and to enact a new Article 12. These changes focus on digital assets, such as crypto-currencies and non-fungible tokens (NFTs), updating the existing code where appropriate to adapt to the onset of these new types of property and enacting a new article to define and regulate these assets.

A proposal from the **Real Property Section** to update and clarify the requirements for recording a memorandum of trust.

A proposal from the **Estate Planning, Trust and Probate Law Section** to clarify that an Ohio trustee does not have an affirmative duty to move the situs of a trust's administration to a location outside of Ohio.

While only members of the Council of Delegates can vote on committee and section proposals, all members are invited to take part in the discussion. If approved by the council, the Ohio Bar will advocate for these law changes before the General Assembly. 

CLE Opportunity

As part of the annual meeting, earn one hour of complimentary CLE credit as we discuss civility as a key ingredient for good public policy, not to mention practicing law and many other applications. Is civility gone? And can we get it back? Hear from our panel of policy makers.

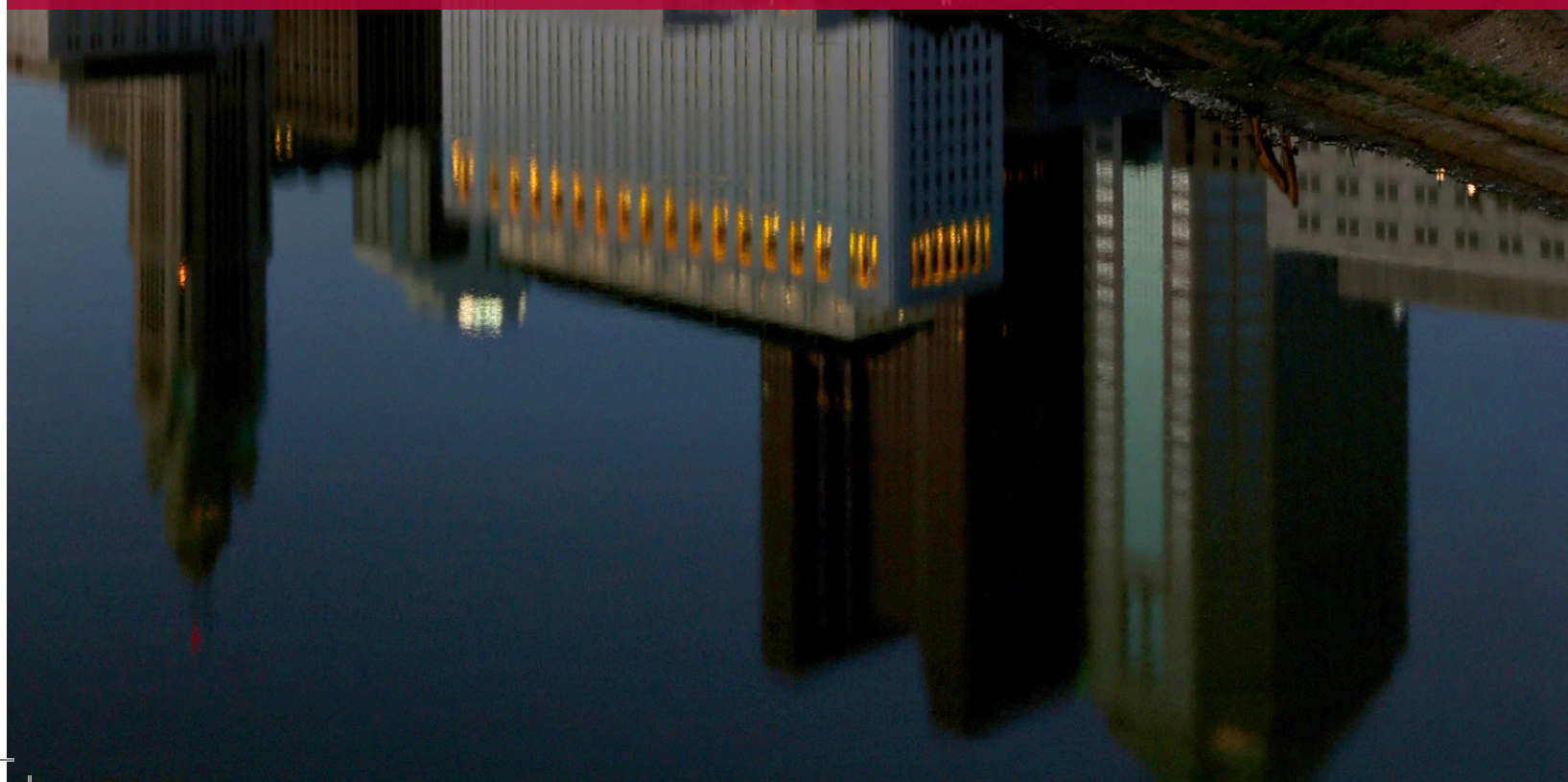


To register and learn more about 2023 award winners and council proposals, visit ohiobar.org/annualmeeting and be sure to join us May 9 at the Ohio Statehouse.



Supreme Court Roundup

Major 2022 Ohio Supreme Court Decisions and Their Public Policy Implications





Attorneys know well that, while our statutes originate in the legislature, case law can have a major effect on public policy, whether it sets a new precedent or spurs lawmakers to act. In 2022, the Ohio Supreme Court decided several cases with future policy implications on topics like freedom of speech, statues of repose, tort reform and more. We asked some close watchers of the Supreme Court to give us the highlights of these cases and how they believe the decisions could affect policy down the line.



League of Women Voters v. Ohio Redistricting Comm., Slip Opinion Nos. 2022-Ohio-65, 2022-Ohio-342, 2022-Ohio-789, 2022-Ohio-1235, 2022-Ohio-1727

In a series of 4-3 opinions, the Ohio Supreme Court concluded that redistricting maps created by the Ohio Redistricting Commission for the 2022 General Assembly elections were unconstitutional. The opinions construed 2015 amendments to Article XI of the Ohio Constitution, which created the commission and provided a framework for drawing new legislative districts. This framework responded to the court's prior holding that former Article XI did not prevent consideration of partisan factors in apportionment decisions.¹

For the 2022 elections, a commission with a Republican majority² approved new districts challenged by petitioners and Democrats as partisan gerrymanders. The dispute focused mainly on two legal issues: (1) whether criteria in new Section 6, including guidance that no maps be drawn "primarily to favor or disfavor a political party" and to draw maps that "correspond closely to the statewide preferences" of Ohio voters,³ are mandatory and (2) the scope of judicial review under new Section 9.⁴ As to the former, the court held that the phrase

"shall attempt" in Section 6 means that while its criteria "may not come to fruition," the commission must "try to achieve them."⁵ As for the latter, the court construed Section 9(A) as "allow[ing] review of a district plan for compliance with any provision in Article XI, including Section 6."⁶ But the court also held that it had no power either to adopt redistricting maps on its own or declare other proposed maps presumptively constitutional.⁷ Together, these three holdings allowed the court to review maps under Section 6, but left it unable to adopt alternative maps.

The upshot was a series of opinions holding that:

1. Too many Republican and "toss up" districts showed various maps were drawn primarily to favor the Republican party.
2. Too many "competitive" Democratic districts – excluded from the court's proportionality analysis – prevented these maps from corresponding closely to statewide voter preferences.
3. And the commission had to reconvene and adopt new maps.

As the elections drew closer, a three-judge federal court intervened to end what it called the "deadlock" between the court and the commission, specifying the commission's third map as the 2022 map.⁸ Chief Justice O'Connor remarked in a later concurring opinion that the federal court's concerns were "created by the commission's lack of action – which is in direct defiance of its constitutional duties and this court's four prior judgments[.]"⁹ All the while, three justices remained in dissent. The dissenting justices argued, among other things, that:

1. "Stand-alone violation[s]" of Section 6's partisan favoritism and proportionality provisions were not "judicially enforceable."¹⁰

2. The majority's invocation of "partisan symmetry" is an unworkable standard.¹¹
3. And the majority's line between "competitive" and "safe" seats, which treats a vote share of 52% or less as a "toss-up" district, is not grounded in the constitution.¹²

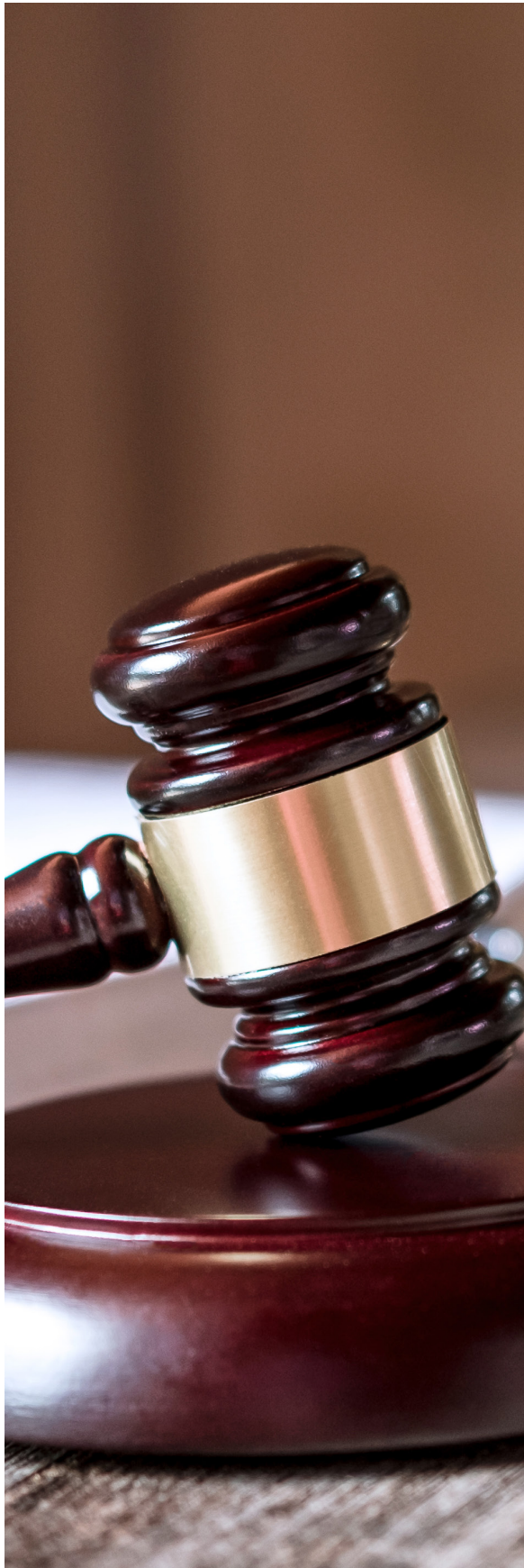
The long-term implications of these opinions and the standards they adopt are unclear. The map adopted by the federal court applied only to 2022 elections, meaning Ohio must draw new maps for the 2024 elections. But any challenge to those maps would be heard by an Ohio Supreme Court with a new chief justice and different makeup. Whether changes at the court are a precursor of a new majority that looks at the 2015 amendments to Article XI differently remains to be seen. And new amendments to Article XI may eventually be in the offing, as the experience of the 2022 election led some to conclude that an independent redistricting commission would better separate the map-drawers from partisan politics.¹³



Elliot v. Durrani, Slip Opinion No. 2022-Ohio-4190.

The court split 4-3 in the latest suit over Dr. Abubakar Durrani's medical care to make its way to the Ohio Supreme Court, holding that the four-year medical claim statute of repose is tolled while a defendant remains outside Ohio.

Elliot addresses two statutes implementing different policies. One, R.C. 2305.15(A), tolls "the period of limitation" when someone leaves the state. It gives a claimant time to serve a lawsuit before the cause of action lapses.¹⁴ The other, R.C. 2305.113(C), is a statute of repose; it specifies a time after which medical providers cannot be sued, "providing a fresh start and embodying the idea that at



some point a defendant should be able to put past events behind him.”¹⁵ The court last tackled how to reconcile this statute of repose with another statute touching on when a cause of action must be filed in *Wilson*, holding that R.C. 2305.113(C)'s liability bar applies unless “an express exception” within that statute says otherwise.¹⁶ Under that rule, the saving statute (R.C. 2305.19(A)) does not extend the repose period.¹⁷

Elliot revisited this “express exception” rule in a case involving a patient who sued Dr. Durrani in 2015, claiming he committed malpractice during a 2010 spinal surgery. The trial court had dismissed the suit under the statute of repose, concluding the statute was not tolled when Dr. Durrani left for Pakistan in late 2013 after being sued by many patients and indicted for criminal fraud. Justice Donnelly’s opinion for the court in *Elliot* reversed this dismissal, holding that an “express exception” to the statute of repose’s liability bar may be found in *other* statutes – including R.C. 2305.15.¹⁸ According to the majority, by referring to when “the period of limitation ... in sections 2305.04 to 2305.14” begins to run, R.C. 2305.15(A) and (B) “explicitly make the tolling statute an exception to the statute of repose.”¹⁹

The upshot, as now-Chief Justice Kennedy’s dissent notes, is that medical providers leaving Ohio to retire or practice in another state “potentially [have] unending exposure to suit” for injuries within four years before their departure. And this tail liability may implicate many of “the problems caused by stale litigation, including the loss of evidence and witnesses, changes in standards of care over long periods, and” the burden of maintaining health records for a long time.

The fallout from this decision is unclear. Not all statutes of repose are worded the same. The logic of *Elliot*

suggests the absconding-defendant statute likely will extend the legal malpractice repose period under R.C. 2305.117; the two statutes of repose are worded similarly.²⁰ But *Elliot* may not apply to statutes of repose with different wording, like the construction statute of repose in R.C. 2305.131. That statute has a broad introductory clause showing a legislative intent to supplant rules of accrual in the rest of R.C. Chapter 2305.²¹ Given this wording, claims that fall within the construction statute of repose may not be subject to R.C. 2305.15 tolling under *Elliot*.²² At any rate, we may see legislative initiatives soon to refine the wording of at least the legal and medical malpractice statutes of repose to provide greater certainty as to when a claim must be brought.

– Benjamin C. Sassé
Partner, Tucker Ellis LLP



Portage County Educators Association for Developmental Disabilities v. State Employment Relations Board, Slip Opinion No. 2022-Ohio-3167

The issue of picketing in front of public officials’ homes came before the Ohio Supreme Court in *Portage County Educators Association for Developmental Disabilities v. State Employment Relations Board*.

In that case, the court held unanimously that a provision prohibiting this so-called “targeted” picketing “in connection with a labor dispute” violates the First Amendment.

The provision, R.C. 4117.11(B)(7), defines in part “unfair labor practice” by public employees or unions. It prohibits “[i]nduc[ing] or encourage[ing] any individual in connection with a labor relations dispute to picket the residence or any place of private employment of any public official or representative of the public employer.”

Employees of the County Board of Developmental Disabilities picketed in front of board's members' homes during a labor dispute. The employees' union challenged the provision under the federal First Amendment.

Decades earlier, the United States Supreme Court held that a general local ordinance prohibiting targeted picketing *was* constitutional. In *Frisby v. Schultz*, 487 U.S. 474 (1988), the court found that the ordinance at issue was content-neutral and thus not subject to strict scrutiny, and that it satisfied the less-stringent standards of intermediate scrutiny. The union in *Portage County* asserted that R.C. 4117(B)(7) applied only "in connection with a labor-relations dispute," and thus, unlike *Frisby*, was not content-neutral.

The employer and the State Employment Relations Board asserted that this language acted only as a restriction on *time*, prohibiting targeted picketing *during* a labor dispute *regardless* of content. The language was necessary to constrain the law to its labor-law context. Otherwise, targeted picketing about police tactics, for example, could constitute "unfair labor practice," which made no sense.

During oral argument, four days before the Super Bowl, Cincinnati Justice Patrick DeWine probed this interpretation. "So," he asked, "If these people had stood outside a [board member's] yard and said, 'Let's go Bengals,' that would have been illegal?" Added Cleveland Justice Melody Stewart: "And would it depend on if they were Browns fans?"

The provision prohibited *any* targeted picketing during a labor dispute, counsel responded, even if the picketers chanted football cheers. Otherwise, employees could subvert the law by chanting irrelevant messages with the obvious purpose of influencing a labor dispute.

The court disagreed. Writing for the court, Justice Michael Donnelly concluded that the provision "indisputably identifies the subject matter of the expression." Further, the provision applies only to public employees, and thus "unmistakably restricts the particular views of particular speakers." Thus, the provision must satisfy strict scrutiny, which it could not.

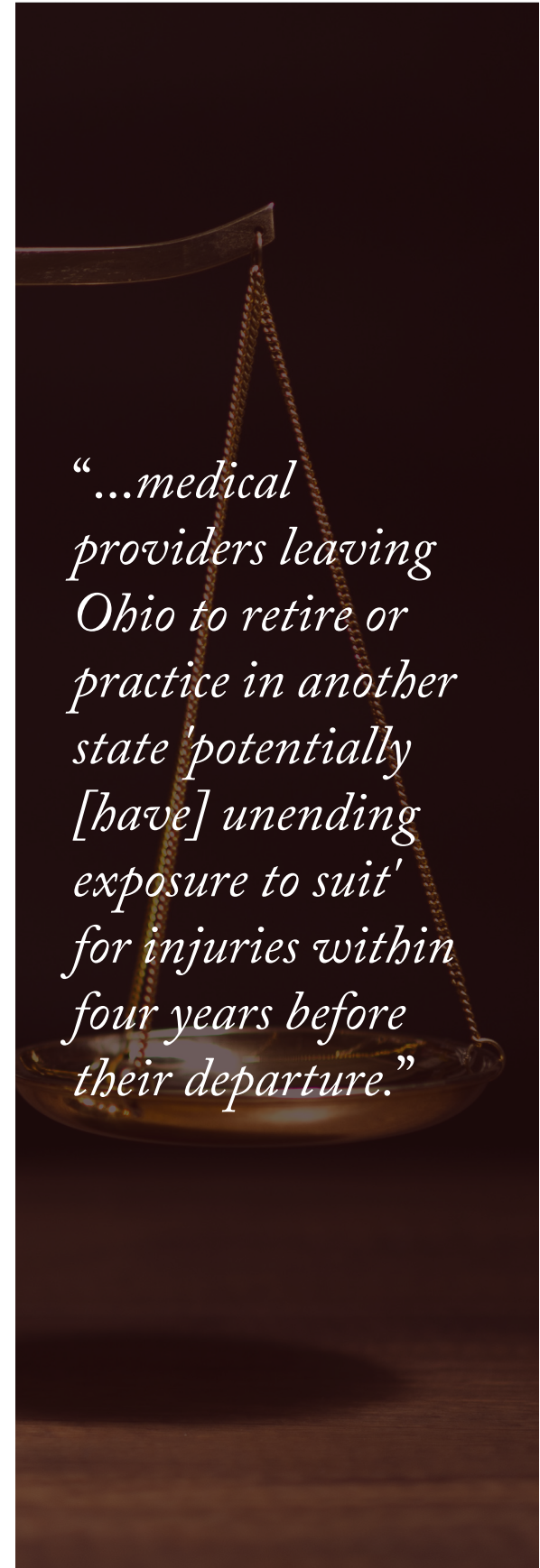
Justice Sharon Kennedy, joined by Justice DeWine and Justice Patrick Fischer, agreed, but for a different reason. The provision prohibits not picketing itself but "induc[ing] or encourag[ing]" picketing, itself a form of speech. But the provision, Justice Kennedy wrote, allows employees "to encourage targeted picketing ... unrelated to a labor-relations dispute and to *discourage* targeted picketing in all circumstances."

After *Portage County*, any prohibition on picketing in front of public official's homes must come in a generally applicable law, not a provision constrained to one area of the law.

- Erik J. Clark
Partner, Organ Law LLP

Clawson v. Heights Chiropractic Physicians LLC, Slip Opinion No. 2022-Ohio-4154

In *Clawson v. Heights Chiropractic Physicians LLC* the Ohio Supreme Court held that an action for chiropractic malpractice against a chiropractor's employer was time barred because the statute of limitations had extinguished the chiropractor's direct liability for the alleged malpractice. The court relied upon its holding in *Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth*, 122 Ohio St.3d 594, 2009-Ohio-3601, 913 N.E.2d 939, stating that an employer may only be vicariously liable for the actions of its employees when one



"...medical providers leaving Ohio to retire or practice in another state 'potentially [have] unending exposure to suit' for injuries within four years before their departure."



or more of their employees are liable for malpractice. While the *Wuerth* case centered on an issue of legal malpractice, the court made it clear that the decision applies to medical- and legal-malpractice claims alike. The court also made it clear that their decision in *Wuerth* applies to all types of agents.

While the Court relied solely upon its prior holdings, it also clarified and arguably expanded common law that limits the doctrine of respondeat superior. This has the potential to lead to statutory changes in the law to prevent litigants from being over-inclusive as to the parties they file actions against where a vicarious liability relationship exists.

Brandt v. Pompa, Slip Opinion No. 2022-Ohio-4525

In *Brandt v. Pompa*, the Ohio Supreme Court in a 4-3 opinion ruled that caps on noneconomic damages are unconstitutional as applied to sexually abused childhood victims “who suffer traumatic, extensive, and chronic psychological injury as a result of intentional criminal acts and who sue their abusers for civil damages.”

Writing for the court, Chief Justice O’Connor found that the constitutional guarantee to a “remedy by due course of law” in Article 1 Section 16 of the Ohio Constitution is unjustly withheld for victims who suffer abuse at a young age when they suffer from “catastrophic *psychological* injuries” from persons who have been found guilty of those intentional criminal acts.

The caps contained in R.C. 2315.18 have previously been held to be constitutional in *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468. In that case the court held that “R.C. 2315.18 is rationally related to the legitimate state interests of reforming the state civil justice system to make it fairer and more predictable and thereby improving the state’s economy.” The pronounced state interest was “making certain that Ohio has a fair, predictable system of civil justice that preserves the rights of those who have been harmed by negligent behavior, while curbing the number of frivolous lawsuits, which increases the cost of doing business, threatens Ohio jobs, drives up costs to consumers, and may stifle innovation.”

In *Brandt*, the court distinguished from its holding in *Arbino* because

the present case dealt with intentional conduct and the stated justification in *Arbino* dealt with negligent behavior.

One way to look at this decision is to suggest that the court seems to be drawing a line in the sand to say that the state’s interest in making the civil justice system more predictable and thereby improving the state’s economy, does not satisfy a rational basis test when the conduct in question was intentional. However, the court was careful to limit its holding to apply only to victims who suffer abuse at a young age and suffer “catastrophic *psychological* injuries.” It is worth noting that the case was decided by a narrow 4-3 majority and the composition of the court has since changed. Nevertheless, how far this case will go in limiting the application of caps on noneconomic damages will be worth watching as it could lead to the legislature revisiting R.C. 2315.18.

– Scott Lundregan
*Ohio Bar Director of Policy and
Legislative Counsel*

About the Authors



Scott Lundregan is the director of policy and legislative counsel at the Ohio Bar where he leads the association's public policy team and lobbies

for Ohio Bar priorities at the Ohio Statehouse and beyond. Learn more about Scott in our feature on the Ohio Bar public policy team on page 34.



Erik Clark is a partner at Organ Law LLP in Columbus where he works as a trial and appellate lawyer focusing on business

litigation. He has represented state agencies in matters challenging the constitutionality of state laws and has argued multiple high-profile cases before the Ohio Supreme Court, the 6th Circuit, 8th Circuit and several intermediate state appellate courts. Clark earned his master's degree in journalism and his law degree from The Ohio State University.



Benjamin Sassé is a fellow of the American Academy of Appellate Lawyers and chair of the Tucker Ellis LLP Appellate & Legal

Issues Group in Cleveland. He has argued appeals in Ohio, including many cases before the Ohio Supreme Court have established standards for Ohio employment tort claims, treble damages actions and attorney fees enhancements, among other areas of law. He earned his undergraduate degree from Earlham College and his law degree from the Case Western Reserve University School of Law.

Endnotes

¹ *Wilson v. Kasich*, 134 Ohio St.3d 221, 2012-Ohio-5367, ¶14.

² Commission members included 5 Republicans (Governor Mike DeWine, Auditor Keith Faber, Secretary of State Frank LaRose, Senate

President Matthew Huffman, and House Speaker Robert Cupp) and 2 Democrats (Senator Vernon Sykes and House Minority Leader Emelia Sykes).

³ Ohio Constitution, Article XI, Section 6(A)-(B).

⁴ Ohio Constitution, Article XI, Section 9.

⁵ *League of Women Voters v. Ohio Redistricting Comm.*, 167 Ohio St.3d 255, 2022-Ohio-65, ¶90.

⁶ *Id.* at ¶94.

⁷ *League of Women Voters v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-1235, ¶¶64, 72.

⁸ *Gonidakis v. LaRose*, 599 F. Supp. 3d 642, 646, 678-79 (S.D. Ohio 2022).

⁹ *League of Women Voters v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-1727, ¶¶12 (O'Connor, C.J., concurring) (emphasis omitted).

¹⁰ *League of Women Voters v. Ohio Redistricting Comm.*, 168 Ohio St.3d 309, 2022-Ohio-789, ¶¶131-132 (Kennedy and DeWine, J.J., dissenting).

¹¹ *League of Women Voters v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-1235, ¶¶136-141 (DeWine, J., dissenting).

¹² *League of Women Voters v. Ohio Redistricting Comm.*, 168 Ohio St.3d 309, 2022-Ohio-789, ¶¶156-160 (Fischer, J., dissenting).

¹³ *League of Women Voters v. Ohio Redistricting Comm.*, 167 Ohio St.3d 255, 2022-Ohio-65, ¶¶141-147 (O'Connor, C.J., concurring); *League of Women Voters v. Ohio Redistricting Comm.*, Slip Op. No. 2022-Ohio-1727, ¶¶18-22 (O'Connor, C.J., concurring).

¹⁴ *Thompson v. Horvath*, 10 Ohio St.2d 247, 249 (1967).

¹⁵ *Wilson v. Durrani*, 164 Ohio St.3d 419, 2020-Ohio-6827, ¶9 (cleaned up).

¹⁶ *Id.* ¶¶29-30.

¹⁷ *Id.* ¶38.

¹⁸ *Id.* ¶18.

¹⁹ *Id.* ¶18.

²⁰ Compare R.C. 2305.113(C) ("Except as to persons within the age of minority or of unsound mind as

provided by section 2305.16 of the Revised Code, and except as provided in division (D) of this section, *** [n]o action upon a medical *** claim shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the medical *** claim.") *with* R.C. 2305.117(B) ("Except as to persons within the age of minority or of unsound mind as provided by section 2305.16 of the Revised Code, and except as provided in divisions (C) and (D) of this section, *** [n]o action upon a legal malpractice claim against an attorney or a law firm or legal professional association shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the legal malpractice claim.").

²¹ See R.C. 2305.131(A)(1) ("Notwithstanding an otherwise applicable period of limitations specified in this chapter or in section 2125.02 of the Revised Code and except as otherwise provided in divisions (A)(2), (A)(3), (C), and (D) of this section, no cause of action to recover damages *** that arises out of a defective and unsafe condition of an improvement to real property *** shall accrue against a person who performed services for the improvement to real property *** later than ten years from the date of substantial completion of such improvement.") (emphasis added).

²² Even if a court were to conclude that the absconding-defendants statute is specific while the construction statute of repose is general, a court should resolve any conflict between the two by holding that the later-adopted repose period is not tolled. See R.C. 1.51 ("If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.") (emphasis added).



IN OUR OPINION: RESULTS OF THE OHIO BAR 2023-24 PUBLIC POLICY SURVEY

In mid-January, with a new legislative session in the starting gates, we asked for about 15-20 minutes of your time to tell us where you stand on some current public policy proposals and to get a sense of what issues you think are most important for the Ohio Bar to be involved over the next two years.

This periodic temperature check of the membership is one factor of many that helps to guide the Ohio Bar Board of Governors, Council of Delegates and our professional public policy staff as we set priorities, advocate and inform policy makers around the issues of the day at the Statehouse, Supreme Court and Congress.

DIRECTIONAL, NOT GOSPEL

Over the two weeks the online survey was open, 825 of you turned in completed questionnaires. Based on the number of members we have, this would be sufficient to qualify as statistically valid. That said, because we were committed to an anonymous survey to encourage more participation, we cannot be certain that the demographic characteristics of respondents represented the true demographic makeup of the membership. And so, it is important to note that we take these results as directional, not gospel. We caution you to do the same.

WE KNOW, WE KNOW ... IT DEPENDS

We also fully recognize that each question asked represents a highly nuanced area of law and that it's near torture for us to ask a lawyer to simply "agree" or "disagree" rather than give you the option to answer in the way most lawyers like to answer such questions, which is: "It depends." As you will see, a good number of you exercised your "undecided" option on some questions and shared lots of commentary to qualify your agrees and disagrees, which we appreciate and will take into account.



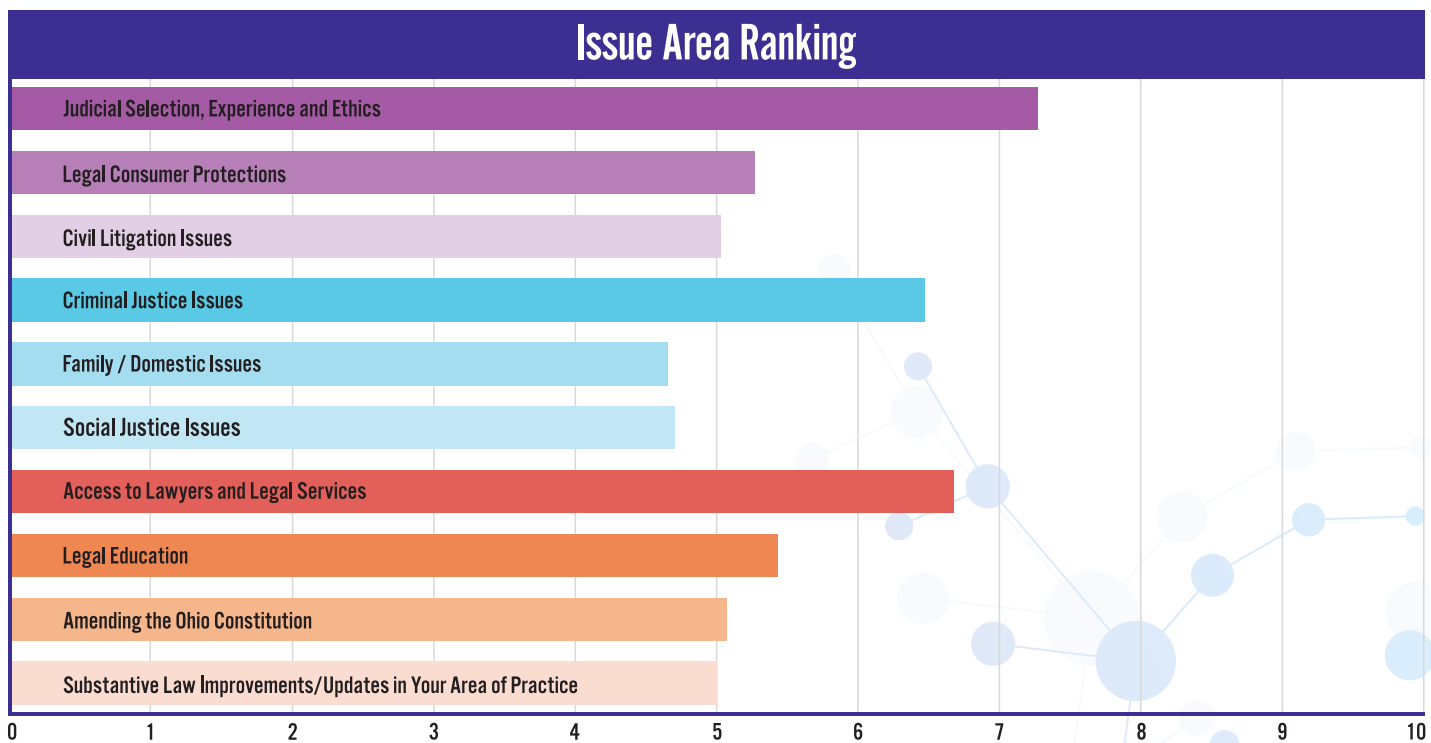
DIVERSITY OF OPINIONS

So, to those of you who took the survey, thanks for bearing with us. We appreciate all the context, your valuable time and most of all, how thoughtful you were in your answers. One thing we have long understood about Ohio Bar members, and you'll see it confirmed in the results to follow: We represent diverse viewpoints, particularly on those hot button issues that divide our society in general. We value this diversity of thought and always keep who we represent in mind when setting priorities for our association and when weighing whether or not to take a formal public policy position on behalf of the Ohio Bar.

And please note that just because we asked a question doesn't mean the Ohio Bar will take a formal position on it. For a brief primer on what goes into setting our policy agenda, be sure to check out President Dean Wilson's column on pg. 8.

THE RESULTS

Survey questions were grouped in 10 different issue areas. Recognizing that the Ohio Bar has limited time, resources and political capital to expend, we asked you to rank the issue areas and tell us which were most important for Ohio Bar involvement. Here's what you told us:



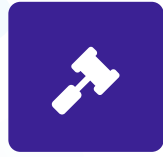
Note that though **Judicial Selection, Experience and Ethics**, **Access to Lawyers and Legal Services** and **Criminal Justice Issues** earned the three highest scores when taking all of your rankings into account, the area of **Substantive Issues in My Practice Area** also gets notable mention because it earned more first place rankings from you than even Criminal Justice Issues. This once again affirms the good work done by Ohio Bar committees and sections who we regularly call upon to weigh in on pending bills and who proactively recommend law improvements based on their expertise and experience navigating existing law.



YOUR RESPONSES IN TOP ISSUE AREAS

The following represents your responses to the questions in the top three issue areas you indicated were most important for Ohio Bar involvement. To view results in other issue areas we polled, visit ohioabar.org/publicpolicysurvey23-24.

Judicial Selection, Experience and Ethics



Candidates for judge should not have partisan designations next to their names on the ballot.

57.51% Agree 33.58% Disagree 8.91% Undecided



Ohio should not have partisan designations for some judicial elections and not for others.

61.62% Agree 29.40% Disagree 8.98% Undecided



Ohio should select its judges via merit selection rather than by election.

41.93% Agree 39.49% Disagree 18.58% Undecided



Ohio's current requirement to be a judge (having served six years as an attorney) is a sufficient standard for ensuring excellence on the bench.

37.03% Agree 51.40% Disagree 11.57% Undecided



Ohio should increase its age limit (currently age 70) for judges.

45.79% Agree 43.71% Disagree 10.50% Undecided



The investigation and disciplinary process for judges should be streamlined and accelerated to ensure more public confidence in the judicial system.

54.97% Agree 17.79% Disagree 27.24% Undecided

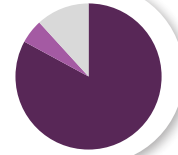


Access to Lawyers and Legal Services



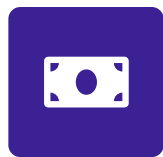
The state of Ohio/counties should increase indigent defense reimbursement rates for court-appointed counsel.

82.91% Agree 5.32% Disagree 11.77% Undecided



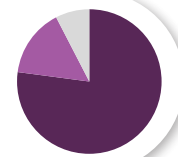
Judges should remain involved in selecting appointed counsel in indigent defense cases.

53.36% Agree 18.25% Disagree 28.39% Undecided



Congress should maintain funding to support legal aid nationally, including in Ohio.

77.09% Agree 15.32% Disagree 7.59% Undecided



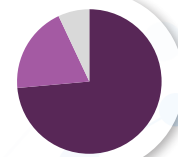
The state should allocate more funding to support legal aid programs across the state.

74.18% Agree 11.90% Disagree 13.92% Undecided



Congress should continue to support the Federal Student Loan Forgiveness Program, which provides loan forgiveness for lawyers who work in the public sector and nonprofit organizations for at least 10 years.

73.57% Agree 19.44% Disagree 6.99% Undecided



Criminal Justice Issues



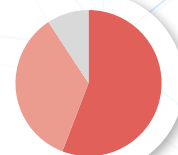
Ohio should reform its bail standards to be consistent across the state and to ensure there is not disparate treatment.

70.88% Agree 15.25% Disagree 13.88% Undecided



The death penalty should be abolished in Ohio.

55.82% Agree 34.92% Disagree 9.26% Undecided



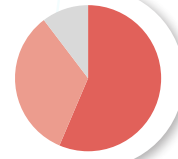


Survey



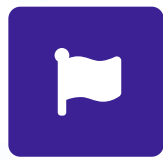
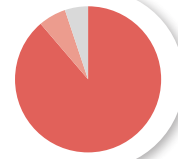
Marijuana should be legalized in Ohio for recreational use.

■ 56.41% Agree ■ 33.25% Disagree ■ 10.34% Undecided



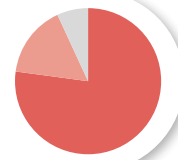
Ohio courts should collect and uniformly report sentencing data so that lawmakers and advocates can make better-informed decisions on public policy.

■ 88.74% Agree ■ 6.13% Disagree ■ 5.13% Undecided



Ohio should adopt a so-called "red flag law," allowing for the temporary removal of firearms from a person who is believed to present a danger to themselves and others.

■ 77.13% Agree ■ 16.00% Disagree ■ 6.88% Undecided



STAY CONNECTED AND INFORMED

If you were unable to participate in the survey this year, never fear. This represents one moment in time and won't be your only opportunity to share your views with the Ohio Bar or stay abreast of current issues.

Question of the Week. Throughout the year, we take short, pulse surveys on many topics, including practice trends and timely public policy issues. Be sure to participate in the Question of the Week, which runs weekly in the Ohio State Bar Association Report "Greenbook" and is posted on your member dashboard at ohiobar.org. All results are posted in the Greenbook the following week.

Weekly Legislative Report/Legislative Enactments. Also featured in your Greenbook Mondays and Fridays (as well as in OSBA News on your member dashboard), don't miss our Weekly Legislative Report to follow our progress on priority legislation and get other highlights of what happened at the Statehouse that week. The Greenbook is also where we report on legislative enactments when they are signed by the Governor and again when they take effect. Bottom line: Read your Greenbooks to be in the know.

Quarterly Legislative Update. Don't miss our quarterly legislative updates – one-hour webcasts for CLE credit that are complimentary for Ohio Bar members. You'll hear all the latest news from the Statehouse and get updates on Ohio Bar priorities while being able to ask questions. Programs are also made available OnDemand if you can't make the live presentation.

Committees and Sections. The Ohio Bar has more than 40 practice- and/or area of interest-specific committees and sections that meet three times per year and have discussions via online member communities in between. Members of the policy team attend these meetings and provide legislative updates, and this is the primary forum where members discuss and debate public policy issues specific to your area of practice. If you are not involved in a committee or section, there's no time like the present to get involved.

Contact Us. Finally, feel free to reach out to our public policy team via email at osba@ohiobar.org or directly.

View more results from the Public Policy Survey at ohiobar.org/publicpolicysurvey23-24.

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Introducing the



Advocacy Toolkit

As guardians of justice, lawyers have a unique role in ensuring that Ohio law is fair, equitable and in the best interests of their clients. And as you can see from the results of our 2023-24 Public Policy Survey, the bar association is made up of many diverse perspectives from across the state.

So the our team of public policy experts developed the **Ohio Bar Advocacy Toolkit** – a comprehensive resource for attorneys who are ready to get involved in the legislative process.

Via the toolkit, learn how to get involved with Ohio Bar advocacy efforts or, if the bar doesn't take a position on an issue that's important to you, find out how to embark on your own advocacy journey.

Once you decide on the issues you'll lobby for or against, visit ohioabar.org/advocacytoolkit to learn how to:

- Find information on specific law proposals.
- Track the bills that interest you.
- Engage with lawmakers.
- Draft bill testimony.
- Speak in a committee hearing.
- Park at the Statehouse.
- Learn how the Ohio Bar decides which issues it will lobby for or against on behalf of our members (and get involved).
- And more.



Lend your voice to the issues you care about most.
Learn more at ohioabar.org/advocacytoolkit.

Certified.

Has a nice ring to it, right?

You are busy and your time is valuable — we get it!

Becoming an Ohio Bar Certified Specialist is time well-spent. Certification can help you advance your practice and grow your career in today's challenging environment.

The Ohio Bar is the only Ohio-specific certification program accredited by the Supreme Court of Ohio, providing certification to attorneys in 11 specialist areas.

Take Action and Start Planning Now

Now is the time to start the application process and start working to complete your requirements by the following deadline for 2023 certification:



Attorneys: Register by June 30 for the Nov. 13, 2023 exams

Apply at ohio-bar.org/certification.

Take your career to new heights by becoming an Ohio Bar Certified Specialist.

Membership Means Savings

Ohio Bar members receive discounts on application and exam fees, as well as complimentary and discounted CLE that can be applied toward certification and renewal requirements. Look for the "S" icon to find courses that qualify for certification credit.





Practice Tip: Working With ESL Clients

By Valeriya Kryvokolisnka

According to the Migration Policy Institute, Ohio is home to over 558,000 immigrants, which is 4.8% of all 11.7 million people living in the state. The top metro areas in Ohio with immigrant populations are Columbus (7.5%), Cleveland (5.7%), Cincinnati (5%) and Dayton (4.3%). Further, the United States Census Bureau reports that 7.2% of people living in Ohio speak a language other than English, another 2.5% of people speak English less than very well, and 2.3% of the people speak only Spanish at home.

Because of this, at some point most of us will encounter a client who speaks very little English or who uses English as their second language. As lawyers, we have a duty to reasonably consult with our client about the client's objectives and options, and to keep our client

reasonably informed about the case. That poses special challenges if there is a language gap.

Here are five tips on how to communicate with clients that I have personally used when representing clients who speak English as their second language (ESL speaker):

1. **Be Patient and Keep it Simple**

For many people, speaking with an attorney can be intimidating under the best of circumstances and understanding "legalese" is almost always challenging. For ESL clients, it is even more difficult. Your client may understand what you are saying but not fully grasp the concept of what you are saying. To ensure that your client understands the

legal process and the implications of their decisions, speak slowly, use simple words, say one concept at a time and perhaps explain in more than one way. For example, when talking to a client about discovery, explain the process and what it means, instead of saying something like "we are going to ask for discovery" or "you have to produce discovery." An ESL client may not understand the meaning of the word discovery and may be confused. If your client doesn't fully grasp the concept of the legal process the first time you explain it, be patient and use examples. Be sure to ask them if they have questions or if they understand before moving on to the next subject. It may take you a few



times to explain the process or the meaning of a word, but your client will appreciate your patience and the time you took to explain the process to them.

2. Be Culturally Aware

Take the time to learn how to pronounce your client's name. If you are struggling, ask your client. Your client will not be offended and will appreciate your effort to learn their name. Growing up, everyone mispronounced my name, so by the time I was in college, I introduced myself as Valerie instead of my real name, which is Valeriya. You will build a stronger connection with your client if you take the time to do this. Learning how to say your client's name is equally as important as learning about their culture. Every culture is different, and what may seem standard to you is not typical for many ESL clients. Learning about your client's culture will help you understand their thought process and will help you guide them in making decisions that will impact their life.

3. Translate Documents

If you know you are meeting with an ESL client, search your local court's website for documents in their language. Many courts have documents translated into different languages and it doesn't cost you anything. Provide the translated documents to your client when you are explaining the legal process, an upcoming hearing or other event. For ESL clients, it is helpful to have something in writing in addition to speaking with them. Even if you don't provide a translated document, provide them with a document in English – they may be able to translate it themselves or seek assistance from a family member, friend or their local community.

“

If you have an ESL client, remember to be patient, understanding and compassionate.

”


4. Use an Interpreter

While an ESL client may say that they don't need an interpreter, if you have any doubts about your client's ability to understand what is being asked or if you have any concerns about your client's responses, be sure to request or hire an interpreter. This should be free of charge for your hearings. Always use an interpreter when you are in court with your client. This ensures that the client understands the legal proceedings and that there are no doubts or miscommunications about what happened. Failure to do this might create a liability for you, and possibly, great disappointment for the client at the outcome.

