

# CNO REVIEW

August 2015



## OHIO READIES FOR SAME-SEX MARRIAGE RULING'S RIPPLES

The impact of the U.S. Supreme Court's *Obergefell* ruling on the judicial system ranges from marriage license applications to domestic relations cases to adoptions. See how Ohio courts are handling the myriad changes needed to comply with the ruling. (Story on p. 6)

## About Court News Ohio

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Content is produced and edited by the Public Information staff with video production assistance from the staff of Ohio Government Telecommunications. The views expressed in CNO content do not necessarily reflect those of the justices of the Supreme Court of Ohio, and the justices do not exercise direct editorial control over the content.

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# Cases

Visit [courtnesohio.gov](http://courtnesohio.gov) for the most current decisions from the Ohio Supreme Court, Courts of Appeals, and Court of Claims.

## Supreme Court of Ohio

### Grain Storage Bins Are Not Taxable as Real Property

The Supreme Court ruled on July 15 that grain storage bins are personal property pursuant to state law and may not be taxed as real property. The court's unanimous decision affirmed a ruling of the Board of Tax Appeals, which determined that the actual value of property owned by Metamora Elevator Company in Fulton County was \$738,240 instead of the auditor's assessed value of more than \$1.8 million, including the storage bins. The court observed that historically the distinction between fixtures that were real property and those that were personal property was elusive. But, in 1992, the General Assembly clarified that storage bins are personal property.

Metamora Elevator Co.  
v. Fulton Cty. Bd. of Revision  
Slip Opinion No. 2015-Ohio-2807

### Lakewood, North Canton Attorneys Suspended

On July 7, the Supreme Court suspended Lakewood attorney **Jalal T. Sleibi** from practicing law for two years, with six months stayed, because of his sexual relationships with four clients. In a 4-3 decision, the court conditioned the six-month stay on Sleibi's participation in training about ethical boundaries and on compliance with his mental-health treatment plan. Separately, on July 1, the Supreme Court suspended **Deborah M. Marinelli** of North Canton for two years, with one year stayed, for abandoning personal bankruptcy matters of 20 clients in late 2012 and in 2013.

Cleveland Metro. Bar Assn. v. Sleibi  
Slip Opinion No. 2015-Ohio-2724  
Stark Cty. Bar Assn. v. Marinelli  
Slip Opinion No. 2015-Ohio-2570

## Courts of Appeals

### Twelfth District: Bad Punctuation Puts Brakes on Parking Ordinance

West Jefferson meant to make it illegal for all types of motor vehicles, including campers, from parking on the street overnight, but a missing comma means the village couldn't tow away a woman's pickup truck, the Twelfth District Court of Appeals ruled. On June 22, the court reversed the decision of the Madison County Municipal Court, which found Andrea Cammelleri guilty of an ordinance forbidding parking on a West Jefferson street for 24 hours straight. In municipal court in March 2014, Cammelleri argued her truck is not a "motor vehicle camper" and the law does not apply to her. The court sided with the village, which argued that by reading the ordinance in context, it's clear the ordinance was just missing a comma between motor vehicle and camper. She was found guilty and ordered to pay court costs. She appealed to the Twelfth District. Writing for the appellate court, Judge **Robert A. Hendrickson** wrote the court must "read words and phrases in context and construe them in accordance with rules of grammar and common usage" when interpreting statutes. "If the village desires a different reading, it should amend the ordinance and insert a comma between the phrase 'motor vehicle' and the word 'camper,'" he wrote.

W. Jefferson v. Cammelleri  
2015-Ohio-2463

### First District: Trial Can Determine if Radio Maker, Pot Growers, Caused Firefighter's Death

The parents of a Hamilton County firefighter can proceed with their wrongful death lawsuit against the maker of an emergency radio and

