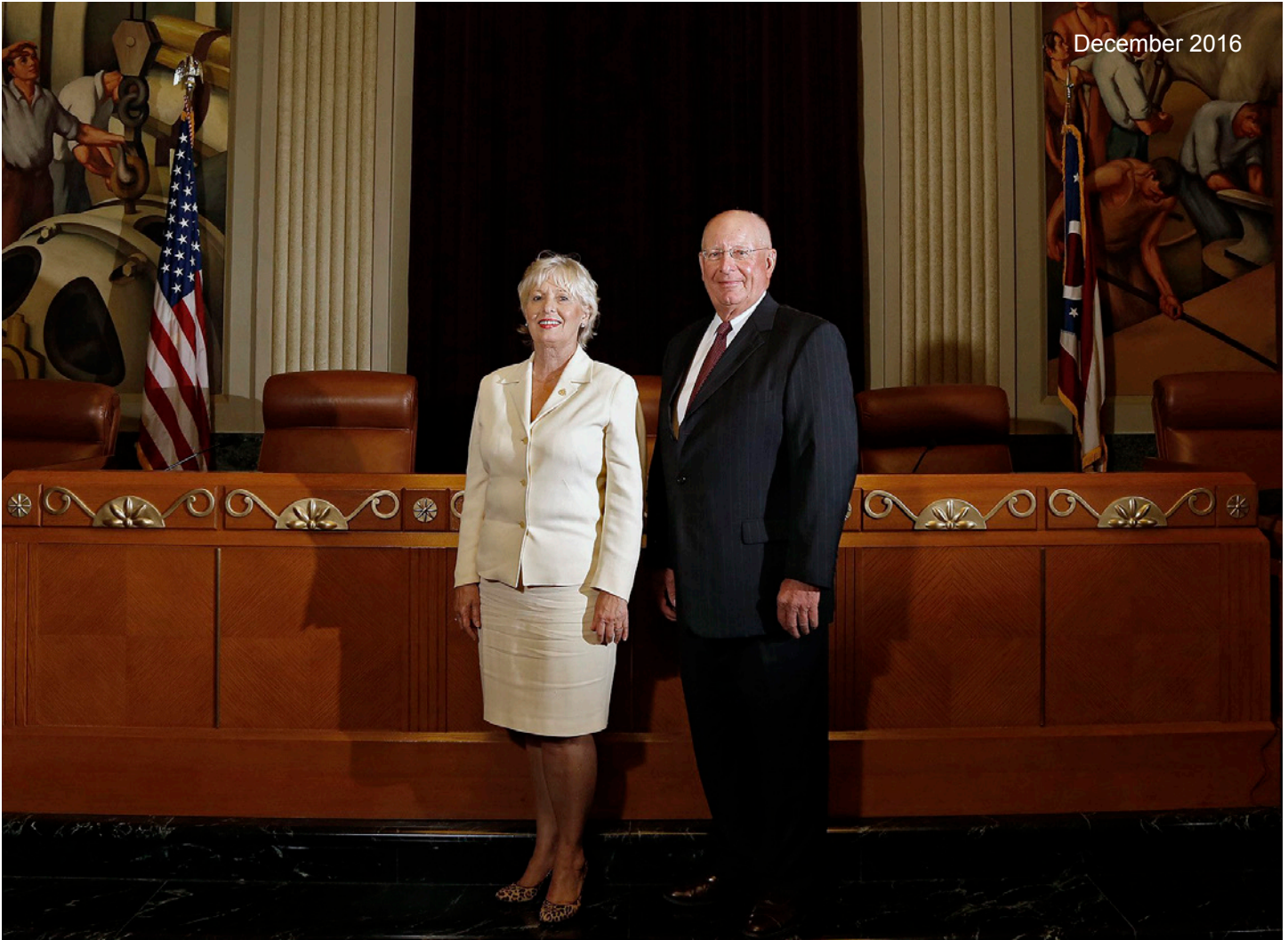


Supreme Court Blocks Hamilton County Judge from Consolidating Hundreds of Malpractice Cases (p. 3)

New Year to Bring Two New Justices After General Election Vote (p. 10)

CNO REVIEW

December 2016



Appealing TENURES

Justices Paul E. Pfeifer and Judith Ann Lanzinger, who will hang up their robes in a few weeks, discuss the rewards of serving on the Ohio Supreme Court.