5. Be Human

Put yourself in your client's shoes. How would you feel if you were in a different country, didn't know the language and had a pending lawsuit? It doesn't matter whether you are representing a client in a divorce, criminal or civil matter – the process is stressful. It is even more stressful for an ESL client who may not be able to fully understand what is going on around them. As lawyers, our hectic schedules sometimes prevent us from taking the time to remember that being in court or in the legal arena is not common for most people. It's second nature to us, but not for most people. For ESL clients, this is foreign territory. Take the time to describe in

detail the opponent's office or the courtroom, where you and the client are going to be, where the judge or magistrate is going to be and if anyone else is going to be there. The more details you provide to your client, the more comfortable and at ease they are going to be.

The legal system and process is difficult to navigate for native speakers, let alone ESL clients. If you have an ESL client, remember to be patient, understanding and compassionate. If you take the time to learn about your client in the beginning, it will be much easier for you to communicate with and advise your client throughout the legal process. 

About the Author



Valeriya S. Kryvokolinska is an associate attorney at the firm of Friedman & Mirman Co. LPA where she practices family law and offers her services in

Russian. She is a graduate of the 2022 Ohio State Bar Association Leadership Academy and has represented clients in divorce and custody matters, served as a Guardian ad Litem for Franklin County and is dedicated to serving others through her volunteer work with The Legal Aid Society of Columbus, where she provides legal advice to low-income individuals. Kryvokolinska was born in Kiev, Ukraine and relocated to Toledo, Ohio at the age of 10. She earned her undergraduate degree from the University of Cincinnati and her law degree from Capital University Law School.



Meet the Ohio Bar Policy Team

The Ohio State Bar Association's team of policy experts advocates for the profession, for access to justice and the rule of law. They are a constant presence at the Ohio General Assembly, the Ohio Supreme Court and the U.S. Capitol and collaborate closely with association members via committees and sections to continuously improve Ohio law. Each one of them has a rich public policy background. If you haven't had a chance to meet the them, get to know more about their public policy chops here.



Mary Amos Augsburger is the CEO of the Ohio State Bar Association. In this executive leadership role, Augsburger directs the association's mission, goals and policy positions in close coordination the association's 24-member board. Augsburger began her career in the Ohio Senate as chief legal counsel and policy advisor for the Senate Majority Caucus at just 30 years of age. She drafted and negotiated proposed legislation for criminal and civil justice initiatives, finance and elections law changes and state budget issues. She also managed litigation involving members of the Senate, the legislative process and constitutional challenges to state laws. Augsburger worked with Squire Sanders + Dempsey LLP (now Squire, Patton & Boggs) in government relations and health care law, then returned to her true passion of public service and advocacy as division chief counsel and department policy advisor to the Ohio Department of Commerce, Division of Financial Institutions then went on to the Ohio Auditor of State where she served as director of policy and public affairs. In that role, she formulated and drafted strategic policy initiatives. She also managed the auditor's government relations program and directed the office's communications, public relations and outreach programs.

In 2012, she joined the Ohio State Bar Association as legislative counsel, serving as the bar's lobbyist and advocate before becoming executive director the following year. She earned her undergraduate degree from The Ohio State University and her law degree from Capital University Law School.



Scott Lundregan is the director of policy and legislative counsel at the Ohio Bar. He joined the bar as director of member engagement and legislative counsel in 2019, managing the 43 committees and sections that ideate and write legislative proposals and help to advance the association's legislative agenda at the Ohio Statehouse. Ludregan previously served as director of policy and deputy chief of staff in the Ohio House of Representatives, where he led the majority caucus' policy team and advised the Speaker and members of the House on legislative priorities and their impact.

He was a successful broker, helping to garner bipartisan support for the vast majority of bills passed by the chamber during the 132nd General Assembly. Prior to his service in the Ohio House, he served as a staff attorney at Baker & Hostetler LLP where he assisted on various litigation matters in connection with the firm's role as counsel to court-appointed trustee under the Securities Investor Protection Act in the liquidation of Bernard L. Madoff Investment Securities LLC. He is a graduate of Miami University and earned his law degree from The Ohio State University Moritz College of Law.




Marisa Myers is the Government Relations Manager at the Ohio Bar. She began her career in politics as a legislative aide to former State Representative Ron Maag from southwest Ohio. She then served as a policy advisor in the Ohio House Speaker's Office, covering a wide variety of issues from higher education to state and local government to transportation. She was promoted to deputy policy director, working alongside Scott Lundregan. Through her time in the Ohio House, Myers learned the ins and outs of the legislative process, working through three budget cycles, numerous committee hearings and floor sessions and other special projects.

From the House, Marisa moved to the Ohio Township Association where she served as the director of governmental affairs managing the association's advocacy efforts, developing educational resources and serving as the point of contact for policy questions from Ohio's 1,308 townships. In one of her biggest achievements, she was instrumental in ensuring townships had access to their share of \$422 million in American Rescue Plan Act funding, which was called into question due to lack of clarity in the law, and helped navigate officials through federal and state requirements associated with the act. Myers earned her undergraduate degree from Wittenberg University in political science, international relations and Spanish. She holds a master's degree from James Madison University in political science, which she completed on JMU's satellite campus in Florence, Italy.



McKenzie K. Davis is a member of the public affairs and lobbying firm The Success Group, which he joined in 2004. He collaborates closely with the Ohio Bar's full-time lobbying staff to ensure the success of the bar's advocacy efforts and has recently been named Ohio's most effective lobbyist by Statehouse insiders. Prior to joining The Success Group, Davis served as the director of government affairs for the Ohio Academy of Nursing Homes. He also served nine years on the Ohio Supreme Court Board of Professional Conduct.

Davis was a member of the 2018 Task Force on the Ohio Disciplinary System and was a 2015 Ohio State Bar Foundation Fellow. He currently serves on the Ohio Supreme Court Board of Character and Fitness, the Chief Justice Thomas Moyer Legacy Committee and the Alpha Gamma Chapter of Sigma Chi House Corporation. Davis earned his undergraduate degree in political science and history from The Ohio State University and his law degree from Capital University Law School. 

Learn more about the Ohio State Bar Association's advocacy efforts, including how to become an advocacy partner at ohio-bar.org/advocacy.



COLOR OF JUSTICE VIRTUAL SYMPOSIUM | APRIL 26, 2023

The Ohio State Bar Foundation (OSBF) is proud to host our 2023 Symposium, The Color of Justice: Racial Inequities in the Justice System. Attorneys from the 2022 OSBF Fellows class are focusing on race-based disparate treatment in the justice system. The Color of Justice will provide panel discussions building understanding around barriers in the justice system, the populations being affected, and opportunities for change on an individual and systemic level.



INTRODUCTORY SESSION

New York Times best-selling author and CNN Host and Senior Legal Analyst Laura Coates joins Kharlton Moore, Director of the Bureau of Justice Assistance, US Dept of Justice for a look into Laura's first-hand experience as a Black prosecutor where she quickly found "the pursuit of justice creates injustice."

PANEL 1: BETTERING THE JUSTICE SYSTEM— OPPORTUNITIES FOR REFORM

Hear from national policy experts about topics at the intersection of race and justice, how race is particularly impacted by criminal law reform proposals, and how courts can actively reduce implicit bias and other barriers to justice.

Moderator: Judge Laurel Beatty Blunt, 10th District Court of Appeals

Panelists: Justice Michael Donnelly, Supreme Court of Ohio; Judge Nicole L. Sanders, Hamilton County Court of Common Pleas; Zach Klein, Columbus City Attorney; and Doug Berman, Professor at The Ohio State University Moritz College of Law and Executive Director of the Drug Enforcement and Policy Center

PANEL 2: CRIMINAL SENTENCING—MASS INCARCERATION AND SENTENCING ALTERNATIVES

This panel will explore how Ohio Courts are implementing science and best practices to reduce over-incarceration and provide access to justice for all who enter into the legal system, while keeping communities safe.

Moderator: Michele Worobiec, OSBF 2022 Class Fellow

Panelists: Brandon Buskey, Director of Criminal Law Reform Project, ACLU, New York; Kyle Strickland, Deputy Director of Race and Democracy at the Roosevelt Institute; Paula Hannaford-Agor, Director of the Center for Jury Studies, National Center for State Courts



FOR MORE INFORMATION VISIT WWW.OSBF.ORG/COLOR-OF-JUSTICE

2022 GRANTS UPDATE



\$1,363,395

TOTAL DOLLARS GRANTED TO NONPROFITS THROUGHOUT THE STATE



32

GRANTS GIVEN TO OHIO NONPROFITS



\$386,510

TOTAL DOLLARS GIVEN THROUGH RACIAL JUSTICE INITIATIVE



>\$15 million

DOLLARS GIVEN SINCE 1992

RAISE THE BAR RESULTS

RAISE THE BAR 2022 CONCLUDED AT THE END OF NOVEMBER 2022, AND THE VERDICT IS IN...

Raise the Bar Ohio is a friendly competition between teams of OSBF Fellows that come together and connect with their communities while raising awareness and support for a better justice system. Total Giving for the 2022 Raise the Bar campaign reached \$39,345, surpassing our goal of \$30,000! What a tremendous accomplishment. On behalf of the OSBF as well as our grantee organizations, we sincerely thank you for your support.

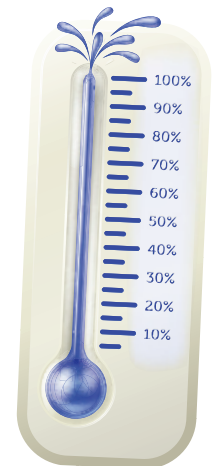
To see all winners and for more information, visit www.osbf.org/raise-the-bar

TOTAL	\$39,345
Not So Grumpy Young Men	\$11,825
Aunt Velda's Advocates	\$7,530
Boaty McBoat Face	\$5,375
Other	\$14,615

PREVAILING PARTY | Not So Grumpy Young Men
MOST NEW DONORS | Aunt Velda's Advocates
TEAM SECURING THE LARGEST GIFT | Aunt Velda's Advocates



GOAL: \$30,000
TOTAL GIVING: \$39,345





Ohio Bar Member Spotlight Special Edition: Justice Joseph T. Deters

In this interview, get to know newly appointed Ohio Supreme Court Justice Joseph Deters. The Ohio Bar visited the 163rd justice and longest-serving Hamilton County Prosecutor at the Thomas J. Moyer Judicial Center in Columbus to talk about his road to the high court, how his experience has shaped his perspective as a justice and what he hopes to achieve while on the bench. Get to know more about the Cincinnati native below.

See the other profiles of members of the high court in previous issues of Ohio Lawyer at ohiobar.org/ohiolawyer.

Describe how you took an interest in the law.

When I was a little boy growing up in Cincinnati, my grandfather was the Sheriff of Hamilton County for 24 years, he was actually a Democrat. My mom's side of the family is all Democrats, and my dad's side is all Republicans. But my grandfather, back then, was the only Democrat that could win in Cincinnati. We would go to his swearing in ceremonies and I just became enamored with what he had done with his life and his commitment to public service really affected me, and that's kind of how it started.

And my dad was not a lawyer but he always pushed me in that direction. My dad would tell me all the time that lawyers run this place, really run the country, and if even if you're not a practicing attorney, the discipline of law school is good for you. So I pointed my

“ I think I bring some real world experience. I've been struck by just how bright and intelligent and welcoming all the other justices have been to me. But I think I do bring a unique perspective to the court that probably hasn't been there for some time. ”

entire academic career towards going into law school.

What was your law school experience like?

It was interesting because I was working a lot to help pay for college and law school and in my third year, I was working almost darn near full time at the prosecutor's office as an intern. I wasn't making much money, I think I was making \$2.50 an hour back then.

When I got out of law school and passed the bar exam, my boss gave me a raise and I was making \$13,000 a year. I thought I'd died and went to heaven.

Now, law schools are in a really tough position because so many things, at least in my experience, you only learn by doing it. I took as much trial practice classes as I could, but it's just not the same, and I tell people that all the time. Until you actually do it, you're not going to learn what it's about. You can learn the basics and you can learn the rules,



Watch the video interview and learn more about Justice Deters at ohiobar.org/justicedeters.



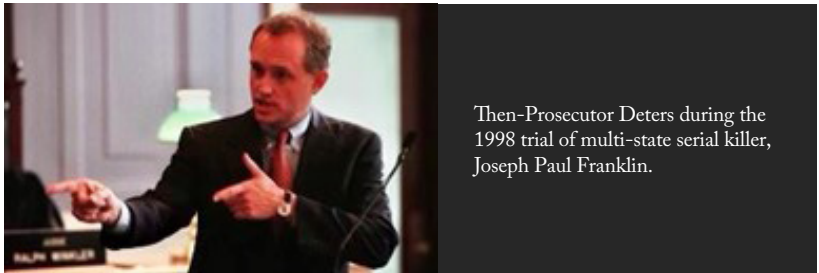
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Justice Deters is sworn in to the Ohio Supreme Court by Chief Justice Sharon Kennedy at his Cincinnati home on Jan. 7, 2023, joined by his wife, Tanya O'Rourke (center) and two of his four children, Elyse and Patrick (left).



Dan P. Tehan Democratic Sheriff of Hamilton County from 1949-72, surrounded by family, including his grandson, the would-be Justice Deters (far right).



Then-Prosecutor Deters during the 1998 trial of multi-state serial killer, Joseph Paul Franklin.

but when it comes down to it, the ability to talk to a jury, the ability to deal with different types of judges – that's all through experience. And you can't teach that, you just can't teach that.

Tell us about your early career and your experience before coming to the court.

When I was just getting out of law school, there was a horrible murder case in Cincinnati and three co-defendants were being tried at the same time. A guy by the name of Monte Tewksbury was working nights at a little convenience store to send his daughter to college and two individuals came into the store, robbed it and [killed Monte] for no other reason than just to kill him. Monte actually called the police, and as he lay dying, called his wife, who got there before the police and he effectively died in her arms there.

Because I was just out of law school, I wasn't anywhere near the trial, but my job was to get Sharon Tewksbury, his wife, to each courtroom when she had to testify because she was a fact witness. And that changed my life and professional career because I saw what victims were dealing with. And I guess it was about 10 years later, I was prosecutor.

The first thing I did when I became prosecutor was to start a victim witness program in Hamilton County because I recognized what these victims' families were going through. We didn't have anything like that before. As a trial lawyer, you like to have somebody in the back of the courtroom with the family so that when things occur, like a defense attorney stands up and makes a motion to dismiss, a victim advocate is with them saying, "Don't worry about it, it happens all the time." It's really helpful to the assistant prosecutor trying the case and more importantly, it gets a lot of information to the victims and their families.

In 1988, the longtime clerk of courts in Hamilton County died and the Republican Party came to me and said, "Would you run in 90 days for clerk?"

Back then, it was a big political job though it has changed quite a bit now. I ran and got elected as clerk but I always wanted to be a prosecutor. And in 1992, I got a chance to run for prosecutor and was successful. I spent about seven years as prosecutor before some folks in the Voinovich administration approached me about running for state

treasurer. I did that in 1998 and was successful and ran for re-election in 2002 and was successful again. Right after that election occurred, the guy who succeeded me in office as prosecutor got in some trouble and some of the folks down in Cincinnati came to me and said, "Would you be willing to come back and run as prosecutor?"

It was peculiar because it was so late in the game that I had to run as a write-in candidate which, if you don't know, is really difficult to do. But I won as a write-in candidate and was prosecutor there [up until my appointment to the court].

What unique perspective do you bring to the court?

I've spent a lot of time in court. I've dealt with lots of judges and I've dealt with lots of prosecutors and defense attorneys. I think I bring some real world experience. I've been struck by just how bright and intelligent and welcoming all the other justices have been to me. But I think I do bring a unique perspective to the court that probably hasn't been there for some time.



I promised myself that I was going to just keep my mouth shut and learn for the first six months and I wasn't going to ask any questions. It was only my second day on the bench and I couldn't control myself anymore and [started asking questions]. But I'm trying to learn and everybody's been great in helping me.

What are some your goals during your time on the Supreme Court?

I hope – and this is what we talked about in terms of real world experience – I can help people see some things that sometimes, when you're reading cases and transcripts, you don't get the real flavor of. Like a witness, how they come across in terms of demeanor and honesty and things like that. I think that's one of the real setbacks in appellate law, you're just reading a transcript and you don't get a feeling for the environment of that courtroom.

I give great deference to juries ... I didn't sit through eight months of a trial like that jury did and listen to everything. And God bless them, they came to a verdict. And that's our system. We may not like it, but that's the way it is. So I give great deference to jury verdicts because they are seeing things directly. They're not reading a transcript. Generally speaking, they're seeing it happen. And when you have a child rape case and you see the demeanor of that child testifying, it is much different than reading it.

Talk about your interest in specialty dockets. In Hamilton County, you helped develop one of the first in the state.

Judge Deidra Hair, who was a judge in municipal court when I was a prosecutor, called me and said, "I want you to check out something for me." There was a drug court that was

occurring in Miami, Florida, it was the first drug court in the country. And the judge said, I want you to go down and watch this.

I went down to Miami and watched this specialized drug court docket in the mid '90s and I was really impressed by what they were doing down there because I've always believed as prosecutor in saving the savable, because people, especially if they have substance abuse problems, they're going to make mistakes.

Generally speaking, if someone has a drug problem, there are ways to deal with that. And the drug court in Hamilton County has been very successful. I've gone to their graduations and people are crying, they're so happy that they cleaned their lives up. It's very fulfilling for me to watch that happen.



Cincinnati Ties

I've stayed active in Cincinnati quite a bit. I was on the Leukemia Society Board and ran two marathons to raise money, which I'll never do again thank you. I was on the University of Cincinnati board of trustees and I stay active in that respect.

My kids have gone to Xavier University and now that I'm an associate justice, we're starting a program where I can work with the kids down at Xavier who want to go to law school and talk to them, give them some insight. And they can either listen to me or not.

On Family

My oldest son is a doctor in Chicago, my second son is a

lawyer in Cincinnati. My daughter is a prosecutor in Cincinnati and I have an 18-year-old who is a freshman at Xavier University.

And I have two new grandchildren, my first grandchildren, which is exciting and they're so much fun. I know it's cliché, but it's so nice to play with them and then be able to leave and let the parents deal with the mess. It's been good.

Hobbies

I play really bad golf but I like doing it. I got my wife hooked on golf and my mom and dad always told me that's a great sport for couples – as you go through life, you can play golf together, you can go vacation and play golf. It's fun and she's getting pretty good.

Favorite Law-Related Book or Movie

It's an interesting question because people always will say to me, let's go watch "Silence of the Lambs" or something like that. And I don't like watching those movies because, for so long, that was my life and it was so depressing. I know it's entertainment for some people, but for me, I've prosecuted I think five serial killers in my career.

So I tend to watch Caddyshack or things like that. I want to be entertained. I liked "The Bonfire of the Vanities," the book was great and very amusing to me. But generally speaking, in my free time, I like to separate from the law as much as I can.

Ohio case law summaries from Nov. 1, 2022 – Jan. 31, 2023

In Case You Missed It: The following are selected summaries of cases decided by Ohio courts between Nov. 1, 2022 – Jan. 31, 2023.

To view all of the decisions issued in this time period or to read the selected cases in their entirety, please visit ohio.org/greenbook where you can search by case name or view by date

Administrative and Regulatory

Declaratory judgment/Civil service/Collective bargaining. Cleveland Police Patrolmen's Assn. v. Cleveland | 2023-Ohio-71 | 8th Appellate District | 01/12/2023 In plaintiff-police union's action against city defendants seeking a declaration of rights under civil service commission rules on behalf of officer, judgment in favor of plaintiff was error where commission rules cannot be enforced within the scope of a declaratory judgment action because the director of public safety has the authority to render decisions on disciplinary issues, and therefore the court may not use the Declaratory Judgment Act under R.C. Ch. 2721 to intervene in an administrative and collective bargaining process.

Appeal/Record/Timely filing/Prejudice.

Goudy v. Tuscarawas Cty. Pub. Defender | 2022-Ohio-4121 | Supreme Court of Ohio | 11/22/2022 In appeal of public defender's office's termination of classified civil service employee where the personnel board of review modified the termination to a suspension, the public defender's office appealed, and the personnel board failed to timely certify to the trial court a complete record of its proceedings pursuant to R.C. 119.12, which provides that failure of the agency to comply with the time allowed to file the record will result in a finding in favor of the party adversely affected, the court of appeals erred in ruling that R.C. 119.12(l) does not contain a prejudice requirement and that the public defender's office was entitled to judgment based on the untimely filing of part of the transcript; the public defender's office did not show that it was prejudiced by the late filing, there was no delay in the overall disposition of the case, and the case is remanded to the court of appeals for consideration of the public defender's office's unresolved assignments of error.

Liquor license/Disorderly conduct/COVID-19 restrictions. Niese Holdings Ltd., L.L.C. v. Ohio Liquor Control Comm. | 2022-Ohio-3896 | 10th Appellate District | 11/01/2022 Reversing liquor control commission's suspension of bar's liquor permit was not error where trial court determined that commission failed to provide substantial evidence to support a finding that the bar knowingly violated Ohio Adm. Code 4301:1-1-52(B)(1) (Rule 52) by allowing persons to engage in disorderly conduct under R.C. 2917.11(A)(5) because the evidence did not demonstrate that bar patrons were inconvenienced, annoyed, or alarmed by lack of mask-wearing and lack of social distancing, which were measures provided for in applicable COVID-19 health orders.

Aviation and Transportation

Motor carrier/Cargo loss/Indemnification. Total Quality Logistics, L.L.C. v. JK & R Express, L.L.C., | 2022-Ohio-3969 | 12th Appellate District | 11/07/2022 In freight broker's breach of contract action against motor carrier to recover voluntary payment broker made to customer for cargo lost when carrier's trailer caught fire, summary judgment in favor of carrier was error since carrier's liability for the cargo loss was unaffected by broker's voluntary payment to customer, and the indemnification provision of parties' broker-carrier agreement explicitly provided that broker was entitled to indemnification for liability for cargo loss; the Globe Indemn. Co. common law requirements for indemnification do not apply when the parties express a clear intent to abrogate those requirements in their contract.

Banking and Commercial

Credit card debt/Arbitration. Midland Funding, L.L.C. v. Schwarzmer | 2022-Ohio-4506 | 8th Appellate District | 12/15/2022 In bank's collection action against credit cardholder to recover amount owed on account, trial court did not err in denying bank's motion

to compel arbitration on cardholder's counterclaim since bank waived the right to arbitrate by filing the action in municipal court and by answering cardholder's counterclaim and discovery requests without asserting its right to arbitrate, and time delay in moving to compel arbitration was sufficient to show waiver under the circumstances.

Construction

Breach of contract/Arbitration/Interest. Beccdir Constr. Co. v. Lorain Cty. Bd. of Commrs. | 2022-Ohio-4762 | 9th Appellate District | 12/29/2022 In construction company's breach of contract action in which arbitrator awarded compensatory damages to company and trial court confirmed the award, the court did not err in denying company's request to modify the award to add pre- and post-judgment interest where, although interest is allowed pursuant to R.C. 1343.03(A), the parties specifically agreed to resolve their dispute through arbitration, the arbitrator twice rejected the company's requests for interest, and the company failed to establish a statutory exception for the court to modify the arbitrator's decision, R.C. 2711.09.

Jurisdiction/Contract. Thorson Baker & Assocs., Inc. v. Nicholas | 2022-Ohio-4636 | 8th Appellate District | 12/22/2022 In engineering consultant's action against out-of-state developer seeking payment of invoices for work on construction project, partial summary judgment in favor of consultant was error where, although developer entered into a contract granting consultant his personal guarantee, the contractual relationship is insufficient to demonstrate personal jurisdiction over defendant, and consultant failed to show that developer had any contacts with the state beyond his personal guarantee.

Consumer

Attorney fees/Knowingly element/Volunteer. Parks v. Aburahma | 2022-Ohio-4253 | 11th Appellate District | 11/28/2022 In plaintiff's action against defendants-suppliers alleging various claims including violations of the Consumer Sales Practices Act (CSPA), the trial court erred in denying plaintiff's application for attorney fees on reasoning that defendants negligently, rather than knowingly, violated the CSPA since the knowingly element necessary for an attorney fee award authorized by R.C. 1345.09(F) requires only that the defendant knowingly commits the act or practice, even if unaware of the CSPA violation; while plaintiff's counsel represented him as part of a volunteer legal services program, there was no pro-bono agreement, and the volunteer agreement provided for the possibility of being awarded fees.

Contracts

Breach/Party. Bizfunds, L.L.C. v. Jetmo, Inc. | 2023-Ohio-81 | 8th Appellate District | 01/12/2023 On reconsideration, App.R. 26(A), in plaintiff-receivables purchaser's breach of contract and fraud action against, inter alia, merchant owner and his wife, who owned facility in which merchant operated business, for ceasing operations immediately after plaintiff advanced funds and for failing to pay balance owed, trial court erred in declining to dismiss the claims against merchant's wife-facility owner and her business since owner was not a party to agreement between plaintiff and merchant, she did not sign a personal guarantee or engage in fraudulent behavior in concert with merchant, and she is not liable for merchant's alleged fraud against plaintiff.

Breach/Pandemic restrictions. McKinney v. LaMalfa Party Ctr. | 2022-Ohio-4333 | 11th Appellate District | 12/05/2022 In bride's action against wedding reception center seeking return of deposit, judgment in favor of bride was not error, even though the parties' contract provided that its terms could not be changed once signed and that monies paid as deposits would not be refunded if the event was cancelled for any reason; the center breached the parties' contract because the pandemic restrictions imposed by the center on the bride materially altered the terms of the contract, and return of the deposit restored bride to her original position.

Noncompete/Settlement agreement.

Hercules LED, L.L.C. v. Drabiski | 2022-Ohio-4359 | 7th Appellate District | 12/01/2022 In plaintiff-company's breach of contract action against defendant-former employee alleging violation of settlement agreement related to the parties' noncompete agreement dispute, judgment in favor of plaintiff is affirmed where defendant violated the settlement agreement by engaging in sales activities within prohibited area, and defendant's obligations under the settlement agreement were not contingent on plaintiff's obligation to provide its client list to defendant because the provision prohibiting defendant from selling within designated area was independent of, and in addition to, the agreement preventing defendant from contacting plaintiff's clients as set forth in the client list.

Breach/Damages/Prejudgment

interest. Crutcher v. Oncology/Hematology Care, Inc. | 2022-Ohio-4105 | 1st Appellate District | 11/18/2022 In medical practice's terminated officer's dispute with the practice regarding the amount of his financial interest where the practice had made periodic payments to officer and, after a partial settlement, officer filed the instant breach of contract action when the practice liquidated its assets, resulting in a judgment for officer, the trial court erred in excluding prejudgment interest from its computation of damages since prejudgment interest is allowed for contract claims pursuant to R.C. 1343.03(A), and officer specifically sought prejudgment interest by including it in his submitted calculation.

Written/Breach/Limitations.

Ownerland Realty, Inc. v. Conversion Properties, L.L.C. | 2022-Ohio-4032 | 1st Appellate District | 11/14/2022 In plaintiff-realty company's breach of written contract action against defendants-businesses seeking to recover unpaid commissions related to leasing and sale of apartment condominiums, the trial court erred in granting defendants' motion for summary judgment where, although the claim would have been outside the R.C. 2305.07 six-year statute of limitations based on the date that the commissions were alleged due and owing, the eight-year general statute of limitations for breach of a written contract under R.C. 2305.06 should have been applied.

Corporate and Business

Accounting information/Negligence/Investment decision. Addison Holdings, L.L.C. v. Fox, Byrd & Co., P.C. | 2022-Ohio-4784 | 4th Appellate District | 12/20/2022 In investors' professional negligence and related claims action against, inter alia, accounting firm that provided financial information to owner of tire business in which investors invested, summary judgment for firm was not error since investors' argument that they are members of a limited class of investors and that firm specifically foresaw that investors, in making their decisions, would rely on the financial documents that firm prepared for owner of tire business is without merit where the evidence merely indicates that the tire business owner might show the tax returns and financial statements to the general investing public, and investors did not justifiably rely on the financial compilations, which included disclaimers to warn readers that the compilations had not been audited and that the firm did not provide any assurances or opinions regarding the financial information.

Dissolution/Unjust enrichment/

Conversion. Bunta v. Superior VacuPress, L.L.C. | 2022-Ohio-4363 | Supreme Court of Ohio | 12/09/2022 In plaintiff-LLC member's conversion and unjust enrichment action against defendant-majority owner for failing to compensate plaintiff for his share of the LLC when defendant dissolved it and transferred its assets and debts to another business, resulting in a jury verdict for plaintiff, the trial court erred in denying defendant's motion for a directed verdict since, regarding plaintiff's unjust enrichment claim, there was an express and valid contract between the parties that covered the same subject as plaintiff's unjust-enrichment claim, precluding that claim, and regarding plaintiff's conversion claim, plaintiff possessed no property right subject to conversion because the LLC's debts exceeded the value of its assets at the time of dissolution and plaintiff's membership interest, which included the right to share in the profits, had no value, and also, plaintiffs' membership interest in the LLC did not continue beyond the date of termination; also, the court noted that now, generally, intangible rights which are customarily merged in or identified with some document may be converted.

Fiduciary duty/Breach/Receiver/ Interested party. Reister v. Gardner | 2022-Ohio-4272 | 12th Appellate District | 11/30/2022 After a judgment was rendered in favor of plaintiff-LLC in underlying defamation action against trade association, and LLC sought appointment of a receiver because the trade association stipulated that it had insufficient funds to satisfy the judgment, in receiver's breach of fiduciary duty action against directors of the association seeking a declaration that the directors' decision to refuse LLC's settlement offer in the defamation action was not a valid exercise of business judgment, the trial court erred in dismissing the LLC as an interested party in receiver's action since the LLC is an interested party pursuant to R.C. 2721.12(A) because the LLC sought receiver's appointment for the specific purpose of bringing a claim against the directors to obtain a judgment from which the defamation judgment could be satisfied.

Criminal

Civil liability/Corrupt Practices

Act. Med. Mut. of Ohio v. FrontPath Health Coalition | 2023-Ohio-243 | 6th Appellate District | 01/27/2023 In plaintiff-health benefit provider's action against defendant-competitor, alleging that defendant recruited public officials to serve on its board and encouraged them to use their influence and authority to steer public contracts to competitor, in violation of the Corrupt Practices Act (CPA), trial court erred in dismissing the claims for civil liability for criminal acts and for violation of the CPA where a criminal conviction was not required for liability to be imposed pursuant to R.C. 2307.60, plaintiff sufficiently alleged elements of complicity to commit a violation of R.C. 2921.42, and plaintiff was not required to show that a public official received a personal benefit to show that defendant was engaged in corrupt activity.

Speedy trial. State v. McDonald | 2023-Ohio-197 | 5th Appellate District | 01/24/2023 In a conviction by plea to first-degree misdemeanor OVI, the trial court erred in denying motion to dismiss on speedy trial grounds, R.C. 2945.71 et seq., since the speedy trial time had expired before defendant's suppression hearing was ever held, the record is devoid of information important to determine otherwise, including the lack of any state response to defendant's two requests for discovery and any judgment

entry stating which party requested three continuances, and there are no judgment entries or discovery receipts in the record to support those alleged facts.

Appeal/Crim.R. 29/Waiver. State v. Sandin | 2023-Ohio-174 | 9th Appellate District | 01/23/2023 In a conviction of, inter alia, attempted aggravated arson, claim on appeal that there was insufficient evidence to support the conviction of attempted aggravated arson is not properly raised on appeal where defendant raised a Crim.R. 29 motion for acquittal at trial, but challenged solely the mens rea element of his offenses and did not present any argument of the state's alleged failure to prove a substantial risk of serious physical harm to the cashier nor did he include any argument that the state was required to present expert testimony in support of the arson offense when he presented his Crim.R. 29 motion for acquittal to the trial court, and thus he waived those arguments on appeal.

Jury/Instructions/Lesser included offense. State v. Elliott | 2023-Ohio-181 | 11th Appellate District | 01/23/2023 In a conviction of robbery, R.C. 2911.02(A) (3) and (B), the trial court did not err by not instructing the jury on the lesser-included offense of theft since defendant's conceded conduct of pushing a store security employee demonstrates, as a matter of law, that the evidence would not support an acquittal on the robbery or theft counts.

Self-defense/Jury instruction/Harmless error. State v. Cunningham | 2023-Ohio-157 | 2nd Appellate District | 01/20/2023 In a conviction of, inter alia, murder and aggravated robbery, although the trial court erred in instructing the jury that self-defense was an affirmative defense, error was harmless because defendant was not entitled to a self-defense instruction since his testimony established that when he stabbed the victim, he lacked an objectively reasonable belief that deadly force was necessary to protect himself from death or great bodily harm where the force he used also was grossly disproportionate to the danger he faced since he had disarmed the victim and no longer had a reason to fear him, and defendant also had a reasonable means of escape to avoid using deadly force.

Fine/Ability to pay. State v. Prichard | 2023-Ohio-160 | 2nd Appellate District | 01/20/2023 In a conviction by plea to aggravated drug possession, the trial court did not err in imposing a mandatory fine since the trial court did consider defendant's present and future ability to pay a \$5,000 fine where the court at the sentencing hearing explicitly acknowledged counsel's assertions regarding defendant's current indigent status, but nevertheless found that his attorney had failed to establish future inability to pay the fine, and the affidavit submitted by defendant addressed his current lack of employment and assets, but it failed to demonstrate a future inability to pay a fine over time.

Forfeiture.

State v. Grace | 2023-Ohio-165 | 6th Appellate District | 01/20/2023

Following a traffic stop in which a search of the vehicle uncovered marijuana and \$21,456 in cash and two cell phones and a charge by criminal complaint of trafficking in marijuana, R.C. 2925.03(A) and (C)(3), that was dismissed following nolle prosequi after the state had transferred the funds to the federal government for possible future prosecution, denial of defendant's "Motion to Return Seized Property" pursuant to R.C. 2981.11 was error since the value of the seized property did not exceed \$100,000, R.C. 2981.14(B), and pursuant to R.C. 2981.11, since no federal forfeiture proceedings have been initiated, the money must be returned to appellant "at the earliest possible time."

Sentencing/Reagan Tokes. State v. Boulware | 2023-Ohio-154 | 2nd Appellate District | 01/20/2023 In a conviction by plea to voluntary manslaughter, although the trial court properly calculated defendant's sentence length and gave a detailed explanation of the sentencing provisions of the Reagan Tokes Act in the judgment entry and informed defendant of the essence of his sentence at the sentencing hearing, the court was required pursuant to R.C. 2929.19(B) (2)(c) to give a detailed explanation of the Act at the sentencing hearing as well, Gatewood; remanded for the sole purpose of re-sentencing in accordance with R.C. 2929.19(B)(2)(c).

Prosecutorial misconduct. State v. Hartley | 2023-Ohio-158 | 2nd Appellate District | 01/20/2023 In a conviction of misdemeanor assault, R.C. 2903.13(A), although prosecutor improperly provided an analogy to

Criminal (Continued)

illustrate what is meant by reasonable doubt, the prosecutor's comments did not constitute plain error since it did not unfairly mislead the jury because the trial court correctly defined reasonable doubt in the jury instructions prior to deliberations, and defendant was not prejudicially affected by the prosecutor's analogies; also discussed, 9-1-1 recordings of victim's calls and ineffective assistance.

Drug offense/Suppression. State v. Morris | 2023-Ohio-168 | 6th Appellate District | 01/20/2023 In a conviction of possession of cocaine, R.C. 2925.11(A) and (C)(4)(E), the trial court did not err in denial of motion to suppress evidence seized pursuant to a search warrant since the affidavit establishes the reliability of the source in stating "just sold 2 'zips' or ounces of cocaine out of [specific address]" providing a sufficient basis to conclude that probable cause existed to believe that evidence of drug trafficking would be found at that address.

Sentencing/Youth of defendant. State v. Spears | 2023-Ohio-187 | 5th Appellate District | 01/20/2023 In juvenile's bindover to the common pleas general division and conviction by plea to involuntary manslaughter and aggravated robbery, the trial court erred in failing to fulfill the obligation imposed by R.C. 2929.19(B)(1)(b) to consider the defendant's youth and its characteristics and the specific elements listed in R.C. 2929.19(B)(1)(b) as mitigating factors since, even though a trial court need not make findings on these elements, the facts that must be considered must be in the record for any review by a court of appeals to conclude that the trial court considered them; also discussed, the Reagan Tokes Act does not violate the separation of powers doctrine nor the constitutional right to trial by jury, due process or equal protection.

Plea/Guilty/Complete admission. State v. Jeter | 2023-Ohio-145 | 8th Appellate District | 01/19/2023 In a conviction by plea of guilty to aggravated vehicular assault, R.C. 2903.08(A)(2)(b), claim that state's issuance of a driver's license to defendant while she was under suspension constituted invited error is without merit since her guilty plea was a complete admission of her guilt, Crim.R. 11(B)(1), waiving her right to challenge the sufficiency of the evidence supporting her felony conviction.

Evidence/Identification/Photo array. State v. Roberts | 2023-Ohio-142 | 6th Appellate District | 01/18/2023 In a conviction of, inter alia, murder, denial of motion to suppress witness' identification of defendant from a photo array was not error since array was not unreliable where: witness had an opportunity to view suspect's face behind the drawn gun during the crime; he centered his attention on the suspect's face due to the drawn gun and to statements made in furtherance of the crime; the accuracy of the identification; witness' level of certainty; the short amount of time that had passed between the crime and the identification; and the lack of substantial likelihood of misidentification.

Appeal/Motion in limine/Record. State v. Sheckles | 2023-Ohio-133 | 1st Appellate District | 01/18/2023 In prosecution of, inter alia, attempted murder, appeal by the state of grant of motions in limine (1) to quash a subpoena to a former Department of Justice employee, who lacked a "Touhy letter," providing approval to testify and to produce documents while performing his official duties, and (2) to exclude the testimony of a bar owner concerning a video that was compiled by an officer from several surveillance videos by different cameras in the bar since the bar owner's equipment did not produce the video, the court of appeals affirms since the excluded testimony and video were not included in the record on appeal, and the appellate court must presume the regularity of the trial court's rulings and affirm.

Sentencing/Merger. State v. Horn | 2023-Ohio-138 | 6th Appellate District | 01/18/2023 In a conviction of six counts of rape with sexually violent predator specifications, with three of the counts merged for sentencing on remand for re-sentencing, the trial court did not err by re-sentencing defendant on a merged count where the original conviction was reversed on the other count since a guilt finding that has merged for purposes of sentencing survives the merger, and a defendant may be sentenced on the offense where the initial, alternative conviction was vacated, R.C. 2941.25(A) and Turner, nor did the trial court err in rejecting defendant's request to retry the sexually violent predator specification on remand.

Evidence/Other acts/Evid.R. 404(B). State v. Frankowski | 2023-Ohio-110 | 9th Appellate District | 01/17/2023 In a conviction of burglary, R.C. 2911.12(A)(3)(D), and tampering with evidence, R.C. 2921.12(A)(1)(B), admission of other-acts evidence was not error where the victim's testimony provided a necessary context for the testimony of the witnesses that followed and also was intrinsic to other offenses charged, and thus admissible apart from Evid.R. 404(B), notwithstanding that defendant was not convicted of the other charges; also discussed, prosecutorial misconduct during closing argument not demonstrated.

Evidence/Grotesque photographs/Aggravated murder. State v. Hamrick | 2023-Ohio-117 | 12th Appellate District | 01/17/2023 In a conviction of aggravated murder, R.C. 2903.01, with a firearm specification, although one of the autopsy photographs admitted into evidence may have been gruesome, the probative value outweighed any danger of unfair prejudice, Evid.R. 403(A), and moreover, any error was harmless in view of the overwhelming evidence of guilt; also discussed, the court of appeals has no jurisdiction to review a sentence for aggravated murder, R.C. 2953.08(D)(3).

Jury/Instructions/Complicity to theft. State v. Trafton | 2023-Ohio-122 | 12th Appellate District | 01/17/2023 In a conviction of fifth-degree felony theft, R.C. 2913.02(A)(1), the trial court did not commit plain error in instructing jury on complicity where defendant was the driver of vehicle that individuals exited and then entered a store and returned to after stealing various items from the store, and defendant confirmed to officer making a traffic stop that he took the individuals in the vehicle to and from the store where the thefts occurred.

Sentencing/Restitution/Marsy's Law. State v. Hensley | 2023-Ohio-119 | 12th Appellate District | 01/17/2023 In a conviction of OVI and failure to stop after an accident, the trial court erred by ordering defendant to pay restitution to the victim's insurer of \$14,635 the insurer paid to the victim pursuant to the victim's insurance policy to compensate the victim for the damage defendant caused to her car since the insurer is not itself a "victim" under either Marsy's Law or R.C. 2929.18(A)(1).

Extortion/Pecuniary value. State v. Buchanan | 2023-Ohio-125 | 3rd Appellate District | 01/17/2023 Conviction of extortion, R.C. 2905.11(A)(5), arising out of defendant's phone calls to her ex-husband that he recorded threatening to ruin his life, his job, and his position as a coach for their children if he did not provide positive reports of defendant to children's services and to his mother, who was acting as temporary custodian for their three children, who had been adjudicated dependent, was supported by sufficient evidence of "a valuable thing or benefit," where defendant valued her parenting time and she threatened to damage her ex-husband's reputation if he did not assist her in obtaining more parenting time, and defendant's claim that there must be a pecuniary value is not supported by the caselaw.

Trial/Fair trial/Right to present a defense. State v. Bridle | 2023-Ohio-109 | 9th Appellate District | 01/17/2023 In a conviction of, inter alia, attempted aggravated murder, felonious assault, aggravated burglary and vandalism, the trial court violated defendant's constitutional rights when, during the defense case-in-chief, the trial court reversed its position on the admissibility of several pieces of provocation and state-of-mind evidence after it had previously made pretrial and trial rulings that such evidence would be admissible and that the jury could make a determination based on its evaluation of the evidence, violating defendant's constitutional right to present a defense since both parties had relied on the trial court's prior rulings on admissibility of that evidence; cause is remanded.

Appeal/Mootness. State v. Wilk | 2023-Ohio-112 | 9th Appellate District | 01/17/2023 In a conviction of misdemeanor aggravated menacing, R.C. 2903.21(A), although defendant completed his jail sentence and paid his fines and court costs, the appeal was not moot since defendant did not serve his sentence voluntarily where his appeal challenges his conviction, not solely his sentence, Lewis; however, the conviction met sufficiency and weight of evidence standards where defendant failed to provide any argument why evidence was insufficient, and jury did not lose its way in making its credibility determinations.

Obstructing official business/Persistent disorderly conduct/Failure to disclose personal information. State v. Blair | 2023-Ohio-88 | 2nd Appellate District | 01/13/2023 Conviction of obstructing official business, R.C. 2917.11(A)(1), and persistent disorderly conduct, R.C. 2917.11(E)(3)(a), met the sufficiency and weight of evidence standards where, respectively, defendant repeatedly refused to cooperate with officers in their performance of their official duties, and his repeated and aggressive refusal to cooperate constituted "tumultuous behavior" and "unruly conduct;" however, conviction of failure to disclose personal information in a public place, R.C. 2921.29(A)(1), was error where defendant was not asked to identify himself until officers took him to a secure processing room that is not a public place.

Witnesses/Unavailability/Evid.R. 804. State v. Leigh | 2023-Ohio-91 | 2nd Appellate District | 01/13/2023 Following bindover of juvenile to adult court and bench conviction of, inter alia, murder, the trial court did not err in granting state's motion that a witness was unavailable pursuant to Evid.R. 804(A)(5) and that the unavailable witness' former audio-taped testimony at the bindover probable cause hearing be admitted at trial where nothing suggests that the recording is not what it purports to be, the witness was cross-examined by the same attorney representing defendant during the juvenile court bindover proceedings, defense counsel had a similar motivation to cross-examine the witness under Evid.R. 804(B)(1), and thus there was no Confrontation Clause violation; also discussed, ineffective assistance of counsel.

Plea/Crim.R. 11(C). State v. Burks | 2023-Ohio-72 | 8th Appellate District | 01/12/2023 In a conviction by plea of guilty in three criminal cases to, inter alia, five counts of rape, plea was validly made where the trial court complied with Crim.R. 11(C) since the judge was not required by the rule to explicitly ask defendant if any threats or promises had been made in exchange for his plea, the court's colloquy was extensive, and defendant failed to demonstrate any prejudice where nothing in the record supports his assertion that he received threats, or that, as he claimed, he was promised an eight-year sentence since the plea agreement included no mention

of a recommended sentence, and the state clearly said that the parties had not reached an agreement.

