

CNO REVIEW

March 2017



NEW JUSTICES JOIN THE BENCH

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About Court News Ohio

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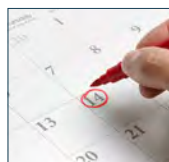
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Gov. Kasich Fills Judicial Vacancies

ON THE COVER: Justices Patrick F. Fischer (*pictured, far left*) and R. Patrick DeWine (*pictured, far right*) sit for their first oral arguments as members of the Ohio Supreme Court.



Cases

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

Supreme Court of Ohio

Court Will Not Require Powell to Place Condo Zoning Ordinance on Ballot

The Ohio Supreme Court rejected a request to force a vote on a 48-home development planned for Powell, but indicated opponents could take up their issue in a lower court.

In a per curiam decision, the Supreme Court refused to grant a writ of mandamus to Brian Ebersole, a leading member of a group opposing developer Arlington Homes' planned Harper's Pointe project in Powell, a small Delaware County city on the northern edge of Columbus.

The writ requested that Powell City Council's zoning change for the project be put up for a referendum on the May 2017 ballot. Arlington first proposed a 47-unit family-

condominium project on the land in 2015, and Powell City Council gave its approval to the plan and a zoning classification change that zoned the area "Planned Residential."

Residents sought a referendum to the ordinance, and voters rejected it in November 2015. Arlington returned with a new plan to put 48 family homes on the land, and the city presented a new ordinance that only rezoned the land without approving the plan. The rezoning would make the land a "Downtown Residence District." Ebersole argued the city was making a slight change to get around the city charter's requirement that any ordinance rejected by voters can only be re-enacted if approved by voters. He maintained the new ordinance was a slight change to get around the citywide vote.

The Court wrote that the city council was not attempting to re-enact

the rejected law. It suggested that if Ebersole wants to challenge that the new law is essentially the same as the old law, he needs to seek a declaratory judgment in common pleas court. The decision said the Court offers no opinion on whether Ebersole's complaint has merit, but only that the Court does not view the city charter as requiring city council to put the new ordinance with the revised zoning on the ballot.

Chief Justice **Maureen O'Connor** and Justices **Sharon L. Kennedy**, **Judith L. French**, **William M. O'Neill**, **Patrick F. Fischer**, and **R. Patrick DeWine** joined the opinion. Justice **Terrence O'Donnell** concurred separately in a written opinion.

2016-1701. State ex rel. Ebersole v. City Council of Powell, [Slip Opinion No. 2017-Ohio-509](#).

HappeningNow

News and Notes from Courthouses Across the Buckeye State

Court Adopts Guardianship, Probate Forms

The Ohio Supreme Court adopted new and updated forms for adult guardianship cases and other probate matters, effective March 1.

Following the Supreme Court's adoption of new adult guardianship rules (Sup.R. 66.01 through 66.09) in 2015, the Ohio Association of Probate Judges suggested several changes to forms used by probate courts. The Commission on the Rules of Superintendence reviewed the proposal and submitted its recommendations to the Court.

The guardianship-related changes consist of 13 new forms (Standard Probate Forms 27.0 to 27.12), which include:

- Notification by probate court to guardians when it receives comments or complaints about the guardian and when it decides whether to hold a hearing about the comments or complaints
- Report to be completed by guardian listing a breakdown of fees incurred, including guardianship, legal, and other direct services fees
- Guardian's notification to the probate court that he or she has completed the required training courses
- Address change notices and other personal information updates for guardians or wards
- Guardian's application to begin a legal proceeding for a ward under his or her care
- Report detailing whether a ward has certain legal papers and their location
- Application to close the guardianship of an estate
- Annual guardianship plan

In other probate areas, the amendments adjust forms about adoptions, minors' estates, and the appointment of appraisers. Access all the new [forms](#).

Professionalism Commission Names 2017 Leadership

Franklin County Common Pleas Court Magistrate **Mark Petrucci** will serve as 2017 chair of the [Supreme Court Commission on Professionalism](#). Petrucci served as vice chair in 2016, and his original term began in 2014. The former Columbus Bar Association president has worked as a magistrate for nine years.

Lake County Common Pleas Court Judge **Richard Collins Jr.** will serve as vice chair. He has been on the bench since 2002.