Story on p. 6.

About Court News Ohio

Court News Ohio is a service of the Office of Public Information of the Supreme Court of Ohio and Ohio Government Telecommunications. Court News Ohio includes a website (courtnewsohio.gov), a monthly publication (CNO Review), a television program (CNOTV), a Facebook page (facebook.com/courtnewsohio), a Twitter feed (@courtnewsohio), and a YouTube channel (youtube.com/CourtNewsOhioTV).

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Court News Ohio
65 S. Front Street
10th Floor
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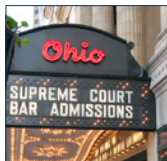
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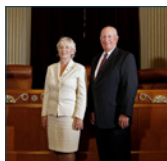
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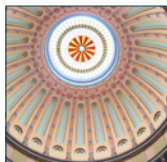


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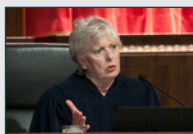


Check out our video interviews with departing Justices Pfeifer and Lanzinger:



Justice Paul E. Pfeifer

[Cultivating a Life in the Law](#)



Justice Judith Ann Lanzinger

[The 3Rs and More: Reading, Writing, Deliberating, Judging](#)

On the Cover: Justices Judith Ann Lanzinger and Paul E. Pfeifer in a hearing room at the Thomas J. Moyer Ohio Judicial Center. (Photo: Kyle Robertson / The Columbus Dispatch)

Cases

Visit courtnewsohio.gov for the most current decisions from the Ohio Supreme Court, Courts of Appeals, and Court of Claims.

Supreme Court of Ohio

Ohio Can Impose Commercial Activity Tax on Online Retailers

Ohio can impose its commercial-activity tax (CAT) on out-of-state companies that sell products and services to Ohioans, but have no physical presence in the state, the Supreme Court ruled Nov. 17.

The Court determined the U.S. Constitution's commerce clause does not prevent a state from imposing a "privilege to do business" tax, such as the CAT, on online retailers. Writing for the Court majority, Justice **William M. O'Neill** determined that while a physical presence in a state may be required to impose the obligation to collect sales taxes and use taxes on an out-of-state seller, that requirement does not apply to a business tax on an interstate company. Ohio's \$500,000 in annual sales threshold for the CAT to apply meets the commerce clause requirement, he concluded.

In a dissenting opinion, Justice **Sharon L. Kennedy** wrote the U.S. Supreme Court issued the last word on taxing out-of-state companies in 1992, in *Quill Corp. v. North Dakota* when it ruled that a physical presence is required. She asserted that only Congress or the U.S. Supreme Court can change the current state of the law on taxing interstate commerce.

The Court's opinion affirms a Board of Tax Appeals (BTA) decision upholding the Ohio tax commissioner's imposition of the CAT on Virginia-based Crutchfield Corporation. The Court also decided two companion cases involving Newegg Inc., which the Court noted is the nation's second-largest online retailer, and Wisconsin-based Mason Companies. Earlier this year, the Court consolidated the three cases for oral arguments because the

online retailers essentially made the same claims when appealing the BTA ruling.

Crutchfield Corp. v. Testa
[Slip Opinion No. 2016-Ohio-7760](#)

Newegg Inc. v. Testa
[Slip Opinion No. 2016-Ohio-7762](#)

Mason Cos., Inc. v. Testa
[Slip Opinion No. 2016-Ohio-7768](#)

Immigrant Can Withdraw Admission of Guilt to Avoid Deportation

The Ohio Supreme Court ruled Nov. 21 that if a pretrial diversion program requires a noncitizen to admit guilt, the trial court must warn the accused that he or she could be deported.

The Court's decision allowed Cleveland immigrant Issa Kona to withdraw his admission of guilt to a 2006 robbery charge because the process did not include a warning from the trial court of the consequences. This led to Kona unknowingly facing deportation when he admitted guilt by completing a required admission-of-guilt form after a Cuyahoga County trial court allowed him to apply for the county's diversion program. Kona did not go before a judge in open court, and there was no mention about the effects of his enrollment on his immigration status.