Evidence/Hearsay. State v. Giauque | 2023-Ohio-94 | 5th Appellate District | 01/12/2023 In a conviction of, inter alia, two counts of grand theft of beans and a grain wagon, the trial court did not commit plain error in not excluding hearsay evidence by a statement of the victim concerning the amount of loss that he sustained that his insurer indicated was missing since, even though admission of the challenged statements may be hearsay, the other evidence of the victim's insurer's determination of the loss sustained was evident without the hearsay statement, and other hearsay testimony that the variety of beans sold by defendant was the same as the victim's did not prove that the beans were the same as the victim's, but supported a conclusion that the beans were all from the same source.

Mistrial/Invited error. State v. McCollum | 2023-Ohio-69 | 8th Appellate District | 01/12/2023 In a conviction of, inter alia, aggravated murder, the trial court did not err in not declaring a mistrial following defendant's emotional outburst in front of the jury during juror selection implicating himself and then he argued that he should get a new trial because his own words and actions prejudiced him is without merit since any error was invited by his own conduct, Williams.

Restitution/Direct and proximate result. State v. Folson | 2023-Ohio-55 | 1st Appellate District | 01/11/2023 In a conviction by plea to criminal damaging by defendant hitting the bumper of victim's vehicle, R.C. 2909.06, award of restitution of \$4,000 was error since restitution is limited to "the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense," R.C. 2929.28(A)(1), and the award exceeded the amount of economic loss caused by defendant's actions since the complaint and the affidavit in support both stated that defendant had hit the victim's car and caused damage to the rear bumper and side door, but the damages awarded for slashed tires and syrup in the gas tank were not a direct and proximate result of defendant's act of hitting the victim's rear bumper.

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Self-defense/Evidence/Hearsay.

State v. Canankamp | 2023-Ohio-43 | 3rd Appellate District | 01/09/2023

In a conviction of, inter alia, assault and theft, the trial court did not err by excluding police reports, victim's medical records and text messages as inadmissible hearsay under Evid.R. 404 and 405 since defendant's claim that she should have been able to introduce this evidence at trial in support of her claim of self-defense to prove that the victim was the initial aggressor is without merit since Evid.R. 405(B) precludes a defendant from introducing specific instances of a victim's conduct to prove that the victim was the initial aggressor in support of a self-defense claim, Barnes.

Self-representation. State v. Okoronkwo | 2023-Ohio-48 | 11th Appellate District | 01/09/2023

In a conviction of, inter alia, aggravated robbery, it was error for the trial court not to permit defendant to represent himself without the court making the required inquiry whether defendant's election to represent himself was not knowing, intelligent and voluntary, and defendant's competency to make the election to represent himself was not a stated basis for the trial court's denial of defendant's claim of the right to self-representation, and "the trial that followed with defense counsel whom the court imposed on him violated his rights under both the Ohio and federal constitutions;" reversed and remanded for further proceedings consistent with this opinion.

Evidence/Circumstantial. State v. Cotton | 2023-Ohio-46 | 12th Appellate District | 01/09/2023

In a bench conviction of aggravated robbery, testimony of the officer who interviewed the co-defendant that indicated co-defendant and defendant were involved in the robbery was error since it suggested that defendant was the "other male" involved in the co-defendant's scheme to rob the victim, but any error was harmless in light of the fact that defendant's-sister's driver's license was found in the vehicle and matched the vehicle registration since it was circumstantial evidence that defendant had been in the car in which the license was found, and the car matched the victim's description of the car in which his assailants had fled.

Witnesses/Impeachment. State v. Elek | 2023-Ohio-41 | 9th Appellate District | 01/09/2023

In a conviction of rape and gross sexual imposition of a minor, the trial court did not commit plain error by permitting the state to question defendant's wife about a list she provided her therapist in which the minor was included in persons that defendant had sexual relations with since the state was not required to prove the truth of the matter asserted in the list to seek its introduction under Evid.R. 613(B) because the state only introduced the list for the purpose of impeaching the defendant's wife with evidence of a prior inconsistent statement she made and, moreover, defendant failed to demonstrate prejudice since he told an officer during an interview that his wife was accusing him of being a sexual predator.

Jury/Batson challenge. State v. Oghojafor | 2023-Ohio-44 | 12th Appellate District | 01/09/2023

In a conviction of kidnapping and domestic violence, the trial court did not violate defendant's equal protection rights by overruling his Batson challenge to the state's peremptory challenge to a prospective black juror since defense counsel had not demonstrated that the state's challenge was racially motivated where the state gave a race-neutral explanation for its peremptory challenge of the black juror by explaining its concern about the juror's potential to be distracted during jury service due to her position as a funeral director and her family business' prospective loss of customers and her general lack of enthusiasm about serving, and defense counsel offered no evidence of any racially-motivated reasons in the state's peremptory excusing the juror.

Evidence/Evid.R. 404(B). State v. Wilson | 2023-Ohio-27 | 2nd Appellate District | 01/06/2023

In a conviction of felonious assault, the trial court did not err in admitting evidence that defendant claimed constituted "other bad acts" in violation of Evid.R. 404(B) since defendant did not object when evidence was introduced that he kept a razor on a plate in his bedroom, nor was any objection made where prosecutor elicited testimony from defendant that he had been using cocaine the night before the incident since it was relevant to his access to a razor that was in his bedroom that the victim testified was used by defendant in cutting him, and trial judge gave a limiting instruction.

Drug possession/Suppression. State v. Dixon | 2023-Ohio-23 | 2nd Appellate District | 01/06/2023

In a conviction by plea to possession of heroin, denial of motion to suppress was not error where officers had reasonable suspicion of traffic violations of speeding and failure to make a proper signal when turning since a traffic stop based on a visual estimation of speed is permissible, even if the stop ultimately cannot result in a speeding citation, where officers' testimony demonstrated they had training and experience to make a visual estimation of speed, and officer's testimony and video from his vehicle's dash camera provided reasonable, articulable suspicion that defendant had committed a turning signal violation.

Sentencing/Jail-time credit. State v. Ragland | 2023-Ohio-31 | 6th Appellate District | 01/06/2023

In a conviction by plea to fifth-degree felony domestic violence and misdemeanor counts of aggravated trespass, endangering children and resisting arrest, imposition of community control on the domestic violence conviction with concurrent jail sentences on the misdemeanor offenses, and subsequent admission to violation of community control and imposition of reserved 12-month prison sentence, the trial court did not err in not awarding jail-time credit for the 180 days defendant served in jail for the misdemeanor convictions since a defendant's jail sentence for a community control violation is not offset by the previously served misdemeanor sentence imposed on the same date, R.C. 2967.191, Rarden.

Sentencing/Allied offenses. State v. Hendrix | 2023-Ohio-17 | 1st Appellate District | 01/06/2023

In a conviction of, inter alia, aggravated robbery and three counts of kidnapping, the trial court erred by not merging for sentencing one of the kidnapping counts with the aggravated robbery count as allied offenses since the charges arose out of the same course of conduct of a home-invasion robbery of a victim, the robbery and kidnapping did not cause separate identifiable harm, and the offenses shared a common animus; remanded for re-sentencing.

Sentencing/Appeal following remand/ Res judicata. State v. Dwyer | 2023-Ohio-24 | 2nd Appellate District | 01/06/2023

In an appeal of conviction of attempted murder, aggravated robbery and felonious assault, plus a three-year

firearm specification accompanying each offense, the court of appeals held that the specification accompanying the felonious assault conviction was error since the trial court erroneously held that it was mandatory, but on remand the trial court imposed the same sentence, stating that it was exercising its discretion to impose a three-year prison sentence on the firearm specification for the felonious assault, challenge to sentencing provisions in the Reagan Tokes Law on appeal from sentencing on remand is barred by res judicata since defendant could have, but did not, raise the issue in its direct appeal.

DNA testing/Post-conviction. State v. Gilcrease | 2023-Ohio-14 | 8th Appellate District | 01/05/2023 Following a 2019 conviction of, inter alia, murder and weapons offenses that was affirmed with a limited remand to impose a sentence in open court on one of the counts, the trial court's denial of 2022 application for post-conviction DNA testing was error where the court failed to provide its reasons for rejecting defendant's application under R.C. 2953.73(D), Rawls.

Evidence/Sexual orientation/Evid.R. 403(A). State v. Ruggles | 2023-Ohio-54 | 4th Appellate District | 01/04/2023 In a conviction of unlawful sexual conduct with a minor, R.C. 2907.04(A), the trial court did not commit plain error in granting the state's motion in limine to prevent defendant from questioning the state's teenage female witnesses if they were in an intimate relationship with each other where he failed to raise a constitutional violation of his Confrontation Clause or Equal Protection Clause rights, and he failed to demonstrate Crim.R. 52(B) plain error since any evidence of the minors' sexual orientation was not relevant and more prejudicial than probative, Evid.R. 403(A).

Identification. State v. Chaney | 2023-Ohio-8 | 5th Appellate District | 01/04/2023 In a conviction of, inter alia, aggravated robbery, claim that victim's in-court identification of defendant was unreliable as a result of the police conducting an unduly suggestive pretrial photographic identification by showing a photo of defendant that was on an officer's phone and asking victim whether the individual in the photo was the person who committed the crimes is without merit because victim was unlikely to have misidentified the offender and his identification was reliable under the circumstances since

he was present with defendant for at least five minutes in a well-lit area after defendant broke into his house, and he was able to recall what the intruder was wearing and that he had a gun.

Self-defense/Jury instruction. State v. Robinette | 2023-Ohio-5 | 5th Appellate District | 01/03/2023 In a conviction of, inter alia, felonious assault, the trial court erred by not giving a self-defense jury instruction, R.C. 2901.05(A), since evidence was presented that "tends to support" that defendant used force in self-defense, defense of another or defense of his residence where the unrefuted evidence presented established that three individuals came uninvited to defendant's apartment to engage in a physical confrontation with defendant, one individual brought a gun with him that was observed by defendant, evidence was presented that tends to support that defendant did not violate any duty to retreat or avoid the danger and he had a right to stand his ground, R.C. 2901.09, since he was at his apartment.

Indictment/Continuance. State v. Wymer | 2022-Ohio-4795 | 11th Appellate District | 12/30/2022 In a conviction of multiple sex offenses, including rape of a minor less than 10 years-old, the trial court erred by failing to grant a continuance to defendant following the return of a superseding indictment since on the business day prior to trial, a superseding indictment was filed, altering the ninth and tenth counts from alleging that the victim was under 13 to alleging that defendant compelled the victim to submit by force or threat of force and, although the superseding indictment lessened the degree of these two counts, it substantially altered the charges, R.C. 2945.02.

Court costs. E. Liverpool v. Green | 2022-Ohio-4811 | 7th Appellate District | 12/30/2022 In an action for unpaid city income taxes that was dismissed after defendant paid the taxes, imposition of court costs against defendant without a hearing did not violate his federal and state rights to due process of law since the city's prosecution was successful based on the nature of the charged crimes, and the conduct of defendant by his voluntary payment of the past due taxes that precipitated the dismissal of the criminal complaint is an admission of his guilt, R.C. 2947.23.

Search/Community care-taking.

State v. McCarthy | 2022-Ohio-4738 | 2nd Appellate District | 12/29/2022 In a conviction by plea to aggravated possession of drugs, denial of motion to suppress drug evidence that was seized from defendant's vehicle was not error since officer saw drugs in plain view on the passenger's side floorboard as he was attempting to turn off the ignition for safety purposes where officer was engaging in a community care-taking/emergency-aid exception to the Fourth Amendment search warrant requirement, and no objective justification is required for an officer to engage in a consensual encounter of an unconscious, disoriented or injured motorist parked in a public place.

Self-defense/Imminent danger. State v. Warner | 2022-Ohio-4742 | 2nd Appellate District | 12/29/2022 In a bench conviction of, inter alia, domestic violence, the trial court did not err in finding that defendant did not act in self-defense, R.C. 2901.05(B)(1), where, although defendant was not at fault in creating the situation since his wife slapped him during an argument, he failed to demonstrate that he had an honest belief that he was in imminent danger of bodily harm, R.C. 2901.05(B)(1).

Mistrial/Curative instruction. State v. Herrera | 2022-Ohio-4769 | 6th Appellate District | 12/29/2022 In a conviction of felonious assault and tampering with evidence, the trial court did not err in denying defendant's request for a mistrial following victim's testimony that defendant had previously been "incarcerated" where the trial court, with the agreement of defense counsel, gave a curative instruction during the jury instruction phase instead of at the time of the victim's testimony in order not to draw attention to the comment and, moreover, defendant made repeated references at trial to his criminal history, including that he spent time in jail.

Post-conviction relief/Ineffective assistance/Hearing. State v. Bunch | 2022-Ohio-4723 | Supreme Court of Ohio | 12/29/2022 Following conviction of, inter alia, three counts of rape, denial of petition for post-conviction relief without an evidentiary hearing was error since a hearing is necessary to reach the merits regarding whether defense counsel's performance was deficient by not obtaining an expert witness on identification since identity was the

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central issue in state's case against petitioner, funds had been approved for that purpose, and the expert-witness' affidavit of proposed testimony, if correct, would establish that victim's identification of petitioner was likely inaccurate; remanded to trial court for evidentiary hearing.

Sentencing/Post-release control violation. State v. Cheek | 2022-Ohio-4736 | 2nd Appellate District | 12/29/2022 In a conviction by plea to felonious assault, R.C. 2903.11(A)(1), imposition of a mandatory prison sentence of a minimum of five years up to a maximum of seven-and-one-half years and imposition of a prison sanction for the 743 days remaining on post-release control on a prior conviction, together with jail-time credit of 230 days, to be served consecutively to the underlying prison sentence was not error because the sentence imposed complied with R.C. 2929.14(A)(1) since the time defendant was held in custody was not pursuant to an administrative prison sanction that ultimately terminated his post-release control.

Self-defense/Effective date. State v. Adkins | 2022-Ohio-4760 | 3rd Appellate District | 12/29/2022 On remand from the Ohio Supreme Court, in a conviction of, inter alia, murder, R.C. 2903.02(A), the trial court erred by instructing the jury that the self-defense law in effect at the time of the alleged criminal act applied, rather than at the time of the trial, R.C. 2901.05; remanded for new trial.

Sentencing/Firearm specification/Consecutive sentences. State v. Penn | 2022-Ohio-4801 | 5th Appellate District | 12/29/2022 In an appeal by the state pursuant to R.C. 2953.08(B)(2), the trial court erred by failing to impose a consecutive sentence for a firearm specification in one case with the firearm specification in a separate unrelated case that was joined for trial with the other case with defendant pleading guilty to felonies in both cases since the felonies were not committed as part of the same act or transaction and arose in two different cases, R.C. 2929.14(B)(1)(a) and (C)(1)(a).

DNA testing. State v. Warren | 2022-Ohio-4743 | 2nd Appellate District | 12/29/2022 Following a 1995 conviction of murder that was affirmed, denial of 2021 application for post-conviction

DNA testing of the three shell casings recovered from the crime scene was error since there was evidence that biological material was collected from the crime scene and the prosecuting attorney's required report stated "potential biological material was collected from the scene * * *, parent samples of which still exist," and the trial court failed to adequately review regional crime laboratory's conclusion of unsuitability of testing since the laboratory did not "prepare a written document that contains its determination and the reasoning and rationale for that determination," R.C. 2953.74(C) and Noling.

Speedy trial/Tolling. State v. Stevens | 2022-Ohio-4804 | 5th Appellate District | 12/29/2022 In a conviction of aggravated burglary, denial of motion to dismiss on statutory speedy trial grounds, R.C. 2945.71, et seq., was not error where defendant's and state's motions to continue the case for, inter alia, discovery purposes, including an analysis of defendant's cell phone, unavailability of the prosecutor and a witness due to scheduled vacations, defendant's motion to modify bond and the trial court's rescheduling the trial tolled the running of the speedy trial period sufficiently that the speedy trial time had not expired.

Restitution/Marsy's Law/Mandamus. State v. Brasher | 2022-Ohio-4703 | Supreme Court of Ohio | 12/28/2022 Following a conviction of grand theft of a motor vehicle and imposition of an 18-month prison sentence, it was error for the trial court to grant victim's mandamus action to enforce her constitutional right to restitution under Marsy's Law, Ohio Const. Art. I, Sec. 10a, since victim should have appealed the portion of defendant's sentence denying restitution because she had standing to do so at that time, not by collaterally attacking the trial court's judgment sentencing defendant by seeking an extraordinary writ for a restitution order after the sentencing court's judgment was final and defendant's sentence had been completed.

Appeal/Untimeliness. State v. James | 2022-Ohio-4692 | 11th Appellate District | 12/27/2022 Court of appeals dismisses untimely filed appeal that is a duplicate filing of a timely appeal filed by defendant-appellant in another case.

Evidence/9-1-1 call transcript. State v. Shellabarger | 2022-Ohio-4685 | 3rd Appellate District | 12/27/2022 In a conviction of involuntary manslaughter and two counts of endangering children, arising out of defendant's infant daughter's death in a portable crib, claim that the trial court erred when it allowed jury to utilize a state's exhibit, a transcript of a 9-1-1 call that was prepared by the FBI and used to assist the jury in understanding defendant's 9-1-1 call is without merit since defendant stipulated to the admission of State's Exhibit 1 (a DVD of the recorded 9-1-1 emergency call) and state's Exhibit 2 (a transcript prepared by the sheriff's office of the recorded 9-1-1 call) and, moreover, defendant failed to demonstrate that there were any inconsistencies in the two transcripts, Evid.R. 1002.

Sentencing/Consecutive sentences. State v. Malcolm | 2022-Ohio-4708 | 5th Appellate District | 12/27/2022 In a conviction of drug offenses, imposition of community control and defendant's subsequent admission of community control violation, imposition of concurrent sentence in this case to be run consecutive to the sentence imposed in another case was error since the trial court failed to make the statutory findings required by R.C. 2929.14(C)(4) for the imposition of consecutive sentences at the revocation hearing or in the sentencing entry.

Domestic violence. State v. Ullman | 2022-Ohio-4683 | 9th Appellate District | 12/27/2022 Conviction of domestic violence, R.C. 2919.25(A), was supported by sufficient evidence where defendant's girlfriend, with whom he had lived for three years, told an investigating officer that defendant had tried to gouge her eye out and that she told him she was calling the police after he had a seizure during their argument, and thus his actions prior to his seizure were not just disordered movements by a person having a seizure; also discussed, defendant did not have standing to claim that the trial court violated Marsy's Law by threatening victim with contempt if she refused to testify.

Confrontation Clause/Witnesses/Forfeiture by wrongdoing. State v. Smith | 2022-Ohio-4687 | 3rd Appellate District | 12/27/2022 In a conviction of, inter alia, aggravated vehicular assault, OVI and failure to stop after an accident, the trial court did not err by admitting

the statement of a witness under the forfeiture by wrongdoing exception since the statement did not violate the Confrontation Clause where the state demonstrated that witness was unavailable, the statement made to police was testimonial since the primary purpose of the interrogation was to enable police assistance to meet an ongoing emergency, and statements of the unavailable witness were admissible as forfeiture by wrongdoing as evidenced by jail-call between witness and defendant, Evid.R. 804(B)(6).

Sentencing/Restitution. State v. Brown | 2022-Ohio-4689 | 3rd Appellate District | 12/27/2022 In a conviction by plea to theft, R.C. 2913.02(A)(1), (B)(2), the trial court erred by ordering restitution in the amount of \$11,896.08 since it is an amount beyond the amount of the theft that the amended indictment charged defendant with and for which she was convicted of, "greater than \$1,000.00 but less than \$7,500.00;" also discussed, agreed to polygraph test results obtained prior to plea could be considered during sentencing hearing where defendant disputed that she took the amount charged.

Sentencing/Jail-time credit. State v. Lynch | 2022-Ohio-4706 | 5th Appellate District | 12/27/2022 In a conviction by plea to sex offenses involving a minor, denial of jail-time credit for the time defendant spent in jail in another state on charges for sex offenses involving the same minor was not error since there is no indication on the record to support a finding that defendant was being held on any Ohio charges in the other state while he was being detained in the other state on charges relating to the other state's charges against defendant.

Sentencing/Community control. State v. Mullins | 2022-Ohio-4686 | 3rd Appellate District | 12/27/2022 Following a conviction by plea to domestic violence and imposition of five years community control, claim that the trial court's determination that defendant had violated his community control conditions was based solely on hearsay contained in a drug test report prepared by another county that administered the test is without merit since Evid.R. 101(C) states that the Ohio Rules of Evidence "do not apply" in "proceedings with respect to community control sanctions" even if evidence would not have been admissible in a criminal trial where it is not the only evidence presented since

defendant admitted to the violation at the hearing.

Sentencing/Sex offender registration violation. State v. Ashcraft | 2022-Ohio-4611 | Supreme Court of Ohio | 12/23/2022 Following appellant's 2013 conviction of unlawful sexual conduct with a minor and registration as a sex offender, appellant was convicted in 2018 of failing to provide a change-of-address notification for his sex-offender registration, R.C. 2950.05(F)(1), and a 2020 conviction of another violation of R.C. 2950.05(F)(1), the imposition of a nine-month prison term pursuant to R.C. 2950.99(A)(2)(b), in addition to the three-year sentence imposed for the offense, was not error since the statute provides that a defendant may be subject to a sentence imposed under R.C. 2950.99(A)(2)(b) "[i]n addition to" any prison term imposed under R.C. 2929.14(A)(3)(b) for the second violation of R.C. 2950.05(F)(1).

Jury trial/Waiver. State v. Graham | 2022-Ohio-4752 | 7th Appellate District | 12/23/2022 In a conviction of, inter alia, aggravated robbery, kidnapping, safecracking and having a weapon while under disability, the weapon offense conviction is reversed since the trial court failed to comply with the requirements of R.C. 2945.05 and Crim.R. 23(A) since a jury waiver was not signed, filed or voiced by the defendant in open court, Lomax.

Sentencing/Consecutive sentences/Appellate review. State v. Gwynne | 2022-Ohio-4607 | Supreme Court of Ohio | 12/23/2022 In imposing consecutive sentences, R.C. 2929.14(C) (4) requires trial courts to consider the overall number of consecutive sentences and the aggregate sentence to be imposed when making the required necessity and proportionality findings since the findings must be made in consideration of the aggregate term to be imposed; also, appellate review of consecutive sentences under R.C. 2953.08(G)(2) requires appellate courts to review the record de novo and to decide whether the record clearly and convincingly does not support the consecutive sentence findings.

Witnesses/Refreshed recollection. State v. Harris | 2022-Ohio-4630 | 8th Appellate District | 12/22/2022 In a conviction of, inter alia, murder, and five counts of attempted murder, although trial court improperly permitted the

state to play the video of the witnesses' statements in open court with the jury present for the purpose to refresh the witnesses' recollection since in order to refresh a witness' recollection, "[t]he proper procedure when a videotape exists of a statement is to allow the witness to view the tape outside the presence of the jury, refreshing his recollection," Fair, the error did not constitute plain error since there was not a reasonable probability that the error resulted in prejudice because there was ample evidence of defendant's guilt in the record, if believed by the jury, Thomas.

Sentencing/Allied offenses. State v. Johnson | 2022-Ohio-4641 | 8th Appellate District | 12/22/2022 In a conviction of, inter alia, murder, R.C. 2903.02(A), and imposition of consecutive prison sentences totaling 26 years to life, the state concedes the trial court erred by failing to merge certain offenses as allied offenses of similar import: (Counts 1-4) murder involving the unlawful termination of another's pregnancy, R.C. 2903.02(A), aggravated murder of an unborn fetus, R.C. 2903.01(C), murder of an unborn fetus, R.C. 2903.02(B), and felonious assault of an unborn fetus, R.C. 2903.11(A)(2); and (Counts 5-6) attempted murder of mother of fetus, R.C. 2923.02/2903.02(A), and felonious assault of mother of fetus, R.C. 2903.11(A) (2); remanded solely for re-sentencing to merge allied offenses of similar import.

Evidence/Prior inconsistent statements/Limiting instruction. State v. Harrison | 2022-Ohio-4627 | 2nd Appellate District | 12/22/2022 In a conviction of seven counts of gross sexual imposition of two minors, trial court did not err by allowing extrinsic evidence of a witness' prior inconsistent statements since the statements were relevant to the substance of the charges against defendant, Evid.R. 613(B), and trial court's not providing a limiting instruction regarding extrinsic evidence, that also was not requested by defendant, did not constitute plain error.

Weapons disability/Application for relief. Zakel v. State | 2022-Ohio-4637 | 8th Appellate District | 12/22/2022 Denial of application for relief from a weapons disability, R.C. 2923.14, imposed pursuant to 18 U.S.C. 922(g) (9) that arose out of a domestic violence conviction, was not error since a weapons disability as a result

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of a misdemeanor domestic violence conviction is imposed under federal law in Ohio, and thus the trial court had no other choice but to summarily deny the application.

Plea/Validity/Collateral consequences.

State v. Stennett | 2022-Ohio-4645 | 8th Appellate District | 12/22/2022 In a conviction by plea to sexual battery, claim that plea was not validly made because, although the trial court advised defendant that he would be classified as a Tier III sex offender for life, he was not advised of all collateral consequences attendant to that classification is without merit since that is a non-constitutional collateral consequence that "a defendant must affirmatively show prejudice to invalidate a plea," Dangler, and the face of the record does not demonstrate that defendant would not have pled guilty had he known of the collateral consequences arising from the lifetime reporting requirement before entering the guilty plea.

Search/Traffic stop. State v. Byrd | 2022-Ohio-4635 | 8th Appellate District | 12/22/2022

In a conviction by plea of improperly handling firearms in a motor vehicle and carrying a concealed weapon following a traffic stop for a marked lanes violation, the trial court's denial of motion to suppress was error where officer prolonged the traffic stop for a canine sniff of defendant's vehicle without a reasonable suspicion to justify conducting the sniff where officer testified he had completed his investigation of the traffic matter eight minutes before the canine's arrival, and officer's testimony that defendant's nervousness and the description of her travels did not make sense to him were insufficient grounds to extend the stop for the sniff.

Rape/Kidnapping/Felonious assault.

State v. Harvey | 2022-Ohio-4650 | 6th Appellate District | 12/22/2022

Conviction of, inter alia, two counts of rape, R.C. 2907.02(A)(2) and (B), kidnapping, R.C. 2905.01(A)(4) and (C), and felonious assault, SANE's testimony and medical records were properly admitted under Evid.R. 702, and the statements made by the victim for the purpose of diagnosis and treatment were admissible under Evid.R. 803(4), including statements by victim that defendant dragged her from room to room with defendant

physically assaulting her, supporting the kidnapping and felonious convictions.

Search/Affidavit/Good faith. State v. Schubert | 2022-Ohio-4604 | Supreme Court of Ohio | 12/22/2022

In a conviction by plea to aggravated vehicular homicide and child pornography offenses following denial of motion to suppress evidence obtained from a search pursuant to a search warrant of cell phones found in a vehicle involved in an accident, denial of motion to suppress was error since the warrant is defective under the Fourth Amendment for lack of probable cause in the supporting affidavit because the affidavit failed to establish any connection between the cell phones recovered at the scene of the crash and the crime of aggravated vehicular homicide, and thus the affidavit is "bare bones" and not objectively reasonable and the good-faith exception to the exclusionary rule does not apply.

Evidence/Confrontation. State v. Drane | 2022-Ohio-4624 | 2nd Appellate District | 12/22/2022

In bench conviction of murder, felonious assault, failure to comply and weapon offenses, state did not submit improper hearsay testimony in violation of the Confrontation Clause of a person who made a 9-1-1 call who was contacted by the police to determine who was driving a car that was involved in a shooting where state properly identified the 9-1-1 call as required by Evid.R. 901(A), and was not admitted to prove the truth of her statements, but instead introduced to demonstrate the course of the police investigation and how they came to speak with her as well as to investigate her suggestion to contact another person.

Sentencing/Allied offenses. State v. Johnson | 2022-Ohio-4629 | 2nd Appellate District | 12/22/2022

In convictions of, inter alia, discharge of a firearm on or near a prohibited premises, R.C. 2923.162(A)(3), and felonious assault with a deadly weapon, R.C. 2903.11(A)(2), claim that the trial court erred by not merging these offenses as allied offenses of similar import for sentencing is without merit since the offenses were dissimilar in import and significance in that defendant's conduct of firing gunshots at a vehicle in the middle of a busy highway harmed the public at large and was dissimilar in import and significance from the felonious assault

against a particular victim on that highway, R.C. 2941.25.

Witness/Unavailability/Wrongdoing by defendant. State v. Bias | 2022-Ohio-4643 | 10th Appellate District | 12/22/2022

In a bench conviction of four counts of murder, R.C. 2903.02, the trial court did not err by determining that the state demonstrated by a preponderance of the evidence that appellant engaged in wrongdoing for the purpose of preventing a witness-gang member from testifying at trial and that the state made reasonable, good-faith efforts to secure the gang member's presence at trial to testify, and thus the trial court properly admitted the witness-gang member's out-of-court statements to the police under Evid.R. 804(B)(6) concerning the shooting that led to the charges filed against defendant; also, defendant's confrontation right was not violated since defendant forfeited his confrontation right by his wrongdoing, Hand.

Violent Offender Database/Hearing.

State v. Klein | 2022-Ohio-4600 | 1st Appellate District | 12/21/2022

Following 2006 conviction of aggravated burglary, having weapons while under a disability, and four counts of kidnapping that was affirmed, and denial of numerous post-conviction motions, trial court erred by failing to hold a hearing as contemplated under R.C. 2903.42 on appellant's motion to rebut the Violent Offender Database enrollment presumption, but the court is not required to otherwise reconsider appellant's factual guilt or entertain a collateral attack on his convictions; remanded to hold a hearing pursuant to R.C. 2903.42(A)(1) and (4).

Restitution/Hearing. State v. Nicholson | 2022-Ohio-4598 | 1st Appellate District | 12/21/2022

In a conviction of two counts of misdemeanor criminal damaging, trial court erred by ordering defendant pay restitution since trial court failed to hold a hearing, even though defendant disputed the amount of restitution, R.C. 2929.28(A)(1); remanded for an evidentiary hearing on amount of restitution.

Evidence/Other acts/Evid.R. 404(B).

State v. Twiley | 2022-Ohio-4751 | 7th Appellate District | 12/21/2022

In a conviction of murder and aggravated arson, the trial court did not err by permitting the admission of other acts evidence, Evid.R. 404(B), of a tire-

slashing incident by defendant on the victim's vehicle, bruising observed on the victim, and victim's statement that defendant said he would kill her since all of the testimony is relevant to show defendant's motive and intent as permitted by Evid.R. 404(B) where state's theory of the case was that the victim had enough of defendant and was preparing to end their relationship, and the trial court gave the jury a proper limiting statement.

Self-defense/Burden of production/persuasion. State v. Messenger | 2022-Ohio-4562 | Supreme Court of Ohio | 12/21/2022 In a conviction of purposeful murder, R.C. 2903.02, the trial court provided jury with an instruction on self-defense, demonstrating that the court determined defendant provided sufficient evidence that he was acting in self-defense when he shot and killed the person with whom he was arguing, and jury's guilty verdict demonstrates that the state met its burden of persuading the jury beyond a reasonable doubt that defendant was not acting in self-defense when he killed the person; the sufficiency-of-the-evidence standard of review applies to defendant's burden of production of self-defense, and a manifest-weight-of-the-evidence standard of review applies to the state's burden of persuasion that defendant did not act in self-defense, R.C. 2901.05.

Sentencing/Community control. State v. Leroy | 2022-Ohio-4588 | 10th Appellate District | 12/20/2022 In a conviction by plea to importuning, and imposition of four years of community control, trial court erred by requiring as community control conditions that defendant have "no new arrests," in the absence of more evidence of underlying criminal or prohibited conduct, and trial court also erred in ordering child support-related conditions that went beyond requiring defendant to comply with the imposed terms of the order, but it was proper for trial court to order compliance with the order, establish wage withholding, if available, as to that child-support obligation, and in addition, pay down within 24 months the amount in arrears, R.C. 2929.15(A)(1).

Joinder/Severance. State v. Redman | 2022-Ohio-4750 | 7th Appellate District | 12/20/2022 In a conviction of felonious assault and aggravated arson, the trial court did not err by not severing the charges where defendant argued that the charges occurred on two different dates and involved completely different

events, and that in the arson charge, she was charged as the offender, but in the other charges, she was charged with aiding and abetting another, but the court of appeals determined that severance was not proper where all the counts stemmed from the same course of criminal conduct within an 18-hour period, the same victims were involved and the evidence overlapped.

Plea/Crim.R. 11. State v. Hill | 2022-Ohio-4544 | Supreme Court of Ohio | 12/20/2022 In a conviction by plea of guilty to drug and weapon offenses following denial of a motion to suppress, although the trial court did not have a prohibited blanket policy of not accepting no contest pleas, Beasley, it erred by refusing to permit defendant to enter a plea of no contest based on its belief that there were not any legitimate issues to raise on appeal since its decision effectively usurped the role of the court of appeals by essentially determining that it had appropriately ruled on defendant's pre-trial motions, including the motion to suppress.

Assault/Child endangering. State v. Beaver | 2022-Ohio-4578 | 5th Appellate District | 12/19/2022 Conviction of assault, R.C. 2903.13(A), and three counts of child endangering, R.C. 2919.22(A)(E)(2)(a), arising out of an encounter of defendant with victim he was living with and their three children met the sufficiency and weight of evidence standards where victim testified that defendant struck her twice while in a van driving to their home, even though jury found state's claim of serious physical injury insufficient, it did find that the injuries inflicted supported misdemeanor assault, and jury did not lose its way in making its credibility determinations.

Speedy trial/Tolling. State v. Runner | 2022-Ohio-4756 | 7th Appellate District | 12/19/2022 In a conviction by plea to aggravated trafficking in drugs, denial of motion to dismiss for speedy trial violation was not error where defense counsel's written request for supplemental discovery, coupled with the state's subsequent demand for discovery, imposed an obligation on defendant pursuant to Crim. R. 16(H) to provide reciprocal discovery to the state, and defendant's delay in doing so within a reasonable time tolled the speedy time requirement, R.C. 2945.72(D); also, the indefinite sentencing structure of the Reagan Tokes Law is constitutional.

Evidence/Character evidence. State v. Corey | 2022-Ohio-4568 | 11th Appellate District | 12/19/2022 In a conviction of, inter alia, attempted murder, state did not use improper character evidence during defendant's cross-examination by asking if he owned multiple handguns since it was not elicited for the purpose of proving that defendant "acted in conformity therewith on a particular occasion," in violation of Evid.R. 404(A) or to prove that "on a particular occasion the person acted in accordance with the character," Evid.R. 404(B), since defendant's testimony on direct examination about his knowledge and aptitude with firearms was relevant to his self-defense claim and cross-examination on that topic was also relevant.

Witnesses/Confrontation. State v. Carter | 2022-Ohio-4559 | 3rd Appellate District | 12/19/2022 In a conviction of two counts of sexual battery of a minor between the ages of 17-19 years-old, R.C. 2907.03(A)(5), (B), grant of state's motion for witnesses to testify via video was not error since it did not violate the Confrontation Clauses in the U.S. and Ohio Constitutions because trial court had a reasonable basis on a case-specific finding based on the important public policy involving the Covid pandemic and to maintain the orderly administration of trial proceedings, nor did a witness' use of a speech-to-text captioning program disqualify him as a witness under Evid.R. 601, nor was he otherwise disqualified under Evid.R. 604 Sup. R. 88, or R.C. 2311.14.

Competency. State v. Winegarner | 2022-Ohio-4632 | 8th Appellate District | 12/16/2022 In a conviction of, inter alia, attempted murder, although the trial court failed to hold a competency hearing when a competency issue was raised by defense counsel, there was no reversible error since the record does not contain sufficient indicia of defendant's incompetency that mandated a hearing where the concern by the competency examiner of defendant's willingness or inability to assist counsel was disproved where defendant did assist counsel through two trials, he was active at trial, discussed his decision to try certain charges to the court, objected to stipulations by his attorney, and also voiced objections to certain jury instructions, R.C. 2945.37.

Criminal (Continued)

Self-representation. State v. Hart | 2022-Ohio-4550 | 2nd Appellate District | 12/16/2022 In a conviction of, inter alia, drug and weapon offenses, trial court did not err by not permitting defendant to represent himself with standby counsel available, even though defendant had executed a waiver of counsel form where defendant repeatedly equivocated whether he desired to be represented or to represent himself with standby counsel after signing the waiver, he was facing eight charges in a complex trial, he had only an eleventh grade education, and he had never before represented himself.

Search/Terry stop/Reasonable suspicion. State v. Rogers | 2022-Ohio-4535 | 1st Appellate District | 12/16/2022 In a conviction by plea to weapons offenses, denial of motion to suppress was not error since the stop and search of defendant's vehicle was supported by a reasonable suspicion to make a Terry stop and conduct a protective search of defendant's vehicle where an experienced officer in a gun crime task force was surveilling a high-crime area in which a block-party was occurring, and he observed defendant's actions in returning to his vehicle briefly and appeared to be placing an item in his waistband resulting in a "suspicious bulge" in the front center location of his waist area, and subsequent traffic stop detention of 11 and a half minutes did not extend the stop beyond what is lawful under Terry.

Evidence/Motive/Admission. State v. Carlson | 2022-Ohio-4548 | 2nd Appellate District | 12/16/2022 In a conviction of possession of a fentanyl-related compound, R.C. 2925.11(A), although it was plain error to admit testimony by a state witness that defendant stated he was a drug addict was erroneously admitted for the purpose of establishing motive under Evid.R. 404(B) since it was not a material issue in dispute that he had taken the drug, any error was harmless since defendant failed to demonstrate prejudice where trial judge provided a limiting instruction, and defendant's admission tended to establish knowledge, a material element that was at issue at trial and it was also an admission of a party opponent under Evid.R. 801(D)(2)(a).

Drug offenses/Motion to suppress. State v. Sturgill | 2022-Ohio-4574 | 5th Appellate District | 12/16/2022 In a conviction by plea to cocaine possession, corrupting another with drugs, and trafficking in marijuana, denial of motion to suppress was not error since defendant was not under arrest when she opened her door after officer knocked, the officers' conduct did not prohibit defendant from going back inside the house, or from staying inside the house when police came to the door, she was not taken into custody when she opened the door and subsequently permitted the police to enter, and search warrant was not required since there were exigent circumstances of a strong odor of marijuana burning emanating from defendant's residence and officers were aware children were present.

Juvenile/Commitment. In re M.K. | 2022-Ohio-4537 | 1st Appellate District | 12/16/2022 In commitments to department of youth services of juvenile found delinquent of adult offenses in four dispositions, challenges to commitments are without merit where juvenile received the proper confinement credit in the dispositions in two of the cases, informed that his actions violated the terms of his probation in the two other cases and informed of the impact that his probation violation could have on those two cases, and his commitment in the fourth case fell within the statutory range, with the juvenile court weighing his delinquency record, his risk of recidivating, and his various probation violations.

Speedy trial/Waiver by counsel. Warrensville Hts. v. Parker | 2022-Ohio-4507 | 8th Appellate District | 12/15/2022 In a bench conviction of municipal ordinance disorderly conduct, the trial court did not err in not dismissing for speedy trial violation since a defendant's statutory right to a speedy trial may be waived, with or without the defendant's consent by defendant's counsel since the record reflects that defendant was present at the hearing held within the speedy time limit, counsel appeared by phone and, during the hearing that was held on the record, counsel for defendant waived speedy trial time.

Evidence/DNA procedure. State v. Murphy | 2022-Ohio-4555 | 7th Appellate District | 12/15/2022 In a conviction of knowingly conveying or attempting to convey a drug of abuse

onto the grounds of a detention facility, R.C. 2921.36(A)(2), arising out of a drug contained in a letter to defendant that touch DNA identified as that of the prisoner's wife, defendant was not denied due process since there was no Brady violation because there was no bad faith involved in the state's DNA procedure because state's forensic scientist's cutting of the envelope stamp's four edges for DNA testing and disposing of those edges after the DNA was consumed did not equate with the withholding or destruction of materially exculpatory evidence, and the defense expert agreed it was expected that the initial testing would consume the portion tested.

Bill of particulars. State v. Haynes | 2022-Ohio-4473 | Supreme Court of Ohio | 12/15/2022 In a conviction for three counts of abduction of children, R.C. 2905.02(A)(1), by grandfather that was affirmed, the Ohio Supreme Court reverses, holding that on defendant's written request for a bill of particulars, the state was required to provide a bill of particulars setting forth specifically the nature of the offense charged and of the conduct of the defendant alleged to constitute the offense, Ohio Const., Art. I, Sec. 10, R.C. 2941.07, and Crim.R. 7(E), and the fact that the state provides full open-file discovery does not provide an exception, Chinn, Fowler and Petro.

Sentencing/Community control revocation/Consecutive sentences. State v. Jones | 2022-Ohio-4485 | Supreme Court of Ohio | 12/15/2022 In an appeal involving a certified-conflict question, the Ohio Supreme Court holds that when a trial court revokes community control previously imposed, it may require that the reserved prison term be served consecutively to any other sentence then existing or then being imposed only if, at the time the community control was imposed, the trial court notified the defendant that a consecutive sentence could be imposed on revocation of community control.

Restitution/Hearing. State v. Green | 2022-Ohio-4524 | 8th Appellate District | 12/15/2022 In a conviction by plea to attempted receiving stolen property, trial court erred by ordering restitution of \$3,500 since defendant objected to the amount of the award at his sentencing hearing, and trial court ordered restitution without evidence that substantiated the amount of loss, R.C. 2929.18(A)(1) and Lalain; remanded

and trial court required to hold a full restitution hearing.

Evidence/Hearsay/Present sense impression/Recorded recollection. Cleveland v. Myles | 2022-Ohio-4504 | 8th Appellate District | 12/15/2022 In a bench conviction of domestic violence, admission of defendant's 9-1-1 call and victim's written statement to responding officers was not error since the 9-1-1 call was admissible under Evid.R. 803(1) as a present sense impression exception to the hearsay rule, and the trial court properly permitted victim to read her written statement to the police into the record as a recorded recollection, Evid.R. 803(5), where she had difficulty recalling the alleged event at trial.

Sex offense/Child pornography/Search. State v. Dixon | 2022-Ohio-4532 | 10th Appellate District | 12/15/2022 In a conviction by plea to five counts of pandering sexually oriented matter involving a minor, R.C. 2907.322, denial of motion to suppress the evidence obtained through the execution of a search warrant was not error since the inferences made by the judge who issued the search warrant were reasonable and supported by the facts presented in the affidavit of defendant's involvement in an internet video conferencing application of meetings that included child pornography, and affiant included information in the affidavit about obtaining an individual's location based on the use of those applications, providing the judge with a substantial basis for concluding that probable cause existed to issue the warrant.

Contempt. State v. Wisener | 2022-Ohio-4557 | 7th Appellate District | 12/15/2022 Conviction of criminal contempt for defendant's refusal to wear a mask in the courthouse in violation of a court order was not error where trial court was focused on punishing defendant for repeatedly violating the mask mandate and preserving the dignity of the court that suffered by defendant's acknowledged disobedience to the court order applicable to the courthouse and the courtroom, and the imposition of a determinate sentence for the criminal contempt was not error; also, defendant failed to make a prima facie case that the mask order had a coercive affect in the practice of his religion.

Plea/Withdrawal. State v. Barnes | 2022-Ohio-4486 | Supreme Court of Ohio | 12/15/2022 In a conviction by plea to involuntary manslaughter, R.C. 2903.04(B), denial of Crim.R. 32.1 motion to withdraw plea was error since defendant had a reasonable and legitimate basis to withdraw the guilty plea before sentencing when he learned of evidence that was previously withheld from him and would have changed his decision to plead guilty where defendant learned of video footage with audio that had previously been withheld from him and that he had not been aware or informed of, constituting evidence that corroborated his self-defense claim; remanded to the trial court for further proceedings, Xie.

