

# CNO REVIEW

June 2017



## The Art of **E-FILING**

Attorneys weigh in on the impact of electronic  
submissions at the Ohio Supreme Court.

STORY ON P. 4.

## About Court News Ohio

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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

### Mandatory Bindover for Older Juveniles Constitutional

The constitutional rights of older juveniles charged with certain serious crimes are not violated when they are automatically sent to trial in adult court, the Ohio Supreme Court ruled on May 25.

A clause in the Ohio Constitution gives state lawmakers the right to determine the jurisdiction of the common pleas courts, the Court ruled in *State v. Aalim*. The decision reversed a ruling handed down five months ago in which a four-justice majority found the mandatory bindover law violated a juvenile's right to due process as guaranteed by the Ohio Constitution.

The Court reconsidered the case of 16-year-old Matthew Aalim and found his rights were not violated when a juvenile court automatically transferred him to adult court for allegedly committing an act that would be considered aggravated robbery if committed by an adult, and using a gun to commit the crime.

Writing for majority, Justice **Sharon L. Kennedy** stated that reconsideration of the decision was appropriate because the Court previously failed to consider that Article IV, Section 4(B) of the Ohio Constitution grants the General Assembly exclusive authority to define the jurisdiction of common pleas courts, including juvenile courts.

In a dissenting opinion, Chief Justice **Maureen O'Connor** objected to the majority "affording blind deference to the legislature, ignoring the requirements of due process and fairness, and artificially constraining the United States Supreme Court's commands that we must consider juvenile offenders differently than adult offenders." The chief justice

previously was in the majority, which ruled the mandatory bindover procedure was unconstitutional.

The Court vacated its earlier decision, and affirmed the Second District Court of Appeals' judgment upholding the trial court's decision to try Aalim as an adult.

*State v. Aalim*  
[Slip Opinion No. 2017-Ohio-2956](#)

### Book Bag Search that Led to Discovery of Gun at School Ruled Permissible

The constitutional rights of a student who had bullets in his book bag were not violated when a high school used this discovery to search another of the student's bags and found a handgun, the Ohio Supreme Court ruled on May 11.

The unanimous decision reversed a Tenth District Court of Appeals ruling. The appeals panel agreed with a trial court that the gun was inadmissible as evidence because the search violated the U.S. Constitution's Fourth Amendment guarantees against unlawful search and seizure.

But the Supreme Court, in a decision by Justice **Sharon L. Kennedy**, wrote that schools have a compelling interest in protecting students from harm, making it reasonable for the school to conduct a warrantless search of property, like a book bag, to identify the owner and ensure the contents were not dangerous.

Students have a diminished expectation of privacy because of schools' obligation to keep them safe and this requires an easing of the normal limitations on searches, such as the need for probable cause, the Court stated. A student's privacy is further diminished when he or she

leaves a personal item unattended at school, making a warrantless search reasonable.

The case involved Columbus Whetstone High School student Joshua Polk who was charged with possession of a deadly weapon in a school safety zone. Polk sought to suppress from the trial the handgun found in a bag he was carrying when he was stopped in the school by the principal, the school safety and security resource coordinator, and a Columbus police officer.

A school bus driver found an unattended bag on the bus and gave it to the school safety coordinator, who opened it far enough to see items that belonged to Polk. He recalled hearing that Polk was possibly in a gang, and took the bag to the principal's office, where the bag was emptied and the bullets found. Polk sought to suppress the bullets and the gun as evidence, and the trial judge ruled that the initial search of the unattended bag was reasonable but the follow-up search of the first bag in the principal's office was unreasonable and was conducted "solely based on the identity and reputation of the owner."

Prosecutors described the school's protocol as a "special needs search." The Supreme Court explained that the Fourth Amendment considers a search reasonable if there is "individualized suspicion of wrongdoing." However, a special need arises in cases where a person's privacy interest is minimal and an important governmental interest would be jeopardized without the ability to search. A special needs search is reasonable without any suspicion of a crime.