Besides the leadership posts, Petrucci and Collins also were reappointed to three-year terms.



Portrait Dedication: Hon. Judith Ann Lanzinger

At a Courtroom ceremony on Feb. 6, the Ohio Supreme Court dedicated the portrait of former Justice **Judith Ann Lanzinger**.

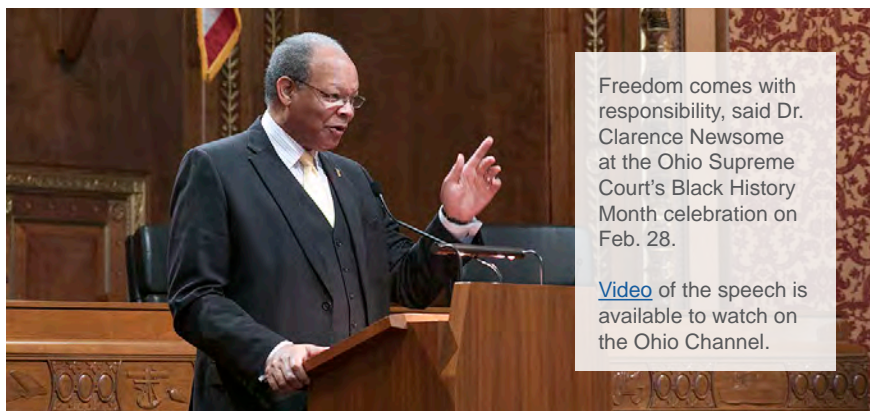
After becoming the only person in Ohio history to be elected to every level of the state's judiciary, Justice Lanzinger concluded her 12-year career on the Supreme Court in December. She could not run for re-election because of the constitutional age restriction for judges.

Artist Jeffrey Kloppling, Lanzinger's cousin, spent six years completing the portrait after spending two years in the planning stages. After the family unveiled the portrait, Chief Justice **Maureen O'Connor** accepted it on behalf of the Court.

The portrait will hang in the Thomas J. Moyer Ohio Judicial Center in Room 104. View the entire [ceremony](#).

PICTURED: Former Ohio Supreme Court Justice Judith Ann Lanzinger and portrait artist Jeffrey Kloppling pose in front of her official portrait.

Freedom at Heart of Black History Month Speech



Freedom comes with responsibility, said Dr. Clarence Newsome at the Ohio Supreme Court's Black History Month celebration on Feb. 28.

[Video](#) of the speech is available to watch on the Ohio Channel.

Oney Judge, a young slave in the household of George and Martha Washington, decided to flee and escaped to New Hampshire. Many years later, Judge said she would do it again, even though she struggled throughout her life, because she felt she was made of child of God by becoming free.

The story resonated with **Clarence G. Newsome**, president of the National Underground Railroad Freedom Center and speaker for the Ohio Supreme Court's Feb. 27 Black History Month celebration. Newsome, who has a doctorate in American religious history, said this view of freedom as created by a higher power reflects the moral grounding of the concept.

"There is a right way to live together," he said. "There is a right way to craft laws that allow for us to live to our fullest potential without doing harm to one another."

Newsome stressed to the audience, which included nearly 120 high school students, that freedom comes with responsibility.

"Freedom is bounded. It is not boundless," he said. "Because we can do something freely doesn't mean it's the right thing to do."

"That's where this sense of a moral compass ... becomes a very powerful force for social growth and social transformation."

Shared Resources Website to Benefit Local Court Projects

The Ohio Supreme Court in February unveiled a shared resources [website](#) to encourage local courts to collaborate on projects to save time and money yet still meet their needs.

The website acts as a clearinghouse for courts to share current projects and to find partners for future ones. Local courts can access a list of statewide projects and see three examples of how resource-sharing proved successful for local courts. The Supreme Court's Case Management Section will serve as a liaison in assisting local courts in finding partners for proposed projects.

Members of the Supreme Court's Advisory Committee on Case Management Subcommittee on Resource Sharing, which developed the idea, were retired Cuyahoga County Common Pleas Court Judge **Tom Pokorny**, Second District Court of Appeals Judge **Michael Hall**, Franklin County Domestic Relations/Juvenile Court Judge **Kim Browne**, Cleveland Municipal Court Administrator **Russell Brown**, Franklin County Municipal Court Division Manager **Alex Sanchez**, and Jefferson County Juvenile Court Probation Officer **Mindy Nash**.