Plea/Maximum penalty/Prejudice. State v. Meadows | 2022-Ohio-4513 | 8th Appellate District | 12/15/2022 In a conviction by plea to attempted felonious assault and related offenses, plea was validly made, even though trial court did not properly advise defendant pursuant to Crim.R. 11(C)(2)(a) of the maximum penalty for one count, since defendant failed to demonstrate prejudice where nothing in the record indicates defendant would have opted for trial if he had known he faced a maximum sentence of 18 months, instead of 24 months in the amended count, since neither he nor his counsel objected or otherwise raised the issue when the trial court announced its error and provided an opportunity for counsel to speak before resentencing defendant on the amended count.

Sentencing/Breach of plea agreement/Consecutive sentences. State v. Ellison | 2022-Ohio-4518 | 8th Appellate District | 12/15/2022 In a conviction by plea to rape, abduction, gross sexual imposition, and abduction, imposition of consecutive prison sentences for an aggregate prison term of 12 to 17 years was error since trial court breached the plea agreement by imposing consecutive sentences after telling defendant if he pled guilty, it would not impose consecutive sentences; sentence vacated and case remanded for court of appeals to determine whether there should be specific performance of the plea agreement or whether the circumstances require providing defendant the opportunity to withdraw the plea.

Evidence/Character/Evid.R. 404(B). State v. Grimes | 2022-Ohio-4526 | 8th Appellate District | 12/15/2022 In a conviction in two cases of, inter alia, multiple counts of rape of a minor and child pornography, trial court did not commit plain error in the admission of character evidence of defendant's tendency toward aggressive behavior towards the victim and of another person since allowing the evidence of force is relevant to a non-character-based issue that is material to the case and was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, Evid.R. 404(B), Hartman.

Witnesses/Expert/Accident reconstruction. State v. Malvasi | 2022-Ohio-4556 | 7th Appellate District | 12/14/2022 In a conviction of, inter alia, aggravated vehicular homicide, two counts of failure to stop after an accident, and OVI, trial court did not err in permitting a trooper to testify as an accident reconstruction expert based on the trooper's qualifications, the expert's reconstruction methods were established to be reliable under Evid.R. 702(C) and the principles in Daubert, and issues with the certainty of the scientific opinion are matters of sufficiency or weight of the evidence.

Public indecency/Constitutionality/Sufficiency. State v. Imboden | 2022-Ohio-4580 | 4th Appellate District | 12/14/2022 In a conviction of public indecency, R.C. 2907.09(A) (1), defendant waived claim that statute is unconstitutional by failing to raise the issue in trial court, although court of appeals notes the statute is not overbroad and does not criminalize private constitutionally protected conduct, and the conviction met the sufficiency and weight of evidence standards where a witness testified that she could look from her house and could see defendant's exposing his genitalia from inside his house, as well as when she exited her car on a public street, and that defendant acted recklessly by exposing himself for over 30 minutes.

Sentencing/Allied offenses/Plain error. State v. Bailey | 2022-Ohio-4407 | Supreme Court of Ohio | 12/14/2022 In a conviction of, inter alia, kidnapping and two counts of rape, since defendant did not preserve the issue of merger of allied offenses for sentencing of the kidnapping and rape convictions by

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raising an objection in the trial court, he forfeited all but plain error, which he has not established on appeal, the trial court did not commit plain error by not merging the kidnapping and rape counts as allied offenses of similar import, R.C. 2941.25.

Restitution/Marsy's Law/Standing.

State v. Fisk | 2022-Ohio-4435 | Supreme Court of Ohio | 12/13/2022 In state's cross-appeal challenging trial court's denial of restitution to victim in defendant's appeal of conviction of felonious assault in which the court of appeals affirmed the conviction but held that the state lacked standing to appeal the trial court's restitution decision under Ohio Const. Art. I, Sec. 10a (Marsy's Law), the Supreme Court of Ohio reverses and remands to the court of appeals to address the state's appeal under applicable statutes involving authority of the state to appeal the issue of restitution under Marsy's Law.

Speedy trial/Conceded error. Columbus v. Coleman | 2022-Ohio-4478 | 10th Appellate District | 12/13/2022

In appeal by city of dismissal on speedy trial grounds of a city code first-degree misdemeanor assault charge, the trial court erroneously concluded that the speedy trial time under R.C. 2945.71 had expired when dismissing the charge, defendant concedes the error and dismissal of the charge against defendant on speedy trial grounds was plainly erroneous, constituted an obvious defect in the proceeding and affected the city's substantial rights, Crim.R. 52(B).

Jury/Instructions/Lesser included offense. State v. Nelson | 2022-Ohio-4499 | 5th Appellate District | 12/13/2022

In a conviction of aggravated murder, R.C. 2903.01(A) and 2929.02(A), the trial court did not err by not giving a jury instruction on voluntary manslaughter, R.C. 2903.03, since defendant's claim he acted under the influence of sudden passion or in a sudden fit of rage brought on by serious provocation by the victim, is not supported by the record demonstrating his methodical stalking of victim's location, and there was no evidence defendant subjectively acted under the influence of sudden passion or in a sudden fit of rage brought on by serious provocation by the victim since victim did nothing to provoke defendant's

murderous rage other than attempt to live her life without him.

Sealing/State appeal. State v. Coffelt | 2022-Ohio-4622 | 7th Appellate District | 12/13/2022

In an appeal by the state of grant of application to seal applicant's record of conviction, the trial court erred since appellant had a pending community control sentence in another matter and community control constitutes a pending criminal proceeding, precluding grant of an application to seal a record, J.M.S.

Competency. State v. Hough | 2022-Ohio-4436 | Supreme Court of Ohio | 12/13/2022

In a conviction of, inter alia, aggravated vehicular homicide, the trial court's failure to hold a competency hearing after one was requested by defendant's counsel prior to trial was not harmless error since the mental-health diagnoses of defendant are relevant and should be considered with any other evidence that may indicate incompetency where there are numerous indicia of defendant's incompetency in the record and, since defendant had the right to a contemporaneous competency hearing under R.C. 2945.37(B), it necessitates vacating his conviction in order to provide an inquiry of his competency that is contemporaneous with his trial if the state chooses to retry him.

Sentencing/Allied offenses. State v. Harless | 2022-Ohio-4475 | 10th Appellate District | 12/13/2022

In a conviction by plea to breaking and entering, R.C. 2911.13, and theft, R.C. 2913.02, and subsequent violations of community control, imposition of consecutive prison sentence of six months on each charge was not error because, although a claim that offenses are allied offenses of similar import that merge under R.C. 2941.25 was not asserted prior to sentencing, a defendant does not waive his R.C. 2941.25 protection but rather forfeits his allied offenses claim for appellate review and, although a defendant may raise a forfeited claim on appeal as plain error affecting substantial rights, Crim.R. 52(B), the court of appeals does not find plain error, Harless and McKnight.

Sex offenses/Rape/Gross sexual imposition. State v. Milliken | 2022-Ohio-4497 | 5th Appellate District | 12/13/2022

Convictions of multiple counts of rape, R.C. 2907.02(A)(1) (b), and gross sexual imposition, R.C.

2907.05(A)(4), of two minors were not against the sufficiency and weight of evidence where defendant's arguments are premised on the victims' credibility based on alleged inconsistencies in their testimony since the finder of fact may take note of inconsistencies and resolve or discount them accordingly, but the inconsistencies do not render a conviction against the weight of evidence.

Evidence/Prior false allegations.

State v. Strader | 2022-Ohio-4470 | 5th Appellate District | 12/12/2022 In a conviction of gross sexual imposition, R.C. 2907.05(A)(4)(C)(2), and voyeurism, R.C. 2907.08(C), of defendant's daughter, who was less than 13 years-old, the trial court did not err by not permitting defendant to cross-examine his daughter about alleged prior false statements of sexual assault involving a male neighbor child since there was no evidence that the daughter's allegations were false, Evid.R. 608(B).

Domestic violence/Family or household members. State v. Shelby | 2022-Ohio-4450 | 9th Appellate District | 12/12/2022

Conviction of domestic violence, R.C. 2919.25(A), was supported by sufficient evidence that defendant and another person were family or household members under the statute since victim's testimony that he and defendant were sharing the same residence at the time of the alleged domestic violence was sufficient because the sharing of familial or financial responsibilities and consortium is required only if the victim and the offender do not share the same residence, McGlothlin, and moreover, defendant testified that he shared a bedroom with the victim and that they slept together.

Plea/Withdrawal. State v. Kurdi | 2022-Ohio-4459 | 11th Appellate District | 12/12/2022

In a conviction by plea in two cases to aggravated trafficking, R.C. 2925.03(A)(1), and possession of cocaine, R.C. 2925.11, denial of motion to withdraw plea without an evidentiary hearing was error where defendant's affidavit that was additionally supported by trial counsel's affidavit averred that: (1) trial judge and his lawyer advised him he may be subject to deportation; (2) he believed he could contest the possibility of deportation; but (3) he learned after pleading guilty that his plea subjected him to automatic deportation, Lee; remanded for further proceedings.

Sentencing/Community control violation/Jail-time credit. State v. Schoenstein | 2022-Ohio-4446 | 12th Appellate District | 12/12/2022 In a conviction by plea of non-support of dependents, imposition and subsequent violation of community control, the trial court's imposition of a nine-month prison sentence with jail-time credit of 21 days was not error since the trial court had sentenced defendant to community control, not a prison term, and it was not obligated to include jail-time credit in its sentencing entry, R.C. 2929.19(B)(2)(g)(i), and the amount of jail-time credit granted exceeded the amount he was entitled to, notwithstanding that the department of corrections may also have miscalculated the amount of jail-time due in defendant's favor.

Self-representation. State v. Holley | 2022-Ohio-4465 | 11th Appellate District | 12/12/2022 In a conviction of felony drug possession and felony tampering with evidence, the trial court did not err in denying defendant's motion to represent himself and to dismiss counsel following the close of state's case, that he supported by his claims that counsel failed to ask questions that defendant requested on cross-examination and failed to communicate with him about his case, but the trial court found that defense counsel provided competent representation and that the pro se motions defendant had attempted to file relating to dismissal of the charges and jurisdiction were unlawful arguments, defendant had an inability to follow rules of procedure and evidence and he would not be competent to represent himself.

Criminal trespass. State v. Bennett | 2022-Ohio-4471 | 11th Appellate District | 12/12/2022 Conviction of criminal trespass, R.C. 2911.21(A)(4), was not against the weight of evidence where defendant refused to leave a motel after being requested to do so by the motel manager when she was refunded her money for the room since Ohio law requires only that the notification to leave be reasonable, not the underlying reason for making the request, and thus neither the sufficiency nor the reasonableness of the manager's reasons for asking defendant to leave constitute a defense.

Ineffective assistance. State v. Snider, 2022-Ohio-4566 | 2022-Ohio-4566 | 11th Appellate District | 12/12/2022 In a conviction of attempted rape, gross sexual imposition, unlawful sexual conduct with a minor, and sexual battery, trial counsel provided ineffective assistance by not objecting to defendant's witness testifying as an expert on recantation in child sexual abuse cases when the expert report provided to defense counsel did not discuss recantation, and the failure to object to the admission of the expert testimony given in violation of Crim.R.16 (K) cannot be excused as trial strategy since the alleged victim's inconsistent statements of whether she was lying was prejudicial since the convictions were based solely on her testimony.

Right to counsel/Self-representation/Hybrid representation. State v. Colquitt | 2022-Ohio-4448 | 12th Appellate District | 12/12/2022 In a conviction of, inter alia, felonious assault, failure to comply and drug offenses, while defendant unequivocally asserted his right to self-representation, not only at the arraignment, but at the pretrial hearing, the trial court failed to ensure that defendant had a sufficient understanding of the danger of self-representation, nor did defendant sign a waiver of his right to counsel, Crim.R. 44, and the trial court also erred by allowing defendant and standby attorney to engage in hybrid representation.

Jury instructions/Involuntary manslaughter/Self-defense/Ineffective assistance. State v. Dixon | 2022-Ohio-4454 | 4th Appellate District | 12/09/2022 In a conviction of, inter alia, murder, trial court did not err by denying defendant's request for a jury instruction on voluntary manslaughter since there was no objective evidence from which a jury could have reasonably found that defendant acted under the influence of "sudden passion" or a "sudden fit of rage" because he feared for his or others safety, nor did trial counsel provide ineffective assistance by not objecting to the provision in the self-defense jury instruction that included a duty to retreat since defendant was not in his residence nor was he in a place he lawfully had a right to be.

Aggravated murder/Death penalty/Mental disorder/Final appealable order. State v. Fitzpatrick | 2022-Ohio-4381 | 1st Appellate District | 12/09/2022 Following a 2002 conviction by plea to three counts of aggravated murder and imposition of death sentence that was affirmed, and 2021 legislation providing that a person who has been diagnosed with specified mental disorders meeting the statutory criteria is ineligible for the death penalty, R.C. 2929.025(E)(1), appellant filed a petition pursuant to R.C. 2953.21(A)(1)(a)(iv) and (A)(3)(b) claiming that at the time of the offense, he had a serious mental illness within the meaning of R.C. 2929.025 and could not be sentenced to death, appeal of the trial court's order compelling appellant to submit to a forensic psychological examination by an expert chosen by the state is not a final appealable order under R.C. 2505.02(B)(2).

Sentencing/Jail-time credit/Post-release control. State v. Springs, 2022-Ohio-4414 | 2022-Ohio-4414 | 2nd Appellate District | 12/09/2022 In a conviction by plea to robbery, state conceded error in trial court's failure to calculate jail-time credit at the sentencing hearing and in the court's failure to advise defendant at the sentencing hearing of the consequences for violating the terms of post-release control, R.C. 2929.19(B)(2)(d) and (e); remanded for determination of jail-time credit, to issue an amended judgment entry setting forth that information, and to hold a resentencing hearing to impose post-release control.

Felonious assault of officer. State v. Lewis | 2022-Ohio-4421 | 6th Appellate District | 12/09/2022 Conviction of felonious assault of a peace officer, R.C. 2903.11(A)(1) and (D), met the sufficiency and weight of evidence standards where defendant bit officer in the neck after he was arrested during an investigation of a stopped unoccupied vehicle on the berm of a highway and was not an act of self-defense since officer was merely taking him to sit in the officer's car during his investigation, and given the nature of defendant's conduct and the location of the bite on the officer, it could not reasonably be claimed that defendant's conduct was inadvertent or unintentional.

Criminal (Continued)

Evidence/Gang affiliation/Other acts. [State v. Flow | 2022-Ohio-4416 | 6th Appellate District | 12/09/2022](#)

In convictions of, inter alia, felony complicity to murder, trial court did not err by admitting references to gang membership that were limited to proof of the relationships between defendant, co-defendant, a juvenile who was also involved in the shooting that resulted in a victim's death, and two other individuals who were found with the guns used in the shootings, since relevant to show connectivity among those individuals and also provided context regarding defendant's role in committing the offenses, defendant's counsel was aware of the gang participation charge, and defendant cannot demonstrate bad faith, unfair surprise or prejudice resulting from the lack of notice of the use of Evid.R. 404(B) other acts evidence, Williams.

Prosecutorial misconduct. [State v. Smith | 2022-Ohio-4425 | 6th Appellate District | 12/09/2022](#) In a conviction by plea to felonious assault and to attempted failure to comply with an order or signal of a police officer, the trial court did not commit plain error by sentencing defendant after the prosecutor at the sentencing hearing alleged facts unfavorable to defendant when prosecutor had agreed to remain silent at sentencing in view of the absence of any evidence the trial court relied on from the prosecutor's comments and, when the prosecutor was made aware of his error, he immediately requested that his comments be stricken from the record.

Anders brief. [State v. Hendricks | 2022-Ohio-4413 | 2nd Appellate District | 12/09/2022](#) In an appeal of conviction by plea to theft and obstructing justice, the court of appeals affirms judgment after conducting an independent review of the record and concluding that no non-frivolous issues exist for appeal, Anders.

Aggravated murder/Appeal/Constitutional claim. [State v. Grevious | 2022-Ohio-4361 | Supreme Court of Ohio | 12/09/2022](#) In a conviction of non-capital aggravated murder and the aggravating circumstance of committing the offense for hire and jury recommendation that the trial court sentence defendant to life imprisonment without possibility of parole, R.C. 2929.03(D)(2)(c), the limited right of

appeal under R.C. 2953.08(D)(3) does not violate the United States Constitution by limiting a defendant's right to appeal a sentence for aggravated murder but, when a defendant raises a constitutional claim regarding that sentence on appeal, the statute does not preclude an appellate court from reviewing the constitutional challenge, Patrick, and thus the court of appeals erred by declining to review the merits of defendant's constitutional challenges to his aggravated murder sentence.

Sentencing/Alford plea/Speedy trial. [State v. Wilson | 2022-Ohio-4427 | 6th Appellate District | 12/09/2022](#) In conviction by Alford plea to gross sexual imposition, R.C. 2907.05(A)(4) and (C)(2), and imposition of a prison term of 30 months, claim on appeal that defendant was denied the constitutional right to a speedy trial because trial court did not inform him that his guilty plea would waive a speedy-trial violation claim on appeal is without merit since a trial court's not informing a defendant that a guilty plea made pursuant to an Alford plea would waive a speedy-trial violation issue on appeal does not render the plea involuntary, Turski.

Sex offense/Gross sexual imposition. [State v. Irvin | 2022-Ohio-4417 | 6th Appellate District | 12/09/2022](#) Conviction of gross sexual imposition of a minor less than 13-years-old, R.C. 2907.05(A)(4) and (C)(2), met the sufficiency and weight of evidence standards where claim state was required to show that defendant "was actually sexually aroused or gratified," is without merit since state must show only that he touched the victim "for that purpose," and the trier of fact may infer a purpose of sexual arousal or gratification from the type, nature and circumstances of the contact, along with the personality of the defendant, and a conviction is not against the weight of the evidence solely because the jury heard inconsistent testimony.

Sentencing/Firearm specifications/Merger. [State v. Bollar | 2022-Ohio-4370 | Supreme Court of Ohio | 12/09/2022](#) In a conviction by plea to, inter alia, involuntary manslaughter and felonious assault, sentencing defendant to three years in prison for the firearm specification attendant to the charge of felonious assault after the trial court had merged for sentencing the charges of involuntary manslaughter and felonious assault as

allied offenses of similar import was not error since R.C. 2929.14(B)(1)(g) creates a statutory exemption to the merger of multiple firearm specifications when the underlying felonies are merged at sentencing as allied offenses of similar import pursuant to R.C. 2941.25.

Sentencing/Scope of review. [State v. Dodd | 2022-Ohio-4455 | 4th Appellate District | 12/08/2022](#) In a conviction by plea to felonious assault, claim that the trial court considered two factors at sentencing lacking any basis in the record, namely that defendant acted with racial animus against victim and that defendant had a prior criminal record as an adult is without merit since defendant did not request the court of appeals to review whether the record supports the trial court's findings under R.C. 2953.08(G)(2)(a), but instead requested review of court's findings relating to racial animus and recidivism and, since those are findings are under R.C. 2929.12(B)(8) and (D)(2), the court of appeals has no authority to review whether the record supports a sentence as a whole under R.C. 2929.11 and 2929.12, Jones.

Sentencing/Allied offenses. [State v. Joseph | 2022-Ohio-4404 | 8th Appellate District | 12/08/2022](#) In a conviction in three cases of, inter alia, two counts of having a weapon while under disability, the trial court erred in failing to conduct an allied offense analysis for the having weapons while under disability charges since the two charges facially presented a question of merger where the offenses were arguably committed at the same time while defendant was both a person with a prior felony conviction and a fugitive from justice.

Search/Traffic stop/Plain view. [State v. Jackson | 2022-Ohio-4365 | Supreme Court of Ohio | 12/08/2022](#) In a conviction of weapons offenses, denial of motion to suppress was not error since defendant did not challenge the legality of the traffic stop at trial, and an officer may order a motorist to exit a car properly stopped for a traffic violation, even without a suspicion of criminal activity, officer's act of opening the driver's car door after ordering defendant to exit when defendant did not exit as ordered was not a search because officer did not act with the purpose of finding out what was inside the car, and the plain-view exception to the warrant requirement applied to

marijuana seized in plain view on the car floor, justifying a warrantless search of entire car under the automobile exception to the warrant requirement.

Speedy trial/Tolling events. S. Euclid v. Njoku | 2022-Ohio-4388 | 8th Appellate District | 12/08/2022 In prosecution of domestic violence, R.C. 2919.25(A), the trial court erred in granting defendant's motion for a speedy trial violation since the tolling events due to defendant's actions, including his discovery request before he was arrested, the time elapsed for defendant's failure to serve reciprocal discovery responses on the city, the Ohio Supreme Court's COVID-19 protocols, and the trial court's own administrative orders were valid reasons to delay jury trials and also served as tolling events under R.C. 2945.72(H), Fleegle; remanded for further proceedings.

Sentencing/Misdemeanors/Consecutive sentences. S. Euclid v. Bargainer | 2022-Ohio-4394 | 8th Appellate District | 12/08/2022 In a conviction by plea in seven cases to seven first-degree misdemeanors, five counts of theft and two counts of escape, imposition of consecutive sentences totaling 720 days was error since the total jail sentence violated the provision in R.C. 2929.19(B)(1) that limits the maximum sentence to 18 months, R.C. 2929.19; remanded for re-sentencing.

Post-conviction relief/Judicial bias. State v. Weaver | 2022-Ohio-4371 | Supreme Court of Ohio | 12/08/2022 Following a conviction of, inter alia, aggravated murder of newly-born child that was affirmed, and appellant brought a petition for post-conviction relief alleging that her trial counsel was ineffective for failing to present evidence about pregnancy-negation syndrome as a mitigating factor during sentencing, the trial court erred in dismissing petition where record supports claim that the court in the post-conviction proceeding was biased by arbitrarily disregarding petitioner's expert psychologist's testimony by stating that the testimony was "unbelievable" since the court's conclusion was based on immaterial information, a fundamental misunderstanding of neonaticide, and its own biases pertaining to the subject of the doctor's testimony.

Tampering with records/Litigation privilege. State v. Brown | 2022-Ohio-4347 | Supreme Court of Ohio | 12/07/2022 In a prosecution for tampering with records, R.C. 2913.42, the litigation privilege, protecting a person from civil liability for defamatory statements made during judicial proceedings and that were reasonably related to those proceedings, does not exempt a person from criminal liability related to those statements, and defendant acted "knowing she had no privilege to do so" when she filed a quiet-title complaint and affidavit of indigency with false statements and acknowledged in those filings that she could be subject to criminal liability for providing false information in the filings.

Sentencing/Allied offenses/Weapon forfeiture. State v. Mitchell | 2022-Ohio-4355 | 1st Appellate District | 12/07/2022 In convictions for having weapons under disability and possession of and trafficking in marijuana, the trial court erred in failing to merge the offenses for trafficking in and possession of marijuana since these offenses were not dissimilar in import or significance because they represented the same transaction where officers found the marijuana in the apartment in which defendant was living, the offenses were not committed with separate animus or motivation and both offenses were based on the same contraband; the trial court also erred in issuing a broad firearms forfeiture edict since the indictment listed only one specific firearm.

Sentencing/Allied offenses. State v. Collins | 2022-Ohio-4353 | 1st Appellate District | 12/07/2022 In a conviction by plea of no contest to drug and weapon offenses, the trial court erred by not merging for sentencing the offenses of carrying a concealed weapon, R.C. 2923.12(A)(2), and improper handling of a firearm in a motor vehicle, R.C. 2923.16(B), as allied offenses of similar import since the resulting harm was the same for both offenses, the offenses were not committed separately because both stemmed from the defendant's placing a loaded firearm under his seat in his vehicle, and he committed the offenses with a single animus of hiding a loaded firearm under his seat; also discussed, investigatory stop.

Plea/Withdrawal/Ineffective assistance. State v. Haser | 2022-Ohio-4375 | 5th Appellate District | 12/06/2022 In a conviction by plea to aggravated burglary, R.C. 2911.11(A)(1), and domestic violence, R.C. 2919.25(A), denial of post-sentence Crim.R. 32.1 motion to withdraw plea was not error since claims of debilitating anxiety that affected plea decision are not supported by substantive evidence, and defendant made a series of self-serving statements without corroboration that his counsel was ineffective; also, Crim.R. 32.1 does not require a trial court to issue findings of fact and conclusions of law when ruling on a motion to withdraw a guilty plea, Griffin.

Preindictment delay/Actual prejudice. State v. Bourn | 2022-Ohio-4321 | Supreme Court of Ohio | 12/06/2022 In rape prosecution, grant of defendant's motion to dismiss rape charges for an over 12-year pre-indictment delay was error since the action was commenced within the statute of limitations, and defendant failed to demonstrate that the delay resulted in actual prejudice in a rape case in which consent is at issue where there was no evidence presented of a reliable indication of the alleged loss of evidence of consent, defendant's claim that the evidence of consent existed and could have been obtained is speculative, and the alleged evidence was not material nor substantively probative on the issue of consent, Jones.

Prosecutorial vindictiveness. State v. Kirkland | 2022-Ohio-4325 | 9th Appellate District | 12/05/2022 In a conviction of, inter alia, aggravated murder and imposition of life in prison without the possibility of parole, claim that the death penalty specification that was added by a supplemental indictment after defendant invoked his speedy trial rights was prosecutorial vindictiveness for defendant invoking his speedy trial rights is without merit since he failed to raise the issue in the trial court, and there was no plain or structural error since there was no showing of vindictiveness because when an indictment is amended before trial, "a defendant must objectively prove that the actions of the prosecutor were retaliatory," Viscomi.

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Plea/Withdrawal. State v. Sales | 2022-Ohio-4326 | 12th Appellate District | 12/05/2022 Following a conviction by plea to fourth-degree felony vehicular assault, R.C. 2903.08(A)(2)(b), and first-degree misdemeanor OVI, R.C. 4511.19(A)(1)(a), denial of pre-conviction motion to withdraw plea was not error where the trial court correctly found that the conviction for vehicular assault, R.C. 2903.08(A)(2)(b), was not a crime that could lead to deportation to defendant's home country, properly advised defendant of that fact as required by R.C. 2943.031(A), and its credibility determination that there was no language barrier that prevented defendant from fully understanding the proceedings at the change of plea hearing is not reviewable; also discussed, no ineffective assistance of counsel.

Discovery/Disclosure/Rebuttal. State v. Rittinger | 2022-Ohio-4339 | 5th Appellate District | 12/05/2022 In a conviction of domestic violence and felonious assault, the trial court did not err by allowing the state to introduce a photo from victim's phone showing her and defendant at a bar with a date and time stamp of 1:12 a.m. on the day the domestic violence was alleged to have occurred and victim's testimony authenticating the photo, after the defense had rested its case without the state disclosing it to defendant during discovery under Crim.R. 16(B)(1) since the state asserted that it did not plan on using it because it did not believe it had any relevance until defendant testified that he and the victim left the bar around 11:00 p.m., that contradicted victim's testimony that they left "very late," and it was relevant for the limited purpose of rebuttal.

Jury/Juror information. State v. Johnson | 2022-Ohio-4344 | 5th Appellate District | 12/05/2022 In a conviction of, inter alia, two counts of murder, R.C. 2903.02(B)/(D) and 2929.02(B), the trial court's not providing defense counsel with the names and addresses of the potential jurors did not constitute structural error, Hill, and there was no plain error in the court's use of juror numbers in place of juror names where the trial court gave the jurors a plausible and non-prejudicial reason for not disclosing their identities during voir dire making clear that anonymity was not being invoked to prevent them from being harmed by this

particular defendant, Hill; also discussed, ineffective assistance of counsel and admission of cell phone records.

Evidence/Attorney-Client privilege/Confrontation/Allocution. State v. Brunson | 2022-Ohio-4299 | Supreme Court of Ohio | 12/05/2022 In a conviction of, inter alia, aggravated murder, the trial court did not err by concluding that the attorney-client privilege applied to an alleged co-conspirator's-state's witness' statements to witness' attorney and his investigator during a break in his interview with the police that was recorded without the knowledge of the witness' attorney since record did not clearly establish that the witness testified on the contents of the communication at a motion to suppress hearing; also discussed, right to confrontation not violated by defendant's inability to use the recording in cross-examining co-conspirator and, although the trial court erred by considering defendant's waiver of allocution at sentencing as demonstrating lack of remorse, the record demonstrates that the sentence would not have been different absent the error.

Evidence/Hearsay. State v. Fulton | 2022-Ohio-4323 | 3rd Appellate District | 12/05/2022 In a conviction of, inter alia, two counts of rape, defendant's claim that the trial court erred by not allowing him to question an investigating officer on cross-examination as to whether he or the officer made a statement about defendant taking a DNA test after officer stated that he, not the defendant, made the statement, is without merit since the trial court correctly found the statement was clearly an out of court statement offered to prove the truth of the matter asserted, i.e., that defendant was the one to raise the idea of taking a DNA test, not an admission offered by the officer against defendant that would not have been hearsay, Evid.R. 801(D)(2).

Restitution/Marsy's Law. State v. Yerkey | 2022-Ohio-4298 | Supreme Court of Ohio | 12/05/2022 In a conviction of violating a civil protection order, the trial court erred in ordering restitution for victim's wages lost as a result of victim's voluntary attendance at court proceedings for prosecution of the crime since lost wages are not a direct and proximate result of the violation of the civil protection order, R.C. 2929.32 and 2929.01(L), Lalain, and the enactment of Marsy's Law, Ohio Const. Art. I, Sec. 10a, does not change the result.

Deadly weapon/Inmate possession. State v. Montanaro | 2022-Ohio-4343 | 5th Appellate District | 12/02/2022 Conviction of prison inmate of possession of a deadly weapon while under detention, R.C. 2923.131(B), met the sufficiency and weight of evidence standards where the state presented testimony that ordinary items found in the prison commissary can be fashioned into deadly weapons, and that the state's exhibit is a sharp object made from tweezers available in prison commissary, that was deliberately altered and capable of use in a "poker" fashion to stab at a person's vital organs, item was sharpened, which defendant admitted to doing, and included a "grip" fashioned from a shoelace that would prevent slipping if used as a weapon.

Search/Suppression/Community control violation. State v. Kellett | 2022-Ohio-4340 | 5th Appellate District | 12/02/2022 In a conviction by plea to illegal use of a minor or impaired person in nudity-oriented material or performance and two counts of voyeurism, denial of motion to suppress was not error since defendant violated community control imposed in a prior conviction where probation officer found videos and images on defendant's cell phone of females in a restroom in stages of undress, and officer had reasonable grounds under R.C. 2951.02 to search defendant's cell phone based on multiple witnesses statements indicating defendant's use of the cell phone, coupled with the circumstances in which defendant was found half-naked near the women's restroom.

Aggravated trafficking in drugs/Engaging in a pattern of corrupt activity. State v. Kollé | 2022-Ohio-4322 | 4th Appellate District | 12/02/2022 In a conviction of aggravated trafficking in drugs and engaging in a pattern of corrupt activity, there was sufficient evidence presented to support the drug offense conviction but not the engaging in a pattern of corrupt activity conviction since, although R.C. 2925.03(C)(1)(e) does not require proof that the substance offered for sale contains the relevant controlled substance, the state did not produce evidence of at least two corrupt activities since the proceeds of the second controlled buy did not meet the monetary threshold for a corrupt activity under R.C. 2923.31(l)(2)(c).

DNA testing. State v. Scott | 2022-Ohio-4277 | Supreme Court of Ohio | 12/02/2022 Following a 1992 conviction of, inter alia, murder, denial of 2019 petition for post-conviction DNA testing of victim's fingernail scrapings to exclude appellant as a contributor was error since the testing would be outcome determinative pursuant to R.C. 2953.74(C)(4) and (5) where record is devoid of any physical evidence linking appellant to the crimes, the defense theory involved one or more alternative suspects, a key state witness recanted his testimony and the identity of the contributor to the DNA samples taken from the victim is unknown, and thus the possibility that a comparison of post-conviction DNA test results with CODIS will identify a person other than the offender is "available admissible evidence" when considering the application.

Child endangerment/Subject matter jurisdiction. State v. Jackson | 2022-Ohio-4316 | 2nd Appellate District | 12/02/2022 In a conviction by plea to child endangering, R.C. 2919.22(B) (1), claim that the trial court erred in failing to dismiss for lack of subject matter jurisdiction on the basis that the probate court had jurisdiction is without merit since R.C. 2151.23(A)(6) exempts defendant's felony indictment from the juvenile court's exclusive jurisdiction; also discussed, no speedy trial violation since appellant's petition for a writ of prohibition tolled the speedy-trial time, R.C. 2945.72(E).

Plea/Validity. State v. Perez | 2022-Ohio-4352 | 4th Appellate District | 12/01/2022 In a conviction by plea to burglary, R.C. 2911.12(A)(3), and having weapons under a disability, R.C. 2923.13(A)(3), and imposition of two consecutive three-year prison terms after defendant failed to complete a community control program, plea was not validly made since the trial court did not notify appellant of the mandatory nature of post-release control, but instead informed him that his post-release control sanction would be discretionary; reversed and remanded.

Ineffective assistance/Jury instructions. State v. Lloyd | 2022-Ohio-4259 | Supreme Court of Ohio | 12/01/2022 In a conviction of felony murder and felonious assault, trial counsel did not provide ineffective assistance by not requesting jury instructions on the lesser-included offenses of involuntary

manslaughter and assault and by not requesting jury instructions on the inferior-degree offenses of aggravated assault and voluntary manslaughter since those decisions are matters of trial strategy, nor has appellant established that he would have been entitled to the additional jury instructions if his attorney had requested them.

Aggravated murder/Capital punishment. State v. Garrett | 2022-Ohio-4218 | Supreme Court of Ohio | 11/30/2022 Ohio Supreme Court affirms the trial court's conviction for the aggravated murders of defendant's four year-old daughter and her mother, with imposition of death-penalty specification for the murder of the minor and of life without parole for the aggravated murder of the child's mother; issues discussed include: courtroom closure; Batson challenges; voluntariness of defendant's statements and confession to police; gruesome photographs; sufficiency and weight of evidence of the aggravated murder of minor; prosecutorial misconduct; ineffective assistance of counsel; readmission of trial-phase evidence during mitigation; jury instruction error claims; sentencing opinion errors; and independent sentence evaluation.

Sentencing/Merger. State v. Montgomery | 2022-Ohio-4273 | 5th Appellate District | 11/30/2022 In a conviction by plea to, inter alia, attempted felonious assault, R.C. 2923.02(A), and failure to comply, R.C. 2921.331(B) and (C)(5)(a)(ii), the trial court did not err by not merging the offenses as allied offenses of similar import for sentencing since the felonious assault offense put trooper at risk by defendant's attempt to drive away during a traffic stop while trooper's arm was still in defendant's vehicle or his subsequent attempt to hit trooper with his car at a gas station, and the failure to comply placed other drivers at risk where defendant drove his vehicle at speeds up to 120 miles per hour and swerved in and out of traffic.

Sentencing/Consecutive sentences. State v. Liddy | 2022-Ohio-4282 | 11th Appellate District | 11/30/2022 In a conviction by plea to attempted failure to comply, R.C. 2921.331(B), (C) (5)(a)(ii) and 2923.02(A), imposition of an 18-month sentence to be served consecutive to a sentence in another case was error since the trial court did not make the R.C. 2929.14(C)(4) findings

for the imposition of consecutive sentences, and a consecutive prison term was not mandatory for the conviction of attempted failure to comply because there is no language in R.C. 2921.331 indicating that an attempt to commit failure to comply constitutes an offense, and thus defendant's attempt offense constituted a separate offense, R.C. 2923.02(E)(1); remanded for re-sentencing.

Evidence/Character evidence. State v. Voltz | 2022-Ohio-4351 | 7th Appellate District | 11/30/2022 In a conviction of, inter alia, seven counts of rape of two children under 13 years-old, the trial court did not err by barring defense counsel from asking a witness, the 21 year-old son of defendant's current girlfriend, on direct examination if he had observed bad conduct or sexual comments by defendant during the time that they lived together since under Evid.R. 405, only reputation or opinion evidence is permissible character evidence on direct examination and specific acts may be raised only on cross-examination, unless character or a trait of character is an essential element of a charge; also discussed, the trial court did err in part by applying the Adam Walsh Act instead of Megan's Law to some of the offenses.

Identification/Photo identification. State v. Thomann | 2022-Ohio-4264 | 1st Appellate District | 11/30/2022 In a conviction of robbery, denial of motion to suppress photo identification by victim was not error where photos were shown to victim by a blind administrator, the required folder system was used and, although the administrator did not strictly comply with R.C. 2933.83, defendant did not establish that the deviation from the statute resulted in an unduly suggestive lineup; the trial court did err by imposing a no-contact order, a community control sanction, since it sentenced him to a term of incarceration, Beauchamp; remanded with instructions to vacate the no-contact order.

Sentencing/Post-release control. State v. Clagg | 2022-Ohio-4255 | 10th Appellate District | 11/29/2022 Following a 2018 conviction by plea to engaging in solicitation after a positive HIV test and to loitering to engage in solicitation after a positive HIV test, imposition of community control and subsequent violation of its terms and imposition of modified reserved sentence that was served, the trial court's imposition of a

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five-year period of post-release control at a subsequent hearing was error since a trial court does not have the authority to re-sentence a defendant for the purpose of adding a term of post-release control as a sanction for a particular offense after the defendant has already served the prison term for that offense, *Holdcraft*.

Sentencing/Consecutive sentences. *State v. Hull* | 2022-Ohio-4274 | 5th Appellate District | 11/29/2022 In a conviction by plea of driving offenses, and imposition of concurrent and consecutive sentences, the state concedes that the trial court failed to include the findings from R.C. 2929.14(C) that consecutive service is necessary to protect the public from future crimes by the offender and that consecutive sentences are not disproportionate to the defendant's conduct; remanded to the trial court for re-sentencing pursuant to R.C. 2929.14(C)(4) and *Bonnell*.

Jury instructions/Duress. *State v. Cowan* | 2022-Ohio-4241 | 11th Appellate District | 11/28/2022 In a conviction of trespass in a habitation when a person is present or likely to be present, R.C. 2911.12(B), the trial court did not err in not instructing the jury on the affirmative defense of duress where defendant claimed he did not enter the owner's house until after his alleged attackers fled and he received permission from the owner of the house to enter, and thus defendant failed to establish a constant force controlling his will and compelling him to enter the owner's residence.

Failure to comply/Identity. *State v. Bostick* | 2022-Ohio-4228 | 12th Appellate District | 11/28/2022 Conviction of failure to comply with the order or signal of a police officer, R.C. 2321.331(B), met the sufficiency and weight of evidence standards that defendant was the person who was driving the vehicle fleeing from the police where an officer was able to identify the driver's facial characteristics as those of defendant who was driving the car attempting to escape the police, and the other person who was the passenger had a facial tattoo and longer hair, and the jury was in the best position to judge the credibility of the officer.

Sex offenses/Rape. *State v. Frazier* | 2022-Ohio-4232 | 3rd Appellate District | 11/28/2022 Conviction of rape of defendant's seven year-old step-daughter, R.C. 2907.02(A)(1)(b), (B), was not against the weight of evidence since defendant's argument that the fact that the jury found him not guilty of another count of rape under the same statutory provision is without merit because the rape charges were based on different allegations concerning separate acts by defendant that occurred with the victim during two separate short periods of time.

Confrontation Clause/Hearsay/9-1-1 call. *State v. DeLong* | 2022-Ohio-4233 | 3rd Appellate District | 11/28/2022 In a conviction of domestic violence, R.C. 2919.25(A), admission of 9-1-1 call by victim who was not present at trial did not violate the Confrontation Clause since it was non-testimonial because the caller was seeking police assistance for an ongoing emergency involving defendant and the victim, and it was also admissible as an excited utterance under Evid.R. 803(2).

Aggravated burglary/Aggravated menacing. *State v. Allen* | 2022-Ohio-4243 | 11th Appellate District | 11/28/2022 Conviction of aggravated burglary, R.C. 2911.11(A)(1), and aggravated menacing, R.C. 2903.21, met the sufficiency and weight of evidence standards where two children testified that defendant, who was known to them, without permission entered the residence that they were legally residing at and threatened them with physical harm by pointing a knife at them, and defendant's claim that the conviction for aggravated burglary is inconsistent with jury's acquittal for felonious assault is without merit since the jury could have reasonably concluded that defendant did not knowingly cause or attempt to cause physical harm and also concluded that he did knowingly cause the victims to believe he would seriously injure them.

Mentally ill person. *State v. Tanner* | 2022-Ohio-4224 | 12th Appellate District | 11/28/2022 Following a 1990 finding that defendant was not guilty by reason of insanity of the murder of his wife and found to be a mentally ill person subject to court order pursuant to R.C. 2945.40 and 5122.01, committed to a mental health facility for treatment and in 1996 he was granted conditional release from his institutionalization

with conditions but, in 2021, after a full hearing with the medical professionals involved in treating and reviewing defendant's mental condition, the trial court did not err in finding clear and convincing evidence that appellant remained a mentally ill person subject to court order and continuing his conditional release with the requirement that he engage in appointments with a specific doctor once every four months.

Sex offense/Rape. *State v. Whitfield* | 2022-Ohio-4205 | 8th Appellate District | 11/23/2022 Bench conviction of rape, R.C. 2907.02(A)(2), met the sufficiency and weight of evidence standards since the victim testified that defendant had sexual relations with her against her will, and she testified that she was resisting both physically and verbally but that defendant was "way bigger" and "stronger" than she was and she could not free herself, and defendant ignored her verbal commands to stop and, although victim testified that she did not remember some details of her interactions with defendant leading up to the day of the incident as related to the date of the attack and details of the rape, the victim showed excellent recall.

New trial/Juror misconduct. *State v. Fultz* | 2022-Ohio-4177 | 2nd Appellate District | 11/23/2022 In a conviction of arson and criminal damaging, denial of motion for new trial for jury misconduct, Crim.R. 33(A)(2), was error since there was juror misconduct by at least two jurors who used information not introduced as evidence at trial during jury deliberation and that the jury considered, and one juror had been untruthful under oath about her commission of misconduct, resulting in a denial of due process and a fair trial.

Trial/Partial closure. *State v. Bond* | 2022-Ohio-4150 | Supreme Court of Ohio | 11/23/2022 In an appeal by the state of the court of appeals' reversal of conviction of murder, holding that the trial court committed structural error in partially closing trial to the public by restricting courtroom access to only the victim's and defendant's immediate family members because of an incident outside of the courtroom during a recess, the Ohio Supreme Court holds the court of appeals erred since it should have applied the plain error standard since defendant failed to object to the closure and, under that standard, defendant failed to demonstrate that the public-trial violation so affected the

fairness of the proceeding as to require correction.

Resisting arrest. State v. Pitts | 2022-Ohio-4172 | 1st Appellate District | 11/23/2022 Bench conviction of resisting arrest, R.C. 2921.33(B), met the sufficiency and weight of evidence standards since an officer sustained an injury while he and other officers were attempting to subdue defendant when he refused to be arrested for alleged domestic violence against his mother that she reported, and defendant was informed that the officers were going to arrest him during their encounter with him where body camera video showed defendant's actions in refusing to be arrested and that an officer was injured by kneeling on a taser while trying to subdue defendant who was resisting officers' commands to submit to arrest.

Sentencing/No contact order/Post-release control. State v. Patrick | 2022-Ohio-4171 | 1st Appellate District | 11/23/2022 In a conviction by plea to felonious assault, R.C. 2903.11(A)(1), and imposition of, inter alia, an eight-year prison sentence, the trial court erred in ordering defendant have no contact with the victim and the court also failed to notify defendant of post-release control at the sentencing hearing since a no-contact order is a community-control sanction, James, and although the trial court included in its sentencing entry the required term of post-release control, it failed to state the provision at the sentencing hearing; no contact order is vacated and cause is remanded to hold a notification of post release-control hearing pursuant to R.C. 2929.191.