*State v. Polk*  
[Slip Opinion No. 2017-Ohio-2735](#)



# The Art of **E-FILING**

CLICKS AND DIGITS RELIEVE STRESS

**H**is anxiety never reached panic level, but Cuyahoga County assistant prosecutor **Daniel T. Van** sweated through some close calls when filing paper documents with the Ohio Supreme Court.

“Prior to electronic filing, there have been times in which I had to drive to Columbus to file a document or rely upon the assistance of colleagues in Columbus to file a document in order to meet a deadline,” Van explained.

Although he was close, he never missed a deadline. But the time and money spent on making copies and taking them up to the 8th floor Clerk of Court’s office was a lot of work and worry.

“Our staff understood the Court’s filing requirements and would have to work diligently to ensure that briefs were properly formatted with enough lead time to ensure that the appropriate number of copies (such as 16 copies for a merit brief) were made and timely delivered and filed with the Clerk of Court. We would have to track our filings to ensure that the clerk received our briefs by the filing deadline,” Van said.

The Cuyahoga County prosecutor’s office was fortunate in its ability to meet the deadlines. Other attorneys weren’t so lucky.

“It would be not uncommon for it to be at the end of the day and we would get a call saying, ‘I’m in Mansfield and I’m going as quickly as I can,’” said **Steve Kahler**, with the Supreme Court’s Clerk’s office. “Or to unfortunately

not make it in time and to be waiting at security at 5 p.m. when we closed.”

All that drama began to fade away in January 2015 when attorneys were able to file documents electronically. That means doing away with the endless paper copies and binders and replacing them with a fixed digital format. Two years later, it’s considered a tremendous success, with more than 74 percent of all attorney filings performed electronically.

“It’s going great. We have had a lot of really good feedback. We hear our system is very user friendly, very intuitive, and people like it,” said **Sandra Grosko**, the clerk of the Supreme Court of Ohio.

## THE HISTORY OF E-FILING

The Ohio Supreme Court was in the middle of an e-filing sensation when conversions were instituted at state supreme courts.

“We were twenty-something among the courts of last resort, the supreme courts that started e-filing,” said Grosko.

Electronic filing started as the solution for one federal court’s crowded docket in the late 1990s. After being piloted by 31 courts in 2001, e-filing was implemented in every federal district court in the United States and in several federal courts of appeal.

The Ohio Supreme Court’s decision to use e-filing came on the heels of a working draft of Standards for Electronic Filing Processes in 2006.

In 2014, more than 85 Ohio lawyers who frequently file with the court participated in a three-month e-filing pilot program.

Cleveland Assistant Director of Law **Linda Bickerstaff** was one of them.

“The **convenience** of **e-filing** has made life far **less stressful.**”

**Linda Bickerstaff**  
Cleveland Assistant Director of Law

“E-filing has certainly placed me on equal footing with opposing counsel sometimes located in Columbus,” Bickerstaff said. “I am extremely pleased with the functionality of the e-filing system and its ease of use. Prior to e-filing, sizeable briefs, for example, had to be finalized a week in advance, not only to ensure timely delivery to

the Court but in time to reproduce and bind the required number of copies to be filed as well. This meant, of course, that opposing counsel would receive an early copy of my brief allowing them more time to respond. The convenience of e-filing has made life far less stressful.”

Like many attorneys, Cleveland-based **Paul Flowers** was already using e-filing in the federal system and was relieved when the Ohio Supreme Court started its program. It eliminates the cost of making copies and binding filings.

“We have been using the federal filing system for about 20 years, and the Supreme Court’s system was well worth the wait,” Flowers said. “The system is extremely simple and straightforward. With the limited number of options you can select, it eliminates a lot of confusion over how the filing should be submitted.”

After the pilot program, e-filing for the Supreme Court was expanded to all registered lawyers in early 2015, and to pro se filers, those individuals who represent themselves, later in the year.

Forty percent of those who file with the Ohio Supreme are pro se filers and represent themselves. Sadly, only three percent of those filers take advantage of e-filing.