Board of Professional Conduct Releases 2016 Annual Report

The Ohio Board of Professional Conduct released its [2016 annual report](#), highlighting its consideration of disciplinary cases involving Ohio judges and lawyers and a significant expansion of the board's education and outreach activities.

For the fourth time in the past five years, the board reduced its pending caseload by disposing of 83 disciplinary cases and ending the year with 57 pending cases, including 24 cases filed in the last two months of the year. The case dispositions included three recommendations for sanctions in judicial misconduct cases and the dismissal of a fourth judicial discipline case following the respondent's agreement to permanently resign from judicial service.



Honoring Excellence

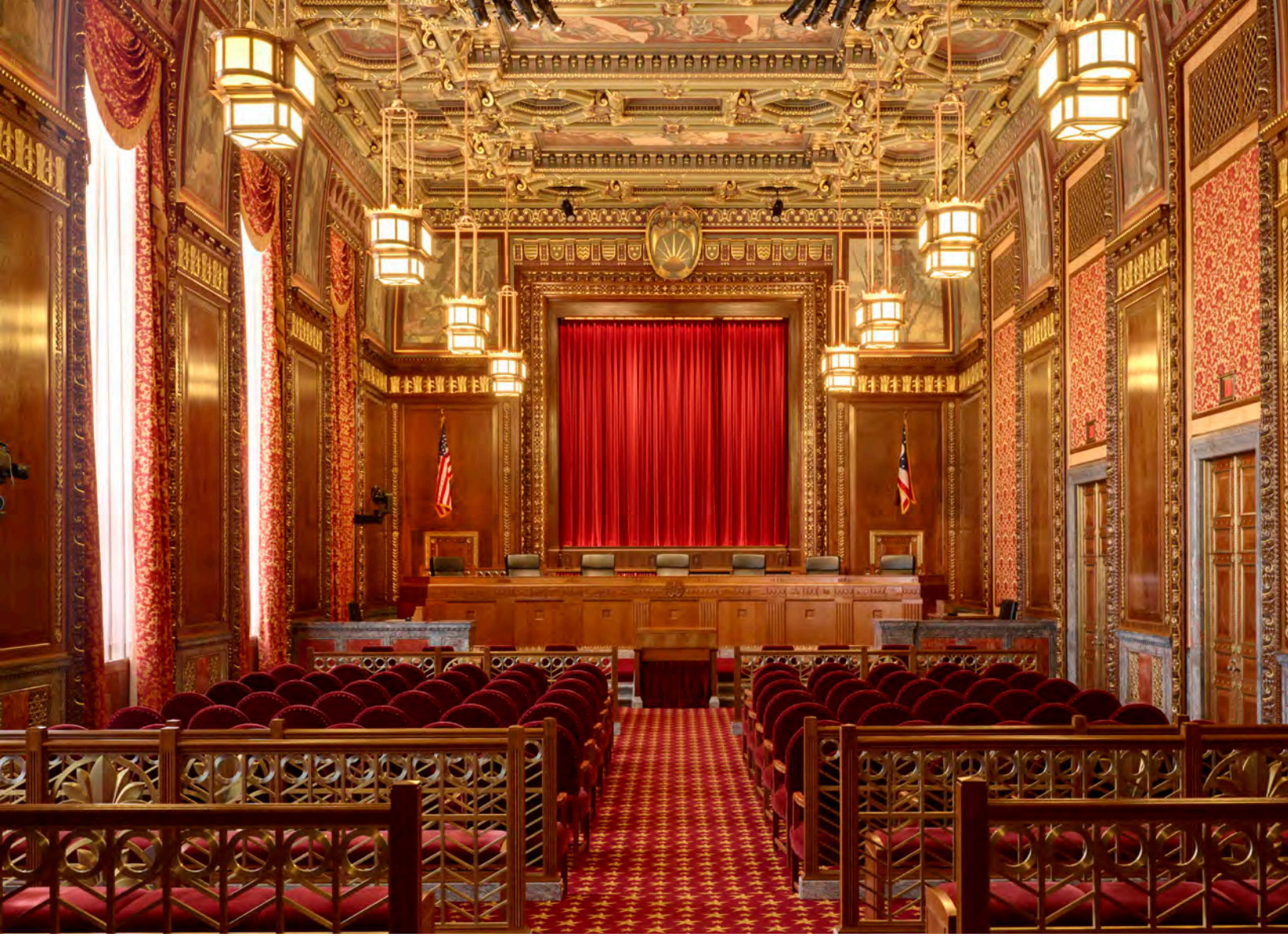
Four Ohio Supreme Court employees were recognized for their professionalism and service during a Feb. 28 ceremony.