Sentencing/Consecutive sentences/Juvenile. State v. Jones | 2022-Ohio-4202 | 8th Appellate District | 11/23/2022 In a conviction by plea to assault, R.C. 2903.13(A), imposition of a 24-month prison term to be served consecutive to defendant's present juvenile commitment was error because the trial court sentenced appellant to serve his criminal sentence consecutive to his juvenile disposition without authority to do so since neither R.C. 2929.41 nor 2929.14(C)(4) serves as a statutory basis to support the imposition of what is effectively a hybrid or blended sentence, Hand and Williams.

Sealing. State v. P.J.F. | 2022-Ohio-4152 | Supreme Court of Ohio | 11/23/2022 Trial court's grant of application to seal record of conviction in a felony child

support case was not error since an applicant becomes eligible to have the record sealed when the child support payments are ordered as a condition of nonresidential community control, the nonresidential community control is terminated when the applicant receives a final discharge from the community control sanction, and the statutory waiting period to file an application to seal has elapsed pursuant to the version of R.C. 2953.32 in effect at the time of the filing of the application to seal the record.

Murder. State v. Nelson | 2022-Ohio-4170 | 5th Appellate District | 11/22/2022 Conviction of, inter alia, murder, R.C. 2903.02(A), met the sufficiency and weight of evidence standards where, shortly before victim was shot and found in the driver's seat of her car after she and defendant, who was in a relationship and living with the victim at the victim's residence at the time of her death, left a bar together in victim's car with victim driving, the bar was a short distance from the victim's home and the car and victim were found near her home a short time after leaving the bar, a spent bullet casing was found on the passenger floorboard and a gun was later found on the victim's property and determined to be the murder weapon, but DNA analysis of male DNA on the gun was insufficient for comparison, and defendant, whom police were unable to contact, was later found hiding in a shower at an unrelated suspect's residence.

Sentencing/Consecutive sentences. State v. Volz | 2022-Ohio-4134 | 12th Appellate District | 11/21/2022 In a conviction in four separate cases and imposition of community control in three of the cases and sentence to prison in one case, on subsequent violation of community control and imposition of concurrent sentence in one case and prison sentences in the other three cases to be served consecutively, the trial court erred by failing to make all the required findings in R.C. 2929.14(C) (4) for the imposition of consecutive sentences where it did not make the proportionality finding at the sentencing hearing; remanded for re-sentencing on the matter of consecutive sentences.

Prosecutorial misconduct. State v. Shannon | 2022-Ohio-4160 | 11th Appellate District | 11/21/2022 In a conviction of, inter alia, domestic violence, claim of prosecutorial

misconduct in the cross-examination of a defense alibi witness, who testified that defendant was with her during the time the claimed acts were committed, was not plain error where prosecutor asked witness if there were messages between her and defendant talking sexually, including messages from the jail and, moreover, there was no prejudice in view of the overwhelming evidence supporting the convictions, including the testimony of the victim and multiple witnesses regarding the events that occurred that directly contradicted the alibi testimony; also discussed, the Reagan Tokes Law is not unconstitutional as applied.

Drug offenses/Major Drug Offender specification. State v. Hooks | 2022-Ohio-4132 | 12th Appellate District | 11/21/2022 In a conviction of, inter alia, four counts each of trafficking in, and possession of, heroin, and three counts each of trafficking in, and possession of, cocaine, claim that the trial court erred by imposing a Major Drug Offender (MDO) sentence without an MDO specification attached to two of the counts and that the failure to conform the indictment to R.C. 2941.1410 deprives the trial court of jurisdiction to find that defendant is an MDO is without merit since R.C. 2941.1410(A) provides an exception to the MDO specification requirement where an offender is charged pursuant to R.C. 2925.03, and those counts did not require R.C. 2925.1410(A) MDO specifications.

Evidence/Other acts. State v. Schmidt | 2022-Ohio-4138 | 12th Appellate District | 11/21/2022 In a conviction of, inter alia, gross sexual imposition of a minor who was 12 years-old at the time of the incidents, admission of other acts testimony concerning defendant's alleged prior sexual misconduct with other minors that did not result in conviction was not error where the testimony of other alleged victims of the commonality in circumstances and the similarity in the acts alleged with an identical motive was admissible for establishing intent, and the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, Evid.R. 404(B) and Hartman.

Sentencing/Allied offenses. State v. Victor | 2022-Ohio-4159 | 11th Appellate District | 11/21/2022 In a conviction of rape, R.C. 2907.02(A)(1)(b), and three counts of gross sexual imposition, R.C.

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2907.05(A)(4), of a minor less than 13 years-old, the trial court did not err by merging sentences as allied offenses of similar import in one of the counts of gross sexual imposition with the rape count and not merging the other two counts of gross sexual imposition with the rape count since they resulted from multiple incidents/acts of touching the victim and occurred on separate days, a fact demonstrated by the separate time periods in the indictment and victim's testimony that the gross sexual imposition occurred multiple times.

Sentencing/Indefinite sentence notifications. State v. Greene | 2022-Ohio-4113 | 2nd Appellate District | 11/18/2022 In a conviction by plea to second-degree felony felonious assault, imposition of an indefinite prison sentence of a minimum of 8 years and a maximum of 12 years was error since the trial court failed to provide required R.C. 2929.19(B)(2)(c) notifications at sentencing of the minimum and maximum prison term and to the existence and operation of a rebuttable presumption of release from service of the sentence upon expiration of the minimum term, Massie; remanded for a new sentencing hearing in compliance with R.C. 2929.19(B)(2)(c).

Domestic violence. State v. Bryant | 2022-Ohio-4108 | 1st Appellate District | 11/18/2022 Bench conviction of domestic violence, R.C. 2919.25, met the sufficiency and weight of evidence standards where victim testified that during an argument with defendant, he grabbed and squeezed her chin, and struck her across her right cheek, and defendant's claim that the state did not prove a familial relationship is without merit where victim testified that defendant was the father of her child, took care of the child on occasion, procured clothes and toys for the child, and the state was not obligated to tender formal paternity or related DNA documentation in order to establish the family member requirement, and the trial court did not lose its way in finding victim's testimony credible.

Evidence/Past trespasses. State v. Santana | 2022-Ohio-4118 | 2nd Appellate District | 11/18/2022 In a conviction of, inter alia, four counts of murder and felonious assault, the trial court did not err by excluding evidence of past trespasses involving damage to defendant's property and house since

there was no evidence presented that any of the prior events involved threats to defendant that would have justified the force that he used because prior instances of trespassing or throwing rocks at defendant's property had been too remote in time to the night of the incident in this case, there was no evidence directly connecting any of the prior incidents to the three males involved in this incident, nor did the evidence support self-defense since defendant was the first aggressor.

Sentencing/Vindictiveness. State v. Coley | 2022-Ohio-4123 | 6th Appellate District | 11/18/2022 In conviction of first-degree misdemeanor aggravated menacing arising out of defendant's threats and brandishing a firearm while in a confrontation with two individuals at a gas station/convenience store, imposition of 180 days in county jail, with 120 of the days suspended, and a three-year period of community control was not the result of judicial vindictiveness where trial court imposed its sentence, not because defendant had a concealed weapon license, but for ignoring information that came with defendant's concealed carry weapon license training, and court considered the sentencing requirements and factors in R.C. 2929.21 and 2929.22, by imposing sentence within the applicable statutory limits.

Assault. State v. Rance | 2022-Ohio-4125 | 6th Appellate District | 11/18/2022 Bench conviction of assault, R.C. 2903.13(A), met the sufficiency and weight of evidence standards where victim testified that defendant hit her on the right side of her head that caused her pain and loss of hearing, resulting in a hospital visit in which she was diagnosed with bruising on her jaw and a ruptured eardrum, and defendant's claim that the testimony of the victim and the responding officer implicating defendant was contradictory goes to the credibility of the witnesses, not the sufficiency of the evidence, and the trial court did not lose its way in making its credibility determinations.

Post-conviction relief/Untimely. State v. Savage | 2022-Ohio-4107 | 1st Appellate District | 11/18/2022 Following a 2018 conviction of aggravated robbery with gun specifications that was affirmed, denial of "Motion for Delayed Postconviction" as untimely filed was not error since the petitioner's motion fails to satisfy the jurisdictional requirements of R.C. 2953.23 by not

claiming that his post-conviction claims are based on a new right recognized by the U.S. Supreme Court, and he has not demonstrated that he was unavoidably prevented from discovering the photographs and the trial testimony that he now relies on to support his post-conviction claims, and thus his petition was subject to dismissal without a hearing, R.C. 2953.21(D) and (F) and 2953.23(A).

Sentencing/Jail-time credit/Post-release control. State v. Taylor | 2022-Ohio-4120 | 2nd Appellate District | 11/18/2022 In conviction by plea to second-degree felony felonious assault and subsequent plea in another pending case to having a weapon while under disability, trial court did not err in not awarding jail-time credit where appellant was in jail on an unrelated misdemeanor offense during the time that he was awaiting sentencing, for his felony offenses since he was not confined for any reason arising out of his felonious-assault offense, R.C. 2967.191(A); trial court did err in imposing two to five years of mandatory post-release control at the sentencing hearing and in its judgment entry since under R.C. 2967.28(B)(3) the required period is 18 months to three years.

Sentencing/Allied offenses. State v. Rogers | 2022-Ohio-4126 | 6th Appellate District | 11/18/2022 In a conviction by plea to involuntary manslaughter, R.C. 2903.04(A), (C) and robbery, R.C. 2911.02(A)(2), (B), the trial court did not commit plain error in not merging the offenses as allied offenses of similar import since the conduct constituted offenses of dissimilar import since victim suffered separate and identifiable harms where defendant's robbery offense did not require evidence of the victim's resulting death as is required for an involuntary manslaughter offense.

Sex offenses/Rape/Gross sexual imposition/Child pornography. State v. Sanchez-Sanchez | 2022-Ohio-4080 | 8th Appellate District | 11/17/2022 In a conviction of rape, gross sexual imposition and illegal use of a minor less than 13 years-old in nudity-oriented material or performance, although the state met the sufficiency and weight of evidence standards of the rape and gross sexual imposition offenses through the victim's testimony, the evidence presented was insufficient to demonstrate the offense of gross sexual imposition where the only evidence

presented was minor's testimony when she allegedly took photographs of herself when she was naked and she thinks they showed her face; also discussed, erroneous jury instruction on flight was not prejudicial.

Double jeopardy. State v. Graves | 2022-Ohio-4130 | 5th Appellate District | 11/17/2022 Following a conviction by plea to OVI, R.C. 4511.19(A)(1), defendant pled guilty to possession of hashish, R.C. 2925.11(A), (C)(7)(d), both offenses arising out of a traffic stop, and defendant did not incur Double Jeopardy since operating a vehicle under the influence of drugs and possession of hashish constitute separate violations of distinct statutory provisions, each requiring proof of a fact that the other did not.

Sentencing/Reagan Tokes. State v. Lovelace | 2022-Ohio-4514 | 8th Appellate District | 11/15/2022 In state's appeal of sentence imposed in conviction of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, trial court erred by holding the Law unconstitutional and imposing a definite sentence pursuant to the statutes in effect prior to the enactment of the Law in light of the circuit's en banc decision in Delvallie holding that the Law is constitutional; remanded for resentencing.

Sentencing/Reagan Tokes. State v. Holsinger | 2022-Ohio-4092 | 4th Appellate District | 11/15/2022 In a conviction of possession of a controlled substance and three counts of aggravated trafficking in drugs, R.C. 2925.03(A)(1) and (C)(1)(c), claim that the sentencing scheme under the Reagan Tokes Law, R.C. 2901.011 and related statutes, is unconstitutional on its face is without merit since: it does not violate the separation of powers doctrine, Bontrager; does not violate due process by limiting access to counsel when the state maintains an offender's incarceration under R.C. 2967.271; and the Law does not violate due process by not requiring a judge to make the decision to maintain incarceration, Bontrager.

Evidence/Dash and body cam video. Kent v. Lusane | 2022-Ohio-4057 | 11th Appellate District | 11/14/2022 In bench conviction of misdemeanor municipal code failure to yield, defendant failed to demonstrate that the city's dash and body camera videos would have been

materially exculpatory or that the video evidence would contradict the officers' testimony and support his acquittal, nor did defendant demonstrate that the police department acted in bad faith in not retaining the records beyond the department's retention period where defendant mailed his request to the prosecutor at an incorrect address, and the record suggests that the prosecutor was not even aware of the request until pretrial.

Drug possession/Constructive possession. State v. Kessler Scott | 2022-Ohio-4054 | 11th Appellate District | 11/14/2022 Conviction of possession of a fentanyl-related compound, R.C. 2925.11, met the sufficiency and weight of evidence standards since the state introduced sufficient evidence from which a jury could find that defendant was in constructive possession of the drugs where he admitted to using the drugs, the drugs were stored in his container and the drugs were found in the vehicle's center console between defendant and the driver and were readily accessible to both, and jury did not lose its way in making its credibility determinations; also discussed, jury instruction on flight.

Search/Suppression. State v. Bailey | 2022-Ohio-4028 | 1st Appellate District | 11/14/2022 In a conviction by plea to, inter alia, receiving stolen property, and weapon offenses, denial of motion to suppress was error where prior to being given Miranda warnings, defendant on exiting his vehicle after being stopped, was handcuffed, searched and taken to a police cruiser, there were at least five officers and three police cruisers at the scene, his car was completely blocked in by three police cruisers and he was told that there would be a canine search of his car.

Sentencing/Community control. State v. Caldwell | 2022-Ohio-4035 | 12th Appellate District | 11/14/2022 In a conviction by plea to, inter alia, unlawful sexual conduct with a minor, and subsequent violation of community control, the trial court did not err by revoking community control since defendant violated community control by leaving the state without written permission and also by possessing an electronic device capable of accessing the Internet without having installed the specific software on his cellphone that was required under his community control conditions.

Plea/Substantial compliance. State v. Ely | 2022-Ohio-4039 | 11th Appellate District | 11/14/2022 In a conviction by plea of guilty to first-degree misdemeanor OVI, R.C. 4511.19(A)(1) (a), to which the Ohio Traffic Rules apply, although the trial court did not specifically inform defendant that his guilty plea was "a complete admission of [his] guilt," Traf.R. 10(B) and (D), the right to be informed of the effect of a plea is a non-constitutional right, subject to a substantial compliance standard, and since the trial court substantially complied in informing defendant of the effect of his guilty plea and, defendant entered a guilty plea without asserting actual innocence, he is presumed to understand that he has completely admitted his guilt, Griggs.

Ineffective assistance. State v. Schaade | 2022-Ohio-4050 | 11th Appellate District | 11/14/2022 In a conviction of gross sexual imposition of defendant's 12 year-old niece, R.C. 2907.05(A) (4) and (C)(2), defense counsel did not provide ineffective assistance by not calling witnesses to contradict the victim's testimony since defense counsel's decision to call a witness is within the province of counsel's trial tactics, and defendant has not identified the "Children Services workers" that his counsel should have subpoenaed, nor has he explained what their actual testimony would have been, and thus defendant did not show a reasonable probability that the outcome of the trial would have been different.

Aggravated menacing. State v. Coleman | 2022-Ohio-4029 | 1st Appellate District | 11/14/2022 Bench conviction of aggravated menacing, R.C. 2903.21(A), met the sufficiency and weight of evidence standards where victim testified that defendant threatened him and other individuals in his apartment building with a firearm, and apartment manager who spoke with victim testified that he was "very nervous and agitated and seemed like he may have been a bit frightened" was sufficient to demonstrate that victim feared defendant was going to cause him serious physical harm, and the trial court did not lose its way in making its credibility determinations.

Self-defense. State v. Wagner | 2022-Ohio-4051 | 11th Appellate District | 11/14/2022 In convictions of, inter alia, felonious assault and improperly handling firearms in a motor vehicle, the

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trial court erred by instructing the jury to consider whether defendant had a duty to retreat as a factor of his self-defense claim where the plain language of the statute in effect at the time of trial and jury deliberations prohibited such an instruction where defendant testified that he shot his weapon after the driver of another car shot at him during an alleged road rage incident, R.C. 2901.09(C), since the Ohio Supreme Court has held that amended R.C. 2901.05 applies "to all trials conducted on or after the effective date" regardless of when the underlying criminal conduct occurred, Brooks.

New trial/Post-conviction relief/DNA.

State v. Hatton | 2022-Ohio-3991 | Supreme Court of Ohio | 11/10/2022 Following 1997 conviction of, inter alia, rape and burglary that was affirmed, and denial of numerous post-conviction motions, trial court's denial of 2019 motion for leave to file a motion for a new trial and a successive petition for post-conviction relief that was affirmed by the court of appeals on the basis of res judicata was error since the state had failed to timely disclose relevant, exculpatory evidence of the presence of B allele in the mixed-sample male DNA fractions of the victim's vaginal swabs that were not present in the DNA of the victim or the defendants.

Assault/Obstructing official business.

State v. Woodson | 2022-Ohio-4005 | 2nd Appellate District | 11/10/2022 Bench conviction of assault, R.C. 2903.13(A), and obstructing official business, R.C. 2921.31(A), met the sufficiency and weight of evidence standards where, even though victim did not testify since she could not be located, the arresting officer testified and his body camera footage documented that the victim identified defendant and was admitted by the court through the "excited utterance" exception to the hearsay rule, and defendant obstructed official business where officers approached him in a marked police car, were wearing police uniforms, and yelled at him to stop but he fled before being tasered, and the trial court was in the best position to judge witnesses' credibility.

Restitution/Economic loss.

Cleveland v. Figueroa | 2022-Ohio-4012 | 8th Appellate District | 11/10/2022 In a conviction of municipal ordinance criminal damaging, imposition of \$1,800

restitution for damages to victim's vehicle was not error where based on victim's economic loss, and the trial court was not required to consider defendant's ability to pay or that the victim had car insurance to offset the restitution amount, R.C. 2929.28(A)(1), and no legal authority requires a trial court to offset any restitution award by any potential insurance coverage.

Post-conviction relief.

State v. Blanton | 2022-Ohio-3985 | Supreme Court of Ohio | 11/10/2022 Following 2016 convictions in consolidated cases of, inter alia, multiple counts of rape and kidnapping in one case and felonious assault and kidnapping in the other case, that were affirmed, denials of 2017 and 2018 pro se petitions for post-conviction relief were not error where appellant's claims that his trial attorney provided ineffective assistance are either barred by res judicata or failed to set forth a substantive claim for relief since his claims either were, or could have been, raised in the direct appeal from the convictions; were based on appellant's self-serving affidavits that lacked credibility, and he failed to demonstrate he was prejudiced by his attorney's trial strategy decisions.

Self-defense/Duty to retreat.

State v. Midkiff | 2022-Ohio-4004 | 2nd Appellate District | 11/10/2022 In a conviction of felonious assault arising from an altercation between defendant and the victim, the trial court did not commit plain error by not instructing the jury on the amended version of the self-defense statute, R.C. 2901.09, since the "stand your ground" law's changes to R.C. 2901.09 do not apply retroactively to a defendant who committed his or her offense prior to April 6, 2021, but whose trial was held after that date, as was the situation in this case, R.C. 1.58 and Degahson.

Double jeopardy.

State v. Cervantes | 2022-Ohio-4018 | 6th Appellate District | 11/10/2022 In a conviction of kidnapping, felonious assault and attempted murder, the trial court did not err in denying motion to dismiss on double jeopardy grounds since defendant's claim the events constituted a continuing course of conduct and the state could not separate them into separate charges in separate jurisdictions is without merit since separate jurisdictions may separately prosecute an offender where a course of criminal conduct transpired over multiple

jurisdictions and separate, distinct criminal acts were committed during the course of conduct and, although R.C. 2901.12(H) would have permitted state to prosecute all the offenses together, it did not require the state to do so.

Sex offenses/Sexual battery.

State v. Peacock | 2022-Ohio-4021 | 6th Appellate District | 11/10/2022 Conviction of sexual battery, R.C. 2907.03(A)(2), was supported by the weight of evidence that the victim was substantially impaired beyond a reasonable doubt where victim, her daughter, an officer and two detectives testified that she was intoxicated after consuming alcohol, marijuana and cocaine over the span of a few hours before the assault, and defendant admitted to smoking marijuana with the victim shortly before the assault and that the victim was intoxicated.

Falsification/Dereliction of duty.

State v. Mills | 2022-Ohio-4010 | 8th Appellate District | 11/10/2022 In a conviction of former regional director of corrections of two counts of falsification and two counts of dereliction of duty, R.C. 2921.44(C)(2) and (C)(5), significant evidence established that defendant had a position of trust, authority, or command over the county jail, and thus that he was an officer under the statute, but trial court erred by allowing into evidence substantial argument, witness testimony, and photographic evidence involving multiple deaths in the county jail that occurred before, after, and while defendant was the regional director of corrections, and there is a reasonable possibility that the improper evidence contributed to his conviction.

Sealing/Hearing/Eligible offender.

State v. A.L.H. | 2022-Ohio-4016 | 8th Appellate District | 11/10/2022 In an appeal of denial of "Application for Sealing of the Record of Conviction" with a request for a hearing, the state concedes error where the trial court failed to hold a hearing as requested pursuant to R.C. 2953.32(A)(1), and the state also acknowledges that not only is the appellant an eligible offender as defined in R.C. 2953.31(A)(1), but that he was convicted of an eligible offense under R.C. 2953.36.

Search/Probable cause.

State v. Reed | 2022-Ohio-3986 | 1st Appellate District | 11/09/2022 In a conviction by plea to drug trafficking, denial of motion to suppress was not error since the

search and arrest of defendant was supported by probable cause since an officer observed a transaction at a gas station where an individual parked his car beside a gas pump, entered defendant's vehicle also parked at a gas pump and exited the vehicle shortly after, neither individual purchased gas and the high level of drug activity in the area coincided with officer's testimony about an established pattern of behavior indicating a drug transaction, and he communicated to other officers the basis for his probable cause, and thus any of the officers could lawfully stop and arrest defendant.

Habeas corpus. McDonald v. Black | 2022-Ohio-3938 | Supreme Court of Ohio | 11/08/2022 In inmate's petition for a writ of habeas corpus against warden, writ is denied since relator failed to include a copy of his sentencing entry, a commitment paper that is required to be filed with his habeas petition, R.C. 2725.04(D), and the affidavit attached to his habeas petition did not offer a legitimate justification for his failure to comply with R.C. 2725.04(D).

Sex offenses/Voyeurism. State v. Hardgrove | 2022-Ohio-3993 | 5th Appellate District | 11/08/2022 Conviction of voyeurism, R.C. 2907.08(B), met the sufficiency and weight of evidence standards where the state presented evidence that the phone with video recordings of the victim preparing to shower was found in defendant's book bag hidden in a hallway closet only used by defendant and pointed in the direction of the victim's bedroom, testimony was also presented that no other men were in the house during the time the videos were taken, and the state also presented testimony of the victim and her mother that the man in the video recordings was defendant, and defendant identified his own voice in the video.

Animal cruelty. State v. Kapcar | 2022-Ohio-3959 | 9th Appellate District | 11/07/2022 Conviction of six counts of cruelty to animals, R.C. 959.13(A)(1), met the sufficiency and weight of evidence standards where the state provided evidence, including a veterinarian's testimony, that the horses owned by defendant were in dire condition at the time of their removal, and defendant acknowledged that the horses had lost a significant amount of weight and that their feet were overgrown, notwithstanding that there was defense

testimony presented that the condition of the horses was overstated, and trier of fact did not clearly lose its way in making its credibility determinations.

Speedy trial/Findings of fact and conclusions of law. State v. Otero | 2022-Ohio-3960 | 9th Appellate District | 11/07/2022 Following a conviction by plea to drug charges that arose out of an arrest of defendant in his residence, the trial court erred by granting a motion to dismiss for violation of a speedy trial in a second indictment of drug charges that arose out of drugs found on an adjoining property owned by defendant where the trial court failed to issue findings of fact and conclusions of law in the second case, Crim.R. 48(B), since the second indictment stood separate and apart from the first indictment, and thus Crim.R. 48(B) applied when the trial court dismissed the second indictment over the state's objection.

Sex offenses/Gross sexual imposition. State v. Lawson | 2022-Ohio-3972 | 11th Appellate District | 11/07/2022 Conviction of four counts of gross sexual imposition of a minor less than 13 years-old, R.C. 2907.05(A)(1) and (A)(4), met the sufficiency and weight of evidence standards where minor testified the areas in which defendant had sexual contact with her and the evidence presented demonstrated force was used since defendant was an authority figure to the victim, and defendant's claim that victim should be disbelieved because no one else saw the conduct alleged is without merit since a lack of corroborating eyewitness testimony is not a basis for reversal.

Sentencing/Consecutive sentences. State v. Cortez | 2022-Ohio-3973 | 11th Appellate District | 11/07/2022 In a conviction by plea to attempted rape of a minor and gross sexual imposition of another minor, the trial court did not err by imposing consecutive prison sentences totaling 11 years, and the state was free to alter its plea recommendation of concurrent sentences to consecutive sentences on a change in circumstances by defendant's failure to appear for his sentencing hearing two times that prolonged his sentencing hearing by approximately four months, Randazzo.

Sentencing/Misdemeanors/Consecutive sentences. State v. Cunningham | 2022-Ohio-3982 | 5th Appellate District | 11/07/2022

In a conviction of two counts of misdemeanor aggravated menacing, R.C. 2903.21(A), three counts of misdemeanor domestic violence, R.C. 2919.25(A) and (C), and two counts of misdemeanor child endangering, R.C. 2919.22(A), imposition of consecutive sentences without findings was not error since R.C. 2929.14(C)(4) does not apply to a conviction that includes consecutive service of misdemeanor jail terms, R.C. 2929.41(B)(1), and Bechtel, and the trial court specified in its judgment entry that the sentences were to be served consecutively.

Prosecutorial misconduct/Closing argument. State v. Jones | 2022-Ohio-3978 | 11th Appellate District | 11/07/2022 In a conviction of reckless homicide with a firearm specification and tampering with evidence, although the prosecutor impermissibly commented on defendant's post-arrest silence during closing arguments and the trial court overruled defense counsel's objection and did not give a curative jury instruction, there was no reversible error since the errors did not prejudicially affect the substantial rights of defendant because the errors did not deprive defendant of a fair trial where there was overwhelming evidence of defendant's guilt; also discussed, prosecutorial questioning of a witness on intimidation was not error.

Self-defense. State v. Eddy | 2022-Ohio-3965 | 3rd Appellate District | 11/07/2022 In a bench conviction of assault, R.C. 2903.13(A), defendant failed to demonstrate that he was not at least partially at fault for creating the situation giving rise to the affray between him and the victim with whom he was living, and the trial court correctly applied the legal standard for self-defense through non-deadly force since defendant never attempted to withdraw from the affray and used more force than was reasonably necessary to defend against imminent danger of bodily harm, and the court did not indicate that it believed that the legal standard for self-defense through deadly force was applicable or that defendant had a duty to retreat.

Prosecutorial misconduct/Victim impact statements. State v. Collins | 2022-Ohio-3971 | 11th Appellate District | 11/07/2022 In a conviction by plea to felonious assault, the state did not commit prosecutorial misconduct by not disclosing to defendant information from victim impact statements since

Criminal (Continued)

the statements were prepared after defendant's plea as part of the pre-sentencing investigation and those statements were not evidence within the state's possession, and the victim impact statement that defendant claimed was exculpatory was written by a nurse who had not evaluated defendant for purposes of legal competency or sanity, and the formal competency and sanity evaluations did not support defendant's incompetency claims.

Sealing. *State v. Howard* | [2022-Ohio-3992](#) | [5th Appellate District](#) | [11/07/2022](#) Denial of application to seal the record of applicant's conviction of trespass in a habitation and assault was error where, although the trial court found appellant to be an eligible offender, R.C. 2953.32(C)(1), the trial court erred by finding that the legitimate needs of the state in maintaining the records of the conviction in order to preserve recoupment from crime victims reparation fund outweighed the applicant's interest in sealing since applicant had provided a promissory note to the state for the amount that the state had paid to the victim from its reparation fund.

Suppression. *State v. Hayden* | [2022-Ohio-3933](#) | [1st Appellate District](#) | [11/04/2022](#) After release of appellant from local incarceration imposed as community control for a drug-trafficking conviction, appellant was convicted of drug and weapon offenses following probation officers' finding of drugs and a weapon in a vehicle that defendant had permission to drive, the trial court's denial of motion to suppress was not error where probation officers had reasonable grounds to believe that appellant was not compliant with the conditions of his probation since GPS monitoring indicated to officers that defendant was violating his probation conditions, and defendant and owner of vehicle that defendant was using gave consent to search the vehicle; also discussed, notification provision in R.C. 2951.02(A).

Sentencing. *State v. Barker* | [2022-Ohio-3939](#) | [2nd Appellate District](#) | [11/04/2022](#) In a conviction by plea to attempted trespass in a habitation, R.C. 2923.02(A) and R.C. 2911.12(B), claim that the trial court erred by imposing an 11-month prison sentence rather than community control is without merit since R.C. 2929.13(B)(1)(b)(i) and (ii) gave the

trial court discretion to impose a prison term because defendant previously had served a one-year prison term for violating the terms of his community control in another case in which he was convicted of a fifth-degree felony, and he had also caused physical harm to the victim in this case, and the trial court considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12, R.C. 2953.08(G)(2)(b) and Jones.

Appeal/Transcript/Due process. *Cleveland v. McGervey* | [2022-Ohio-3911](#) | [8th Appellate District](#) | [11/03/2022](#) In a bench conviction of municipal code aggravated disorderly conduct, the trial court violated defendant's right to due process by failing to provide an adequate recording of the trial proceedings that could be transmitted on appeal since the record supports the conclusion that either the trial court led the parties to believe the bench trial was being recorded or a formal request was made to have the bench trial recorded, Crim.R. 22, and an effort was made on appeal to comply with App.R. 9 to reconstruct what occurred, but trial counsel had a limited recollection of the proceedings and defendant's health-related issues precluded her assistance; remanded for new trial.

Self-defense. *State v. Hoskin* | [2022-Ohio-3917](#) | [8th Appellate District](#) | [11/03/2022](#) In a conviction of, inter alia, murder, the state presented sufficient evidence to show that defendant did not act in self-defense and was at fault in creating the situation that led to the victim's death where, following victim's encountering defendant in another's house, victim retreated and defendant followed, testifying he wanted to "get to the bottom" of why victim was "playing games" with him and, although there was evidence that the victim had a gun that had been fired, defendant was at fault in creating the situation when he chose to confront the victim, even if defendant's actions were otherwise completely lawful, Elam.

Sentencing/No-contact order/Allied offenses. *State v. Burgos* | [2022-Ohio-3919](#) | [8th Appellate District](#) | [11/03/2022](#) In a bench conviction of, inter alia, aggravated burglary, burglary and three counts of misdemeanor domestic violence, the trial court erred by imposing a no-contact order since it is a community control sanction and no community control was imposed for any of the convictions; the court also erred by not merging the aggravated burglary

and burglary convictions for sentencing since the offenses were committed with the same animus.

Limitations/Attempted aggravated murder. *State v. Bortree* | [2022-Ohio-3890](#) | [Supreme Court of Ohio](#) | [11/03/2022](#) In a 2020 conviction of attempted aggravated murder, alleged to have occurred in 1993, and affirmed by the court of appeals, the trial court's denial of motion to dismiss was error since the statute of limitations, R.C. 2901.13, had expired because, although the statute had been amended and explicitly states there is no period of limitation for the prosecution of aggravated murder or murder, R.C. 2903.01(A)(2), it does not include attempted aggravated murder, nor is that offense included in the designated felonies in R.C. 2901.13(A)(3) and (4) that set the statute of limitations at either 20 or 25 years, and thus pursuant to R.C. 2901.13(A)(1)(a), the statute of limitations for attempted aggravated murder is six years.

Speedy trial/Tolling. *State v. Belville* | [2022-Ohio-3879](#) | [Supreme Court of Ohio](#) | [11/02/2022](#) In a felony drug conviction, defendant was not denied his statutory speedy trial rights under R.C. 2945.71 since time was tolled under R.C. 2945.72(E) because discovery was ongoing due to state's review and the time reasonably needed for updates involving video footage seized by the state from defendant's residence and preparation of it for defendant, and there is no evidence of dilatory or bad faith action by the state in not providing the video discovery sooner.

Environmental and Natural Resources

Mineral interest/Lease/Good faith. *Ischy v. Northwood Energy Corp.* | [2022-Ohio-4755](#) | [7th Appellate District](#) | [12/20/2022](#) In plaintiffs-property owners' breach of implied duty of good faith action against defendant-oil and gas lessee seeking a declaration that the parties' lease had expired by its terms, summary judgment in favor of defendant was not error where defendant's operation in preparing to drill the site began prior to expiration of the primary term of the lease, which extended the lease into the second term, and even if defendant pooled just enough property to avoid an extension payment, a claim for breach of implied duty of good faith and fair dealing cannot exist independent of a claim for breach of contract, which plaintiffs did not assert.

Appropriation/Government oversight.

State ex rel. AWMS Water Solutions, L.L.C. v. Mertz | 2022-Ohio-4571 | 11th Appellate District | 12/19/2022
Water injection company's petition for writ of mandamus to compel state division to initiate appropriation is denied where the company asserts that department's continued suspension of company's permit to inject water into wells following seismic activity constitutes an unlawful taking under the Fifth Amendment, but the company has failed to demonstrate a cognizable property interest in both the lease and the permit to inject since the company's exclusive right to operate injection wells pursuant to the lease is conditioned on its ability to obtain necessary permits and on its subjection to heightened governmental oversight, and even if company could transfer or assign its lease, it fundamentally lacks the necessary right to exclude the government.

Mineral interests/Breach of warranty.

Carpenter v. Antero Resources Appalachian Corp. | 2022-Ohio-4619 | 7th Appellate District | 12/15/2022
In plaintiffs-property owners' action against defendant-oil and gas lessee seeking to quiet title to oil and gas rights on property, summary judgment in favor of defendant on its breach of warranty counterclaim was not error where plaintiffs leased entire mineral estate to defendant but failed to clear title which led to judgment in favor of other mineral owners, plaintiffs did not refuse defendant's royalty payments on interests plaintiffs did not own, and plaintiffs breached the warranty of title when they and defendant, as plaintiffs' lessee, were constructively evicted from the portions of oil and gas that plaintiffs did not own.

Estate Planning, Trust and Probate**Name change/Public policy/**

Magistrate's decision/Objections. In re Name Change of Blevins | 2022-Ohio-4812 | 4th Appellate District | 12/28/2022
Denial of inmate's application for name change was not error since name change would adversely affect the rights of victim's family and friends and the parole authority's ability to monitor the inmate when released from prison, and name change would contravene public policy to protect and promote victim's rights, R.C. 2717.09; also, inmate could challenge the trial court's adoption of magistrate's decision without first filing objections because the magistrate's

decision did not advise inmate that a party cannot assign error unless the party timely and specifically objected to that finding or conclusion in the decision, Civ.R. 53(D)(3)(a)(iii).

Trust/Trustee/Guardian. In re Robert J. Pond Living Trust | 2022-Ohio-4301 | 5th Appellate District | 12/02/2022

In dispute involving a family trust which provided that son would become successor trustee if his mother-trustee was unable to serve, and mother was later adjudicated incompetent, trial court did not err in allowing mother's guardian to exercise mother's rights in the trust to remove son as successor trustee where the trust document allowed guardian, on behalf of mother, to apply to the probate court to remove son as trustee, to make demands for principal and income distributions from the trust, and to exercise mother's rights in the trust, and son is not a beneficiary eligible to receive distributions because mother is the current beneficiary of the trust.

Concealment/Transcript. Lucarell v. Sait | 2022-Ohio-4279 | 11th Appellate District | 11/30/2022

In plaintiff-administrator's R.C. 2109.50 special statutory proceeding to discover concealed assets of estate, which is an inquisitorial discovery proceeding alleging wrongful possession of personal property belonging to estate, judgment in favor of plaintiff is reversed on reasoning that the probate court did not fulfill its obligation to order the transcript and provide a record to the court of appeals, and the case is remanded to the probate court for further proceedings.

Power of attorney/Self-dealing.

Thomas v. Delgado | 2022-Ohio-4235 | 3rd Appellate District | 11/28/2022
In plaintiff's multi-claim action alleging self-dealing by defendant-decedent's attorney in fact, the trial court erred in granting defendant summary judgment in light of the evidence that, inter alia, defendant effected a series of cash withdrawals from decedent's bank accounts, signing the majority of withdrawal slips in his individual capacity, and also completed a series of cashier's check withdrawals made out to various companies and persons, almost all of which were signed by defendant in his individual capacity, with the result that genuine issues of material fact remain as to the validity of the transfers from decedent's accounts that defendant executed allegedly for his own benefit.

Will contest/Undue influence/Jury instruction. Haddad v. Maalouf-Masek | 2022-Ohio-4085 | 8th Appellate District | 11/17/2022

In will contest action by plaintiff-disinherited sister against defendant-executor sister, claiming undue influence, where plaintiff challenges part of the jury instruction that was confusing with regard to the issue of undue influence, trial court's judgment in favor of defendant is affirmed since plaintiff's counsel did bring the alleged error to the court's attention, and a review of the jury instructions in their entirety reveals that the remainder of the instructions remedied any confusion that the contested instruction could have created, and immediately after the instruction was given, the trial court extensively explained undue influence.

Guardianship. In re Guardianship of Pond | 2022-Ohio-4023 | 5th Appellate District | 11/10/2022

Denial of son's application for appointment as guardian of his mother and appointment of attorney as mother's guardian is affirmed where, inter alia, son agreed to a finding of mother's incompetence at hearing, but his opinions about his mother's capabilities were not consistent, there was evidence that son's opinions about his mother were closely linked to giving him the greatest control over his mother's finances, he was accused by others of financially taking advantage of his mother, and less restrictive options in the form of power of attorney or trust would not sufficiently protect mother, due to her incompetence.

Family Law and Domestic Relations**Property division/Businesses/Income and appreciation.** Fordeley v. Fordeley | 2023-Ohio-261 | 11th Appellate District | 01/30/2023

In divorce action in which the parties challenged the distribution of property, trial court erred in classifying businesses as marital property subject to division where husband owned businesses prior to parties' marriage and therefore businesses themselves were husband's separate property under R.C. 3105.071, but income and active appreciation of businesses that occurred during marriage were marital property, and therefore active appreciation value of businesses must be determined to allow equitable distribution to parties; also, parties' prenuptial agreement was ruled to be unenforceable for coercion and overreaching.

Family Law and Domestic Relations (Continued)

Appeal/Mootness. Woodford v. Woodford | 2023-Ohio-193 | 10th Appellate District | 01/24/2023 In divorce action, husband's appeal challenging trial court's order that the record and shared parenting decree be supplemented with a child support worksheet, Civ.R. 60(A), is dismissed as moot where the trial court's previous decision was appealed, reversed on appeal, and remanded for the trial court to review the award and make the worksheet part of the record.

Child support/Modification. Carney v. McNally | 2023-Ohio-148 | 5th Appellate District | 01/19/2023 In divorce action in which husband sought additional deviation in child support obligation, trial court did not err in ordering husband to pay child support in amount equal to presumptive statutory guideline, R.C. 3119.051(A), where, although husband's out-of-state living expenses were higher than wife's, he shared expenses with his girlfriend while wife did not share expenses, and even though wife agreed to downward deviation for the parties' own travel expenses, the court carefully considered travel costs and found that splitting children's travel expenses between the parties was in children's best interest.

Continuance/New counsel. Stalnaker v. Stalnaker | 2023-Ohio-61 | 9th Appellate District | 01/11/2023 In divorce action, denial of wife's motion for a continuance when her counsel withdrew was error where there had been no prior continuances, husband did not object to a continuance, there was no evidence that husband would have been prejudiced by a continuance, disjointed pretrial proceedings coincided with the onset of the pandemic, and although the matter was scheduled before new counsel's conflicting matter was scheduled, new counsel faced an obstacle in preparing for the case in a very short period of time.

Maiden name/Nunc pro tunc. Galloway v. Galloway | 2023-Ohio-29 | 6th Appellate District | 01/06/2023 In divorce action, trial court erred in failing to restore wife's name to her maiden name, even though she did not make the request in her complaint, since she did make the request in her objections to the magistrate's report, and the duty to make the name change is mandatory under R.C. 3105.16; however, the name

change cannot be made with a nunc pro tunc order, which is properly used to correct clerical errors rather than to make substantive changes to a judgment such as restoring a maiden name.

Spousal support/Cohabitation. Spehar v. Spehar | 2023-Ohio-32 | 5th Appellate District | 01/06/2023 In divorce action in which wife enlisted her fiancé to co-sign on mortgage to refinance marital home, trial court did not err in ruling that wife was in a cohabitation relationship with fiancé, even though he maintained a separate residence, since fiancé is building equity in the home and in the event that wife should pass away first, fiancé would become the sole owner of the marital home; as well, evidence reflects that wife and fiancé have lived together for a sustained duration with shared expenses with respect to financing and day-to-day expenses.

Spousal support/Separation agreement. In re Dissolution of Marriage of Mongkollugsana | 2023-Ohio-25 | 2nd Appellate District | 01/06/2023 In dissolution of marriage action, denial of husband's motion to modify or terminate his spousal support obligation is affirmed where his claim that he had retired from employment is of no avail since the parties' separation agreement, that was incorporated into the decree of dissolution, did not contain a provision permitting modification of the amount or terms of spousal support, and therefore the court lacked jurisdiction to modify or terminate husband's support obligation.

Adoption/Consent. In re Adoption of R.R. | 2022-Ohio-4813 | 4th Appellate District | 12/29/2022 In child's legal custodian's petition for adoption of child, trial court did not err in finding that mother's consent was required where mother had frequent contact with custodian while mother was incarcerated, she wrote and sent items to child both before and after her period of incarceration, and she attempted to initiate child support order during look-back period, while custodian did not ask for support from mother, made it clear that mother's contribution was not necessary, and did not permit mother to have contact with child, R.C. 3107.07.

Contempt/Damages. Boyd v. Boyd | 2022-Ohio-4775 | 10th Appellate District | 12/29/2022 In divorce action

in which the trial court found husband in contempt for failing to make payments on a home equity line of credit (HELOC), the court erred in awarding wife compensatory damages since wife failed to present any testimony, affidavits, receipts, or accounting as to the extent of damages she sustained by making the HELOC payments; on remand, the trial court is instructed to conduct a full damages hearing or supplemental briefing to re-examine the issue of damages from the civil contempt order and to determine what, if any, compensation wife is entitled to based on husband's noncompliance.

Child support. Myers v. Vitanovic | 2022-Ohio-4802 | 5th Appellate District | 12/29/2022 In father's action seeking modification of shared parenting plan, trial court did not err in its calculation of father's child support obligation where parents' combined income exceeded maximum listed under R.C. 3119.021 and therefore the standard worksheet was not required, and deviation from standard child support order was found to be in children's best interest under the R.C. 3119.23 factors because mother's costs far exceeded father's and father's total household income far exceeded mother's income.

Property division/Firearms. Schaible v. Schaible | 2022-Ohio-4717 | 12th Appellate District | 12/28/2022 In divorce action in which husband disputed interpretation of terms of parties' separation agreement, trial court erred in ordering husband to provide to wife ammunition in his possession as part of wife's purchase of firearms where the parties' agreement referred to firearms without any mention of ammunition, statutory definitions of firearms and ammunition refer to specific and different things, and wife did not object to agreement terms which referred only to firearms.

Agreement/Form of income/Contempt. Ligget v. Ligget | 2022-Ohio-4700 | 1st Appellate District | 12/28/2022 In divorce action in which wife filed a motion for contempt, claiming that husband was in violation of terms of decree for failure to pay to her a percentage of his bonus income, trial court erred in granting husband's motion to dismiss since wife was seeking enforcement of a bargained-for entitlement rather than modification of parties' agreement by asserting that husband changed the form in which

he received incentive compensation to circumvent the court's order that he pay wife a percent of any bonus he received, and therefore the court had jurisdiction to consider whether husband's behavior constituted contempt.

Property division/Passive growth.

Lepsky v. Lepsky | 2022-Ohio-4710 | 5th Appellate District | 12/27/2022 In divorce action in which wife disputed division of property based on parties' separation agreement, trial court did not err in its interpretation of parties' agreement listing business bank account as part of husband's retained property, and with regard to retirement accounts, although the parties' agreement did not specifically refer to passive growth on those accounts, inclusion of passive growth calculation is required pursuant to R.C. 3105.171 unless the agreement specifically excludes passive growth as a consideration.