“I don’t think that people who represent themselves know that we have it,” said Kahler. “And there’s no way to individually get that word out. So when people call with other questions, we mention you can file this electronically and direct them to the place on the website where they can do that.”

## EASY ACCESS

To access the e-filing system, one needs to create an account with the Ohio Supreme Court’s e-Filing Portal. Attorneys can use their attorney registration number. Pro se filers can use an email address. From there, they choose the documents they want to file and start uploading them.

There are several guidelines for e-filing.

Filing documents does not alter deadlines imposed by the Rules of Practice of the Supreme Court of Ohio. Documents received after 5 p.m. Eastern Time through the e-Filing Portal will not be considered for filing until the next business day.

“Our filing deadline is 5 p.m. and that is the same for people coming into the office or e-filing. So you can file in the middle of the night, but the document won’t be considered for filing until the next filing day,” Grosko said.

“The most common issue is that the end of the filing date is at 5 o’clock and not 11:59 p.m. That’s something I wish everybody knew or would see in the rules before filing,” Kahler said.

Filers should allow sufficient time to set up account credentials and become familiar with the e-Filing Portal.

Items received through the portal will be reviewed in the order in which they are 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.

“They can sit at their desk and they receive a response email back saying we received your document.” Grosko said. “One thing I want to point out is that it doesn’t mean your document has been filed. Because we have certain guidelines the court requires us to look for in our filings. So once we file the document, we send a follow-up email saying now it’s been filed or it’s been rejected and here is why.”

So far, the biggest challenge in the program is when there is a technical issue on the user’s end.

“We always warn people to not wait until the last minute because things can happen. They can have a technical problem. So we say, ‘please don’t wait and think you are going to do it in five minutes,’” Grosko said.

Still, technical mistakes through electronic filing or e-filing are more easily fixed now than in the days before it was available.

“We have had instances in which, due to technical issues, a filing was rejected and we would have to scramble to correct any mistakes,” Van said. “This would involve either timely delivering of a new filing and copies to the Clerk’s office or correcting the filing and copies in person. Once, I had to disassemble several copies of a brief to correct a typographical error in a brief at the Clerk’s office and then re-staple all of the copies.”

In addition, use of the e-Filing Portal does not alter the filer’s obligation to serve the other parties to the case.

## THE ART OF CONVENIENCE

While federal courts make e-filing mandatory, the Ohio Supreme Court’s e-filing system is voluntary.

Attorneys like Van and others are quick to give feedback.

“From a professional standpoint, I appreciate the implementation of electronic filing,” he said. “The Ohio Supreme Court’s electronic filing system has made filing more convenient and has reduced costs associated with making copies and mailing. Electronic filing allows us to easily upload our completed work product in PDF format, and the system itself is user-friendly and straight-forward, and eliminates time restraints previously associated with delivery. The notification system provides peace of mind knowing when a brief has been accepted for filing.”



The Supreme Court [website](#) offers video tutorials, a user guide, and other helpful information and links.

## Judicial Appointments

### Robert G. Hart

Sandusky County Common Pleas Court

Fremont Municipal Court Judge **Robert G. Hart** becomes the newest Sandusky County Common Pleas Court judge on June 5. He was appointed on May 8 by Gov. John R. Kasich, and he must win in the November 2018 general election to retain the seat for the remainder of the unexpired term, which ends Feb. 9, 2021. Judge Hart replaces Judge **Barbara J. Wilson**, who died March 9.

Judge Hart received his bachelor's degree from Loyola University of Chicago and his law degree from Ohio State University. He was admitted to the practice of law in Ohio on Oct. 29, 1984.

Judge Hart is a member of the Ohio Judicial Conference, including the executive, criminal law and procedure, and traffic law and procedure committees and co-chair of the civil law and procedure committee.

### Melynda Cook Howard

Middletown Municipal Court

Middletown defense attorney **Melynda Cook Howard** was appointed by Gov. John R. Kasich on May 26 to the Middletown Municipal Court.