The 13th annual employee recognition ceremony included a presentation of the Professional Excellence Awards, the highest honor given to Supreme Court staff, to (pictured from left) : Katie Monahan, Office of Public Information; Jess Mosser, Office of Chief Legal Counsel; Erick Gale, Office of Legal Resources; and Kelly Peters, Office of Justice Judith L. French.

Also at the ceremony, employees were recognized for 5, 10, 15, 20, 25, and 30 years of service.

2016 Pro Bono Reporting Deadline: March 31, 2017

Ohio attorneys registered for active, corporate, or emeritus pro bono status have until March 31 to voluntarily report 2016 pro bono activities. Any pro bono work, including financial contributions to organizations that provide legal services to people of limited means, can be reported. Those who wish to participate in voluntary reporting may request a link to the reporting website by email to justiceinaction@olaf.org.



New Justices Join the Bench

Two justices took their seats on the Ohio Supreme Court for the first time early this year. Justice Patrick F. Fischer won election in November to the Supreme Court and began a six-year term on Jan. 1 as the 157th justice. Justice R. Patrick DeWine was elected to the Court in November as the 158th justice and began his term on Jan. 2. The 2016 election marked the first time in 24 years that there were two contested open seats on the state's court of last resort.

Both Justices Fischer and DeWine most recently served as judges on the First District Court of Appeals in Hamilton County. It has been 22 years since a justice from Hamilton County has served on the Court. That person was Asher Sweeney, who joined the bench in 1977 and remained until 1994.

The new justices each held a formal ceremony to take their oaths of office.



Justice Fischer



Justice DeWine



Justice Fischer takes his oath of office on March 1 from Chief Justice Maureen O'Connor. Also pictured are Justice Fischer's wife, Jane, and their daughter and son-in-law.

Fischer Discusses Service and Impartiality

Justice Fischer took his ceremonial oath of office during a March 1 Courtroom ceremony surrounded by family and friends. Chief Justice **Maureen O'Connor** administered the oath.

In his remarks, Justice Fischer, who served for six years on the First District, listed four factors that make a good judge or justice: impartiality, independence, integrity, and professionalism. Noting his Jesuit high school education, he mentioned the order's saying, "A Man for Others," and the importance to him of the Jesuit tradition of service.

"It is this ability of one person who shall stand up for all others, sometimes alone, which is the gift of independence. And, for me, it is only with that independence that a judge can stand up for every person seeking justice," he said.

Justice Fischer thanked his late parents for sacrificing, saving, and scrimping for his education and that of his five siblings. Three of the Fischer children became lawyers.

"My parents' gift that education makes the future, and their importance on learning how to learn made all the difference," he said. "And, to me, it is only with that continuous learning that the law can maintain its integrity."

Justice Fischer also pledged to be a collegial member of the Supreme Court, making good on the teamwork lessons of his childhood friends.

Among the ceremony's speakers was Supreme Court Justice **Judith L. French**. She gave examples

of Justice Fischer's compassion and concern for others, and said he has already shown himself to be "calm, considerate, articulate, and thoughtful" as a colleague on the Court.

"As a justice, he is above all else a listener. Whether on the bench or off, he listens before speaking," she said. "Now I already know that Pat and I will not always agree, but I will always appreciate his perspective and his willingness to consider all sides before reaching a conclusion."

OSBA Executive Director **Mary Amos Augsburg** served as emcee, and former Ohio State Bar Association (OSBA) President **Barbara J. Howard** also spoke. Justice Fischer is one of the few justices in the Supreme Court's history to also have served as president of the OSBA. The Friendly Sons of St. Patrick Glee Club from Cincinnati – whose members include First District Court of Appeals Judge Beth Myers's husband and son, Mike and Benjamin Keefe – sang at the event.