Writing for the majority, Justice **Paul E. Pfeifer** explained that under federal immigration law, the admission of guilt allowing Kona to participate in a program for those not likely to re-offend had the same consequences as those for offenders of more serious crimes who must enter a plea. When a noncitizen enters a plea before a judge, state law requires the judge to warn the defendant of the potential immigration status consequences.

Justice Pfeifer wrote that for noncitizens the most significant aspect of a criminal conviction may not be the sanction, but its effect on immigration status, and that Ohio lawmakers recognized the seriousness of the impact when they adopted R.C. 2943.01. He noted the law requires the trial court to personally address the accused noncitizen and advise of the consequences a plea has on immigration status. If a trial court fails to give the warning, the law requires the court to allow the plea to be withdrawn.

State v. Kona
[Slip Opinion No. 2016-Ohio-7796](#)

Court Blocks Hamilton County Judge from Consolidating Hundreds of Malpractice Cases

A Hamilton County Common Pleas Court judge lacked the authority to consolidate and hear hundreds of medical malpractice lawsuits filed against a local surgeon who was indicted on federal health-care charges for performing unnecessary surgeries, the Supreme Court ruled Nov. 15.

In a per curiam opinion, the Court found that Judge **Robert Ruhlman** did not follow state or local rules when he unilaterally transferred cases against Dr. Abubaker Atiq Durrani and several local hospitals to his courtroom. The Court ordered Ruhlman to transfer the cases that were not assigned to him back to the judges to whom they were originally assigned.

Durrani was charged with 10 counts of health-care fraud, alleging he convinced patients to undergo medically unnecessary spinal surgeries, then billed private and public health insurers millions of dollars for the fraudulent services.

Continued on p. 5.

HappeningNow

News and Notes from Courthouses Across the Buckeye State



Bar Admission Ceremonies Feature 616 Participating New Attorneys

A total of 616 successful bar admission applicants who satisfied all of the Ohio Supreme Court's other requirements for admission participated in the November 2016 bar admissions ceremonies Nov. 7 at the Ohio Theatre in Columbus.

The Supreme Court's two retiring members – Justice **Paul E. Pfeifer** and Justice **Judith Ann Lanzinger** – offered remarks and led the new attorneys in the professional oath during the Court's special public sessions. **Alan C. Michaels**, dean at the Ohio State University Moritz College of Law, and **Ronald S. Kopp**, Ohio State Bar Association president, also spoke.

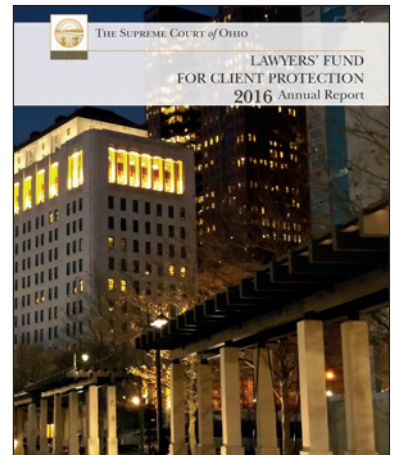
The oath was administered in a morning session to eligible applicants from the law schools of Capital University, Northern Kentucky University, The Ohio State University, the University of Cincinnati, and the University of Dayton. The afternoon ceremony featured eligible applicants from the law schools of Case Western Reserve University, Cleveland State University, Ohio Northern University, the University of Akron, the University of Toledo, and 59 out-of-state law schools.

Following the ceremonies, the attorneys and their families visited the Thomas J. Moyer Ohio Judicial Center, the Supreme Court courtroom, and the Court's Law Library. New attorneys also were able to file their registration paperwork and learn about the Court's mentoring program.



Watch video of the ceremonies at ohiochannel.org.

Lawyers' Fund for Client Protection Releases Fiscal Year Report



One hundred-and-fifty clients who sustained financial losses resulting from the dishonest conduct of their Ohio attorney were reimbursed more than \$782,000 in Fiscal Year 2016, according to a [report](#) released on Nov. 10 by the Lawyers' Fund for Client Protection.