Howard will join the court June 19 and must win in the November 2017 general election to retain the seat for the unexpired term ending Dec. 31, 2019. Howard replaces Judge **Mark Wall**, who died Feb. 11.

Howard received her bachelor's degree from Eastern Michigan University and her law degree from the University of Cincinnati. She was admitted to the practice of law in Ohio on Nov. 12, 1996.

### Lucas County Judge Delivers UT Law Commencement

Lucas County Common Pleas Court Judge **Myron C. Duhart** delivered the keynote address at the University of Toledo College of Law's commencement on May 6.

The ceremony honored 79 juris doctor and three master of studies in law candidates.

Judge Duhart spoke to the graduates about giving back and service to the community, topics about which he is passionate.

A lifelong learner, Judge Duhart earned his bachelor's degree from Wright State University, juris doctor from the UT College of Law in 1996, and is pursuing a master of laws degree in judicial studies from the Duke University School of Law. He also attended the Harvard Kennedy School of Government.



Judge Duhart

## Rule Amendment Summary

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

### DNA Testing

A person sentenced to death will be able to appeal the rejection of an application for DNA testing directly to the Ohio Supreme Court. The new rules adopted by the Court are the result of a 2016 case (*State v. Noling*) in which the Court found that part of the state law limiting the appeals of capital offenders seeking DNA testing after a conviction is unconstitutional. The amendments to the Rules of Practice of the Supreme Court of Ohio took effect June 1, and allow the filing of an appeal after a common pleas court decision that rejects an application for DNA testing, for an offender sentenced to death.

### Menacing Dispute Mediation

Under temporary rule changes announced by the Court, a group of pilot courts around the state will begin to mediate a subset of civil stalking protection order cases. The pilot program will determine if these cases are better suited for mediation, rather than being processed through traditional means. Common pleas courts report that many of the menacing disputes occur between coworkers or neighbors. Cases involving domestic violence or sexually oriented offenses are not eligible for mediation. The temporary rules took effect June 1.



## 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 49 – 2017-2018 Biennial Budget – Rep. Ryan Smith (R-Bidwell)**

To provide authorization and conditions for the operation of state programs.

**STATUS:** Introduced in the House Feb. 8, 2017. Passed the House May 2, 2017 (58-36). Referred to the Senate, where it is pending. The statutory deadline for passage is June 30, 2017.

### **HB 174 and SB 130 – Franklin County Court – Rep. Jim Hughes (R-Columbus) & Rep. Laura Lanese (R-Grove City); Sen. Charleta Tavares (D-Columbus)**

To add two judges to the Domestic Relations Division of the Franklin County Court of Common Pleas to be elected in 2018.

**STATUS:** HB 174 was introduced in the House April 5, 2017, and referred to the House Civil Justice Committee, where its second hearing is scheduled. SB 130 was introduced in the Senate on April 10, 2017, and referred to the Senate Judiciary Committee.

### **HB 215 and SB 141 – Paulding Courts – Rep. Craig Riedel (R-Defiance); Sen. Cliff Hite (R-Findlay)**

To create the Paulding County Municipal Court in Paulding on January 1, 2019, to establish one full-time judgeship in that court, to provide for the nomination of the judge by petition only, to abolish the Paulding County Court on that date, to designate the Paulding County Clerk of Courts as the clerk of the Paulding County Municipal Court, and to provide for the election for the Paulding County Municipal Court of one full-time judge in 2018.

**STATUS:** HB 215 was introduced in the House May 9, 2017, and

referred to the House Criminal Justice Committee, where it has had one hearing. SB 141 was introduced in the Senate May 2, 2017, and referred to the Senate Judiciary Committee.

### **HB 218 – Park Districts – Rep. Bill Seitz (R-Cincinnati)**

To expand a probate court's powers and duties with regard to a park district.

**STATUS:** Introduced in the House May 16, 2017, and referred to the House Government Accountability & Oversight Committee, where its second hearing is scheduled.