Watch Justice Fischer's ceremony on [The Ohio Channel](#).

Justice DeWine Focuses on Independence and Restraint

During a Feb. 9 Courtroom ceremony filled with family and friends, Justice DeWine took his ceremonial oath of office. Chief Justice O'Connor administered the oath.

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NEW JUSTICES: Continued from p. 7



Justice Pat DeWine takes his oath of office on Feb. 9 from Chief Justice Maureen O'Connor. Also pictured are Justice DeWine's wife, Rhonda, and their children.

Justice DeWine, whose judicial experience includes nearly four years on the First District and four years on the Hamilton County Common Pleas Court, thanked his family, mentors, and colleagues and “virtually everyone” in the room for helping him along the way over the two years he campaigned for the Supreme Court.

Of his travels to all 88 counties, Justice DeWine said he realized the wisdom of making judges directly accountable to the voters and that he “learned a great deal about Ohio, and I think it really has made me a better judge.”

Justice DeWine also pledged to keep restraint and independence at the center of his decision-making, as called for by the framers of the Constitution.

“They understood that our freedoms would be guaranteed not by any single branch of government, but by the whole of our system, by the branches working sometimes together but also sometimes in tension with each other,” he said. “For that system to work, our judiciary must be independent, but at the same time, the great powers that our courts are vested with compel that we always exercise restraint.”

Among the speakers on the program were Justice DeWine’s father, Ohio Attorney General **Mike**

DeWine. He said that Justice DeWine learned the value of hard work from his grandparents, and he applied those lessons to distance running, serving his community, and campaigning.

“Pat once said that the best compliment my father could give me would be to say, ‘Pat does what he thinks is right.’ That is the highest praise he has for people,” Attorney General DeWine said. “Well, Patrick, I know you do what you think is right. And we know you will continue to do that as a member, as a justice of the Ohio Supreme Court. You worked exceedingly hard for this. You earned this. And your mother and I could not be any more proud of you than we are today.”

Judge **Michael R. Barrett** of the U.S. District Court for the Southern District of Ohio served as emcee. Ohio Judicial Conference Executive Director and former Supreme Court Justice **Paul E. Pfeifer**, whose seat Justice DeWine assumed, also spoke.



Watch Justice DeWine's ceremony on [The Ohio Channel](#).



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 1 – Protecting Domestic Violence Victims, Rep. Emilia Sykes (D-Akron) & Rep. Nathan Manning (R-North Ridgeville)

To authorize the issuance of dating violence protection orders with respect to conduct directed at a petitioner alleging dating violence, to provide access to domestic violence shelters for victims of dating violence, and to require the Attorney General's victim's bill of rights pamphlet to include a notice that a petitioner alleging dating violence has the right to petition for a civil protection order.

STATUS: Passed by the House Civil Justice Committee on Feb. 22, 2017.

HB 4 – Cocaine Amounts Determination, Rep. Bob Cupp (R-Lima) & Rep. John Rogers (D-Mentor-on-the-Lake)

To provide that in determining the amount of cocaine for trafficking and possession offenses, it also includes a compound, mixture, preparation, or substance containing cocaine, and to declare an emergency.

STATUS: Passed the House on Feb. 15, 2017.

HB 49 – Operating Budget, Rep. Ryan Smith (R-Gallipolis)

Creates FY 2018-2019 main operating budget.

STATUS: Introduced in the House on Feb. 8, 2017. Referred to the House Finance Committee.

SB 4 – Records Expungement, Sen. Stephanie Kunze (R-Hilliard) & Sen. Scott Oelslager (R-North Canton)

HB 56, Rep. Jonathan Dever (R-Cincinnati) & Rep. Theresa Gavarone (R-Bowling Green)

To allow a person who is found not guilty of an offense, or who is the defendant named in a dismissed criminal charge, to apply for a court order to expunge the person's official records if the charge or not guilty finding was the result of the applicant having been a human trafficking victim, to allow a person convicted of certain prostitution-related offenses to apply for the expungement of the conviction record of any offense, other than a specified disqualifying offense, the person's participation in which was a result of having been a human trafficking victim, and to allow intervention in lieu of conviction for persons charged with committing an offense while a victim of compelling prostitution.

STATUS: SB 4 was introduced on Jan. 31, 2017, and HB 56 was introduced on Feb. 13, 2017.