The fund seeks to promote public confidence in the legal profession by reimbursing law clients. The claims eligible for reimbursement resulted from the dishonest conduct of 48 attorneys. Of the claims approved, 125 were for unearned fees, 19 were for thefts by fiduciaries, and four involved theft-of-settlement proceeds.

Also in the report:

- 97 claimants received 100 percent reimbursement.
- 40 claims were ruled ineligible.
- One claimant received the maximum (\$75,000) award amount.

The fund was created in 1985 by Court rule and is primarily supported by attorney registration fees. A seven-member board of commissioners appointed by the Ohio Supreme Court determines claim eligibility and manages assets.

Since its inception, the fund has allocated more than \$20 million for 2,830 former law clients.

Ohio Court Professionals Complete Executive Training Program

With [30 more court professionals](#) achieving national certification in November, Ohio now employs more than 300 Certified Court Managers working in courts statewide.

Offered through a partnership between the Ohio Supreme Court’s Judicial College and the National Center for State Courts’ Institute for Court Management since 2002, the Court Management Program addresses specific training needs of court leaders. Each court professional attained the credential by completing a three-year program of courses, including the purposes and responsibilities of courts, caseflow management, and court performance standards.

Ohio is among a handful of states that bring this training program to court professionals so that traveling out of state isn’t necessary.

Participants represent all jurisdictions and regions of the state and include court administrators, elected and appointed clerks, chief probation officers, and other court staff in management positions. Supreme Court Justice **Sharon L. Kennedy** offered her congratulations, as did Supreme Court Administrative Director **Michael L. Buenger**, during a graduation ceremony on Nov. 18 at the Thomas J. Moyer Ohio Judicial Center.



CASES: Continued from p. 3.

Hundreds of his former patients filed malpractice lawsuits against the doctor and the hospitals in which he practiced.

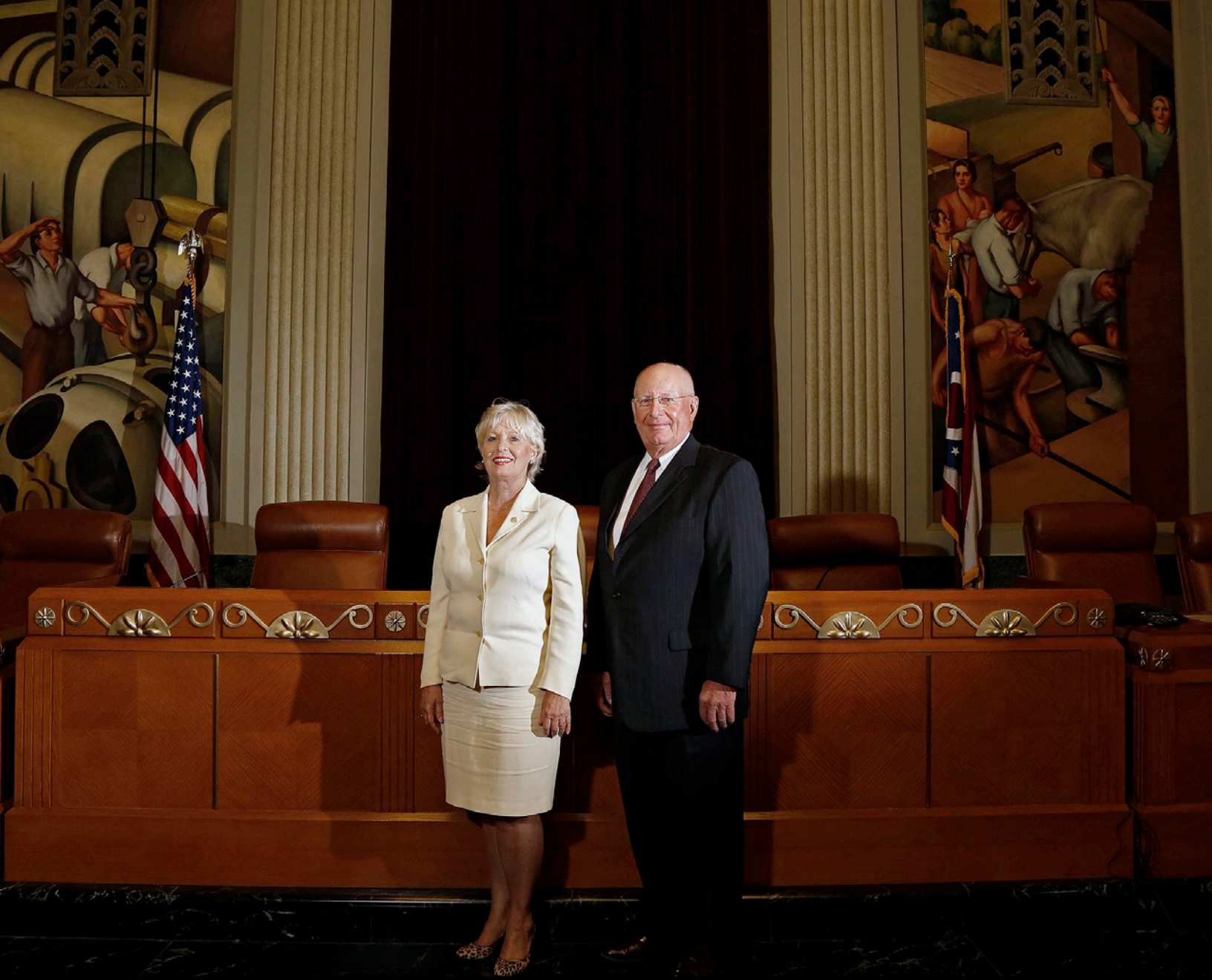
Despite the medical providers’ opposition, Judge Ruehlman signed an order transferring all cases to his docket at the request of several former patients. He did not hold a hearing before taking action.