homeowners growing marijuana in their basement where an accident occurred, the First District Court of Appeals ruled. On June 26, the court reversed the ruling of a trial court that dismissed the lawsuit of Donald and Arlene Zang, the parents of Colerain Township Fire Department Captain Robin Broxterman, who died battling a house fire in 2008. Broxterman, a 17-year-veteran, and Brian Schira, a five-month rookie on the force, died from smoke inhalation after the first floor collapsed and they fell into the basement. The Zangs filed a wrongful death lawsuit in May 2012 against homeowners Matthew and Sharyn Cones, who were growing marijuana in a secret room in their basement where they also grew orchids. The family also sued Motorola Inc., makers of the emergency radios Colerain Township uses, and Morning Pride, LLC, makers of the fire protective gear the township firefighters wear. In April 2014, the trial court granted summary judgment to all defendants, ruling the Zangs failed to prove the firefighting products were defective and that the Coneses were immune from a civil lawsuit by firefighters. Writing for the First District, Judge **Sylvia S. Hendon** wrote the trial court wrongfully agreed with the Coneses use of the "Firefighter's Rule" that Ohio courts established to find owners of private property are not liable to firefighters injured while on their premises performing their official duties. Citing the Ohio Supreme Court's 1996 *Hack v. Gillespie*, Judge Hendon found the immunity does not apply if the injury is caused by the property owner's "willful or wanton misconduct or affirmative act of negligence." She found the Zangs have a right to argue in court that the Coneses conduct could be considered willful or wanton.

Zang v. Cones  
2015-Ohio-2530

# Happening Now

News and Notes from Courthouses Across the Buckeye State

## Ohio Supreme Court Expands Electronic Filing e-Filing Portal Now Open to Self-Represented Litigants

Attorneys have been able to file electronically through the Ohio Supreme Court's e-Filing Portal since Jan. 5, 2015, and about 2,900 documents, or 72 percent of all attorney filings, have been sent through the portal since then. On July 22, new rules approved by the Supreme Court justices went into effect to allow for non-attorney electronic filing.

Chief Justice **Maureen O'Connor** said allowing non-attorneys to file electronically gives them parity with lawyers, "Everybody who comes before the court comes on equal footing and has to be treated alike, and this allows them to be treated equally and to have equal access to our services," Chief Justice O'Connor said.

Chief Justice O'Connor added electronic filing is also a convenient, cost-efficient way to file.

Supreme Court Clerk of the Court **Sandra Grosko** said there is a slight difference for establishing e-filing accounts, "Attorneys use their attorney registration number to establish their account, and non-attorneys use an email address."

Grosko pointed out several guidelines that non-attorneys should know if they're filing electronically.

"They can only prepare documents on their own behalf, the filing requirements in the Rules of Practice apply to all filings, whether by the e-Filing Portal or otherwise, and the 5 o'clock deadline is enforced for e-filings," she said.

Specifically, users of e-filing should remember:

- Documents received after 5 p.m. through the e-Filing Portal will not be considered for filing until the next business day.
- Items received through the portal will be reviewed in the order in which they were received by the Clerk's Office. Due to high volume, review of documents for compliance with the Rules of Practice can take up to one business day.
- Use of the e-Filing Portal does not alter the filer's obligation to serve the other parties to the case.

The Supreme Court website offers video tutorials, a user guide, and other helpful information and links.



ATTORNEYS



SELF-REPRESENTED LITIGANTS

## Ohioans Take on National Justice System Leadership Roles

Three Ohio Supreme Court employees will serve in leadership positions with national organizations in 2015 and 2016.



**Stephanie Hess** is the new president of the National Association for Court Management (NACM), the largest organization of court management professionals in the world with more than 1,700 members committed to improving the administration of justice. Hess has been with the Supreme Court since 2006 and was named director of Court Services in 2013.



**Rick Dove** is the new president of the National Council of Lawyer Disciplinary Boards (NCLDB), an organization that provides a national forum for the exchange of information about the administration, conduct, and improvement of lawyer disciplinary proceedings. Dove served on the Supreme Court staff for more than 22 years before becoming director of the Board of Professional Conduct in 2011. He has held several other officer positions with the NCLDB, including as an at-large director, secretary, and president-elect.



**Margaret Allen** will begin her term in the fall as the next president of the National Association of State Judicial Educators (NASJE), a member organization of judicial educators and others interested in judicial branch education. Allen is also co-chair of the NASJE Membership and Mentor Committee and has served on the education committee. She is an education program manager for the Ohio Judicial College, and has been with the Judicial College for 14 years.

## Courts and Mental Health Providers Can Report Handgun Background Check Information Electronically

An important piece of information for background checks associated with handgun purchases and concealed-carry permits can now be submitted by Ohio courts and mental health care providers through the Ohio Courts Network (OCN).

On June 3, the OCN began allowing Mental Illness Adjudication Reporting (MIAR) from county probate courts and state hospitals to the Bureau of Criminal Investigation. As part of Ohio's 2004 law allowing concealed carry handgun permits, probate courts and mental health providers were required to notify BCI with all adjudications of mental illness. The Ohio Supreme Court and the Ohio Attorney General's Office worked together on the technology to link the BCI to the OCN for these reports.