SB 7 – Protection Order Violations, Sen. Kevin Bacon (R-Minerva Park) & Sen. Gayle Manning (R-North Ridgeville)

To provide that service of a protection order or consent agreement upon a person is not necessary for the person to be convicted of the offense of violating a protection order if the person had actual notice of the order or agreement and the person recklessly violated its terms.

STATUS: Introduced on Jan. 31, 2017.

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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

March 1

Guardian ad Litem Continuing Education Course: Child Development

Guardians ad Litem
Toledo
12:30 p.m. - 4 p.m.

March 2

Judicial Candidates Seminar

Judicial Candidates
Dayton
1:30 p.m. - 3:30 p.m.

March 8 - 10

New Magistrate Orientation

Magistrates
Columbus

March 9

Court Security Officers Unit 2: Court Security Fundamentals

Court Personnel
Akron

March 15 - 17

Court Management Program 2017 Level II: High Performance Court Framework

CMP 2017 Class
Columbus

March 16

Fundamentals of Adult Guardianship BROADCAST

Adult Guardians
6-Hour Broadcast
to various Ohio sites

March 16 - 17

Juvenile Judges Spring Seminar - Delinquency & Unruly

Judges & Magistrates
Columbus

March 30

Domestic Violence & Contempt

Acting Judges, Judges
& Magistrates
Perrysburg

Judicial College Online Study Courses

Judges, Magistrates & Acting Judges

Access to Justice & Fairness in the Courts for the Deaf (2.25 Hours)

Handling Contempt Situations (2.0 Hours)

Hearsay Basics (1.0 Hour)

Specialized Topics in Domestic Violence (1.0 Hour)

The Language of Justice: Ensuring Access to Ohio Courts (1.0 Hour)

Ensuring Meaningful Opportunities for Youth Engagement in Court (2.75 Hours)

Guardians (Open to All Audiences)

Ohio Guardian ad Litem Education Program: Advanced Topics in Child Abuse (3.0 Hours)

Ohio Guardian ad Litem Education Program: Advanced Topics in Divorce Cases (3.75 Hours)

Fundamentals of Adult Guardianship Online Course for Professionals (6.0 Hours)

Adult Guardianship: Guardianship of the Estate (3.0 Hours)

Fundamentals of Adult Guardianship Online Course for Laypersons (6.0 Hours)
All Court Employees

Legal Advice versus Legal Information (0.75 Hours)

Introduction to the Courts (2.0 Hours)

March 31
**Domestic Relations
 Spring Seminar**
 Judges & Magistrates
 Columbus

April 6
Supervisor Series
 Court Personnel
 Columbus

April 6 & 7
Capital Cases
 Judges
 Columbus

April 7
Supervisor Series
 Court Personnel
 Columbus

Dispute Resolution
 Training
[sc.ohio.gov/JCS/
 disputeResolution](http://sc.ohio.gov/JCS/disputeResolution)

March 20 & 21
 and March 27-29
**Specialized Family/Divorce
 Mediation Training**
 Delaware

April 3 & 4
 and April 10 & 11
**Abuse, Neglect
 and Dependency**
 Toledo

March 15
**Parenting Coordination
 Roundtable Teleconference**

Language Services
 Training
sc.ohio.gov/JCS/interpreterSvcs

March 24 & 25
Orientation Training
 (Exam Candidate
 Application Required)
 Columbus

Supreme Court of Ohio
sc.ohio.gov

April 4 – 5
Oral Arguments
 Live stream at 9 a.m. at
sc.ohio.gov

April 6
**Oral Arguments at Off-Site
 Court**
McConnelsville, Ohio
 Live stream at 9 a.m.
 at sc.ohio.gov

LEGISLATIVE DIGEST: Continued from p. 9.

SB 25 – Perry County Municipal Court, Sen. Jay Hottinger (R-Newark)

To create the Perry County Municipal Court in New Lexington on Jan. 1, 2018, to establish one full-time judgeship in that court, to provide for the nomination of the judge by petition only, to abolish the Perry County Court on that date, to designate the Perry County Clerk of Courts as the clerk of the Perry County Municipal Court, and to provide for the election for the Perry County Municipal Court of one full-time judge in 2017.