Parenting time. Purohit v. Purohit

| 2022-Ohio-4628 | 2nd Appellate District | 12/22/2022 In divorce action in which husband objected to modification of parenting time, trial court did not err in implementing a standard order of parenting time rather than a phased-in approach recommended by the guardian ad litem where magistrate's schedule was not substantially different from guardian ad litem's suggestion, the schedule changes did not happen abruptly, and husband did not express concerns about child's welfare or the conditions of wife's group home at review hearing.

Civil protection order/Modification/

Prohibition. State ex rel. J.R. v. Jones | 2022-Ohio-4642 | 8th Appellate District | 12/22/2022 Relator-wife's petition for a writ of prohibition to reverse a decision by respondents, judge and magistrate, that modified a domestic violence protection order against husband, is granted since R.C. 3113.31(E)(8) provides for reservation of jurisdiction to modify protection orders when a motion is filed, but there was no motion for modification of order filed, so respondents lacked jurisdiction to sua sponte modify the protection order.

Civil protection order. York v. York

| 2022-Ohio-4733 | 4th Appellate District | 12/21/2022 Denial of petition for a domestic violence civil protection order against respondent-petitioner's ex-husband for various threatening acts was not error where, inter alia, even if

threats against petitioner were found to be credible, some of petitioner's actions were inconsistent with her claim that respondent was scaring her, and respondent's act of tracking petitioner's vehicle did not pose a threat to cause bodily harm, R.C. 3113.31(A).

Spousal support. Rawlings v. Doran |

2022-Ohio-4758 | 7th Appellate District | 12/21/2022 In divorce action in which husband sought termination of spousal support at the time of his retirement, trial court did not err in finding a change of circumstances warranting significant reduction but not termination of husband's support obligation where wife had not yet reached retirement age to allow full monthly Social Security benefits, the court considered the fact that wife continues to work only part-time after having raised children, and there was no requirement that wife must charge rent to adult children living with her, R.C. 3105.18(E).

Spousal support/Security/Equitable

lien. Michael v. Miller | 2022-Ohio-4543 | Supreme Court of Ohio | 12/19/2022 In divorce action in which the parties executed a separation agreement providing that husband was subject to a current monthly spousal support obligation and also subject to a separate subsequent quarterly spousal support obligation, the court of appeals' ruling that wife had an equitable lien on husband's share of company stock to cover the current monthly spousal support payments is reversed since, although the first two elements of an equitable lien are present in husband's obligation to pay a certain sum in current spousal support and an identifiable res in husband's company stock, there is no express or implied intent for the company stock to serve as security for husband's current support obligation; the court of appeals erred when it failed to consider husband's cognovit note, the parties' stock-pledge agreement, and wife's UCC financing statement as evidence of the parties' intent to secure only the subsequent obligation.

Common law marriage/Default

judgment. West v. West | 2022-Ohio-4561 | 3rd Appellate District | 12/19/2022 In divorce action, the trial court did err in ruling that there was a common law marriage and in issuing a divorce decree where husband's argument that the trial court entered a default judgment is without merit since the civil rules provide that default judgments do not

apply to complaints for divorce, the trial court required wife to prove common law marriage by clear and convincing evidence and the court heard extensive testimony and evidence on the issue, followed by written final arguments from both parties, while husband was present with counsel and had the opportunity to cross-examine wife's witnesses and to present rebuttal testimony to corroborative evidence offered.

Child support/Beyond majority. Tolbert

v. Tolbert | 2022-Ohio-4482 | 1st Appellate District | 12/14/2022 In divorce action in which wife sought extension of husband's child support obligation after child reached the age of majority, trial court did not err in denying wife's motion where, although wife believed that child was unable to support himself due to mental disability, evidence established that child was capable of maintaining and transporting himself to employment and being otherwise self-sufficient, and the record contains no evidence that child is mentally or physically disabled, R.C. 3119.86.

Divorce/Attorney fees. Gupta v. Sharan

| 2022-Ohio-4479 | 10th Appellate District | 12/13/2022 In divorce action in which wife contested the decree, trial court did not err in ordering wife to pay husband's attorney fees out of her share of the marital estate since wife failed to appear at numerous hearings, she did not cooperate or comply with discovery, she repeatedly made false allegations against husband to police and to the guardian ad litem, she sought a stay of the matter based on inaccurate information regarding her inability to travel from another country, and she filed multiple motions in an effort to delay the matter, R.C. 3105.73.

Custody/Parenting plan/Termination.

Suever v. Schmidt | 2022-Ohio-4451 | 3rd Appellate District | 12/12/2022 In divorce action in which the parties entered into a shared parenting plan followed by disputes between the parties, resulting in a court order that the best interest of the child, R.C. 3109.04(F), was served by father being designated as the residential parent and legal custodian of child, with mother initially exercising parenting time via video conference, trial court did not err in not considering whether there was a change in circumstances since a trial court is not required to find, in addition to child's best interest, a change in circumstances before terminating a shared parenting

Family Law and Domestic Relations (Continued)

plan, Bruns; the analysis required for terminating a shared parenting plan is different from the analysis for modifying a shared parenting plan.

Custody/Civil protection order/Judicial notice. Divincenzo v. Divincenzo | 2022-Ohio-4457 | 11th Appellate District | 12/12/2022 In custody dispute resulting in domestic relations court's judgment terminating shared parenting, designating mother as the residential parent and legal custodian, and dismissing father's motions for custody as being filed prematurely because an ex parte civil protection order (DVCPO) was in effect at the time father filed his motions, the domestic relations court erred to the extent that it took judicial notice, Evid.R. 201, of the factual findings made in the DVCPO proceedings, although the domestic relations court could take judicial notice of the DVCPO judgment itself; when the domestic relations court issues a parenting order in parties' divorce action, the order entered in the divorce action supersedes the DVCPO's parenting provisions, R.C. 3113.31(E)(3)(b).

Property division/Cryogenically frozen eggs. Kotkowski-Paul v. Paul | 2022-Ohio-4567 | 11th Appellate District | 12/12/2022 In divorce action in which the parties disagreed about how to treat their cryogenically frozen embryos, trial court's holding that the embryos were marital property, originally agreed to by both parties, but later disputed by wife, and allocating the embryos to wife but ordering that she either donate them or destroy them, is affirmed since, inter alia, the judgment was equitable in recognizing wife's interests in having additional children where wife did not show that she would be unable to have additional children and in recognizing husband's wishes not to be the father of additional children with wife, and trial court's order, in substance, traces the language of the parties' hospital's blank in vitro fertilization contract submitted by wife in her post-trial brief, R.C. 3105.171(J)(2).

Adoption/Putative father/Consent. In re Adoption of H.P. | 2022-Ohio-4369 | Supreme Court of Ohio | 12/08/2022 In petition for adoption of child where the probate court ruled that putative father's consent was not required for adoption, R.C. 3107.07(B), because he had failed to timely register as the putative father

under R.C. 3107.062, the court of appeals erred in reversing on reasoning that the putative father had a "second status" as the biological father whose paternity had been judicially determined since the genetic-testing results were of no consequence because they were obtained after the adoption petition had been filed; there is no legal authority for giving a putative father an additional opportunity to contest a child's adoption by attempting to become a legal father after the adoption proceeding has begun, and failure to register or to take other required steps in the time and manner prescribed by Ohio's adoption statutes will result in the father's having no say if and when another person steps forward to file an adoption petition.

Custody/Spousal support. Ash-Holloway v. Holloway | 2022-Ohio-4248 | 11th Appellate District | 11/28/2022 In divorce action in which father disputed custody order, trial court did not err in designating mother as residential parent and legal custodian of child where, although father and child have strong bond, father attempted to alienate child from mother and shut mother out of child's life, father's visits were ordered to be supervised to facilitate rehabilitation of mother's relationship with child, and short-term spousal support obligation imposed on mother was appropriate because father is able to obtain employment to support himself, R.C. 3109.04.

Child/Spousal support/Imputed income. Sanchez v. Casiano | 2022-Ohio-4179 | 2nd Appellate District | 11/23/2022 In divorce action, trial court erred in setting the amount it ordered husband to pay for child and spousal support where the magistrate found that husband was voluntarily unemployed and set an amount of imputed income, but the court, like the magistrate, did not conduct analysis of the statutory factors in R.C. 3119.01(C)(17)(a)(i)-(xi) to calculate the level of imputed income, and the parties' failure to provide much evidence on the statutory factors did not relieve the trial court of its responsibility to consider the statutory factor when calculating the proper amount of income to impute; the case is remanded for the trial court to accept additional evidence from the parties to adequately address the statutory factors for imputing income, and once that determination is made, the court is to adjust its child support and spousal support calculations accordingly.

Divorce/Pension benefits. Smith v. Farmer | 2022-Ohio-4180 | 2nd Appellate District | 11/23/2022 In unjust enrichment action filed by plaintiff-former wife of police officer against defendant-surviving wife to recover officer's survivor benefits that had been assigned to plaintiff under divorce decree, summary judgment in favor of defendant was not error where, although plaintiff received pension benefits upon husband's retirement under terms of the decree, husband was not required to name plaintiff as beneficiary of survivor benefits, and R.C. 742.58 and 742.37 provide for benefits to be paid to defendant as surviving spouse.

Spousal support/Earned income/Social Security. Jones v. Jones | 2022-Ohio-4236 | 4th Appellate District | 11/22/2022 In divorce action in which husband sought termination of his spousal support obligation which was divided into a part equalizing earned income and a part equalizing Social Security income, the trial court did not err in finding that there was a change in circumstances with regard to earned income where husband's retirement significantly changed his earned income to warrant termination of support, R.C. 3105.18, but the estimation of Social Security income had not changed enough to warrant modification or termination of that part of spousal support.

Property division/Spousal support/Manifest injustice. Herman v. Herman | 2022-Ohio-4148 | 3rd Appellate District | 11/21/2022 In divorce action in which wife disputed the division of marital property and spousal support, which were ratified on prior appeal, where the trial court erred in its division of wife's retirement account because the method used at trial and on remand resulted in an unintended windfall to husband, the error at trial and on appeal fall within the concept of extraordinary circumstances and manifest injustice and overcome application of the law of the case doctrine; award to husband of spousal support must be revisited following correction of property division, R.C. 3105.18.

Divorce/Dismissal. Postan v. Postan | 2022-Ohio-4141 | 9th Appellate District | 11/21/2022 In divorce action in which the parties failed to submit an agreed judgment entry by the scheduled date and to appear for hearing, the trial court erred in dismissing husband's divorce

complaint where, although Civ.R. 41(B) (1) permits dismissal if a plaintiff fails to comply with any court order, the record is devoid of any court order with which husband failed to comply, husband was not cautioned that a failure to take action would result in dismissal, he was not afforded a reasonable opportunity to defend against dismissal, and wife's subsequent complaint for divorce did not make husband's appeal moot.

Civil protection order/Evidence. R.Y.D. v. M.M. | 2022-Ohio-4116 | 2nd Appellate District | 11/18/2022 Denial of petitioner-mother's petition on behalf of child for a domestic violence civil protection order against respondent-father was error where child's testimony about molestation was found to be credible, while respondent lacked credibility, child was not required to establish her allegations beyond a reasonable doubt, and there was sufficient credible evidence to prove by a preponderance of evidence that the child was in danger of domestic violence, R.C. 3113.31.

Property division/Separation agreement. May v. May | 2022-Ohio-4091 | 5th Appellate District | 11/17/2022 In divorce action in which the parties had filed a separation agreement providing that the marital home was an asset that husband had voluntarily given to wife free and clear of any claim of his, the trial court erred in awarding to husband part of the proceeds of the sale of the house on reasoning that the sale had not been finalized pursuant to a separation agreement provision that related to the continuing jurisdiction of the court since the wife had sold the house, paid off the mortgage through the sale, and made a profit, fulfilling the intent of the parties' separation agreement months before the time of the trial court's decision.

Parenting time/Children's discretion. Veach v. Adams | 2022-Ohio-4031 | 1st Appellate District | 11/14/2022 In divorce action in which husband disputed the terms of the court's parenting time order providing that no child could be forced to attend parenting time with him, trial court did not err in allowing children discretion to decline to attend parenting time with father where there was no evidence that wife manipulated children to cause them to avoid parenting time because protests from children occurred on the way to or at the parenting exchange, and nothing in the court's order prevents husband from filing a motion for contempt if he thinks that wife is attempting to influence children.

Civil protection order. Ziegler v. Tameris | 2022-Ohio-4044 | 11th Appellate District | 11/14/2022 Issuing petitioner a civil stalking protection order against respondent-neighbor where petitioner alleged that respondent engaged in frequent behavior of torment and harassment was not error since, although many of the instances of alleged harassment were not sufficient to trigger issuance of the order, the high frequency of actions show that respondent engaged in menacing by stalking, petitioner's family members testified to specific events that caused her to suffer anxiety and fear, and petitioner was found more credible than respondent, R.C. 2903.211(A)(1).

Divorce/Prohibition/Jurisdiction. State ex rel. Gray v. Kimbler | 2022-Ohio-3937 | Supreme Court of Ohio | 11/08/2022 In divorce action, dismissal of relator's petition for a writ of prohibition seeking to prevent respondent-common pleas general division judge from proceeding with pending breach of contract action related to division of property in separation agreement is affirmed since respondent does not patently and unambiguously lack subject-matter jurisdiction over post-decree proceedings in divorce cases; the courts of common pleas have general subject-matter jurisdiction over all civil cases where the matter in dispute exceeds the jurisdiction of county courts, R.C. 2305.01, and the court of common pleas, including divisions of courts of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters, R.C. 3105.011(A), and therefore the domestic relations division jurisdiction under R.C. 2301.03(U) is not exclusive.

Property division/Decree modification. Constance v. Constance | 2022-Ohio-3983 | 5th Appellate District | 11/07/2022 In divorce action in which wife appeals a court order requiring her to deliver certain personal property to husband, the trial court's order was error as a modification of property division under the parties' agreed final judgment entry, which provided that the division of personal property was controlled by the parties' prenuptial agreement, and the parties did not assert ambiguity or give consent to the modification, so court had no authority under the plain language of R.C. 3105.171(l) to order any modifications.

Custody/Children's expenses. Paeltz v. Paeltz | 2022-Ohio-3964 | 12th Appellate District | 11/07/2022 In divorce action in which wife sought termination of shared parenting plan, the trial court did not err in designating wife as the residential parent and requiring husband to pay children's uncovered healthcare, school, and activity expenses where, even though husband was not required to pay wife child support under the terms of parties' separation agreement, the agreement contemplated modification of financial provisions related to the children, and husband currently earns significant income and has a more limited parenting schedule with children.

Property division/Beneficiary designation/Federal law pre-emption. Turnmire v. Turnmire | 2022-Ohio-3968 | 12th Appellate District | 11/07/2022 In dissolution of marriage action in which plaintiff-wife alleged unjust enrichment against defendant-deceased husband's surviving spouse, whom husband had designated beneficiary of the proceeds of his military life insurance policy, where plaintiff sought to impose a constructive trust over the proceeds of the policy since she had originally been designated the beneficiary under the terms of the dissolution agreement, summary judgment in favor of defendant was not error since Servicemembers' Group Life Insurance Act (SGLIA), 38 U.S.C. 1965 et seq. pre-empts inconsistent state law, in the instant case embodied in the dissolution decree, to give husband an absolute right to designate the policy beneficiary and to change the beneficiary at any time, depriving plaintiff of benefits.

Divorce/Continuance. Crandall v. Crandall | 2022-Ohio-3956 | 9th Appellate District | 11/07/2022 In divorce action, denial of wife's motion for a continuance of the trial date after retaining new counsel was error since wife articulated reasons for obtaining new counsel and why she would be prejudiced without a continuance, husband did not oppose wife's motion, the court failed to address wife's substantive concerns when denying the motion, and wife was limited in her ability to present evidence or contest husband's evidence due to the denial of a continuance.

Family Law and Domestic Relations (Continued)

Divorce/Intervention/Joinder. Davis v. Hallum-Davis | 2022-Ohio-3929 | 10th Appellate District | 11/03/2022 In divorce action in which husband's father sought to intervene under Civ.R. 24(A), seeking repayment of his loan to the parties, then moved to convert his motion to intervene into a motion for permissive joinder under Civ.R. 20 after realizing that Civ.R. 75(B) renders Civ.R. 24(A) inapplicable in divorce actions, and then withdrew his motions, followed by his attorney's withdrawal on reasoning that father was not a party, trial court's order of intervention and permissive joinder of father is reversed since it is unclear under what authority the trial court issued the order, and the case is remanded to consider whether granting joinder of father is proper, and if so, to provide an explanation or reasoning to enable meaningful appellate review.

Insurance

Discovery/Untimely response/Privilege. Drummond v. State Farm Mut. Auto Ins. Co. | 2023-Ohio-283 | 10th Appellate District | 01/31/2023 In insured's breach of contract action against insurer seeking coverage for vehicle accident under underinsured motorist policy, trial court erred in denying insurer's motion to stay discovery where insurer's untimely response to discovery was excusable due to circumstances surrounding pandemic as well as the acknowledged cooperation of opposing counsel regarding discovery, and the absence of a motion to compel by insureds; delay in responding did not constitute a knowing and voluntary waiver of applicable testimonial privilege under R.C. 2317.02(A)(2).

Businessowner's/Ransomware attack. EMOI Servs., L.L.C. v. Owners Ins. Co. | 2022-Ohio-4649 | Supreme Court of Ohio | 12/27/2022 In insured-business's action against insurer under businessowner's policy, asserting that insurer breached the insurance policy contract for denying, in bad faith, coverage for a ransomware attack on insured's electronic files for which insured paid the ransom demand, the court of appeals erred in reversing trial court's summary judgment in favor of insurer since the ransomware attack caused no direct physical loss or damage to the media, which includes software, as required by the electronic equipment endorsement of the policy,

where the software was not damaged by the encryption that prevented insured's access to its software and database systems; also, the policy's data compromise endorsement excluded coverage for any threat, extortion or blackmail.

Motor vehicle/Assignment of rights. Blue Ash Auto Body, Inc. v. Grange Property & Cas. Ins. Co. | 2022-Ohio-4599 | 1st Appellate District | 12/21/2022 In auto body shop's breach of contract and unjust enrichment action against insurer for failure to pay amounts allegedly owed for repairs made to insured vehicles after vehicle owners assigned to the shop their rights against insurer, summary judgment in favor of insurer was not error where the policies in question unambiguously provided that rights under the policies could not be assigned without insurer's consent, the shop, as a third-party, had no right to contest insurer's coverage estimates, and assignment of rights is against public policy because it promotes litigation as the sole method to contest demand for payment.

Business owner's/Income loss/Pandemic. Eye Specialists of Delaware v. Harleysville Worchester Ins. Co. | 2022-Ohio-4531 | 10th Appellate District | 12/15/2022 In plaintiff-medical practice's action against defendant-insurer for denial of claims for loss of business income due to the pandemic, trial court did not err in granting defendant's Civ.R. 12(B)(6) motion to dismiss where, even if plaintiff suffered a loss described by the business income coverage provision of the policy, the virus exclusion unambiguously barred coverage because the exclusion applied to loss caused directly or indirectly by virus, regardless of whether the losses arose from governmental action or the virus itself.

Commercial property/Physical loss/Pandemic closure. Neuro-Communication Servs., Inc. v. Cincinnati Ins. Co. | 2022-Ohio-4379 | Supreme Court of Ohio | 12/12/2022 In federal court dispute about whether insured's commercial-property insurance policy entitles it to recover income lost after it was forced to close because of the COVID-19 pandemic where the federal court certified a question of Ohio law to the Supreme Court of Ohio, asking if the general presence in the community, on surfaces at the premises, or the presence at the premises of a person

infected with COVID-19 constituted direct physical loss or damage to insured's property, the court answers in the negative; the terms of the policy are clear that for coverage to be provided, there must be actual, tangible physical alteration of the covered property and such loss or damage does not include a loss of the ability to use the covered property for business purposes.

Discovery/Claim file. State Auto. Mut. Ins. Co. v. Rowe | 2022-Ohio-4443 | 9th Appellate District | 12/12/2022 In discovery dispute between insurer and insureds, arising from action against insureds for wrongful death and subsequent action by insureds against insurer asserting breach of insurance contract and related claims, where insureds filed a motion to compel the production of insurer's claim file, trial court erred in ruling that there was no legal basis for the file to be discoverable by insureds but then allowing insureds' counsel to review the documents, with portions redacted, without placing any limits on what the insureds' counsel could do with that information; case is remanded for the trial court to create an entry that both complies with the law and is sufficient to permit appellate review.

Subrogation/Arbitration. Epps v. State Farm Auto. Ins. | 2022-Ohio-4084 | 8th Appellate District | 11/17/2022 In plaintiff-insured's action for a declaratory judgment against defendant-her insurer seeking an order that defendant had no subrogation rights against her traffic accident settlement with tortfeasor's insurer where defendant declined plaintiff's assistance in collecting its subrogation interest and then failed to timely initiate a civil action against the tortfeasor, trial court did not err in staying the proceedings pending arbitration since defendant provided evidence that it was subject to an arbitration agreement with tortfeasor's insurer for the recovery of its subrogated interest in the medical payments made to plaintiff, and although plaintiff is not subject to the arbitration agreement between the two insurers, R.C. 2711.02(B) mandates that proceedings be stayed where an issue is subject to an arbitration agreement, not where all parties in a lawsuit are subject to an arbitration agreement.

Juvenile

Delinquency/Ineffective assistance. In re T.N.R. | 2023-Ohio-85 | 8th Appellate District | 01/12/2023 In an adjudication of juvenile as delinquent of, inter alia, adult aggravated robbery based on complicity, juvenile did not receive ineffective assistance when defense counsel did not move to suppress juvenile's videotaped statement to officers since her statement was not involuntary or coerced based on the totality of the circumstances where she appears coherent and stable in the video, she signed a waiver of her Miranda rights, the officers merely stated that they wanted to help clear her name, encouraged her to tell the truth and said they would talk to the prosecutor.

Delinquency/Restitution. In re R.S. | 2023-Ohio-45 | 12th Appellate District | 01/09/2023 In an adjudication of juvenile as delinquent of adult theft, attempted burglary and felonious assault, the juvenile court did not commit plain error by imposing restitution for \$50,167.49 where there is no evidence in the record that the amount the court ordered juvenile to pay exceeded victim's economic loss, no evidence that victim had insurance that might cover any of his losses and no evidence that the court ordered restitution in excess of the amount of economic loss suffered by the victim, R.C. 2152.20(A)(3).

Bindover. State v. McBride | 2023-Ohio-16 | 1st Appellate District | 01/06/2023 In an appeal of conviction following bindover of juvenile of, inter alia, rape, a juvenile court's amenability determination must be supported only by a preponderance of the evidence, and while the state bears the burden of persuasion of a juvenile's non-amenability to treatment in the juvenile system, it is not required to produce affirmative evidence of non-amenability, notwithstanding testimony of two experts that juvenile was amenable to treatment in the juvenile system, where the trial court provided objective reasons for not accepting the experts' opinions that the juvenile was not sufficiently mature for a transfer based on his higher risk for reoffending.

Injured child/Jurisdiction/Dismissal. In re A.B. | 2022-Ohio-4805 | 5th Appellate District | 12/29/2022 In action to adjudicate child abused, neglected, or dependent, based on child's injuries, trial court did not err in granting temporary custody to parents

where, although agency voluntarily dismissed its complaint prior to hearing, the court maintained jurisdiction under R.C. 2151.23(A)(1) because Civ.R. 41(A)(1) does not apply to custody proceedings, and Juvenile Rules do not provide for voluntary dismissal of abuse, neglect, or dependency complaints.

Grandparent visitation. M.H. v. B.K. | 2022-Ohio-4777 | 10th Appellate District | 12/29/2022 Granting paternal grandmother's motion for visitation with child, as being in child's best interest under R.C. 3109.051(D), was error since grandmother has no prior relationship with child and suffers from health conditions which include untreated depression and unpredictable epileptic seizures, raising the possibility that if she had a seizure while visiting with child, there would be no one available to care for the child.

Custody/Temporary/Reunification/Permanent. In re Lu.M-R. | 2022-Ohio-4779 | 10th Appellate District | 12/29/2022 Award of temporary custody of dependent children to agency, which has filed a motion for permanent custody, is affirmed since trial court's retroactive granting of first and second extensions of temporary custody did not deprive mother of the opportunity to reunify with her children; her contention that the children must have been in temporary custody, R.C. 2151.353(A)(2), for at least 22 months before permanent custody can be awarded is not supported by statutes or case law, a parent is provided 12 months to work toward reunification before an agency can institute a permanent custody action under R.C. 2151.414(B)(1)(d), and that time has elapsed in the instant case.

Delinquency/Juvenile sex offender registration. In re N.D. | 2022-Ohio-4672 | Supreme Court of Ohio | 12/28/2022 Judgment of the court of appeals is reversed on authority of In re D.R., ___ Ohio St.3d ___, 2022-Ohio-4493, N.E.3d ___, and cause is remanded to the juvenile court to conduct a new completion-of-disposition hearing that takes into account the holding in D.R.

Bindover/Probable cause. State v. Burns | 2022-Ohio-4606 | Supreme Court of Ohio | 12/23/2022 State must prove in juvenile court probable cause to believe that a juvenile committed every act charged before the juvenile may be indicted for those acts in

adult court following bindover since "[a] finding of probable cause is a jurisdictional prerequisite under R.C. 2152.12 to transferring a child to adult court for prosecution of an act charged," State v. Smith, 167 Ohio St.3d 423; also, a case transferred from juvenile court may result in new indicted charges in adult court when the new charges are based on acts that were the subject of the juvenile complaint but were not specifically named in the individual acts transferred, but a new charge may not be based on a charge that the juvenile court found was not supported by probable cause.

Custody. In re Robinson v. Rehfus | 2022-Ohio-4679 | 7th Appellate District | 12/22/2022 In custody dispute in which mother filed motions to modify parental rights and to hold father in contempt, trial court's denial of motions is affirmed where, although change in circumstances had occurred, modification of custody was not in child's best interest because child was happy with current schedule, mother's contempt allegations were not based on specific orders, father did not willfully deny mother parenting time, and mother failed to provide a transcript to allow review of weight of evidence, R.C. 3109.04.

Bindover. State v. Ramsden | 2022-Ohio-4483 | Supreme Court of Ohio | 12/16/2022 Judgment of the court of appeals is affirmed on the authority of State v. Nicholas, ___ Ohio St.3d ___, 2022-Ohio-4276, ___ N.E.3d ___.

Delinquency/Juvenile-sex-offender registration. In re D.R. | 2022-Ohio-4493 | Supreme Court of Ohio | 12/16/2022 Following an adjudication of juvenile as delinquent of adult gross sexual imposition against a victim under the age of 13 and juvenile classified as a Tier I juvenile-offender registrant, juvenile's continued classification as a mandatory registrant following juvenile court's termination of probation on successful completion of conditions violated juvenile's procedural due-process rights since, as applied in this case, R.C. 2152.84(A)(2)(b) imposes a punishment on the juvenile extending into adulthood through a process that provides neither discretion by the juvenile court nor shielding of juvenile by the juvenile-justice system; remanded for a new completion-of-disposition hearing under R.C. 2152.84.

Juvenile (Continued)

Custody/Contempt. In re A.R.M. | 2022-Ohio-4551 | 2nd Appellate District | 12/16/2022 In custody action in which mother was found in contempt for failure to allow father parenting time, trial court did not err in finding mother in willful contempt of parenting time order since mother removed child from the state during father's scheduled parenting time, she attempted to conceal location of musically-gifted child's performance, she did not timely respond to father's attempts to see child and did not tell child that father had come to see musical performance, and child's performance was as a contracted employee of studio and not as an extracurricular activity.

Sentencing/Life imprisonment/Cruel and unusual punishment. State v. Morris | 2022-Ohio-4609 | Supreme Court of Ohio | 12/12/2022 In a conviction of juvenile following bindover of, inter alia, two counts of complicity to aggravated murder and two counts of complicity to attempted aggravated murder and imposition of sentence to life in prison with the possibility of parole after 38 to 43 years that the court of appeals affirmed, the Ohio Supreme Court reverses, holding that the sentence imposed constitutes cruel and unusual punishment under the United States and Ohio Constitutions since the trial court failed to consider the offender's youth as a mitigating factor in sentencing, Patrick; remanded for re-sentencing.

Bindover. State v. Macklin | 2022-Ohio-4400 | 8th Appellate District | 12/08/2022 In a conviction of, inter alia, felony murder, aggravated robbery and conspiracy, although the trial court lacked jurisdiction on counts that were not bound over by the juvenile court for aggravated murder and conspiracy, defendant was found not guilty of aggravated murder and thus he did not incur prejudice on that count but, since he was found guilty of conspiracy, the court of appeals vacates that conviction; remaining convictions met the sufficiency and weight of the evidence based on eyewitness testimony, including testimony of other three co-defendants, surveillance video, DNA evidence, fingerprint evidence, historical location analysis of defendant's digital records of his cellular phone and that of a co-defendant.

Visitation/Grandparent. In re A.M. | 2022-Ohio-4305 | 6th Appellate District | 12/02/2022 Denial of paternal grandmother's motion for visitation with child is affirmed since the trial court determined that it was in child's best interest not to order visitation with grandmother, R.C. 3109.051(D), where the court considered the relationships between child, grandmother, father and mother, noting the contentious relationship between grandmother and father and accounting for the geographical distances between grandmother, child's father and mother; also, the child did not want a set visitation with grandmother, and even without a schedule or court order, child had contact with grandmother.

Bindover. State v. Nicholas | 2022-Ohio-4276 | Supreme Court of Ohio | 12/02/2022 In a conviction of aggravated murder and murder in juvenile's killing of his father's girlfriend when the juvenile was 14 years-old, it was error for the juvenile court to order discretionary bindover of appellant to the general division court pursuant to R.C. 2152.12(B) since the record is devoid of any evidence supporting the finding that the department of youth services (DYS) lacks the resources or capability to treat appellant for dissociative-identity disorder, or that treatment for that disorder is beyond the capabilities of the medical and mental-health professionals providing treatment for mental-health conditions to juveniles in DHS custody.

Appeal/Reopening. In re T.A. | 2022-Ohio-4173 | Supreme Court of Ohio | 11/29/2022 On certified-conflict, the Ohio Supreme Court holds that a person adjudicated a juvenile delinquent may not reopen a direct appeal from the adjudication based on a claim of ineffective assistance of appellate counsel under App.R. 26(B); however, a juvenile found to be delinquent may utilize the pre-rule procedures described in Murnahan, and the Court recommends that the Commission on the Rules of Practice and Procedure review the issue discussed in this case for a possible rule amendment.

Bindover. State v. Martin | 2022-Ohio-4175 | Supreme Court of Ohio | 11/29/2022 In bindover of juvenile from the juvenile court to general division and plea to, inter alia, involuntary manslaughter, the court of appeals correctly found no error in the juvenile court's grant of the state's motion for

mandatory bindover based on a finding of probable cause where a witness testified that she saw defendant holding a gun, and officers found shell casings in the area that defendant was present when the shooting occurred; also, the determination of probable cause in a bindover proceeding is not subject to a manifest-weight review, AJS and Juv.R. 30(A).

Custody. In re J.H. | 2022-Ohio-4213 | 8th Appellate District | 11/23/2022 Award of permanent custody of children to agency was not error where mother's progress on case plan was inconsistent and sporadic, she failed to follow up with substance abuse services, she failed to comply with the employment portion of her case plan, and she demonstrated a lack of commitment toward her children by failing to support or visit them, while children are bonded with foster family, R.C. 2151.353, 2151.414.

Custody/Appeal/Standing. In re J.T. | 2022-Ohio-4214 | 8th Appellate District | 11/23/2022 Award of permanent custody of abused and dependent children to agency is affirmed where mother's assignment of error on appeal that trial court erred in denying father's motion to continue the trial to review his positive drug screens is overruled since mother lacked standing because she failed to show that she was prejudiced by alleged violations of father's due process rights, R.C. 2151.414.

Custody/Disposition/Judge disqualification. In re K.M. | 2022-Ohio-4169 | 5th Appellate District | 11/22/2022 In agency's action for temporary or permanent custody of child, claiming the child to be dependent, where mother sought to invoke safe haven laws after she had given child away at time of home birth, the trial court did not err in dismissing the action where dismissal was required because the dispositional hearing was not held within the time allowed pursuant to R.C. 2151.35(B) (1); with regard to mother's attempt to disqualify the judge, there was no evidence that mother filed the requisite affidavit of disqualification, and the court of appeals lacks jurisdiction to consider the issue of disqualification, R.C. 2701.03.

Delinquency. In re D.C. | 2022-Ohio-4086 | 8th Appellate District | 11/17/2022 In adjudication of juvenile as delinquent of adult felonious assault, placement of juvenile on community control with

probation supervision for a period of six months was not supported by sufficient evidence of serious physical harm, R.C. 2901.01(A)(5)(c) and (e), since while there was some evidence of physical harm to the victim since he testified that he was "hurt" and "depressed" after the incident with appellant, there was no evidence that the victim suffered serious physical harm.

Delinquency. In re C.P. | 2022-Ohio-4087 | 8th Appellate District | 11/17/2022
In adjudication of juvenile as delinquent by admission to adult gross sexual imposition and two counts of adult sexual battery and admission to the department of youth services for a minimum of one year and maximum to age 21, the juvenile court erred by classifying juvenile a Tier II sex offender and a Public Qualified Juvenile Registrant (PQJR) since R.C. 2152.82(A) and (B) require the court adjudicating a child a delinquent to issue as part of the dispositional order, an order classifying the child a juvenile offender registrant when certain conditions are present, *In re J.W.*, and the state concedes that the juvenile court erred by classifying juvenile as a PQJR since the classification under R.C. 2152.86 is unconstitutional, *In re C.P.*

Custody/Contempt/Due process. Wolf v. Uncapher | 2022-Ohio-4076 | 9th Appellate District | 11/16/2022
In custody dispute in which paternal grandmother and mother agreed to shared legal custody of children, trial court's judgment finding mother in contempt for keeping children from grandmother in violation of shared custodial plan is affirmed where mother's due process rights were not violated since grandmother's affidavit provided mother with sufficient notice of the nature of the contempt allegations because it identified the court order that mother allegedly violated and described the ways that mother was violating order, R.C. 2705.031(B)(2).

Custody/Temporary order/Out-of-state court. Mireles v. Veronie | 2022-Ohio-4038 | 9th Appellate District | 11/14/2022
In out-of-state court's divorce decree and award of custody of child to mother where Ohio-based father filed a motion for emergency custody of child, who reported being injured by mother's boyfriend, Ohio trial court did not err in vacating magistrate's order designating father as temporary legal custodian of child since the court's temporary

jurisdiction ended under R.C. 3127.18 when it obtained out-of-state court's temporary restraining order against mother's boyfriend to protect child, which addressed the same issue that was before the Ohio court; Ohio court's failure to comply with R.C. 3127.09 in communicating with out-of-state court did not prejudice father.

Custody. In re So.P. | 2022-Ohio-4015 | 8th Appellate District | 11/10/2022
Award of legal custody of abused, neglected and dependent children to paternal aunt and uncle was not error where, although mother made progress on case plan and achieved sobriety, there were concerns, *inter alia*, for children's emotional well-being because they did not view mother as an authority figure, one child refused to visit with mother, and other children had limited supervised visits, while children were placed together and are bonded with aunt and uncle, and it was in children's best interest to remain in aunt's and uncle's custody, R.C. 2151.353.

Delinquency. In re J.H. | 2022-Ohio-3987 | 1st Appellate District | 11/09/2022
In adjudication of juvenile as delinquent of adult carrying a concealed weapon and having a weapon under disability, there was insufficient evidence to support the weapons under disability adjudication because the state presented no evidence the juvenile was a "fugitive from justice" since it was not demonstrated that the juvenile took an affirmative step to elude detection by police, *Cherry*, but juvenile's challenges to his concealed weapons adjudication are without merit since an officer with personal knowledge identified the weapon as the firearm he retrieved from the juvenile at the time of his arrest and it had a serial number on it, making it easily identifiable, Evid.R. 901(B)(1), and juvenile provided no evidence that he actually resided at the house where he was found.

Grandparent visitation. In re N.S. | 2022-Ohio-3988 | 1st Appellate District | 11/09/2022
In visitation dispute between children's father and paternal grandfather, the trial court did not err in granting grandfather's motion for visitation since the court did give special weight to father's wishes and did consider the other factors in R.C. 3109.051(D), and after considering and weighing all factors, the court determined that granting visitation to grandfather was in the children's best

interest; also, the record shows that the trial court did not switch the burden of proof to father to establish that visitation with grandfather was not in the children's best interest.

Custody. In re L.E. | 2022-Ohio-3962 | 12th Appellate District | 11/07/2022
In custody dispute, the trial court did not err in designating father as child's residential parent and legal custodian where there was a change in circumstances because mother withheld information concerning her husband's drug addiction, mother demonstrated a pattern of unwillingness to cooperate and to facilitate father's parenting time, and advantages of changing child's environment were not outweighed by likely harm, R.C. 3109.04.

Custody/Hearing/Notice. In re R.H. | 2022-Ohio-3961 | 3rd Appellate District | 11/07/2022
Award of legal custody of abused and/or neglected children to temporary custodians was error where custodians failed to file a motion requesting legal custody prior to dispositional hearing, as required by R.C. 2151.353(A)(3) or Juv.R. 34, the plain language of R.C. 2151.417 establishes that changes to custody must be based on evidence presented at a hearing after notice to all parties, and the parties in the instant case were never notified of the legal custody hearing but were under the impression that the hearing was a "review hearing," and no actual evidence was presented.

Neglected child/Medical procedure. In re I.S. | 2022-Ohio-3923 | 8th Appellate District | 11/03/2022
In case in which mother refused to allow child with a congenital heart condition to undergo medically-recommended surgery, asserting that trial court's orders violated her right to freely practice her religion and arguing that the child's condition was not immediately life threatening, trial court's judgment adjudicating child as neglected, ordering child to be placed under protective supervision, and ordering child to undergo surgery to correct the heart condition is affirmed on the basis of the medical evidence; however, the order for surgery was unduly broad and contained arbitrary and irrational limits, so the case is remanded with instructions to issue a new journal entry related to the timing and surgery recommendations, R.C. 2151.03.

Juvenile (Continued)

Custody/Dispositional hearing/Jurisdiction. In re K.K. | 2022-Ohio-3888 | Supreme Court of Ohio | 11/03/2022 In certified-conflict question custody case, former R.C. 2151.35(B) (1) did not express an intent to divest a juvenile court of subject-matter jurisdiction where the juvenile court adjudicated children dependent and neglected and failed to hold a dispositional hearing within the 90-day statutory time limit, so the juvenile court had subject-matter jurisdiction when it granted temporary custody of the children to the agency, and such a judgment is voidable, not void; because the parents failed to appeal the judgments granting temporary custody, the judgments are valid, and the current challenge is barred by res judicata.

Labor and Employment

Discrimination/Reverse sex. Vogel v. N.E. Ohio Media Group, L.L.C. | 2023-Ohio-176 | 9th Appellate District | 01/23/2023 In plaintiff-city employee's action against city defendants alleging, inter alia, reverse sex discrimination, R.C. 4112.02(A), after plaintiff's employment was terminated for alleged sexual misconduct, summary judgment in favor of defendants was not error where plaintiff failed to provide evidence that the city discriminates against male employees, there was no evidence that the city treated the similarly situated female employee, whom plaintiff identified for comparison, was treated more favorably than plaintiff, and no one filed a complaint against the female co-worker, so it is unknown how she would have been investigated by the law director or whether she also would have been terminated.

Discrimination/Disability/Accommodation/Seniority. Dove v. Ohio Dept. of Rehab. & Corr. | 2022-Ohio-4836 | Court of Claims | 12/21/2022 In prison chaplain's disability discrimination action against state department of corrections for declining to transfer her to a different facility following an altercation with supervising warden, magistrate recommends judgment in favor of department where chaplain, while on disability leave, requested a transfer to avoid working in the same facility as warden, but the department was not required to grant accommodation by sacrificing collectively bargained seniority rights of other employees to effect transfer of chaplain, 42 U.S.C. 12111(9)(B).

Unemployment benefits/Availability requirement. Yang v. Ohio Dept. of Job & Family Servs. | 2022-Ohio-4480 | 10th Appellate District | 12/13/2022 After school instructor's employment was not renewed pursuant to city schools' pandemic policies and instructor's application for unemployment benefits was allowed for one period but denied for another period, followed by instructor's appeal of commission's administrative decision disallowing her request for review of the denial, the trial court did not err in affirming commission's decision where evidence showed that instructor restricted her employment search to employers in smaller settings, and therefore she failed to meet the availability requirements of R.C. 4141.29(A)(4).

Discrimination/Disability/Race. Johnson v. Toledo, Div. of Sts., Bridges & Harbor | 2022-Ohio-4418 | 6th Appellate District | 12/09/2022 In employee's R.C. 4112.02 employment discrimination action against city, alleging disability and race discrimination, trial court did not err in granting city's Civ.R. 50(A) motion for a directed verdict since employee's disability claim of job-related heightened fear of bees is based on his unsupported assertion of suffering from a potentially fatal bee sting allergy, and his race discrimination claim that his unsuccessful attempt at securing a different job, which required a GED, was the result of discrimination is meritless since there is no evidence that the person who filled the job sought by employee was granted a waiver of any type, GED or otherwise, to suggest race discrimination.

Negligence/Federal Employers' Liability Act/Limitations. Nuckols v. Consolidated Rail Corp. | 2022-Ohio-4309 | 6th Appellate District | 12/02/2022 In plaintiff-railroad employee's negligence action under the Federal Employers' Liability Act, 45 U.S.C. 56, against defendant-employer for injury caused by toxic materials to which he was exposed during employment, summary judgment in favor of defendant on reasoning that employee's claim was not timely filed was error since plaintiff testified that he did not earlier know of the dangers in his workplace or that exposure to toxic fumes caused his cancer diagnosis, and defendant's evidence did not demonstrate that plaintiff should have earlier known of a potential link between his diagnosis and his workplace exposure.

Discrimination/Race. Williams v. PNC Bank, N.A. | 2022-Ohio-4287 | 8th Appellate District | 12/01/2022 In terminated employee's race discrimination action in which employee claimed that employer retaliated against him for his opposition to employer's alleged discriminatory conduct, summary judgment in favor of employer was not error where, although the court erred in finding that employee had not established a prima facie case of discrimination, the employer investigated allegations of dishonesty against the employee and terminated him as result of those findings, and therefore the reason for termination was legitimate and nondiscriminatory, R.C. 4112.02(A).

Termination/Arbitration/Collective bargaining agreement. Cleveland v. Cleveland Police Patrolmen's Assn. | 2022-Ohio-4284 | 8th Appellate District | 12/01/2022 In city's application to vacate arbitration award in favor of police officer, reinstating him with full back pay, seniority and benefits, after city terminated his employment for violation of use-of-force policy, trial court did not err in granting union's motion to confirm the arbitration award where the parties' collective bargaining agreement (CBA) required the parties to submit disputes to arbitration, the arbitrator did not modify the CBA in finding that city failed to show officer's use of force was objectively unreasonable, there is no evidence in the record of a finding that the officer was dishonest, and disputed testimony is a matter for the factfinder to determine, R.C. 2911.10(D).

Appeal/Termination/Economic/Jurisdiction. Hennings v. State Personnel Bd. of Review | 2022-Ohio-4252 | 11th Appellate District | 11/28/2022 In county employee's administrative appeal of elimination of her position, the trial court in employee's county erred in affirming the dismissal of her appeal to the board of review since employee filed her appeal in a court that lacked subject-matter jurisdiction, R.C. 124.34(B), where she was terminated for economic rather than disciplinary reasons, and appeals of such terminations are governed by R.C. 119.12, which requires that appeals, including those for layoff for nondisciplinary reasons, must be filed in the Franklin County Court of Common Pleas; the proper remedy for this error is to remand with instructions for the lower court to vacate its order and issue a judgment

dismissing the appeal for lack of subject-matter jurisdiction.