Until the network enhancement, each involuntary commitment was recorded by courts and providers on paper forms and mailed to the BCI for entry into its system. The BCI will continue to process any forms received from probate courts, state hospitals, and mental health facilities, but those courts and state hospitals that prefer to connect through the OCN can report electronically.

In the case of MIAR, the OCN is not collecting the information. Instead BCI is now able to receive it electronically by leveraging the benefits of the OCN authentication and security, said **Tony Kenzie**, Ohio Supreme Court Information Technology Program Manager. Electronic reporting will improve the timeliness and accuracy of the reports, he added.

Along with filing reports, each participating court can use the OCN to view all commitment reports submitted by the court, regardless of whether they were submitted electronically or on paper.

Currently, 83 of 88 probate courts are participating in the OCN. Not all probate courts report MIAR as some counties without mental health facilities transfer their mental illness cases to other counties for evaluation. The receiving counties report the adjudications to the BCI. As of the end of July, 12 probate courts signed up to use this capability, and it is available to the six state mental hospitals.

In 2014, 3,939 involuntary commitments were reported to the BCI, bringing the total reports in its system to 46,753.

## Ohio Leading Training for Those Tasked with Cutting Conflict of Caring for the Elderly

Ohio families often find themselves internally battling over planning and providing for the safety and well-being of their elders. Heated disputes about vulnerable elderly family members and other caretakers have found their way into courtrooms with judges refereeing disputes.

Dispute-resolution professionals see a better way to help families and reduce court action through the guidance of "eldercaring coordinators." Eldercaring coordination is a dispute resolution process during which an eldercaring coordinator assists elders, legally authorized decision-makers, and others who participate by court order or invitation to resolve high-conflict disputes in a manner that respects the elder's need for autonomy and safety.

Ohio is at the forefront of developing a model program for these new positions, which seek to build better collaboration between the elderly, their families, and the existing network of doctors, care providers, attorneys, and others helping them manage their affairs.

In July, the Ohio Supreme Court's Dispute Resolution Section hosted the Association for Conflict Resolution (ACR)'s Inaugural Eldercaring Coordination Training. The ACR is a national professional association for mediators, arbitrators, educators, and other conflict-resolution practitioners, and was supportive of the development of parenting-coordination, a role that is now used in courts across the nation as a viable dispute resolution option for high-conflict cases between divorcing parents. The Guidelines for Parenting Coordination were developed through the Association for Family and Conciliation Courts (AFCC) Task Force in 2005.

Similar to parenting coordination, the ACR envisions the use of

**Story continues on p. 9**



## FEATURED VIDEO

Teens arrested for felonies are getting a second chance with the help of a program designed to change personal attitudes and correct the behaviors that put them behind bars.

The Allen County Juvenile Court's Treatment Program offers an alternative to a juvenile detention facility for those who are selected to participate. The treatment program is comprised of prevention and treatment specialists who include teachers, a probation officer, a counselor, and team leaders. They provide therapeutic and academic help through four phases of intervention.

Watch the video at [courtnewsoriohio.gov](http://courtnewsoriohio.gov).



# OHIO READIES FOR SAME-SEX MARRIAGE RULING'S RIPPLES

The time to reflect on the historical significance of the moment was brief. Within hours of the U.S. Supreme Court's 5-4 ruling declaring the rights of same-sex couples to marry in all states, Ohio courts were issuing licenses.

"Because the high court struck down all such language in state laws, it is the general consensus of this group that courts should immediately begin to issue marriage licenses to same sex couples who otherwise qualify," read a memo from the Ohio Association of Probate Judges to the state's probate judges on June 26, the day of the *Obergefell v. Hodges* decision.

The association noted that Justice **Anthony Kennedy's** majority opinion held state laws challenged by the petitioners to be invalid and he placed no time delay in the decision.

"Individuals need not await legislative action before asserting a fundamental right," Justice Kennedy wrote. Ohio courts were prepared to grant civil marriages after the decision.

One obstacle presented to probate courts on day one was marriage certificates that had places to designate a husband and wife, but not two same-sex spouses. The Ohio Supreme Court moved swiftly to remove the certificate language as a barrier to issuing a license.