### **HB 232 – Tax Deduction – Rep. John Rogers (D-Mentor-on-the-Lake) & Rep. Jeffery Rezabek (R-Clayton)**

To authorize, for six years, a personal income tax deduction for attorneys and pass-through entity law firms based on the number of hours the attorney performed pro bono legal work for indigent clients through a legal aid society and the expenses associated with that work.

**STATUS:** Introduced in the House May 18, 2017, and referred to the House Ways & Means Committee.

### **SB 152 and HB 223 – Structured Settlements – Sen. Matthew Dolan (R-Chagrin Falls); Rep. Jonathan Dever (R-Cincinnati)**

Relative to transfers of structured settlement payment rights.

**STATUS:** SB 152 was introduced in the Senate May 17, 2017, and referred to the Senate Judiciary Committee. HB 223 was introduced in the House May 16, 2017, and referred to the House Civil Justice Committee, where its first hearing is scheduled.

# The Agenda

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

Ohio Court EDU  
(Formerly Judicial eCademy)  
<https://sco.csod.com/client/sco/default.aspx>

June 7

**Probation Officer Training Program**  
Probation Officers  
Dayton

June 14

**Adult Guardianship 3-Hour Continuing Education Course: Developmental Disabilities BROADCAST**  
Adult Guardians  
Broadcast to various Ohio sites  
8:45 a.m. - Noon  
OR 1 p.m. - 4:15 p.m.

June 15

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

June 16

**Consumer Law**  
Judges & Magistrates  
Columbus

June 20

**Court Security Officers: Essential Communication Skills for Court Security Officers**  
Court Personnel  
Columbus

**Probation Officer Training Program: Intro to Offender Behavior Management**  
Probation Officers  
Akron

June 21

**Guardian ad Litem Continuing Education Course: Psychiatric Disorders**  
Guardians ad Litem  
Cleveland  
12:30 - 4 p.m.

**Guardian ad Litem Pre Service Course**  
Guardians ad Litem  
Cleveland

June 21 - 23

**Court Management Program (CMP): Level I: Human Resources**  
CMP 2017 Class  
Columbus

June 22 & 23

**Juvenile Court Clerks Association**  
Court Personnel  
Columbus

June 23

**Court Security Screening Course**  
Court Personnel  
OPOTA-Toledo

June 27

**Probation Officer Training Program: Intro to Cognitive Behavioral Interventions**  
Probation Officers  
Columbus

July 5

**Guardian ad Litem Continuing Education Course: The GAL Interview**  
Guardians ad Litem

Athens  
12:30 - 4 p.m.

July 6

**Probation Officer Training Program**  
Probation Officers  
Dayton

**Court Services Training**  
[sc.ohio.gov/JCS/courtSvc](http://sc.ohio.gov/JCS/courtSvc)

June 7 & 8

**Basic Mediation**  
Columbus

June 19 & 20

**Parenting Coordination**  
Columbus

June 21

**Parenting Coordination Roundtable**  
Teleconference

June 30

**Revised Ohio Youth Assessment Screening (OYAS) Training**  
Columbus

**Court Roundtables**  
[sc.ohio.gov/JCS/roundtables.pdf](http://sc.ohio.gov/JCS/roundtables.pdf)

**NOTE:** All meetings are at the Thomas J. Moyer Ohio Judicial Center in Columbus

June 8

**Domestic Relations Custody Evaluators**  
All Counties

June 20

**Juvenile Chief Probation Officers**  
Counties with population of less than 100,000

**Supreme Court of Ohio**  
[sc.ohio.gov](http://sc.ohio.gov)

June 6, 7, 20 & 21

**Oral Arguments**  
Live stream at 9 a.m. at [sc.ohio.gov](http://sc.ohio.gov)

Conferences

June 6 - 8

**Ohio Association of Probate/Domestic Relations/Juvenile Judges Summer Conference**  
Warren

June 21 - 23

**Ohio Common Pleas Judges Association (OCPJA) Summer Conference**  
Cleveland

June 22

**Juvenile Court Clerks Conference**  
Columbus