Reduction in force/Injunction/ Arbitration. State ex rel. Ohio Assn. of Pub. School Emps. v. Willoughby-Eastlake City School Dist. | 2022-Ohio-4242 | 11th Appellate District | 11/28/2022 In public school nonteaching employees' union's action seeking to compel school board to invalidate reduction in force and pay back wages after employees were laid off during pandemic, trial court erred in granting union's motion for a preliminary injunction where the parties' collective bargaining agreement (CBA) provided for binding arbitration to resolve grievances, the agreement incorporated language from R.C. 3319.081(G), and the statute does not provide employees with greater rights than those negotiated under CBAs.

Employer intentional tort/Arbitration/ Collective bargaining agreement. Sinley v. Safety Controls Technology, Inc. | 2022-Ohio-4153 | Supreme Court of Ohio | 11/23/2022 In employee's intentional tort action against employer for injury while working on malfunctioning grinder where employer filed a motion to stay the court proceedings and to compel arbitration, the court of appeals did not err in affirming the trial court's judgment that since employee's union's collective bargaining agreement does not specifically mention employer intentional tort or R.C. 2745.01, plaintiff did not clearly and unmistakably waive his right to resolve his claim in a judicial forum.

Discrimination/Vaccination. Siliko v. Miami Univ. | 2022-Ohio-4133 | 12th Appellate District | 11/21/2022 In university employees' discrimination action against university trustees for imposing a vaccination policy which treated them differently from vaccinated employees, the trial court erred in dismissing the employees' claim on reasoning that they lacked standing because exemptions from vaccination were available to them; employees satisfied R.C. 3792.04(B)(2) by showing discrimination on the basis that individuals with approved exemptions were required to comply with COVID-19 testing and other educational and preventive health and safety measures that vaccinated co-workers were not subjected to and also that they were not able to participate in a bonus program available only to vaccinated employees.

Collective bargaining agreement/ Investigation/Arbitration. Fraternal Order of Police v. Columbus | 2022-Ohio-4102 | 10th Appellate District | 11/17/2022 In police union's action alleging that city violated the parties' collective bargaining agreement (CBA) by authorizing a law firm to conduct administrative investigations into citizens' complaints against the division of police for use of excessive force during protests, the trial court did not err in confirming the arbitration award, finding that the CBA precluded the subcontracting of law enforcement duties, including internal investigations, sustaining the grievances, and directing the city to cease and desist from using an independent contractor to perform internal investigations; the arbitrator's award draws its essence from the CBA since her decision is rooted squarely in the language of the CBA.

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Attorney fees/Expert fees. Estate of Tomlinson v. Mega Pool Warehouse, Inc. | 2023-Ohio-229 | 5th Appellate District | 01/26/2023 In homeowner's action for breach of contract, breach of warranty, and violations of the Consumer Sales Practices Act (CSPA), claiming substandard workmanship and failure to complete work, resulting in judgment for homeowner on those claims, trial court erred in its determination of fees awarded to homeowner where neither homeowner's application for attorney fees nor supporting affidavit provided an hourly rate, there was no indication as to which tasks were performed by paralegals subject to a lower hourly rate, and expert fees and litigation costs are not recoverable for claims under the CSPA, R.C. 1345.09(F)(2).

Judge disqualification/Sentencing/ Appearance of bias. In re Disqualification of Cottrill | 2022-Ohio-4800 | Supreme Court of Ohio | 12/30/2022 Affidavit of disqualification of judge filed by affiant-attorney representing defendant in underlying criminal case is granted where instant judge's only other fellow judge on the bench was previously found to have acted in a biased manner when denying underlying defendant's petition for post-conviction relief, and while allegations in affidavit do not support a finding that instant judge has actual bias against defendant, a factually similar case influenced instant judge's election to bench after his opponent in judicial election released a similarly

situated defendant from prison, so disqualification will remove any appearance of bias, R.C. 2701.03.

Appeal/Reconsideration/Substantive issues. Eric Petroleum Corp. v. Ascent Resources-Utica, L.L.C. | 2022-Ohio-4817 | 7th Appellate District | 12/30/2022 In gas companies' action challenging assignment of mineral rights where trial court denied companies' request for a preliminary injunction and decided that issues raised by companies fell within the purview of arbitration, resulting in an appeal in which the instant court ruled that the trial court had not issued a final appealable order, companies' application for reconsideration, App.R. 26 (B), is denied where companies sought to have certain language in instant court's earlier opinion stricken under the belief that it would affect substantive arguments for the ongoing issue of arbitration, but nothing in earlier opinion contains analysis or substantive determination of the arbitration issue.

Class action/Student union fee/Clinical education fee. McDermott v. Ohio State Univ. | 2022-Ohio-4780 | 10th Appellate District | 12/29/2022 In dental student's breach of contract and unjust enrichment action against university that was closed during pandemic to recover student union fees and a portion of clinic education fees and also seeking certification of a class of students who paid the student union fees and a subclass of students who paid the dental clinical education fees, the trial court did not err in certifying the class relating to the student union fees by finding by a preponderance of evidence that questions of law and fact common to all class members predominated over questions affecting individual members; however, the court erred when it certified the clinical education fees subclass without conducting a rigorous analysis to determine whether common questions of law and fact predominated over individual questions, Civ.R. 23.

Class action/Tuition/Fees/Pandemic. Waitt v. Kent State Univ. | 2022-Ohio-4781 | 10th Appellate District | 12/29/2022 In students' breach of contract and unjust enrichment action against university for failure to provide the services which tuition and mandatory fees were intended to cover for period of time when classes were converted to remote-learning during pandemic and for retaining monies and refusing

Procedure (Continued)

to offer any refunds, trial court erred in granting students' Civ.R. 23 motion for class certification since the court did not conduct a rigorous analysis of the commonality and predominance factors, and the court failed to rigorously analyze whether students' theory of damages established that all members of the proposed class suffered some injury, as required by Felix.

Class action/Certification/Economic analysis. Duke v. Ohio Univ. | 2022-Ohio-4694 | 10th Appellate District | 12/27/2022 In plaintiff-student's class action alleging breach of contract and related claims against defendant-university for failure to refund tuition and fees after classes were held online rather than in-person during pandemic, trial court erred in granting plaintiff's motion for class certification where rigorous analysis was not made as to whether plaintiff can establish class-wide damages, and proposed conjoint analysis survey did not measure damages at the time of the alleged breach or consider the safety of in-person compared to online classes, Civ.R. 23(B)(3).

Jurisdiction/Statute of repose/Discovery. Everhart v. Merrick Mfg. II, L.L.C. | 2022-Ohio-4626 | 2nd Appellate District | 12/22/2022 Dismissal of plaintiff-injured worker's product liability claim on reasoning that the trial court lacked subject matter jurisdiction, Civ.R. 12(B)(1), because the claim was filed beyond the 10-year statute of repose was error since the court of common pleas has subject matter jurisdiction that extends to all law and equity matters that are not denied to it, and the statute of repose, R.C. 2305.10(C)(1), does not restrict the court's jurisdiction; the statute of repose issue is between the parties, involving whether the complaint fails to state a claim, Civ.R. 12(B)(6), and if the matter could not be resolved by accepting the complaint's allegations as true, the court should allow discovery and decide the matter on summary judgment, but the court refused to allow discovery due to its belief that discovery would not affect subject matter jurisdiction.

Summary judgment/Appellate review/Standards. Smathers v. Glass | 2022-Ohio-4595 | Supreme Court of Ohio | 12/22/2022 In wrongful death action against defendants-county children's services workers, arising from plaintiff's

granddaughter's death, it was error for the trial court to grant defendants' R.C. 2744.03 governmental immunity-based motion for summary judgment where the trial court acted as the factfinder in concluding there was no evidence that defendants acted in a reckless and wanton manner since the correct standard was whether reasonable minds could find that defendants acted in a reckless and wanton manner when the facts were viewed in a light most favorable to the nonmoving plaintiff, and if the undisputed evidence showed that defendants' actions were not reckless or wanton, then defendants are immune and summary judgment was proper; also, the court of appeals erred in deferring to the trial court's findings since, when reviewing the decision of a trial court granting or denying a party's motion for summary judgment, an appellate court applies a de novo standard of review.

Class action/Certification/Economic analysis. Keba v. Bowling Green State Univ. | 2022-Ohio-4592 | 10th Appellate District | 12/20/2022 In student's class action against state university seeking damages based on the alleged difference in market value between in-person classes and online classes after pandemic response required remote learning, trial court erred in granting plaintiff's motion for class certification where rigorous analysis was not conducted pursuant to Civ.R. 23(B)(3) as to the validity of plaintiff's theory of damage and his expert's proposed analysis to show that all class members suffered quantifiable damages.

Appeal/Injunction/Final appealable order. Preterm-Cleveland v. Yost | 2022-Ohio-4540 | 1st Appellate District | 12/16/2022 State's appeal of trial court's order issuing a preliminary injunction enjoining the enforcement of the "Heartbeat Act" (S.B. 23) is dismissed for lack of a final appealable order; the preliminary injunction is a provisional remedy and the court's order determined the action with respect to the provisional remedy where the court gave no indication that its decision was tentative or contingent in any manner, but the state failed to successfully demonstrate that it will be deprived of a meaningful or effective remedy if it cannot appeal at this point, with the result that the trial court's order issuing the preliminary injunction does not satisfy the requirements of a final appealable order under R.C. 2505.02(B)(4).

Relief from judgment/Excusable neglect. Davis v. 40 East, L.L.C. | 2022-Ohio-4505 | 8th Appellate District | 12/15/2022 In home buyer's fraud action against seller where buyer requested mediation and trial court referred the case to mediation, but then granted seller's unopposed motion for summary judgment, the court erred in denying buyer's Civ.R. 60(B) motion for relief from judgment where buyer's counsel's failure to respond to seller's motion for summary judgment was excusable neglect because the court referred the case for mediation on the same day that the motion for summary judgment was filed, and buyer's counsel was unaware of seller's motion but was actively engaged in the case.

Res judicata/Federal and state actions. Armatas v. Aultman Hosp. | 2022-Ohio-4577 | 5th Appellate District | 12/15/2022 In plaintiff-son's multiclaim action against various medical defendants after father died in their care where plaintiff voluntarily dismissed without prejudice all causes of action, Civ.R. 41(A)(1)(a), and then filed the action in federal court, which granted defendants' motion for judgment on the pleadings, followed by plaintiff's refiling of claims in state court, the state court did not err in dismissing plaintiff's claims on the basis of res judicata since the federal court rendered a judgment on the merits of the state law claims, as evidenced by granting judgment on the pleadings; also, federal court's dismissal of federal claims did not preclude ruling on state law claims where the instant state and federal court claims arose from a common nucleus of operative fact and there was substantial similarity between the analysis of the state and federal court claims.

Judge disqualification/Social media post. In re Disqualification of Allen | 2022-Ohio-4715 | Supreme Court of Ohio | 12/07/2022 Affidavit of disqualification of judge filed by defendant's counsel in underlying criminal case is denied where affiant's assertion is without merit that judge's "liking" of a social media post by the prosecutor in an unrelated case in which affiant-counsel is involved demonstrates bias on the part of the judge; the affidavit is denied since the judge says that she does not recall "liking" the post, that she did not watch the video, and that the post did not mention affiant-defendant's attorney, so there is no showing of any personal bias against

affiant warranting judge's removal from all of affiant's cases, R.C. 2701.03.

Prohibition/Jurisdictional priority.

State ex rel. Maron v. Corrigan | 2022-Ohio-4406 | 8th Appellate District | 12/05/2022 Petition for a writ of prohibition to prevent judge from adjudicating declaratory judgment, trespass and related claims action relating to property that is a marital asset in pending divorce action is denied on reasoning that the judge does not patently and unambiguously lack jurisdiction since the courts of common pleas have general subject-matter jurisdiction over all civil cases in which the sum or matter in dispute exceeds the exclusive original jurisdiction of county courts, R.C. 2305.01; also, the jurisdictional priority rule does not apply since the divorce action and the declaratory judgment action do not involve the same parties, the same legal claims or resolution of the same issues.

Class action/Certification/Instructional fee.

Weiman v. Miami Univ. | 2022-Ohio-4294 | 10th Appellate District | 12/01/2022 In students' action against university for failure to refund instructional fees and out-of-state surcharges for semester when classes were converted to remote-learning during pandemic, trial court erred in granting students' Civ.R. 23 motion for class certification where their market-based damage theory and their experts' analysis raise significant questions as to the commonality and predominance requirements for class certification under Civ.R. 23(A)(2) and 23(B)(3), and rigorous analysis of those requirements is required prior to certification.

Judge disqualification.

In re Disqualification of Ondrey | 2022-Ohio-4714 | Supreme Court of Ohio | 12/01/2022 Affidavits of disqualification of judge filed by plaintiff in underlying action asserting a violation of the Open Meetings Act are denied where, inter alia, judge acknowledged error in prematurely deciding a portion of underlying defendants' motion for sanctions, the judge corrected his mistake before affiant filed his affidavit of disqualification, and affiant has not established that the judge's actions were the product of bias against him or that the judge cannot fairly and impartially preside over the remainder of the case, R.C. 2701.03.

Judges/Clerk of courts/Duties/

Jurisdiction. State ex rel. Andrews v. Lake Cty. Court of Common Pleas | 2022-Ohio-4189 | Supreme Court of Ohio | 11/30/2022 In dispute between clerk of courts and common pleas judges that originated as a disagreement about funding new computer software and resulted in a journal entry prohibiting the clerk from entering the courthouse except for one day a month, prompting the clerk to file an action for writs of prohibition, mandamus, or quo warranto to prevent the judges from interfering with her execution of her duties, the judges' motion to dismiss is denied since the clerk's allegations show that the judges patently and unambiguously exceeded their jurisdiction by effectively removing her from office since a clerk of courts occupies a public office distinct from the court and its judges, but provisions in the judges' entry give control of the clerk's legal division to the judges, undermining the independence of the clerk's office and preventing her from doing her job; the clerk is entitled to a writ of prohibition vacating the journal entry and prohibiting the judges from imposing similar restrictions on the clerk in the future without jurisdiction, the writ of mandamus is issued on the same reasoning, and the writ of quo warranto is denied as moot.

Pleading.

Briggs v. Link | 2022-Ohio-4249 | 11th Appellate District | 11/28/2022 In plaintiff's action against defendant-roommate, alleging that defendant made false statements about her and destroyed her property, trial court erred in granting defendant's Civ.R. 12(B)(6) motion to dismiss for failure to state a claim since some of plaintiff's allegations, if taken as true, could plausibly constitute claims of defamation or tortious destruction of property, and plaintiff pleaded sufficient facts to put defendant on notice of her claims, Civ.R. 8(A).

Prohibition/Jurisdiction/Standing.

Osmic v. Sutula | 2022-Ohio-4216 | 8th Appellate District | 11/23/2022 In dispute among siblings regarding ownership of properties where relator's sister had filed underlying tortious interference claim against relator in response to his filing of a quiet title action, relators' petition for a writ of prohibition to prevent judges from hearing the tort case is sua sponte dismissed since the argument that the court did not have jurisdiction because sister lacked standing to file the tort

case based on relator's entitlement to litigation immunity from his filing of quiet title action, is without merit; the issue of sister's standing in the underlying tort action is properly challenged on appeal rather than via a writ, and the question of whether relator is entitled to litigation immunity in underlying tort action depends on whether relator's quiet title action was a sham suit filed to harass.

Appeal/Final appealable order.

Altizer v. Arbors at Gallipolis | 2022-Ohio-4191 | 4th Appellate District | 11/23/2022 In plaintiff's medical negligence action against defendants-corporate healthcare entities for injuries sustained by decedent in a fall in nursing home, appeal of trial court's order granting summary judgment in favor of a group of the defendants, who filed the motion for summary judgment, is dismissed for lack of a final appealable order since an order that adjudicates less than all of the claims or rights of all the parties does not meet the requirements of R.C. 2505.02, and the court's use of Civ.R. 54(B) language does not transform the court's order into a final appealable order.

Transferred certificates of judgment/Service/Relief from judgment.

Cleveland Mun. Court v. Rasheeda Properties, L.L.C. | 2022-Ohio-4211 | 8th Appellate District | 11/23/2022 In two civil collection cases to obtain liens to collect on judgments entered in criminal actions for two of property owner's health code violations where owner failed to appear in each of the criminal cases and certificates of judgment were transferred to civil court, the trial court did not err in denying owner's Civ.R. 60(B)(5) motions for relief from judgment without a hearing since owner argued only that one, of several possible methods of service, failed, and owner did not present the civil court with criminal court records, so there is insufficient information to determine whether the criminal court judgments were invalid for failure of service.

Pleading/Excusable neglect.

Lengacher Holdings, L.L.C. v. Witmer | 2022-Ohio-4147 | 3rd Appellate District | 11/21/2022 In property purchaser's action to quiet title to property where one of sellers' husband's dower interest was not released, sellers and husband did not file an answer, and purchaser filed a motion for default judgment, trial court did not err in denying husband's motion for leave to file an answer instanter

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where husband was previously granted leave to file an answer upon a showing of excusable neglect for failure to timely file answer, but husband failed to present an affidavit or testimony to support his claim of excusable neglect, Civ.R. 6(B)(2).

Limitations/Equitable tolling/Dismissal. Strother v. Columbus | 2022-Ohio-4097 | 10th Appellate District | 11/17/2022 In plaintiff's action against defendant-city for damage to vehicle sustained when driving over utility hole cover, it was error to grant city's statute of limitations-based motion for summary judgment since plaintiff timely filed the complaint by depositing it in the court drop box, even though the complaint was not immediately time stamped by the clerk due to the pandemic, where the equitable tolling doctrine should have been applied because plaintiff demonstrated diligence over matters within his control; with regard to claim against defendant-telephone company, Civ.R. 12(B)(6) dismissal on the basis of the statute of limitations is affirmed, but the trial court should not have considered savings statute or equitable tolling issues because there are no allegations in plaintiff's complaint relevant to those issues.

Jurisdiction/Court of claims. Lathan v. Ohio Dept. of Rehab. & Corr. | 2022-Ohio-4439 | Court of Claims | 11/16/2022 In community-based correctional facility inmate's tort and conditions of confinement action against state department, department's Civ.R. 12(C) motion for judgment on the pleadings is granted on reasoning that the court lacks jurisdiction since the inmate's facility does not meet the definition of the "state" under R.C. 2743.01(A), and the court's jurisdiction is limited by statute, R.C. 2743.02(E), providing that the only defendant in original actions in the court of claims is the state.

Inmate/Litigation history/Private defendant. Howard v. Mgt. & Training Corp. | 2022-Ohio-4071 | 10th Appellate District | 11/15/2022 In plaintiff-inmate's action against defendant-owner/operator of correctional facility alleging that its employees conspired and retaliated against him by writing false conduct reports, trial court erred in granting defendant's motion to dismiss on reasoning that the affidavit plaintiff had filed disclosing his litigation history did not conform to the requirements

of R.C. 2969.25(A); the statutory requirements apply when an inmate commences litigation against a government entity or employee, and the instant defendant is a for-profit operator of a private prison and is not a government entity or employee.

Ecclesiastical abstention. Early Church of God in Christ, Inc. v. Jackson | 2022-Ohio-4034 | 1st Appellate District | 11/14/2022 In church's action against church leaders, alleging misappropriation of church property and assets, trial court erred in reasoning that the ecclesiastical abstention doctrine deprived it of jurisdiction and in dismissing church's claims for breach of fiduciary duties and demand for accounting since the claims presented secular issues capable of resolution by neutral principles of law, and regardless of whether the church is a hierarchical or congregational organization, the ecclesiastical abstention doctrine does not prevent the court's exercise of jurisdiction over the claims.

Court fees and costs/Res judicata. Gault v. Medina Cty. Court of Common Pleas Clerk | 2022-Ohio-3955 | 9th Appellate District | 11/07/2022 In plaintiff's class action against defendants-county officials alleging overcharging of court fees and costs, resulting from defendants' misinterpretation of the relevant statutes, where plaintiff had previously challenged the fees in his separate divorce action, trial court erred in granting defendants' motion for judgment on the pleadings on reasoning that res judicata barred the claims since neither the clerk of court's determination of the amount plaintiff owed nor defendants' methodology for determining that amount was incorporated into the final judgment of plaintiff's divorce action or was ascertainable during the time to appeal, and also defendants were not in privity with plaintiff because they were not involved in plaintiff's prior divorce action, R.C. 2303.201.

Appeal/Transcript. Terrell v. Morgan Furniture | 2022-Ohio-3981 | 11th Appellate District | 11/07/2022 In plaintiff's breach of contract action against defendant-furniture store for sale of a defective chair, judgment in favor of defendant is affirmed where plaintiff failed to provide a transcript of proceedings pursuant to App.R. 9(B), and although the parties agreed that the chair was defective and that defendant

procured a replacement part, there is no evidence on appeal to evaluate whether plaintiff proved her breach of contract claim.

Pleading/Telecommunications harassment. Crenshaw v. Jones | 2022-Ohio-3913 | 8th Appellate District | 11/03/2022 In plaintiff's telecommunications harassment action against defendant for posting defamatory statements on social media with intent to harass, trial court erred in granting defendant's Civ.R. 12(C) motion for judgment on the pleadings where plaintiff's allegations that defendant posted numerous statements on social media with intent to, inter alia, harass, R.C. 2739.01 and 2917.21, were sufficient to survive defendant's Civ.R. 12(C) motion since Ohio is a notice-pleading state and Civ.R. 8(A) requires only a short and plain statement of plaintiff's claim and a demand for relief.

Affidavit of indigency. Crenshaw v. Howard | 2022-Ohio-3914 | 8th Appellate District | 11/03/2022 In plaintiff's action alleging, inter alia, defamation for posting statements on social media with intent to harass, trial court erred in denying plaintiff's request for indigent status, for the purpose of paying filing fees and court costs, as being premature since the court's decision granting defendant's motion for judgment on the pleadings was reversed on reasoning that plaintiff's complaint met the notice pleading requirements under Civ.R. 8(A).

Professional Responsibility

Suspension. In re Alexander | 2023-Ohio-11 | Supreme Court of Ohio | 01/05/2023 Attorney is suspended from the practice of law for an interim period.

Resignation. In re Resignation of D'Atri | 2022-Ohio-4110 | Supreme Court of Ohio | 11/18/2022 Attorney resigns from the practice of law with disciplinary action pending.

Reinstatement. Disciplinary Counsel v. Hoover | 2022-Ohio-4026 | Supreme Court of Ohio | 11/14/2022 Attorney is reinstated to the practice of law.

Suspension. Disciplinary Counsel v. Jarvis | 2022-Ohio-3936 | Supreme Court of Ohio | 11/08/2022 Attorney is suspended from the practice of law for 18 months, with the entire suspension stayed on conditions.

Suspension. In re Andrews | 2022-Ohio-3951 | Supreme Court of Ohio | 11/07/2022 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Adams | 2022-Ohio-3897 | Supreme Court of Ohio | 11/02/2022 Attorney is issued an interim suspension, with reinstatement on conditions.

Suspension. Cleveland Metro. Bar Assn. v. Fleming | 2022-Ohio-3900 | Supreme Court of Ohio | 11/02/2022 Attorney is issued an interim suspension, with reinstatement on conditions.

Public and Public Finance

Public records/Delay. Haynes v. Bexley Police Dept. | 2022-Ohio-4828 | Court of Claims | 12/29/2022 In public records requester's action claiming denial of access to public records consisting of a police department complaint, special master's recommendation that the court deny respondent's motion to dismiss, that requester's claim for production of records is moot, that respondent failed to produce records within a reasonable period of time, and that requester recover from respondent the filing fee and costs associated with the action is adopted by the court.

Public records/Destruction. Mayer v. Bodnar | 2022-Ohio-4705 | 5th Appellate District | 12/27/2022 In plaintiff-township officer's action for unauthorized destruction of, or failure to produce, a public record, R.C. 149.351, and related claims against defendants-township administrator and board of trustees for failure to provide a copy of a recording related to defendants' complaint filed with ethics commission concerning plaintiff's use of township resources to aid in a personal matter, trial court erred in granting defendants' motion for summary judgment where, although plaintiff obtained the recording from another source, the question remains whether he was aggrieved by a violation of R.C. 149.351 when defendants allegedly destroyed or disposed of recording.

Open Meetings Act. State ex rel. Ames v. Portage Cty. Bd. of Commrs. | 2022-Ohio-4663 | Supreme Court of Ohio | 12/27/2022 The judgment of the court of appeals is affirmed on the authority of Ames v. Rootstown Twp. Bd. of Trustees, ___ Ohio St.3d ___, 2022-Ohio-4605.

Open Meetings Act/Multiple violations/Remedy. Ames v. Rootstown Twp. Bd. of Trustees | 2022-Ohio-4605 | Supreme Court of Ohio | 12/22/2022 In plaintiff's action against township board of trustees for violations of the Open Meetings Act over a two-year period with regard to executive sessions, the court of appeals did not err in affirming issuance of one injunction and one \$500 civil-forfeiture penalty; when repeated conduct results in multiple violations of a single provision of R.C. 121.22, the trial court may issue a single injunction, and when it does so, it is required to order the public body to pay a single \$500 civil-forfeiture penalty as to all offenses.

Public records/Personal notes. Ault v. Durbin | 2022-Ohio-4826 | Court of Claims | 12/22/2022 In public records requester-councilwoman's action seeking to compel respondent-city communications director to produce documents from which other councilwoman read during council meeting, special master recommends the court find requested documents were not public records where documents were of unknown provenance and size, respondent attests that the documents from which other councilwoman read were her own notes, and personal notes used to make statements at council meeting were not records kept as part of city's or commission's official records, R.C. 149.011(G).

Public records/Accessible/Statutory damages. State ex rel. Ware v. Wine | 2022-Ohio-4472 | Supreme Court of Ohio | 12/15/2022 Relator-inmate's petition for a writ of mandamus to compel respondents-prison officials to provide him public records is denied regarding a record which inmate failed to request from the proper official, but the writ is granted regarding three other requests that respondents denied on reasoning that the records were already accessible to inmate since respondents failed to explain why providing paper copies to relator would create a security risk, so relator is awarded statutory damages under R.C. 149.43(B); the system for transmission of inmate kites is a form of electronic transmission within the meaning of R.C. 149.43(C)(2).

City council vacancy/Mandamus. Stevenson v. E. Cleveland Council President | 2022-Ohio-4521 | 8th Appellate District | 12/12/2022 Petition

for a writ of mandamus to compel respondents-city council president and clerk to comply with city's charter and other applicable rules and regulations as they fill a vacancy in city council, after successful recall of a council member, is dismissed since petitioners have not identified any provision of law in a statute, ordinance, or the city charter that would give them a clear legal right to the relief requested or that respondents have a legal duty to fulfill.

Zoning/Resolution/Heading. Willow Grove, Ltd. v. Olmstead Twp. Bd. of Zoning Appeals | 2022-Ohio-4364 | Supreme Court of Ohio | 12/09/2022 In developer's application for a zoning certificate to develop single-family townhomes, including construction of a swimming pool and community center for residents' use, the court of appeals' ruling affirming denial of developer's application on reasoning that developer failed to comply with township zoning resolution's off-street parking space requirements for the pool and center was error since the principal use of the property was the development of single-family townhomes, rather than the pool and center, the zoning resolution parking space schedule heading "Principal Building or Use," which contained a term defined in the resolution and was a substantive part of the resolution, applied to the development, and by the schedule's terms, failure to meet the parking space requirement was not a basis for denying the developer's application.

Public records/Mootness/Exception. Wright State Applied Research Corp. v. Wright State Univ. | 2022-Ohio-4415 | 2nd Appellate District | 12/09/2022 In public records request by newspaper for emails between state university and separate research company where newspaper requested unredacted copies of records previously sent, prompting the company to file this action for injunctive relief to prevent university's release of unredacted copies, resulting in newspaper's withdrawal of its request, trial court did not err in granting a summary judgment to university on reasoning that the controversy was moot and that the company could not establish the mootness exception that its claims were capable of repetition yet evading review; a statement by newspaper representative that it might make the same public records request in the future did not outweigh the fact that the state university has a routine

Public and Public Finance (Continued)

practice of consulting with and deferring to the company about public records requests relating to the company.

Public records/Identifying records/ Issue preclusion.

Nolan v. Wetzel | 2022-Ohio-4382 | 5th Appellate District | 12/08/2022 In plaintiffs' action, construed by the trial court as a mandamus action, alleging that village defendants denied access to requested records related to plaintiffs' violations of village nuisance code, summary judgment in favor of defendants was not error where plaintiffs failed to identify requested records with reasonable clarity, requested photographs with judge's handwritten notes are not public records subject to access, and the doctrine of issue preclusion applies because the issue of records production was directly litigated in a previous federal court action.

Appropriation/Prehistoric monument.

State ex rel. Ohio History Connection v. Moundbuilders Country Club Co. | 2022-Ohio-4345 | Supreme Court of Ohio | 12/07/2022 In effort by state-funded historical society to establish a public park on land it owns, that has been designated by the state legislature as an official state prehistoric monument, and that is leased by a golf club, the trial court, affirmed by court of appeals, did not err in granting historical society's petition for appropriation since the society made a good-faith purchase offer for the golf club's lease interest, R.C. 163.04(B), and historical society's exercise of eminent-domain powers was necessary and for a public use, R.C. 163.021(A); the case is remanded to the trial court to proceed to a jury trial in the historical society's appropriation action.

Open Meetings Act/Executive sessions/ Records.

State ex rel. Hicks v. Clermont Cty. Bd. of Comms. | 2022-Ohio-4237 | Supreme Court of Ohio | 12/01/2022 In resident's action asserting that board of county commissioners violated the Open Meetings Act (OMA), the court of appeals erred in ruling in favor of resident on reasoning that the board convened nine executive sessions but were unable to produce evidence of what was considered during the sessions, in holding that the burden shifted to the public body to produce evidence that the executive sessions fell under one of the exceptions of R.C. 121.22(G), and in awarding attorney fees to resident; the OMA requires only that

a public body keep executive-session minutes that reflect the general subject matter of discussions, and the erroneous burden shifting established by the court of appeals would require public bodies to go beyond the requirements of R.C. 121.22 and create a detailed record of its executive-sessions.

Public records/Timeliness.

Rose v. Fairfield Cty. Sheriff Office Jail | 2022-Ohio-4528 | Court of Claims | 11/30/2022 In public records requester's R.C. 2743.75 action relating to an allegation of use of force, where requester asserts that respondent failed to produce records in a timely manner, special master recommends that, inter alia, respondent failed to provide requested records in a reasonable time where request was made in May and the first attempt to deliver the records was in the following August, exceeding any reasonable period of time, R.C. 149.43(B)(1), and this conclusion is supported by the fact that once the instant action was filed, the records were delivered within five weeks; it is recommended that the requester recover the amount of the filing fee and any other costs associated with the action.

Public records/Reasonable time/ Costs.

Cleveland Fire Fighters Assn. v. Cleveland | 2022-Ohio-4329 | Court of Claims | 11/29/2022 In action asserting respondent's failure to provide public records, the court adopts special master's report recommending the court to dismiss claims for production of nine of the records, to find that no records existed for another request, and to order respondent to disclose all records related to employees' fitness for duty and to an examination price sheet, which respondent failed to provide within a reasonable period of time, so requester is entitled to recover from respondent the amount of the filing fee, R.C. 149.43(B).

Public employment/Hearing/Open Meetings Act.

Nosse v. Kirtland | 2022-Ohio-4161 | 11th Appellate District | 11/21/2022 In police chief's administrative appeal of city council's decision removing him from his position, the trial court did not err in affirming council's decision where chief's requested public hearing was held and he was permitted to present evidence and argument while represented by counsel, and once the hearing was concluded, the city council was not required to deliberate

and review evidence in public because the reference to a public hearing in the Open Meetings Act, R.C. 121.22(G), relates to the hearing itself and not to city council's quasi-judicial deliberations in executive session after the hearing was completed; also discussed, R.C. 733.35, providing for mayors to have general supervision over municipal departments and officers.

Public records/Public utility exemption.

Wade v. O'Leary | 2022-Ohio-4530 | Court of Claims | 11/18/2022 In public records requester's R.C. 2743.75 action alleging denial of access to public records consisting of city public utility's shut-off lists, special master recommends denial of the request on the basis that R.C. 149.43(A)(1) and (A)(1)(aa) exempt from public records "Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;" under the statutory language, R.C. 149.43 does not expressly prohibit the disclosure of items that are excluded from the definition of public records but provides that their disclosure is not mandated.

Indemnification/Insurance/Statute.

Cty. Risk Sharing Auth., Inc. v. State | 2022-Ohio-4043 | 11th Appellate District | 11/14/2022 In risk sharing authority's action to declare that the state was solely responsible to defend and indemnify county conservation district and employee in two lawsuits related to employee's traffic accident during employment activities, trial court erred in reasoning that R.C. 940.07 requires the state to indemnify the district to the exclusion of otherwise valid insurance coverage and in granting summary judgment to district since the parties stipulated that the district was a covered party under the risk authority's coverage agreement and the risk sharing authority must fulfill its contractual duty under the coverage agreement; should the district's liability exceed policy limits, under R.C. 940.07, the state is required to fully and completely indemnify the district for such amounts.

Public records/Timeliness/Existence.

Wade v. O'Leary | 2022-Ohio-4529 | Court of Claims | 11/10/2022 In public records requester's R.C. 2743.75 action alleging denial of access to public records and failure to timely produce records, where request is for a list of all marriages at which mayor officiated and all payments received for officiating,

special master recommends that production of the marriage records, after two requests were made, exceeded any reasonable time period, R.C. 149.43(B) (1) so requester should recover the filing fee and any other associated costs; requester has not shown that any city records of marriage officiating payments to mayor exist, and special master recommends that the claim is now moot.

Public records/Medical examiner

verdict. Costaras v. Gilson | 2022-Ohio-4011 | 8th Appellate District | 11/10/2022 In action by executor-wife of decedent seeking a judicial order directing county medical examiner to change the cause of death in the certificate of death and supplementary medical examiner's verdict, the trial court did not err in granting medical examiner's Civ.R. 41(B)(2) motion to dismiss since the circumstantial evidence is consistent with examiner's determination that the manner of decedent's death was suicide where, inter alia, decedent's mental health, recent weight loss and disinterest in exercise, and trouble sleeping are indicative of depression, decedent's car was found at the top of bridge, he was found on the ground below the bridge, and there was no evidence of foul play.

Public records/Quasi-agency/Privilege.

State ex rel. Ames v. Dublikar, Beck, Wiley & Mathews | 2022-Ohio-3990 | Supreme Court of Ohio | 11/10/2022 Dismissal of public records requester's petition for a writ of mandamus to obtain unredacted copies of invoices that law firm had prepared for quasi-agency that had hired law firm on behalf of township was error where the court of appeals reasoned that the redacted information was protected by the attorney-client privilege, but the court did not properly apply the standard of review in dismissing the petition, so the case is remanded to the court of appeals with instructions that it conduct an in camera inspection of the contested invoices, R.C. 149.43.

Public records. Ryan v. Ashtabula | 2022-Ohio-4332 | Court of Claims | 11/08/2022 In action in which public records requester claimed that city failed to produce responsive public records about three criminal cases, trial court overrules requester's objections and adopts special master's revised report and recommendation, inter alia, that the court deny city's motion to dismiss related to the defense of non-existence of records and consider that defense

on its merits, and then, if necessary, determine whether any existing notes constitute public records; the special master also recommends that requester's claim, based on an improper demand to create new records, should be dismissed.

Public records/Spoilation/Forfeiture/

Limitations. Crenshaw v. Cleveland Police Dept. | 2022-Ohio-3915 | 8th Appellate District | 11/03/2022 In plaintiff's action against city defendants seeking damages for spoliation and forfeiture due to negligence in keeping public records that plaintiff had requested, summary judgment in favor of defendants based on the statute of limitations was not error where, although plaintiff's action was not a mandamus action, R.C. 149.351(B) applied to her forfeiture action, and her claim was outside the applicable statute of limitations under R.C. 149.351(E).

Public records/Mandamus/Adequate

remedy at law. State ex rel. Crenshaw v. Maple Hts. Police Dept. | 2022-Ohio-3920 | 8th Appellate District | 11/03/2022 Dismissal of relator's petition for a writ of mandamus to compel respondent-police department to provide requested public records regarding former officer was error, even though relator's previously-filed petition for a writ of mandamus to compel production of the same records was dismissed for failure to caption the petition in the name of the state, which relator could have appealed or sought leave to amend, since relator was not required to establish the lack of an adequate remedy at law because mandamus is the appropriate remedy to compel compliance with the Public Records Act, R.C. 149.43(C)(1).

Public records/Mootness/Damages.

State ex rel. Mobley v. Toledo | 2022-Ohio-3889 | Supreme Court of Ohio | 11/03/2022 Public records requester's petition for a writ of mandamus to compel city to provide paper copies of records-retention schedule and manual for traffic stops and arrests is denied as moot since requester concedes that he has received the records at issue; requester's claim for statutory damages is also denied since he has not proved by clear and convincing evidence that he sent his purported records request by certified mail or any other method, R.C. 149.43.

Public records/Reasonable time/Costs.

Morrison v. Mt. Vernon Law Director's Office | 2022-Ohio-4331 | Court of Claims | 11/02/2022 In requester's action for denial of access to public records where respondent produced the records almost a year after the date of the request, the court adopts the special master's report and recommendation that respondent failed to produce the requested public records within a reasonable time and that respondent should pay requester the amount of the filing fee and any other costs incurred by requester, R.C. 149.43(B).

Public Utilities

Appropriation/Easements/Necessity.

Ohio Power Co. v. Burns | 2022-Ohio-4713 | Supreme Court of Ohio | 12/29/2022 In power company's appropriation action against homeowners seeking to take easements by eminent domain, the court of appeals correctly determined that the necessity of easements presumptions under R.C. 163.09(B)(1)(a) and (c) did not apply where neither the Power Board nor the Siting Board reviewed the proposed easement terms, and the court of appeals properly ruled that the trial court needs to make a separate necessity finding with regard to each easement; as well, the landowners are not entitled to fees under R.C. 163.21(A) because the power company did not abandon the appropriation proceedings when it conceded that a term in the easements was unnecessary.

Solar generation fund/Rider/

Commercial Activity Tax. In re Establishing the Solar Generation Fund Rider | 2022-Ohio-4348 | Supreme Court of Ohio | 12/07/2022

After legislation was enacted establishing a solar generation fund and the Public Utilities Commission (PUCO) issued an order authorizing a recovery mechanism referred to as the solar-generation-fund rider, which provided for electric utilities to charge customers an extra amount that the utilities would then pass on to the fund, prompting an industry association to challenge the amount and structure of the rider, PUCO's order is affirmed except for the rider's provision related to the utilities' Commercial Activity Tax (CAT) since the order could be read to provide that CAT amounts are not to be included in the rider charge, under R.C. 3706.46, or could be read to provide that the CAT amounts may properly be included in the rider charge, so the case is remanded to the PUCO for clarification.

Real Property

Contract/Breach/Discovery/Res judicata. Teays Valley Local School Dist. Bd. of Edn. v. Struckman | 2023-Ohio-244 | 4th Appellate District | 01/25/2023

In school district's action seeking an injunction against property seller-farmer to enjoin use or possession of farm property previously sold to district, where the parties disagreed about the terms of the purchase agreement, summary judgment in favor of district was not error where the final judgment in favor of district in previous case involving the same parties and same purchase contract was conclusive as to all claims, and therefore seller's request to conduct discovery was appropriately stayed until summary judgment ruling because summary judgment was based on the doctrine of res judicata and any discovery would have been unnecessary.

Zoning/Appeal. Progressive Equity Invests., L.L.C. v. Painesville Twp. Bd. of Trustees | 2023-Ohio-180 | 11th Appellate District | 01/23/2023

In commercial property owner's administrative appeal of township board of trustee's decision declining to declare that owner's proposed use of its property would be similar to uses already permitted in the relevant township zoning district, summary judgment in favor of board is affirmed where board's decision was not directly appealable to common pleas court, R.C. 2506.01, property owner failed to appeal to the board of zoning appeals, R.C. 519.14(A), and even if appeal of similar use decision did not lie with board of zoning appeals, the decision was not a quasi-judicial determination that could be directly appealed to the trial court.

Foreclosure/Mechanic's lien/Legitimacy. Fifth Third Mortgage Co. v. McElroy | 2023-Ohio-76 | 8th Appellate District | 01/12/2023 In mortgage company's foreclosure action against property owners for default on note, trial court erred in granting mechanic's lien holder's motion for distribution of excess funds from sale of property where the judgment entry did not establish the legitimacy of the mechanic's lien, but indicated that the determination would be made at later date, and disbursement of excess funds should not have been granted without first holding a hearing or receiving evidence to demonstrate the legitimacy of the lien, App.R. 12(A)(1)(c).

Contract/Breach/Merger by deed. Diehl v. Hulls | 2022-Ohio-4822 | 7th Appellate District | 12/30/2022 In property buyer's breach of contract action against sellers for failure to deed all parcels as agreed in land installment contract, summary judgment in favor of sellers was not error where, although the deed is inconsistent with the purchase agreement and appears to have been altered, the buyer could have, and should have, discovered that six parcels were allegedly omitted from his general warranty deed at the time buyer received the deed, and therefore the claim is pre-empted under the doctrine of merger by deed.

Easements/Vegetation control. Corder v. Ohio Edison Co. | 2022-Ohio-4818 | 7th Appellate District | 12/30/2022 In property owners' action against power company seeking a declaration that easements did not allow application of herbicide to control vegetation, trial court did not err on remand in granting summary judgment to property owners since, under the language of the easements, the word "remove" modifies the words "trim" and "cut" and allows for the removal of what was trimmed and cut; if "remove" was treated as a standalone right, it would render the words "trim" and "cut" superfluous, and therefore the easements do not include the right to destroy vegetation by spraying chemicals.

Foreclosure/Settlement/Statute of frauds. Money Source, Inc. v. Handwork | 2022-Ohio-4824 | 7th Appellate District | 12/29/2022 In lender's foreclosure action against mortgagor's heir for default on loan where the parties entered into a settlement agreement, trial court erred in granting heir's motion to enforce the agreement since lender did not sign agreement, and because the agreement involved the transfer of real property, the statute of frauds applied to require lender's signature for it to constitute valid agreement, and heir did not meet the elements of partial performance to assert an exception to overcome the statute of frauds, R.C. 1335.05.

Development plans/Lot-frontage agreement. Brendamour v. Indian Hill | 2022-Ohio-4724 | 1st Appellate District | 12/29/2022 In plaintiffs-property owners' breach of contract action against defendant-village for approving development plans of intervenors-neighbors that were allegedly in

violation of a prior agreement between plaintiffs and village, trial court erred in dismissing, Civ.R. 12(B)(6), intervenors' breach of contract counterclaim where prior agreement contained a future-disputes provision which prohibited plaintiffs from contesting intervenors' zoning application based on lot-frontage challenge, and the question remains as to whether intervenors can prove damages caused by plaintiffs' alleged breach of future-disputes provision.

Deed restrictions/Surface/Subsurface. Ohio Pub. Works Comm. v. Barnesville | 2022-Ohio-4603 | Supreme Court of Ohio | 12/22/2022 In state public works commission's action for injunctive relief against village which had accepted grants from state conservation bond fund to purchase property, conditioned on village's agreement that deed restrictions would not be amended without commission's prior written approval, and the village, inter alia, entered into an oil and gas lease with energy company that assigned its interest to another company, all without the consent of the commission, the court of appeals correctly determined that the village violated the deed's use and development restrictions when it transferred oil and gas rights to the energy company without commission's written consent where the use and development restrictions applied to both the surface and subsurface of the properties.

Public or private road/Location/Deed. Montgomery v. Island Creek Twp. | 2022-Ohio-4757 | 7th Appellate District | 12/21/2022 In property owners' action against township, seeking a determination whether a strip of property was private or part of a public road, summary judgment in favor of township was not error since the parties agreed that the road is public, rendering the issue of common law dedication of the property irrelevant, and the only question remaining is where the road ends; the owners' deeds identify the road as of fixed length up to the property, and a prior conveyance to neighboring property referencing a point in the middle of the road in describing property boundaries, demonstrate that the property in question is part of a public road.