The afternoon of the *Obergefell* decision, Ohio Supreme Court Chief Justice **Maureen O'Connor** issued an immediate administrative action to revise the Ohio Rules of Civil Procedure. Invoking her power by the Ohio Constitution in Article IV, Section 5, which gives her oversight of the operations of all state courts, Chief Justice O'Connor declared "that all references to husband, wife, father, mother, parent, spouse and other terms that express familial relationships contained in the Rules of Superintendence for the Courts of Ohio and related forms and the Uniform Domestic Relations Forms of the Ohio Rules of Civil Procedure be construed as gender neutral where appropriate to comply with the decision of the United States Supreme Court..."

**Jim Obergefell** of Cincinnati was the lead plaintiff in the landmark case. Obergefell and his spouse were married in another state and he sued Ohio's Department of Health Director **Richard Hodges** in July 2013 for refusing to list him as the surviving

spouse on his husband's death certificate. Ohio voters banned gay marriage in 2004, so the state's health department, which oversees vital statistics that include birth and death records, refused to acknowledge his marriage.

Since the case was directed at actions taken beyond issuing a marriage license, Ohio courts and government agencies are already kicking into high gear, and adjusting to the decision. State agencies already sent hospitals and funeral directors new addendums to birth and death certificates with gender-neutral terms, such as "parent" or "spouse" to address situations such as Obergefell's. State tax forms are being adjusted as well.

## Court Proceeds to Change Rules and Forms

At the Ohio Supreme Court, **John VanNorman**, senior policy and research counsel, compiled a list of more than 20 rules and forms that

the court should consider changing to provide the gender neutrality needed to be consistent with the ruling. This includes one rule of civil procedure, Civil Rule 19.1(A)(2) for compulsory joinder, which requires the Ohio General Assembly's approval. Others include four affidavits and 14 forms that fall under the Uniform Domestic Relations section of the civil rules, as well as one definition in the Rules for the Government of the Bar regarding consumer bankruptcy specialization, and one comment on prohibited representations of married couples in the Rules of Professional Conduct.

In a memo to the court, VanNorman noted that the Ohio Constitution has specific deadlines for changes to the rules of procedure and the court must present proposed changes to the legislature by Jan. 15 of the year they seek a change. Then the court must open the proposed rule changes for public comment, file any changes based on comment as amendments for lawmakers to consider by May 1, and the General Assembly has until July 1 to adopt changes.

Other changes to the rules follow court-imposed procedures that typically send them to a commission or advisory committee established by the court. However, the court has the right to bypass all advisory processes and public-comment periods and adopt rule changes.

In the meantime, other changes to state law may be needed to help guide the court, said Delaware County Juvenile and Probate Court Judge **David A. Hejmanowski**. Judge Hejmanowski has been active in the probate judges association's effort to comply with the ruling. The association prepared for change before the high court's decision. Judge Hejmanowski said at a recent Ohio State Bar Association presentation that the probate judges already submitted several pages of recommendations to the General Assembly's Legislative Services Commission to consider changes to existing state law.

He said the vast majority of Ohio law is gender neutral. Much of that started in the early 1990s after Ohio courts and state lawmakers started following the

recommendations of the Ohio Joint Task Force on Gender Fairness led by former Justice **Alice Robie Resnick** and **Gerald L. Draper**, the 1990-1991 Ohio State Bar Association president.

But Judge Hejmanowski pointed out areas of law where policy decisions need to be made. For instance, he said state law now outlines who is authorized by law to solemnize a marriage between a man and woman. Since the law is silent about same sexes, does the law mean others who are not authorized by the current state law have the right, or should the law be interpreted to mean only those who have the right to officiate opposite-sex marriages have the right to do same-sex marriages? He said he has his own thoughts on how to rule on the question, but he said he believes it's a policy decision to be answered by lawmakers, not judges.

Franklin County Domestic Relations Judge **Dana Preisse**, who joined Judge Hejmanowski at the bar association presentation, said the domestic relations courts have some serious challenges that need to be addressed as they deal with issues of divorce and the legal status of parents. One question she awaits to be answered is the date Ohio courts recognize as the legal date of the beginning of a same-sex marriage.

Judge Preisse questioned whether it will be the actual date the couple married, or June 26, 2015, the day the decision required the state to recognize the marriage. She said that has serious implications on the calculation of pensions and assets that might be divided in a divorce.

### Novel Issues Already Here

Ohio courts have already begun to address some of the controversy arising from the U.S. Supreme Court ruling.