The medical providers alleged that the other judges assigned to hear the cases were not informed of the consolidation, and they sought to vacate Judge Ruehlman’s directive to consolidate the cases. When the request was denied, the providers appealed to the First District Court of Appeals, which dismissed their appeal. The providers then sought a writ of prohibition from the First District asking that it prohibit Judge Ruehlman from making decisions on the cases, and a writ of mandamus requiring that he transfer the cases back to the judges assigned to them. The appellate court denied granting the writs and dismissed the case, which the providers appealed to the Ohio Supreme Court.

The Court’s opinion stated that the medical providers have a clear legal right to their requests because Ruehlman “patently and unambiguously” acted without jurisdiction.

State ex rel. Durrani v. Ruehlman
[Slip Opinion No. 2016-Ohio-7740](#)

Are you in?
 Follow the **Ohio Supreme Court** on **LinkedIn** for job postings and court news.



Appealing **TENURES**

Justices Paul E. Pfeifer and Judith Ann Lanzinger
Bid Farewell to the Ohio Supreme Court

Two of Ohio's longtime justices will say goodbye to the Supreme Court this month. The distinguished tenures of Justices **Paul E. Pfeifer** and **Judith Ann Lanzinger** are coming to a close because of age restrictions in the Ohio Constitution, which prohibit people older than 70 from running for judge. Justice Pfeifer, who has been on the Court for 24 years, and Justice Lanzinger, who has served for 12, seem to be taking it in stride.

"I am someone with very mixed emotions right now," Justice Lanzinger said. "But the Constitution says it's time for me to move on, and that's what I'm going to do. I'm a bit excited, but nervous – probably the way just about anybody is when they make a transition in their career."

"It's a dynamic job, but a quarter of a century is probably enough for any human being," Justice Pfeifer added. "To want more would be a little bit of a hog at the trough."

Each shared warm reflections about the many facets of working at the state's highest court for so many years.

Court's Work

The justices highlighted some of the most significant case rulings they authored – school funding, charter schools, criminal sentencing, and cell-phone search warrants. But they expressed a deeper enjoyment of the deliberative process that leads to the ultimate decisions of the Court – starting, believe it or not, with the case files.

"I just look forward to opening the bankers' boxes that were handed [out] every two weeks because there is always going to be something new – something interesting, something frequently that's never before been decided by a supreme court," Justice Pfeifer explained.