STATUS: Passed the Senate on Feb. 15, 2017.

SB 42 – Drug Offense Penalties, Sen. John Eklund (R-Chardon)

To expressly provide that drug offense penalties that refer to a particular type of drug also apply to a compound, mixture, preparation, or substance containing a detectable amount of that drug and to declare an emergency.

STATUS: Introduced on Feb. 8, 2017.

SB 66 – Sentencing Modification- Rehabilitation, Sen. John Eklund (R-Chardon) & Sen. Charleta Tavares (R-Columbus)

To modify criminal sentencing and corrections law by including rehabilitation as a purpose of felony sentencing, removing the one-year minimum for presumptive fourth or fifth degree felony community control sanctions, modifying sanctions for a violation of a community control condition, modifying the manner of calculating confinement credits, modifying eligibility criteria and procedures for granting intervention in lieu of conviction, making offenders convicted of certain multiple fourth or fifth degree felonies eligible for conviction record sealing, revising procedures for the Adult Parole Authority to grant a final release or terminate post-release control, and modifying the criteria for considering a prison term sanction for a post-release control violation.

STATUS: Introduced on Feb. 22, 2017.

Judicial Appointments

Gov. John Kasich recently appointed the following judges to courts across Ohio.



Jason T. Adams

Summit County
Common Pleas Court

Former magistrate **Jason T.**

Adams assumed office on March 1 and must win in the November 2017 general election to retain the seat for the remainder of the unexpired term, which ends Dec. 31, 2019. Adams replaces Judge **Katarina Cook**, who was elected to the Summit County Domestic Relations Court. Adams received his bachelor's degree and law degree from University of Akron. He was admitted to the practice of law in Ohio on Nov. 6, 1989.



Jeffrey J. Beigel

Shelby County
Probate/Juvenile Court

Jeffrey Beigel assumed office on Feb. 20 and must win in the November 2018 general election to retain the seat for the remainder of the unexpired term, which ends Feb. 8, 2021. Beigel replaces Judge **William R. Zimmerman**, who was elected to the Third District Court of Appeals. Beigel received his bachelor's degree from Miami University and his law degree and master of business administration from the Ohio State University. He was admitted to the practice of law in Ohio on Nov. 12, 1986.



Dennis P. Deters

First District Court of Appeals

Cincinnati attorney **Dennis P.**

Deters assumed office on March 6. He must win in the November 2018 general election to retain the seat for the full six-year term commencing Feb. 11, 2019. Deters replaces Justice **R. Patrick DeWine** who was elected to the Ohio Supreme Court. Deters received his bachelor's degree from the University of Notre Dame and his law degree from the University of Cincinnati. He was admitted to the practice of law in Ohio on Nov. 20, 2000.



Charles M. Miller

First District Court of Appeals

Attorney **Charles M. Miller** became a judge on the Cincinnati appellate court on Feb. 28. He must win in

November 2018 general election to retain the seat for the full six-year term commencing Feb. 9, 2019. Miller replaces Justice **Patrick F. Fischer**, who was elected to the Supreme Court. Miller received his bachelor's degree from the Ohio State University and his law degree from Boston University. He has been a partner at Keating Muething and Klekamp since 2005 and has counseled many cases that appeared before the Supreme Court. He was admitted to the practice of law in Ohio on Nov. 13, 2001.



Ann Marie O'Brien

Akron Municipal Court

Ann Marie O'Brien assumed office on Feb. 21 and must win in the November 2017 general election to retain the seat for the full six-year term commencing Jan. 3, 2018.

O'Brien replaces Judge **Joy Malek Oldfield**, who was elected to the Summit County Court of Common Pleas. O'Brien received her bachelor's degree from Hiram College and her law degree from University of Akron. She was admitted to the practice of law in Ohio on Nov. 18, 1991.



Jonathan P. Starn

Hancock County
Common Pleas Court

Judge **Jonathan P. Starn** assumed office on March 3. He must win in the November 2018 general

election to retain the seat for the remainder of the unexpired term, which ends Dec. 31, 2020. Judge Starn replaces Judge **Joseph H. Niemeyer**, who resigned. Judge Starn, who served on the Findlay Municipal Court since 2010, received his bachelor's and law degrees from Capital University. He was admitted to the practice of law in Ohio on Nov. 8, 1993.