Shortly after the decision, Toledo Municipal Court Judge **C. Allen McConnell** refused to officiate a same-sex wedding in Toledo while on duty, citing religious objections. Judge McConnell has requested the Supreme Court's Board of Professional Conduct to issue an advisory opinion. He wrote that Ohio Revised Code

1901.14 authorizes a municipal judge to perform marriages, but doesn't indicate if that authority is mandatory and requires judges to perform marriages.

Several other judges in Ohio counties also have chosen not to perform marriages until the board issues its advisory opinion answering Judge McConnell's question.

Another Ohio court is preparing to hear its first same-sex divorce. In November 2014, Athens County Judge **George McCarthy** granted a divorce to Brenda Mohny, of Athens, and Erin O'Leary, of Rockbridge, who were married in another state. Shortly after, Judge McCarthy learned he wasn't authorized to make such a ruling. He reversed his own decision in December and the couple on July 14 refiled for divorce, knowing the court is now authorized to proceed.

As issues arise, the court associations and the Supreme Court are expected to assist Ohio judges with the transition. Pickaway County Probate Court Judge **Jan Michael Long**, president of the Ohio Probate Judges Association, said a number of judges and magistrates are examining immediate issues that may arise and are offering suggestions to fellow judges.

"We have always been clear to indicate to our fellow judges that the association is not in any way telling any judge how to decide a particular case, or conflict, or issue," he said. "That is up to each judge to individually decide for his or her court."

And judges are considering issues not immediately addressed by the *Obergefell* decision.

Speaking to a Cincinnati television station, Hamilton County Probate Court Judge **Ralph Winkler** noted that Ohio law allows women as young as 16 to marry, but requires men to be at least 18. Could that be a constitutional violation, he asked?

"It's funny that now, really, men don't have equal rights to get married in Ohio," Winkler said.



## CNO Legislative Digest

Each month, Court News Ohio Review tracks bills and resolutions pending in the Ohio General Assembly that are of interest to the judicial community.

Photo courtesy of the Ohio Statehouse Photo Archive

### **HB 6, Rep. Sarah LaTourette (R-Chagrin Falls); Rep. Stephanie Kunze (R-Hilliard)**

To increase the period of limitations for prosecution of rape or sexual battery, to extend that period of limitations when a DNA record made in connection with the investigation of the offense matches another DNA record of an identifiable person, and to declare an emergency.

**STATUS:** Signed by the Governor on July 16, 2015; Effective on the same day.

### **HB 268, Rep. David Hall (R-Millersburg); Rep. Jonathan Dever (R-Cincinnati)**

To expand the list of human trafficking-related convictions and delinquency adjudications that may be expunged, to increase the penalties for compelling prostitution and promoting prostitution, and to authorize intervention in lieu of conviction for persons charged with committing an offense while a victim of compelling prostitution.

**STATUS:** Introduced in the House on June 22, 2015.

### **HB 270, Rep. Jonathan Dever (R-Cincinnati); Rep. Dorothy Pelanda (R-Marysville)**

To provide that causing the death of another person by an overdose that results from the offender's sale, distribution, dispensation, or administration of a controlled substance or controlled substance analog is a violation of the offense of involuntary manslaughter and to make this provision a strict liability offense.

**STATUS:** Introduced in the House on June 23, 2015.

### **HB 279, Rep. Michael Henne (R-Clayton)**

To generally prohibit individuals who do not maintain statutory minimum levels of automobile insurance from collecting noneconomic damages for harm sustained in a motor vehicle accident.

**STATUS:** Introduced in the House on June 30, 2015.

### **HB 284, Rep. Mike Dovilla (R-Berea); Rep. Marlene Anielski (R-Walton Hills)**

To add extortion and perjury and certain federal offenses to the offenses that may result in forfeiture or termination of public retirement system benefits.

**STATUS:** Introduced in the House on July 7, 2015.

### **SB 7, Sen. Gayle Manning (R-North Ridgeville)**

To prohibit the sale of pure caffeine products and to prohibit the sale of powdered or crystalline alcohol for human consumption.

**STATUS:** Signed by the Governor on June 26, 2015; Effective Sept. 24, 2015.

### **SB 171, Sen. Bill Seitz (R-Cincinnati)**

To enact the Uniform Interstate Depositions and Discovery Act.