After researching, reading, and thinking about the issues in a case, the justices attend oral argument followed by conference – parts of the process both have savored.

"Being able to hear attorneys who are just at the top of their game arguing in front of the Court is amazing," Justice Lanzinger noted.

"It's electric as far as I'm concerned," Justice Pfeifer said. "When I was first here, lawyers used to ask and think that oral argument was not important to the Court. It couldn't be further from the truth. It really helps us flesh out the issues to understand in detail what's important in the case."

"Then, being in deliberations and having an argument that was dissected by six other people who saw the same thing I saw and, yet, have a different take on it, talking it over again and again, and coming to a conclusion," Justice Lanzinger said. "That's an exciting moment – very professionally rewarding."

Experience²

Both justices compiled decades of rich and varied legal experience on their paths to the pinnacle of state courts.

Justice Lanzinger graduated as valedictorian of her class from the University of Toledo College of Law in 1977. After several years practicing as an attorney, she was elected to the Toledo Municipal Court. Voters then chose her to serve on the Lucas County Common Pleas Court for 14 years and on the Sixth District Court of Appeals before she ran and won a seat on the Ohio Supreme Court in 2004. She was re-elected as justice in 2010, and now completes 31 years as a judge who has served at all state court levels. Justice Lanzinger is in a group of six who tie as the 36th longest-serving justices on the Court.

Justice Pfeifer began his legal career after graduating from Ohio State University's law school in 1966. Along with stretches as a private attorney, an assistant attorney general for the state, and a prosecuting attorney in Crawford County, he was elected to the Ohio House of Representatives for one term and the Ohio Senate four times, which included 10 years as chair of the influential Judiciary Committee. Following a successful campaign to join the Court in 1992, voters re-elected Justice Pfeifer

Story continues on p. 8.



Justices Pfeifer and Lanzinger at their shared swearing-in ceremony (January 2011).



three times, and he holds sixth place among all justices in time served on the Court.

“It’s turned out to be fascinating,” he noted. “It’s turned out to be the intellectual feast that the justices that were on the Court when I came here assured me I would find it to be.”

Justice Lanzinger agreed. “I think that’s what this court is for anyone who is wanting to be immersed in the law,” she said. “You get an intellectual feast of the laws in your state, and it’s fantastic.”

They each carry a vivid awareness of the significance of the Court’s decisions to the justice system and for the people of the state. Justice Lanzinger discussed the importance of staying neutral and open-minded, and of considering all sides before interpreting the law and ruling in a case.

“All other state court judges must follow our lead,” she noted. “I always felt that everyone [at the Court] really understood how important it was that we

“ I always felt that everyone [at the Court] really understood how important it was that we realize the consequences to ordinary people that our decisions would have.

— Justice Judith Ann Lanzinger

realize the consequences to ordinary people that our decisions would have.”

Justice Pfeifer described the duty as “constantly sobering,” expressing his aspiration that the Court be clear in its opinions about the precise reasons for a ruling.

“Hopefully the things that we decide are a benefit to citizens, who have no idea the case we just decided might someday be important in their own lives,” he said. “It’s an opportunity to do something important.”

Lasting Contributions

With 36 years of combined service to the state’s court of last resort, Justices Pfeifer and Lanzinger hope their diverse skills and distinct styles have left a positive impact – at the Court and for the future.

Justice Pfeifer mentioned the lively, sometimes biting, style of his opinions, often in dissent. He believes the approach helped make the law – even if it was to be found in the other side’s opinion – more memorable.

“Anything we write goes in the books, and it’s there forever,” he pointed out. “I think without a doubt lawyers and judges will tell you I’ve written some colorful things that will soon be forgotten.”

For Justice Lanzinger, who began her career as a teacher and also has taught many judicial and legal



“Hopefully the things that we decide are a benefit to citizens, who have no idea the case we just decided might someday be important in their own lives. It’s an opportunity to do something important.

— Justice Paul E. Pfeifer

education classes, precision in the Court’s writing has been paramount.

“One of the things that I worked on was the [Court’s] writing manual, and I think that sometimes I was called ‘the grammar lady.’ The other justices would tease me about that,” she said. “I hope that I made a difference in writing at the Court.”