Sale/Two properties/Right of first refusal. Gordon Restaurants, Inc. v. W.S. Carlile & Sons Co. | 2022-Ohio-4589 | 10th Appellate District | 12/20/2022 In plaintiff-commercial lessee's breach of contract action against defendants-property sellers, arising from right of first refusal provision in plaintiff's lease, claiming that defendants bundled together two properties in an effort to defeat plaintiff's right of first refusal on one of the properties, trial court erred in issuing a declaration that plaintiff was legally entitled to exercise its right of first refusal on only one property where defendants and third-party buyer negotiated separate real estate purchase contracts for each of the properties at plaintiff's request, with purchase of the smaller parcel of property contingent on the simultaneous purchase of the larger property, defendants then submitted the separate proposed real estate purchase contracts to plaintiff and gave plaintiff an opportunity to match those offers, so defendants did not breach their obligations under plaintiff's lease agreement.

Foreclosure/Business records. U.S. Bank v. Williams | 2022-Ohio-4590 | 10th Appellate District | 12/20/2022 In bank's foreclosure action against mortgagor for default on note, summary judgment in favor of bank was error since the affidavit of loan servicing agent contained records of prior servicer, but agent failed to acknowledge that another entity created the payment history, the affidavit failed to establish the foundation for admission of an adoptive business record under Evid.R. 803(6), and agent's testimony regarding the amount owed on the note was inadmissible hearsay evidence.

Trespass/Restricted access. Bloomfield v. Varner | 2022-Ohio-4564 | 3rd Appellate District | 12/19/2022 In plaintiffs-subdivision property owners' action against defendants-neighboring property owners seeking injunctive relief and damages for unlawful ingress and egress to defendants' horse barn using subdivision road, summary judgment in favor of defendants was not error since there is nothing in the plaintiffs' deed or in the creation of the subdivision that restricts defendants from using the subdivision road to travel to and from their horse barn.

Lease/Personal property payment/Evidence. Davidson v. Hatcher | 2022-Ohio-4452 | 3rd Appellate District | 12/12/2022 In forcible entry and detainer action related to two lease agreements with options to purchase where landlord claimed that tenant failed to make payments and tenant asserted that he compensated landlord with personal property, including a precious gem, trial court did not err in ruling that tenant's witness was an expert regarding the value of the gem where witness testified that he had been a lapidarist for about 25 years, had run an online gemstone business, and had received training in cutting and working gemstones from a gem appraiser, Evid.R. 702.

License/Breach/Force majeure. Cafaro-Peachcreek Joint Venture Partnership v. Spanggard | 2022-Ohio-4468 | 11th Appellate District | 12/12/2022 In plaintiff-partnership's breach of contract action against defendant-tenant, who had entered into a license agreement with plaintiff to use a mall retail space, where defendant alleges that plaintiff ordered her to remove her business from the premises after the mall was closed due to government pandemic orders, the trial court erred in granting plaintiff's motion for summary judgment since the question remains whether plaintiff breached its contractual obligations by revoking defendant's access to the premises; also, there was no force majeure provision in the parties' license agreement that would excuse either party's performance under the agreement, and a legal distinction between a license and a lease is immaterial to the issues in this appeal.

Foreclosure/Property interest/Dismissal. Hardesty v. Waugh Real Estate Holdings, L.L.C. | 2022-Ohio-4270 | 9th Appellate District | 11/30/2022 In plaintiffs-property owners' action against defendant-current mortgage holder seeking a declaratory judgment and to quiet title to property, arguing that prior mortgage holder had forfeited its interest in the mortgage by failing to prosecute its foreclosure action against plaintiffs, trial court did not err in sua sponte dismissing plaintiffs' complaint for failure to state a claim, Civ.R. 12(B)(6), where plaintiffs alleged only that defendant's interest in the property had been forfeited rather than that the mortgage had been satisfied, and running of the statute of limitations to file a second foreclosure action under R.C. 1303.16(A) does not discharge

plaintiffs' debt, but instead limits the remedies available.

Eviction/Right of possession/Responsive pleading. Henry Cty. Land Reutilization Corp. v. Pelmeur | 2022-Ohio-4231 | 3rd Appellate District | 11/28/2022 In plaintiff-land bank's forcible entry and detainer action against defendant-lease holder of building for failure to vacate the premises following notice of termination and notice to vacate, trial court erred in granting plaintiff's motion for judgment on the pleadings since a question remains as to whether plaintiff owns or has any right to possess the building since plaintiff did not aver that it owned the former school building or that it had assumed former landlord's position as lessor; defendant's failure to specifically deny allegations in the complaint did not result in admission since averments in pleadings to which no responsive pleading is required or permitted are considered denied or avoided, Civ.R. 8(D), and because forcible entry and detainer actions are intended to be summary proceedings, answers are not required under R.C. Ch. 1923.

Foreclosure/Relief from judgment/Stay. Henry Cty. Bank v. Dudley | 2022-Ohio-4192 | 6th Appellate District | 11/23/2022 In bank's foreclosure action against property owners, resulting in a summary judgment in favor of bank, the trial court did not err in denying owners' Civ.R. 60(B) motion for relief from judgment since it was not timely filed, even taking into account the temporary pandemic-related stay, where the motion was filed more than a year after the judgment was issued and two weeks after the stay was lifted; also, the trial court did not err in construing the matter as falling under Civ.R. 60(B)(3), but the owners failed to allege operative facts that would warrant relief, so the court could deny the motion without a hearing.

Adverse possession. McMullen v. Wyatt | 2022-Ohio-4162 | 11th Appellate District | 11/21/2022 In plaintiff-property owner's adverse possession action for detached garage encroaching on property owned by defendant-neighbor, trial court did not err in awarding to plaintiff a strip of land including the part of garage encroaching on defendant's parcel where encroachment of garage predates both parties' ownership of the properties, defendant's surveys of property showed that he was aware of the encroachment, plaintiff occupied the

Real Property (Continued)

garage since the time of her ownership of the property, and there was minimal evidence presented by defendant that plaintiff's use was permissive.

Lease/Breach/Development provision.

Cintrifuse Landlord, L.L.C. v. Panino, L.L.C. | 2022-Ohio-4104 | 1st Appellate District | 11/18/2022 In commercial landlord's breach of contract action against restaurant tenants for failure to pay rent, summary judgment in favor of landlord was error where the parties' lease provided that landlord would use its best efforts to obtain approval for outdoor service/bar area next to the restaurant, tenants presented evidence showing that landlord may not have met its best-efforts obligation, and questions remain as to what efforts landlord actually expended and what steps it might reasonably have taken in handling the development project.

Guaranty/Breach/Attorney fees/

Hearing. Eagle Realty Invests., Inc. v. Dumon | 2022-Ohio-4106 | 1st Appellate District | 11/18/2022 In plaintiffs-joint venture beneficiaries' action against defendants-real estate developers seeking damages for breach of guaranty after development of a luxury hotel stalled, resulting in a summary judgment in favor of plaintiffs for damages plus prejudgment interest and attorney fees, the attorney fees award was error since defendants filed a motion to sever plaintiffs' request for attorney fees and argued for a separate hearing to determine the reasonableness of the claimed fees, and because the fees were disputed, a hearing should have been held on that issue.

Contract/Option to purchase/Notice.

DJD Invest. Co., Ltd. v. Holsopple | 2022-Ohio-4089 | 8th Appellate District | 11/17/2022 In plaintiff-investment company's action for breach of contract and request for specific performance of its option to purchase a condominium unit, summary judgment in favor of plaintiff was not error where the terms of the option agreement did not specify the form or content of written notice to defendants, plaintiff's escrow and closing documents which were received by defendants communicated plaintiff's intent to exercise its option, and after receiving documents, defendants communicated the terms of the sale to title company.

Zoning/Injunction/Fine. Rootstown Twp Bd. of Trustees v. Helmlin | 2022-Ohio-4045 | 11th Appellate District | 11/14/2022 In township board of trustees' zoning violation action against property owner, alleging that owner was using property located in a residential zoning district for commercial purposes, resulting in a permanent injunction and a fine against owner, trial court erred in denying owner's motion to recalculate the fine since fines in civil actions for injunctive relief are not authorized under R.C. 519.99, and while a fine may be imposed for breach of an injunction as an act of contempt, the fine against owner was imposed in anticipation of contempt and was therefore plain error.

Lease/Rent/Utilities/Service.

Mehta v. Johnson | 2022-Ohio-3934 | 1st Appellate District | 11/04/2022 In landlord's action against tenant seeking damages for failure to pay rent and utilities and for damage to premises, judgment in favor of landlord was not error where tenant's claim that she was required to pay only the "fair rental value" instead of the agreed-upon rent was meritless and she failed to show that she was entitled to an abatement of rent, tenant was responsible to pay the water bill, and tenant was also found to be responsible for damage to garage door; as well, tenant's argument that the trial court lacked jurisdiction, asserting that the three-day notice to vacate was not properly served, is without merit since the instant action was for damages, a forcible entry and detainer action is a separate action, R.C. 1923.04, and any error in service of notice is not relevant to the issue of damages.

Eviction/Mobile home/Equity.

Buckeye Mobile Home Estates v. O'Coners | 2022-Ohio-3927 | 6th Appellate District | 11/03/2022 In mobile home park owners' eviction action against tenants for violation of park rules prohibiting owning large dogs and for complaints from other tenants about dogs' incessant barking and aggressive behavior, judgment in favor of owners is affirmed under R.C. 4781.45, governing termination of an agreement with a mobile home park, and tenants' argument that the court did not consider equity is without merit where tenants argued equity relative to a collateral issue of their inability to remove trailer from park, but there was evidence that tenant had monthly income, ownership of other property, and the potential for relocation with assistance from a veterans program.

Appropriation/Prohibition.

Schlegel v. Sweeney | 2022-Ohio-3841 | Supreme Court of Ohio | 11/01/2022 When a law prohibiting park districts from appropriating property for developing recreational trails was enacted while an appropriation proceeding for a path was pending against property owner, owner's petition for a writ of prohibition to halt the appropriation proceeding is denied since the owner has an adequate remedy at law by way of appeal after the trial court issues a decision, and the "anti-appropriation provision" does not patently and unambiguously eliminate the trial court's subject matter jurisdiction.

Taxation

Income/Municipal/Emergency order/

Worker's location. Curcio v. Hufford | 2022-Ohio-4766 | 6th Appellate District | 12/29/2022 In taxpayers' action seeking declaratory and injunctive relief to prevent cities from collecting income taxes from nonresidents who were not physically working in cities during pandemic stay-at-home order, trial court did not err in granting cities' Civ.R. 12(B)(6) motions to dismiss where the legislature has the authority to enact rules for income tax allocation between municipalities, and the federal Due Process Clause does not limit the legislature's ability to determine purely intrastate tax policy or require a worker's physical presence in a municipality for the municipality to tax the worker's earnings, as long as the worker has some "minimal connection" to the municipality.

Commercial activity/Intellectual

property revenue. NASCAR Holdings, Inc. v. McClain | 2022-Ohio-4131 | Supreme Court of Ohio | 11/22/2022 Imposition of commercial activity tax (CAT) on taxpayer-stock car racing corporation for gross receipts related to company's intellectual property, comprised of broadcast revenue, media revenue, licensing fees, and sponsorship fees, was error since the CAT law defines as taxable gross receipts only those receipts that are situated to Ohio, R.C. 5751.01(G), receipts may be situated to Ohio only to the extent that they are based on the right to use the property in Ohio, and none of taxpayer's intellectual property contracts base payment on the right to use taxpayer's intellectual property in Ohio; the case is remanded to determine any remaining tax liability after the amount of gross receipts subject to assessment is reduced.

Real property/Tax valuation. Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision | 2022-Ohio-4100 | 10th Appellate District | 11/17/2022 In board of education's (BOE) complaint requesting an increase in the tax valuation of taxpayer's six parcels to reflect the arm's-length transaction sale price of the properties, ultimately resulting in the Board of Tax Appeals' (BTA) increase of the properties' tax valuation, the trial court did not err in adopting the BTA's decision where, although the BOE did not comply with disclosure deadlines in submitting evidence of the purchase contract and settlement statement, the documents were relevant to the valuation of properties and the BTA was not required to exclude them; also, taxpayer's appraisal was not based on firsthand knowledge of the sale of the property and was not sufficient to negate the validity of the sale price allocated to one of the parcels.

Income/Exemption/Economic district. Concord Real Estate Invest., L.L.C. v. Concord Twp. Joint Economic Dev. Dist. | 2022-Ohio-3976 | 11th Appellate District | 11/07/2022 In action by investor alleging that it owned parcels of real estate for development located within joint economic development district, seeking an income-tax exemption pursuant to R.C. 715.72(Q), where the district responded that investor had no standing to seek an exemption because it was merely an owner of property, the trial court did not err in issuing a judgment for investor as meeting the definition of an owner operating within the district that could file an action on behalf of its business and employees for an exemption because it generated profits from selling its properties, and even though investor has no employees within the district, there is no justification to deny the possibility of exemption to businesses without employees.

Technology

Video service providers/Online streaming. Maple Hts. v. Netflix, Inc. | 2022-Ohio-4174 | Supreme Court of Ohio | 11/30/2022 In federal class-action and declaratory-judgment lawsuit in which city asserted that two companies violated the Fair Competition in Cable Operations Act, R.C. Ch. 1332, the federal court certified to the Supreme Court of Ohio the following two state-law questions: (1) Are the two companies video service providers under Ohio law? and (2) Can the city sue the

companies to enforce Ohio's video service provider provisions? The answer to both questions is "no" where the two companies provide online-streaming services over the Internet, they do not need to place their own wires or equipment in the public rights-of-way, and the equipment used to access their services belongs to their customers, not to them, so they are not video-service providers and are not required to obtain video-service authorization under the Act; as well, the city cannot sue to enforce R.C. Ch. 1332 since it does not imply a private right of action.

Torts

Negligence/Unattended golf cart/Foreseeability. Inskip v. Columbus Zoological Park Assn. | 2023-Ohio-288 | 5th Appellate District | 01/31/2023 In patron's negligence action against zoo for injuries sustained when she was struck by a golf cart driven by child-patron after zoo employee left cart unattended, summary judgment in favor of zoo was error since employee knew that cart could be operated without key when ignition was left on, employee violated zoo policies in leaving unattended cart running while performing a task that was not an emergency, and the question remains whether zoo's duty to patron was breached and whether child's action driving the cart was reasonably foreseeable.

Wrongful death/Medical malpractice/Statute of repose/Conflict. Kennedy v. Western Reserve Senior Care | 2023-Ohio-264 | 11th Appellate District | 01/30/2023 In plaintiff-executrix's wrongful death action against care center defendants alleging that they provided substandard medical care, resulting in decedent's death, trial court did not err in granting defendants' motion for a directed verdict where the wrongful death claim is based on a medical claim, the statute of repose applied to render claim untimely, R.C. 2305.113(C), defendant-physician's move to another state did not toll the statute of repose under R.C. 2305.15(A) because it was for a legitimate business purpose, and plaintiff failed to show that her right to equal protection was violated; the issue of whether the statute of repose for medical claims, R.C. 2305.113(C), applies to statutory wrongful death claims is currently before the Supreme Court of Ohio on appeal and conflict certification.

Legal malpractice/Grievance. Davis v. Yuspeh | 2023-Ohio-219 | 8th Appellate District | 01/26/2023 After filing a grievance with grievance committee of local bar association, in former client's legal malpractice action against attorneys, alleging negligence in their handling of underlying personal injury action by failing to timely conduct discovery, trial court erred in denying attorneys' Civ.R. 12(F) motion to strike allegations in the complaint related to uncertified grievances, which are confidential under Gov.Bar R. V(8), client directly violated rules by including quotations from grievance committee's letter that dismissed his complaint, and confidentiality provisions apply to client as a participant in the legal process.

Wrongful death/Discovery/Law enforcement investigation. Parra v. Jackson | 2023-Ohio-216 | 8th Appellate District | 01/26/2023 In plaintiff-mother's wrongful death action against city defendants for obstructing investigation into her son's murder where plaintiff sought information related to the law enforcement investigation, trial court erred in ordering prosecutor's office to produce requested documents since the requested materials included identification of witnesses and disclosure of police evaluations, separation of evaluative summary from factual data would be a significant burden, and plaintiff failed to establish a compelling need for requested documents to outweigh public's interest in keeping the information confidential, Civ.R. 26(B).

Wrongful imprisonment/Limitations/Actual innocence. Covender v. State | 2023-Ohio-172 | 9th Appellate District | 01/23/2023 In criminal defendant's wrongfully-imprisoned-individual action for imprisonment prior to being granted new trials, leading to dismissal of charges or not guilty verdicts, summary judgment in favor of state was error since complaint was timely filed where action did not accrue until charges were dismissed, R.C. 2743.48(A)(4), the statute was satisfied because charges were dismissed as to one alleged victim and defendant was found not guilty as to second alleged victim, and the question remains as to whether defendant can show actual innocence regarding the offenses.

Torts (Continued)

Discovery/Admissions. Smith v. Bernaciak | 2023-Ohio-175 | 9th Appellate District | 01/23/2023 In plaintiff's civil assault and battery action against defendant for allegedly striking plaintiff in the face, trial court's directed verdict in favor of defendant is affirmed where plaintiff failed to timely respond to requests for admissions and therefore admissions were deemed admitted pursuant to Civ.R. 36(A), she failed to file for leave to file untimely response, and she failed to move the court to withdraw or amend admissions.

Medical malpractice/COVID-19 treatment. Wilhelms v. ProMedica Health Sys., Inc. | 2023-Ohio-143 | 6th Appellate District | 01/18/2023 In plaintiff's medical malpractice action claiming that defendants failed to properly provide nursing care services and treatments which led to permanent injuries, the trial court erred in granting defendants' motion for judgment on the pleadings where the defense that plaintiff developed injuries while being treated for COVID-19 is insufficient to establish that all individuals treating him were covered under the liability and immunity provisions of the Public Readiness and Emergency Preparedness Act, (Prep Act), 42 U.S.C. 247d-6d(a)(2)(B), or that the alleged injuries resulted from the use of a ventilator/respirator, a covered counter measure under the Prep Act, in treating plaintiff.

Negligence. Richie v. Home Depot | 2023-Ohio-68 | 8th Appellate District | 01/12/2023 In plaintiff's negligence action against defendant-hardware store for injuries sustained when a pipe he was lifting fell on his foot, summary judgment in favor of defendant was not error where plaintiff initially claimed that the pipes were incorrectly stacked, only in response to defendant's motion for summary judgment did he assert that there was a greasy or oily substance on the pipe that caused it to slip, and plaintiff failed to show that the substance existed on the pipe or was on the pipe long enough for defendant to clean it or to warn customers.

Negligence/Settlement agreement. Zinsmeister v. Ohm | 2022-Ohio-4787 | 10th Appellate District | 12/30/2022 In plaintiff's negligence action for injuries sustained when his bicycle was struck by vehicle driven by defendant where the parties entered into a settlement

agreement, trial court did not err in granting defendant's motion to enforce the agreement since the terms of the agreement were not in dispute, plaintiff was represented by counsel and had the opportunity to review the terms before signing, he failed to show that he signed under duress, and his accusations were directed at examining physician and were not defendant's fault.

Negligence/Maintenance agreement.

Perez v. Crown Equip. Corp. | 2022-Ohio-4761 | 3rd Appellate District | 12/29/2022 In plaintiff-employee's negligence action against defendant-service provider for failure to maintain overhead door which fell on her at her place of employment, summary judgment in favor of defendant was not error since, pursuant to planned maintenance agreement (PMA) between employer and defendant, defendant did not have a duty to plaintiff as a third-party because maintenance of the door without employer's approval was outside the scope of the PMA with employer, and plaintiff failed to show that her injuries were proximately caused by defendant's failure to exercise due care in performing its obligations under the PMA.

Abuse of process/Ecclesiastical abstention. Plishka v. Skurla | 2022-Ohio-4744 | 8th Appellate District | 12/29/2022 In dispute about missing property from church building, where plaintiff-priest filed an abuse of process action against defendants-church and leader, claiming that defendants' conversion action against him was filed for the purpose of harming his reputation rather than to simply recover allegedly converted property, trial court erred in denying defendant's Civ.R. 12(B)(1) motion to dismiss for lack of subject matter jurisdiction where the ecclesiastical abstention doctrine applies because the church is hierarchical in nature, and plaintiff's claim was inextricably entangled with ecclesiastical concerns rather than being secular in nature.

Unjust enrichment/Automated traffic cameras/Res judicata. Lycan v. Cleveland | 2022-Ohio-4676 | Supreme Court of Ohio | 12/29/2022 In unjust enrichment action by appellees-members of class seeking reimbursement for civil fines imposed for traffic violations identified by use of automated traffic cameras, judgment in favor of appellees is reversed where

appellees paid their civil fines, did not dispute their liability under city ordinance, and admitted their liability for their traffic violations recorded by the city's automated traffic cameras, which concluded the case between appellees and the city as to those traffic violations, so res judicata prevents this subsequent unjust enrichment action based on the city ordinance's alleged inapplicability to vehicle lessees.

Wrongful imprisonment/Jury trial.

McClain v. State | 2022-Ohio-4722 | Supreme Court of Ohio | 12/29/2022 In action for wrongful imprisonment under R.C. 2743.48, judgment in favor of state after bench trial is affirmed, and plaintiff's argument that he was entitled to a jury trial is without merit since Ohio Const. Art. 1, Sec. 5 does not preserve the right to a jury trial in a wrongful imprisonment action against the state where the first step of the wrongful imprisonment statute—being declared a wrongfully imprisoned individual in the court of common pleas—is a declaratory action that did not exist at common law; also, a wrongful imprisonment claim is different from a claim at common law for the intentional tort of false imprisonment.

Conversion/Property transfer.

Bernholtz v. Bernholtz | 2022-Ohio-4764 | 6th Appellate District | 12/29/2022 In mother's action against son and wife alleging, inter alia, conversion for exerting undue influence over her, resulting in transfer of property and cash, trial court erred in finding that the transfer of real property resulted from undue influence where farmland was transferred prior to the time son was named mother's attorney in fact and therefore son did not bear the burden of demonstrating that the transactions were free of undue influence, and mother failed to show that transfer of remaining property, which included family home, was the product of undue influence.

Negligence/Immunity/Physical defect.

Doe v. Greenville City Schools | 2022-Ohio-4618 | Supreme Court of Ohio | 12/28/2022 In plaintiffs' negligence action against defendants-board of education and school personnel, arising from burn injuries to students when a bottle of alcohol caught fire and exploded during a science experiment, trial court did not err in denying defendants' motion to dismiss, in which defendants argued entitlement to governmental immunity, since there

was a fact issue whether the absence from the classroom of safety equipment, particularly a fire extinguisher, could constitute a physical defect that would be an exception to immunity under R.C. 2744.02(B)(4).

Negligence. [Arocho v. Ohio Univ. | 2022-Ohio-4835 | Court of Claims | 12/28/2022](#) In plaintiff's negligence, negligent retention and related claims action against university where there is evidence that university police officer engaged in a sexual relationship with plaintiff when she was a minor, judgment is issued to university since the university's actions when it learned of child protective services agency's investigation, precipitated by an unspecified complaint, were reasonable under the circumstances; firing police officer without an investigation or hearing would have been unreasonable and probably a violation of officer's union contract, officer was placed on leave and barred from the campus within a few days of the university receiving notice of the claim, and university took appropriate action resulting from the investigation.

Slip and fall/Building code. [Lambert v. Up Cincinnati Race, L.L.C. | 2022-Ohio-4699 | 1st Appellate District | 12/28/2022](#) In plaintiff's slip and fall negligence action against defendant-bar for injuries sustained when plaintiff tripped and fell at entrance threshold, summary judgment in favor of defendant was not error where plaintiff had previously used doorway, the riser at the entrance was open and obvious, so defendant had no duty to warn plaintiff, and plaintiff's activities which obscured the danger posed by the riser were of his own making and were not attendant circumstances to mitigate the nature of the doorway; as well, the issue of whether defendant violated building codes was irrelevant to the determination of negligence.

Legal malpractice/Privileged information. [Retail Serv. Sys., Inc v. Organ | 2022-Ohio-4696 | 10th Appellate District | 12/27/2022](#) In plaintiff-retail service company's legal malpractice and related claims action against defendant-law firm for disclosing, in defendant's related quantum meruit complaint against plaintiff for attorney fees for its earlier work in a trade secret case, the settlement figure obtained by new law firm retained by plaintiff, trial court erred in granting defendant's

motion for summary judgment where a question remains as to whether the parties still had an attorney-client relationship at the time the settlement figure was disclosed, and because the settlement figure statement was a truthful disclosure of privileged information for the purpose of collecting an alleged debt, it was not protected by absolute litigation privilege.

Defamation. [Tharp v. Hillcrest Baptist Church of Columbus | 2022-Ohio-4695 | 10th Appellate District | 12/27/2022](#) In plaintiff-former congregant's action against defendants-church and pastor alleging, inter alia, defamation after he was removed from church membership based on his admitted sexual abuse of minors, trial court did not err in granting defendants' motion for summary judgment where pastor had a duty to make the disclosure to protect members of congregation, the alleged defamatory statements were protected by qualified privilege, and the statements were based on a factual foundation and therefore pastor did not act with malice.

Negligence/Immunity/Sewer maintenance/Notification. [James v. New Middletown | 2022-Ohio-4754 | 7th Appellate District | 12/27/2022](#) In property owner's negligence action against village for failure to maintain storm sewage draining system, which led to property damage, trial court erred in denying village's motion for summary judgment where, even though village claimed governmental immunity, maintenance of the sewer system is a proprietary function under R.C. 2744.01, but property owner did not provide evidence that the sewer pipes at issue were owned or maintained by the village prior to flooding, and even if village was responsible for pipes, the owner did not show that the village was on notice of the blockage in pipes.

Medical claim/Limitations/Tolling. [Qualls v. Peregrine Health Servs. | 2022-Ohio-4644 | 10th Appellate District | 12/22/2022](#) In plaintiff-administrator's medical claims against nursing home defendants, alleging sexual assault of decedent during the time she was a resident at the home, trial court erred in granting defendants' motion for summary judgment on reasoning that the complaint was filed outside the medical claim limitations period in R.C. 2305.13(A) since the limitations period was potentially tolled under R.C. 2305.16 because

evidence demonstrates a genuine issue of material fact regarding whether decedent was of unsound mind at the time the claims accrued.

Negligence/Arbitration/Waiver . [Steese v. Canton Regency | 2022-Ohio-4711 | 5th Appellate District | 12/22/2022](#) In resident's negligence action against care facility for injuries sustained after he fell out window at facility, trial court erred in granting facility's motion to stay and to enforce arbitration clause since facility knew of its existing right to arbitrate, its delay prior to filing motion for stay resulted in waiver of that right, it actively participated in litigation, including filing a motion to reinstate the case to the active docket following a failed mediation attempt, and resident was prejudiced by facility's inconsistent acts.

Real property/Physical damage/Economic-loss rule. [Breazeale v. Infrastructure & Dev. Eng., Inc. | 2022-Ohio-4601 | 1st Appellate District | 12/21/2022](#) In homeowners' negligence action against infrastructure and engineering company for faulty investigation of property for builder, which homeowners claim led to loss of home due to a landslide, trial court erred in granting company's motion for summary judgment on reasoning that the economic loss rule barred recovery since homeowners claimed physical damages to real property and not just economic damages, and therefore the economic-loss rule does not apply; as well, the integrated-system rule does not apply since it applies to products liability, and the property in the instant case is not a consumer-purchased product.

Slip and fall/Hockey rink. [George v. Miami Univ. | 2022-Ohio-4837 | Court of Claims | 12/21/2022](#) In plaintiff's slip and fall negligence action against defendant-university for injuries sustained when she fell and was hit by ice resurfacing machine at hockey rink, magistrate recommends judgment in favor of plaintiff where the danger created by an open door along the boards, directly leading to the ice rink surface, was not open and obvious, and defendant had knowledge that the rink door was left open while the machine was operated and breached its duty by failing to ensure that the door remained closed; also, plaintiff's contributory negligence in falling was a concurrent proximate cause of her injuries, reflected in the damages award recommended by magistrate by including an allocation of fault.

Torts (Continued)

Negligence/Chemical exposure.

Schultz v. Ohio Dept. of Rehab. & Corr. | 2022-Ohio-4591 | 10th Appellate District | 12/20/2022 In contractor's employees' negligence action against state department of corrections for injuries sustained from exposure to toxic chemicals at department's facility, judgment in favor of department was not error since employees failed to establish a breach of ordinary care because facility's ventilation system was built according to plans and was properly installed, testimony of employees' expert as to defects in the system was found unpersuasive, and employees failed to show the proximate cause of injuries to warrant application of the doctrine of *res ipsa loquitur*, R.C. 4101.11.

Flooding/Sewer system/Governmental immunity.

State ex rel. Slacas v. KCI Technologies, Inc. | 2022-Ohio-4573 | 11th Appellate District | 12/19/2022 In class action by plaintiffs-property owners against county defendants, asserting claims for negligence, trespass, nuisance and government taking related to flooding, allegedly the result of defendants' failure to maintain storm drain sewer system, trial court's denial of defendants' R.C. Ch. 2744 governmental immunity-based motion for summary judgment was error, in part, where the first two causes of flooding would require redesign and reconstruction of the sewer system for which defendants enjoy immunity, but denial of the summary judgment motion was not error regarding the third cause of flooding, which states a maintenance issue for which defendants do not have immunity.

Criminal wrongdoing/Damages/Non-economic/Cap/Constitutionality.

Brandt v. Pompa | 2022-Ohio-4525 | Supreme Court of Ohio | 12/16/2022 In plaintiff's action for intentional criminal wrongdoing and related claims against defendant, who drugged and molested plaintiff when she was a minor, the court of appeals erred in affirming reduction of the non-economic damages awarded by the jury to plaintiff since the statutory cap on awards of compensatory damages for non-economic losses under R.C. 2315.18 is unconstitutional as applied to plaintiff and similarly situated plaintiffs who were child victims of intentional criminal conduct, have suffered permanent and severe psychological injuries, and bring civil actions to recover damages from the persons convicted of those intentional

criminal acts; subjecting this group to the compensatory-damages caps for non-economic loss has little to no connection to improving the tort system in Ohio, is arbitrary and unreasonable, and is in violation of the due-course-of-law guarantee of Ohio Const. Art. I, Sec. 16, and the jury verdict on damages is reinstated.

Premises liability/Trespass. Augustyn v. Degenhard | 2022-Ohio-4620 | 7th Appellate District | 12/16/2022 In plaintiff's premises liability action against defendant-homeowner for injuries sustained when plaintiff fell down stairs at defendant's home, summary judgment in favor of defendant was not error since plaintiff's companion was invited to the premises for a limited purpose that did not include using stairs, there was no evidence defendant should have anticipated that plaintiff would explore the house separate from plaintiff's invited companion, and plaintiff was a trespasser on the premises because he exceeded the scope of the invitation as not being an invitee, and his companion's invitation was limited.

Abuse/Disability/Damages. McCombs v. Ohio Dept. of Dev. Disabilities | 2022-Ohio-4834 | Court of Claims | 12/16/2022 In mother's abuse and neglect action against department of developmental disabilities, seeking damages for abuse that her son suffered while in disability center, where trial court awarded damages that were appealed by mother, resulting in remand to the instant court, non-economic compensatory damages are redetermined to consist of a total award for individual acts of abuse and an additional award for the cumulative effect of abuses; although damages are speculative due to son's inability to communicate, regular abusive behavior by center employees caused pain and suffering and was counterproductive in terms of meeting therapeutic goals.

Negligence/Landlord/Foreseeability. Thomas v. LSREF3 Bravo (Ohio), L.L.C. | 2022-Ohio-4476 | 10th Appellate District | 12/13/2022 In tenant's negligence action against landlord for injuries sustained when tenant was assaulted by a third-party on apartment complex premises, summary judgment in favor of landlord was not error where, although the landlord knew of illegal activity of trespassers in vicinity, there was no history of crimes of violence associated with the premises, and

therefore landlord did not violate duties imposed under R.C. 5321.04(A) because landlord neither knew nor should have known of the circumstances that caused tenant's injuries.

Medical malpractice/Limitations.

Sullivan v. Mercy Health | 2022-Ohio-4445 | 12th Appellate District | 12/12/2022 In patient's medical malpractice action against hospital for complications resulting from administration of drug to which plaintiff was allergic, summary judgment in favor of hospital was error where patient asserted that she told emergency intake personnel and other professionals involved in her care that she was allergic to the drug and also that her hospital medical records contained that information; plaintiff's action was timely filed since the statute of limitations did not begin to run until the physician-patient relationship for her condition terminated, and patient was treated for the allergic complications until she was discharged from the hospital, R.C. 2305.113.

Medical malpractice/Statute of repose/Tolling.

In re Cases Held for the Decision in Elliot v. Durrani | 2022-Ohio-4378 | Supreme Court of Ohio | 12/09/2022 The judgments of the court of appeals in 10 cases are affirmed on the authority of *Elliot v. Durrani*, ___ Ohio St.3d ___, 2022-Ohio-4190 in which defendant in medical malpractice action filed this country before the R.C. 2305.113(C) statute of repose had expired, the plaintiff filed his complaint outside the statute of repose, and the court of appeals did not err in ruling that R.C. 2305.15(A) tolls the medical-claim statute of repose, so the statute of repose did not bar the filing of plaintiff's claim.

Replevin/Conversion.

Shury v. Cusato | 2022-Ohio-4401 | 8th Appellate District | 12/08/2022 In plaintiff's replevin and conversion action against defendant-auto restoration business for failure to return vehicle due to disputed repair charges and storage fees, trial court erred in denying an award of attorney fees to defendant under the Consumer Sales Practices Act where defendant provided evidence that plaintiff's claim was groundless and made in bad faith, and plaintiff's ability to survive a directed verdict on issues not presented for adjudication was not evidence that plaintiff's claims were not groundless or made in bad faith, R.C. 1345.09(F).

Employer intentional tort/Summary judgment/Denial. Bliss v. Johns Manville | 2022-Ohio-4366 | Supreme Court of Ohio | 12/08/2022 In employee's action against employer alleging that employer intentionally caused employee's injury by having a defective access window on a machine where the trial court denied employer's motion to strike employee's expert affidavit and denied employer's motion for summary judgment, resulting in a jury verdict for employee, the court of appeals did not err in reversing the trial court and in concluding that the access window did not constitute an equipment safety guard, R.C. 2745.01(C), and that there was no evidence of an intent to injure employee, R.C. 2745.01(A), since the reviewing court determined that employee's affidavit comprised legal conclusions and was impermissible, so employee presented no evidence of an equipment safety guard; in reviewing the trial court's denial of employer's motion for summary judgment, resulting in a jury verdict for employee, the court of appeals properly construed the evidence most strongly in favor of the employee, the nonmoving party, when applying the relevant law.

Abuse of process/Probable cause/Dismissal. Armatas v. Aultman Hosp. | 2022-Ohio-4376 | 5th Appellate District | 12/07/2022 In state court multi-claim action by plaintiff-son and executor of his father's estate against various medical defendants, where plaintiff had previously filed the claims in federal court, which ruled on many of the issues, prompting defendants to file counterclaims, including abuse of process, the trial court erred in dismissing the abuse of process counterclaim on reasoning that defendants could not assert that plaintiff had probable cause to file action, an element of abuse of process, along with the element of ulterior motive; an abuse of process claim is not dependent on the outcome of underlying proceedings, even if plaintiff's claims were ultimately barred by the doctrine of res judicata, plaintiff filed the action with probable cause, and the issue of plaintiff's ulterior motive was still to be determined.

Wrongful death/Criminal conviction. Mounts v. Guernsey Cty. Children Servs. | 2022-Ohio-4372 | 5th Appellate District | 12/05/2022 In plaintiff-administrator's wrongful death action against defendant for abuse of a child which resulted in child's death,

the trial court did not err in denying defendant's request for access to grand jury transcripts from underlying criminal action where defendant failed to show a particularized need for the requested documents, he is precluded pursuant to R.C. 2307.60(A)(2) from denying in the civil proceeding any essential facts on which his criminal conviction was based, and he did not show extraordinary circumstances that would justify relitigating any issues in question.

Medical malpractice/Limitations/Savings statute. Underwood v. Mercy Health Partners N., L.L.C. | 2022-Ohio-4313 | 6th Appellate District | 12/02/2022 In plaintiff-surviving spouse's action against defendant-physician for medical malpractice and wrongful death where plaintiff filed original complaint within the limitations periods, dismissed the complaint, and after the state statutes of limitations had expired, using the R.C. 2305.19(A) savings statute, re-filed the complaint in federal court, which ruled against her, prompting her to re-file in state court, the trial court did not err in granting summary judgment to defendant on reasoning that the statutes of limitations barred the action since the savings statute can only be used once to re-file a case, and the state statutes of limitations had expired before plaintiff filed the federal claim so 28 U.S.C. 1367(d), which tolls the statute of limitations for state law claims while a case is in federal court, did not apply.

Negligent physician credentialing. Walling v. Brenya | 2022-Ohio-4265 | Supreme Court of Ohio | 12/01/2022 In estate administrator's negligent credentialing action against hospital following settlement of underlying medical malpractice claim that alleged negligent treatment of decedent, summary judgment in favor of hospital is affirmed where the record is devoid of any stipulation or other agreement conceding liability or malpractice in connection with the care and treatment of the decedent, and negligent-credentialing claims are not viable in the absence of medical negligence by the treating doctor; negligent credentialing is a separate and independent claim from medical negligence.

Negligent supervision/Limitations/Discovery rule. New Wembley L.L.C. v. Klar | 2022-Ohio-4250 | 11th Appellate District | 11/28/2022 In plaintiff-tennis club's action against

defendant-construction company owner, alleging negligent hiring, retention and supervision of co-owner/employee, who was managing the allegedly deficient construction project at plaintiff's facility, trial court's order granting defendant's motion for judgment on the pleadings on reasoning that plaintiff's action was barred by the R.C. 2305.10(A) statute of limitations was error since questions remained as to when the plaintiff knew or should have known it had been injured by defendant's conduct and whether the discovery rule should apply to delay the start of the statute of limitations period.

Negligence/Respondeat superior/Traveling employee. Mitchell v. Worley | 2022-Ohio-4222 | 9th Appellate District | 11/28/2022 In plaintiff's negligence and respondeat superior action against defendants-utility company and employee for injuries sustained when plaintiff was struck by employee's vehicle while employee was driving to job site, the trial court erred in granting summary judgment to defendants where, although defendant-company's employee was a fixed situs employee subject to the coming and going rule, there was no analysis of whether the traveling employee exception, which arose out of workers' compensation law, was applicable in the context of respondeat superior.

Medical malpractice/Extinguished claim/Vicarious liability. Clawson v. Hts. Chiropractic Physicians, L.L.C. | 2022-Ohio-4154 | Supreme Court of Ohio | 11/23/2022 In medical malpractice action in which plaintiff failed to timely serve defendant-doctor and the statute of limitations on her claim against the defendant had expired, extinguishing plaintiff's right of action against the defendant by operation of law, the court of appeals erred in ruling that the defendant's employer could be held vicariously liable for defendant's alleged malpractice; Wuerth precludes a vicarious-liability claim for medical malpractice against a physician's employer when a direct claim against the physician is time-barred.

Invasion of privacy/Nuisance/Real property. Morlatt v. Johnson | 2022-Ohio-4155 | 4th Appellate District | 11/17/2022 In property owners' invasion of privacy and absolute nuisance action against neighbors for interfering with electric crew's work and construction of driveway, judgment for owners was

Torts (Continued)

error since owners had no reasonable expectation of privacy in the area where neighbors' intrusions occurred because activities were on or within view of public right-of-way located on neighbors' property, and owners did not show that they suffered requisite injury for existence of nuisance.

General negligence/Medical negligence/Limitations. O'Dell v. Vrable III, Inc. | 2022-Ohio-4156 | 4th Appellate District | 11/15/2022 In plaintiff-estate administrator's negligence action against nursing home defendants for injuries to decedent when she sustained an unwitnessed fall while in defendants' care, trial court erred in ruling that general negligence claims were medical negligence claims that were not timely filed since decedent's fall did not arise out of a medical diagnosis or treatment pursuant to R.C. 2305.113(E) (3), and therefore the claims should not have been dismissed as being filed outside the medical negligence statute of limitations; however, plaintiff's claims that were medical, rather than general negligence, should have been dismissed.

Insurer's negligence/Limitations. Nazareth Deli, L.L.C. v. John W. Dawson Ins., Inc. | 2022-Ohio-3994 | 10th Appellate District | 11/08/2022 In insured's professional negligence action against insurer for failure to explain the lack of uninsured motorist (UIM) coverage to insured or to offer insured options regarding how to maintain the UIM coverage on the commercial auto policy after it was changed, which led to denial of insured's claim following a vehicle accident, the trial court erred in finding that insured's claim was barred by the statute of limitations since the negligence claim accrued when the negligent act was committed, so the claim accrued at the time the insurer failed to take certain actions in response to changes in the policy and was not barred by the limitations period under R.C. 2305.09(D).

Traffic and OVI

Impaired driving/Speedy trial. State v. Mitchell | 2022-Ohio-4646 | 5th Appellate District | 12/22/2022 In a conviction of OVI, R.C. 4511.19(A)(1)(a), the trial court did not err by not dismissing action for a speedy trial violation since, although at the time of arrest, officer had reason to suspect defendant

was under the influence of marijuana based on officer's observations, defendant's admissions and her field test failures, until the urine test result was available, the state did not have the facts necessary to support a per-se OVI charge, and the urine test results constituted new information unavailable to the state at the time of the original charge, the new count triggered a new speedy-trial clock when filed and, when appellant filed her motion to dismiss, the 90-day time limit had not yet expired.

Workers' Compensation

Continuing jurisdiction/Mistake of fact/Loss of use/Death. State ex rel. Waste Mgt. of Ohio, Inc. v. Indus. Comm. | 2022-Ohio-4581 | Supreme Court of Ohio | 12/22/2022 In relator-waste management company's petition for a writ of mandamus seeking to compel industrial commission to vacate its order exercising continuing jurisdiction and awarding loss-of-use benefits to survivors of employee who was fatally injured in the course of employment, denial of writ was not error where, after initial denial of benefits, commission invoked continuing jurisdiction based on a clear mistake of fact because hearing officer stated that employee died in the accident, but employee survived for three minutes, and even though there was no clear mistake of law, the mistake of fact allowed commission to re-evaluate evidence regarding the claim; since employee suffered permanent loss of use of his arms and legs prior to his death, commission's award of compensation to survivors under R.C. 4123.57(B) is affirmed.

Temporary total disability/Klein decision/Prospective application. State ex rel. Walmart, Inc. v. Hixson | 2022-Ohio-4187 | Supreme Court of Ohio | 11/30/2022 In workplace injury case in which the commission awarded employee temporary total disability (TTD) compensation that continued after her retirement on reasoning that she was temporarily and totally disabled when she left her employment, and the Supreme Court of Ohio subsequently ruled in Klein that when a claimant voluntarily leaves a former position of employment for reasons unrelated to a workplace injury, the claimant is no longer eligible for TTD compensation, even if the claimant remains disabled at the time of separation from employment, the court of appeals' issuance of a writ of mandamus that reversed employee's award of compensation in this case,

relying on the Klein decision, is reversed since Klein applies prospectively only, on the basis of the DiCenzo factors.

Temporary total disability/Abandonment/Employment/Workforce. State ex rel. Ohio State Univ. v. Pratt | 2022-Ohio-4111 | Supreme Court of Ohio | 11/18/2022 In employee's claim for temporary total disability compensation arising from surgery for an injury she sustained after she had submitted a resignation letter to her employer where industrial commission awarded her compensation, the court of appeals erred in vacating the commission's order on reasoning that employee had voluntarily abandoned her employment, based on the court's interpretation of Klein; employee's voluntary resignation from her employment position did not constitute voluntary abandonment of the workforce where employee had accepted a job offer from another employer and, but for the work injury, employee would have been gainfully employed by her new employer during the period for which she sought temporary total disability compensation.









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