**STATUS:** Introduced in the Senate on May 26, 2015.

### **SB 178, Sen. Joe Schiavoni (D-Boardman); Sen. Lou Gentile (D-Steubenville)**

To impose a mandatory prison term of one, two, three, four, or

five years on an offender who is convicted of or pleads guilty to a felony that includes, as an essential element, purposely causing or attempting to cause the death of or physical harm to another, if the indictment, count in the indictment, or information charging the offense specifies that the offense resulted in serious physical harm to a person who was less than 13 years of age.

**STATUS:** Introduced in the Senate on June 3, 2015, and referred to the Senate Criminal Justice Committee. Passed the Senate on June 30, 2015 (32-0).

### **SB 184, Sen. Troy Balderson (R-Zanesville)**

To clarify the sex offender registration requirements.

**STATUS:** Introduced in the Senate on June 16, 2015, and referred to the Senate Criminal Justice Committee.



## Rule Amendment Summary

A summary of select significant rule amendments proposed or enacted by the Ohio Supreme Court

### Practice and Procedure Rules

Amendments to the Rules of Practice and Procedure took effect July 1. The amendments concern changes to the rules of appellate procedure, civil procedure, and juvenile procedure. Many of the changes make simple clarifications, target inconsistencies, or account for renumbering of rules. There are, however, a few substantive changes to existing rules and two new rules.

- New rules (Civ.R. 43 and Juv.R. 41) allow live, open court testimony from a location outside the courtroom. The new civil rule relates to amendments to two Ohio Revised Code statutes in 2011. Those amendments required a court to permit a parent on active duty in the Armed Forces to participate in custody or visitation proceedings and to present evidence electronically. Similar to Civ.R. 43, the new juvenile rule avoids conflict with the Confrontation Clause because it does not allow the remote contemporaneous testimony in adjudicatory hearings in delinquent, unruly, and juvenile traffic cases, or adult criminal trials.
- Amendments to App.R. 3, App.R. 9, and App.R. 11.2 address expedited appeals. App.R. 3 provides notification currently lacking in some appellate districts to alert the court that there needs to be a priority disposition in a case. App.R. 9 recognizes that in an expedited judicial bypass appeal from the juvenile court, there is no requirement of a written transcript if an audio recording is available. App.R. 11.2 adds prosecutorial appeals from suppression orders under criminal and juvenile rules to the list of expedited appeals.
- Amendments to Civ.R. 23 update the rule concerning procedures in class-action lawsuits. The Ohio rule had not been updated since the early 1970s. The changes include defining the class and appointing class counsel in the certification order; additional detail for the initial notice to Civ.R. 23(B)(3) class members; and for the notice of a proposed settlement, voluntary dismissal, or compromise, and new provisions addressing the appointment of class counsel and the awarding of attorney fees and nontaxable costs.

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### **CARING FOR THE ELDERLY: Continued from p. 5**

eldercaring coordination for guardianship/probate cases where high-conflict family dynamics interfere with the well-being and safety of the elder. The training in Ohio was for representatives from courts in several states that are investigating the use of court designated eldercaring coordinators to manage the most difficult elder-care cases on the dockets.

## Trial Judges Should Prepare for More Tricky

Recent Ohio Supreme Court decisions on sentencing for multiple offenses and the pending passage of a law extending the statute of limitations for rape will present challenges for trial court judges, a Cleveland appeals court judge said.

Eighth District Court of Appeals Judge **Sean C. Gallagher** told a gathering of Ohio common pleas court judges in mid-July that the Supreme Court's latest ruling on sentencing for allied offenses provides some clarity for trial court judges, but there are still many facts to consider and unanswered questions.

Judge Gallagher noted the irony of his presentation's title: "Reversal Insurance: Avoiding Sentencing Pitfalls" as he addressed the Ohio Common Pleas Judges Association Summer Conference. Two days prior, the Ohio Supreme Court reversed his decision in *State v. Rogers* dealing with sentencing for allied offenses. The issue with allied offenses is how to interpret the law requiring merging the offenses which is found in R.C. 2941.25 and determines in what cases must two or more different charges be merged, Judge Gallagher explained.

"Although the entire statute comprises only two sentences, they are two of the most confusing sentences in the Revised Code," he said.

Judges must listen to conflicting arguments by prosecutors and defense attorneys to determine if the charges against the accused are

of "similar import," or "dissimilar import," and if they were attempted with "separate animus." He noted these are vague terms that often defy interpretation. However, the recent rulings in *State v. Ruff* in March and the recent *Rogers* ruling are helpful to judges, he said. While the decisions didn't establish a bright-line rule, it gives judges more information on how to analyze a case before sentencing an offender, Judge Gallagher said.