Beyond the Court

Justice Lanzinger and Justice Pfeifer haven’t shared what exactly they will do after being a Supreme, but they aren’t lacking for ideas or possibilities.

Justice Lanzinger, who launched her own blog in 2010 to foster understanding of the legal system, said

Story continues on p. 12.



(Clockwise from top left): 1) Chief Justice Maureen O’Connor addresses Justice Pfeifer and Justice Lanzinger during their final oral argument session (August 2016). 2) Justice Pfeifer converses with former Justice Alice Robie Resnick and the late Chief Justice Thomas J. Moyer following the final oral arguments held in the Rhodes Tower (January 2004). 3) Justice Lanzinger unveils her Justice Judy blog to a group of fourth-graders (June 2010). 4) The justices and Chief Justice O’Connor speak to students at a session of Off-Site Court (April 2007).

New Year to Bring Two New Justices After General Election Vote

Two judges from the First District Court Appeals will join the Ohio Supreme Court as justices at the start of the new year after their election Nov. 8.

According to the Ohio Secretary of State's Office, Judges **Pat DeWine** and **Patrick**



DeWine



Fischer

F. Fischer defeated 11th District Court of Appeals Judge **Cynthia W. Rice** and Cuyahoga County Common Pleas Court Judge **John P. O'Donnell**, respectively. The results of the Fischer/O'Donnell race were unclear until late November because of the outstanding number of absentee and provisional ballots compared to the margin of Fischer's lead. Supreme Court Chief Justice **Maureen O'Connor**, who was unopposed in the general election, retained her seat on the Court for her second and final six-year term as chief justice.

Judge DeWine will replace Justice **Paul E. Pfeifer**, and Judge Fischer will replace Justice **Judith Ann Lanzinger**. Justices Pfeifer and Lanzinger were barred from serving again by a constitutional judicial age restriction.

From a historical standpoint, the election will end the longest continual female majority membership on the Court, which began Jan. 1, 2011.

The election also marked the first time since 1992 that there were two open seats on the Supreme Court.

Governor Fills Holmes County Municipal Court Vacancy

The opening on the Holmes County Municipal Court was filled on Nov. 18 when **Andrew G. Hyde** took the bench. Gov. John Kasich appointed Hyde to the vacancy on Nov. 4.

Hyde must win in the 2017 general election to retain the seat for the remainder of the unexpired term, which ends Dec. 31, 2019. Hyde replaces former Judge **Jane Irving**, who died Aug. 28 following a battle with cancer.

Hyde received his bachelor's degree from Ohio State University and his law degree from Lewis and Clark College. He was admitted to the practice of law in Ohio on May 16, 1994. Hyde has been a trial attorney and counselor of law for a private practice since 1994. He is also the acting assistant law director for the City of Ashland Law Director's Office.

Hyde is a member of the Ashland County, Holmes County, and Ohio State bar associations. He is also the president of the board of the Anazao Community Partners.



Hyde

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.

HB 618, Rep. Kirk Schuring (R-Canton) and Rep. Alicia Reece (D-Cincinnati)

To provide for the expungement of official records related to the apprehension, arrest, criminal charging, or trial of a person based on mistaken identity.

STATUS: Introduced in the House on Nov. 15, 2016.

SB 365, Sen. John Eklund (R-Chardon)

To allow disclosure of information from the law enforcement automated data system (LEADS) to a defendant in a traffic or criminal case.

STATUS: Introduced in the Senate on Nov. 15, 2016.

HJR 12, Rep. Ron Amstutz (R-Wooster) and Rep. Mike Curtin (D-Columbus)

Proposing to repeal Sections 19 and 22 of Article IV of the Constitution of the State of Ohio to adopt the recommendation of the Ohio Constitutional Modernization Commission (OCMC) to eliminate the authority of the General Assembly to establish courts of conciliation and to eliminate the authority of the governor to appoint a supreme court commission.

STATUS: Introduced in the House on Nov. 9, 2016.