He provided some recent examples of crimes that merge and those that don't. A man was recently convicted for trafficking three drugs – heroin, cocaine, and methadone. The Twelfth District Court of Appeals found that a conviction for each type of drug required different proof, and while it was all one person trafficking the drugs at the same time, each drug crime was committed with separate "animus," sometimes defined as immediate motivation. Because of that, the crimes could not be merged and the offender was sentenced on three separate charges. In contrast, a second man was charged with theft of a checkbook and forgery when he tried to cash the checks at a bank. While the two offenses took place in separate locations, the harm of both crimes took place at the same time when the check was attempted to be cashed and the offenses were merged into one crime for sentencing purposes.

Another area in which Judge Gallagher cautioned is sentencing "cold case" offenders

## Judicial Appointments

Gov. John Kasich recently appointed the following judges to fill vacancies:



### Michael T. Daugherty

Clinton County Municipal Court

Daugherty began his service on July 7. He must win in the November 2015 election to retain his seat for the full six-year term commencing on Jan. 1, 2016. He replaced Judge **Chad L. Carey**, who was elected in November to the Clinton County Probate/Juvenile Court. Daugherty received his undergraduate degree from Wilmington College and his law degree from the University of Dayton School of Law. His experience includes service as New Vienna and Clarksville solicitor/prosecutor and president of the Clinton County Bar Association.



### Michael E. Gilb

Warren County Common Pleas Court

Gilb began his judgeship on July 1. He replaced Judge **Robert W. Peeler**, who was elected in November 2014 to a different judgeship on the court. Gilb must win in the November 2016 election to retain the seat for the full six-year term commencing on Jan. 2, 2017. Gilb received his bachelor's degree from the University of Cincinnati and his law degree from Ohio Northern University Claude W. Pettit College of Law. His experience includes service as a former state representative and Mason city councilman.

# Sentencing Issues

whose crimes are now reaching the courts after two sweeping sentencing reforms by the Ohio General Assembly. The confusion about what sentence applies may come before more judges soon as lawmakers recently increased the statute of limitation for rape from 20 years to 25 years (*see HB 6, p. 8*), and old rape kits continue to be tested for DNA matches, he said.

Prior to the “truth-in-sentencing” reforms that took effect in 1996, Ohio law allowed trial judges to impose indefinite sentences. The new law began applying specific years to the sentences, and in 2011, House Bill 86 modified sentencing again. Judge Gallagher said this leads to confusion when trying to determine if the offender must be sentenced to the prison time listed in the law now or what the law listed as the sentence at the time the offense was committed. He said prosecutors will be pushing for the longer sentences under the old law and defense attorneys seeking the shorter sentences under the reform.

Sentencing reform was just one of several issues the common pleas judges tackled over the three-day conference. Other issues included dealing with language barriers in the courts, understanding changing marijuana laws, and the appearance of defendants claiming they are sovereign citizens and refusing to recognize the court’s jurisdiction over them.



## Sean V. McCarthy

Franklin County Municipal Court

McCarthy began his service on July 27. He replaced Judge **David C. Young**, who last November was elected to the Franklin County Common Pleas Court.

McCarthy must win in the November 2015 election to retain the municipal court seat for the remainder of the unexpired term, which ends on Jan. 1, 2018. McCarthy most recently served as a judge on the Franklin County Common Pleas Court when he filled the remainder of an unexpired term, which ended on July 1. He received his bachelor’s degree from Loyola University Chicago, his master’s degree from The Ohio State University, and his law degree from Capital University Law School.

## Franklin County Judge Laurel Beatty Honored

Franklin County Common Pleas Court Judge **Laurel A. Beatty** was named one of Women for Economic and Leadership Development’s (WELD) 2016 Women WELDing the Way honorees.



Judge Beatty and 11 other central Ohio women were selected for being leaders within their organizations, supporting the leadership development of other women, giving time, talent, and resources to their community, and investing in the growth of women-owned businesses. They will be featured in a calendar to be unveiled during a November reception at the Ohio Statehouse Atrium.

Judge Beatty has served on the Franklin County Common Pleas Court bench since 2009. Her community involvement includes the United Way of Central Ohio Board of Trustees and the United Way’s Women’s Leadership Council. As a parent and an elected official, Judge Beatty served on the Greater Columbus Infant Mortality Task Force that aims to reduce the rate of infant deaths in Columbus and Franklin County.

## Judges Named to Ohio State Bar Board

Four judges are among the newest members of the Ohio State Bar Association (OSBA) Board of Governors. Each was elected by OSBA members in the district he or she will represent for the next three years.

The 21-member board manages the OSBA’s business affairs, sets policy, reviews pending legislation, and conducts other business on behalf of its 22,000 members.



### Judge Howard H. Harcha III

Scioto County Common Pleas Court

#### District 8 Representative

Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pickaway, Pike, Ross, Scioto, and Vinton counties.



### Judge Glenn H. Derryberry

Allen County Probate & Juvenile Court

#### District 16 Representative

Allen, Auglaize, Hardin, and Mercer counties.



### Judge James F. Stevenson\*

Shelby County Common Pleas Court

#### District 2 Representative

Darke, Miami, Montgomery, Preble, and Shelby counties.



### Judge Linda Tucci Teodosio

Summit County Juvenile Court

#### District 11 Representative

Portage and Summit counties.

\* Judge Stevenson will also serve on the board’s Membership, Public and Media Relations and Publications Committee.



## Conferences & Meetings

September 2

**Ohio Courts of Appeals Judges Association (OCAJA) Fall Conference**  
Member Judges, Columbus

September 3 & 4

**Ohio Judicial Conference (OJC) Annual Meeting**  
Judges, Columbus  
[ohiojudges.org](http://ohiojudges.org)

### Ohio Attorneys: Registration and Payment Due by Sept. 1

All Ohio attorneys are reminded to register with the Supreme Court's Office of Attorney Services for the upcoming biennium on or before Sept. 1.

Lawyers on active or corporate status must register with Attorney Services and pay a \$350 registration fee every odd-numbered year.

Attorneys can register either electronically or by mail. Mailed registrations will be deemed timely if postmarked by Sept. 1. Online registrations must be completed by 11:59 p.m., Sept. 1 to be deemed timely. Attorneys who successfully complete the process will receive confirmation by mail. Those who do not receive confirmation should contact Attorney Services.

To make the registration process easier, attorneys can also click on the "Biennial Attorney Registration" tab on the front page of the Supreme Court's website, which will take the user directly to the newly enhanced Attorney Portal.

Attorneys who fail to register and pay the fee by the Sept. 1 deadline or within the late registration period will be suspended.

# The Agenda

Upcoming events, training opportunities, and conferences for judges and court staff. For more information, contact the event sponsor at the website provided.

### Judicial College Courses

[judicialacademy.ohio.gov](http://judicialacademy.ohio.gov)

August 7

**Delinquency & Unruly**  
Web Conference  
Judges & Magistrates

August 11

**Probation Officer Training Program: Introduction to Offender Skill Building**  
Probation Officers, Perrysburg

August 13

**Judicial Candidates Seminar**  
Judicial Candidates, Columbus  
1:30 p.m. – 3:30 p.m.

August 14

**Probate Seminar**  
Judges & Magistrates, Columbus

August 18

**Probation Officer Training Program: Professional Communication**  
Probation Officers, Akron

August 19

**Guardian ad Litem Continuing Education Course: Report Writing**  
Guardians ad Litem, Dayton  
1 p.m. – 4:30 p.m.

August 20

**Guardian ad Litem Continuing Education Course: Report Writing**  
Guardians ad Litem, Dayton  
8:30 a.m. – Noon

August 25

**Probation Officer Training Program: Introduction to Offender Skill Building**  
Probation Officers, Columbus

August 27 & 28

**Fundamentals of Adult Guardianship**  
Adult Guardians  
Live course in Columbus  
BROADCAST sites in:

- Clermont County
- Gallia County (Aug. 27 only)
- Franklin County

*Check Judicial eCademy for more details and other sites.*

September 1

**Probation Officer Training Program: Introduction to Cognitive Behavioral Interventions**  
Probation Officers, Dayton/Beavercreek

September 3

**Cyber Security & Street Smart on Drugs**  
Official Court Reporters, Columbus

### Supreme Court of Ohio

[sc.ohio.gov](http://sc.ohio.gov)

August 17

**Deadline for Late Application to Register as a Candidate for the February 2016 Bar Exam**

September 1

**Attorney Registration Deadline for the 2016-2017 Biennium**

September 1 & 2

**Oral Arguments**

September 3

**State of the Judiciary**  
Judges, Columbus