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

judicialeducation.ohio.gov

Dec. 6

Adult Guardianship Continuing Education Course: Developmental Disabilities; BROADCAST to various Ohio sites

Adult Guardians
(Layperson and Professional)
8:45 a.m. - Noon
OR 1 p.m. - 4:15 p.m.

Probation Officer Training Program: Introduction to Offender Behavior Management

Probation Officers
Dayton/Beavercreek

Dec. 7

Guardian ad Litem Pre Service Course

Guardians ad Litem
Columbus

Dec. 7 - 9

Court Management Program (CMP) Module III: Managing Technology Projects & Technology Resources CMP Class of 2017 Level I
Columbus

Dec. 12 - 15

New Judges Orientation Part I
New Judges
Columbus

Dec. 13

Probation Officer Training Program: Introduction to Cognitive Behavioral Interventions
Probation Officers
Toledo

Dec. 14

Guardian ad Litem Continuing Education Course

Guardians ad Litem
Columbus
1 p.m. - 4:30 p.m.

Dec. 15

Guardian ad Litem Continuing Education Course

Guardians ad Litem
Columbus
8:30 a.m. - Noon

Probation Officer Training Program: Introduction to Offender Behavior Management

Probation Officers
Akron/Fairlawn

Dec. 16

Acting Judge Course: Avoiding Potential Minefields

Judges, Magistrates & Acting Judges
Columbus

Issues Involving Drug-Impaired Driving for Juvenile Judges

Judges & Magistrates
Columbus

Dec. 20

Probation Officer Training Program: Introduction to Cognitive Behavioral Interventions

Probation Officers
Columbus

Dispute Resolution Training

sc.ohio.gov/JCS/disputeResolution

Dec. 21

Parenting Coordinators Roundtable Teleconference

Supreme Court of Ohio

sc.ohio.gov

Dec. 12

Late deadline to apply to take the 2017 February Bar Exam

Conferences

Dec. 7 - 9

Ohio Common Pleas Judges Association (OCPJA) Winter Conference
Member Judges
Columbus

Dec. 8 & 9

Ohio Prosecuting Attorneys Association Annual Meeting
Columbus
ohiopa.org



	TENURE	MAJORITY OR LEAD OPINIONS	DISSENTING OPINIONS
Justice Pfeifer 146th Justice of the Ohio Supreme Court	Jan. 2, 1993 - Jan. 1, 2017	356	470
Justice Lanzinger 150th Justice of the Ohio Supreme Court	Jan. 1, 2005 - Dec. 31, 2016	190	123

APPEALING TENURES: Continued from p. 9.

she may continue to teach and write, or possibly return to practicing law or explore community work.

Justice Pfeifer is considering using his legal skills through mediation to help people before they end up in court, and he'll "continue to take hay to the cows" on his 550-acre farm in Bucyrus.

"I think I'll find a way to be challenged and engaged and keep the gray matter active for a while longer," Justice Pfeifer quipped.

Enjoying time with family also will be central. Justice Pfeifer and his wife, Julia, have three children and five grandchildren. Justice Lanzinger and her husband, Robert, who will celebrate their 50th wedding anniversary next year, have two children and three grandchildren.

As for the two newcomers who will join the Court in January, the seasoned justices offer a few parting thoughts.

"Take a deep breath, go on long walks, be willing to respectfully consider the views of your six colleagues, and in the end always be true to your core values in deciding on a fair and just outcome for each decision you make," Justice Pfeifer recommended.

"Because people can only respect and have faith in a judiciary that they first understand, I believe that justices must make principled decisions based on clearly-expressed reasoning," Justice Lanzinger added. "So I would ask them to write well, but I'd also urge them to enjoy the best judicial jobs in the state."

She noted that the constitutional provision that barred her and Justice Pfeifer from running for another term in the positions they've both treasured actually made it possible for her son – Joshua Lanzinger – to become a judge on the Toledo Municipal Court.

"So by moving aside those of us who have had long careers [as judges], such as mine of 31 years, gives somebody else a chance to begin their own career," she said. "But it certainly doesn't mean that anybody who's leaving the Court is going to just fade away. We still have a lot of life in us."

Pictured: Justice Lanzinger and Justice Pfeifer and the leather bottle containing the numbered cubes used to randomly assign cases.