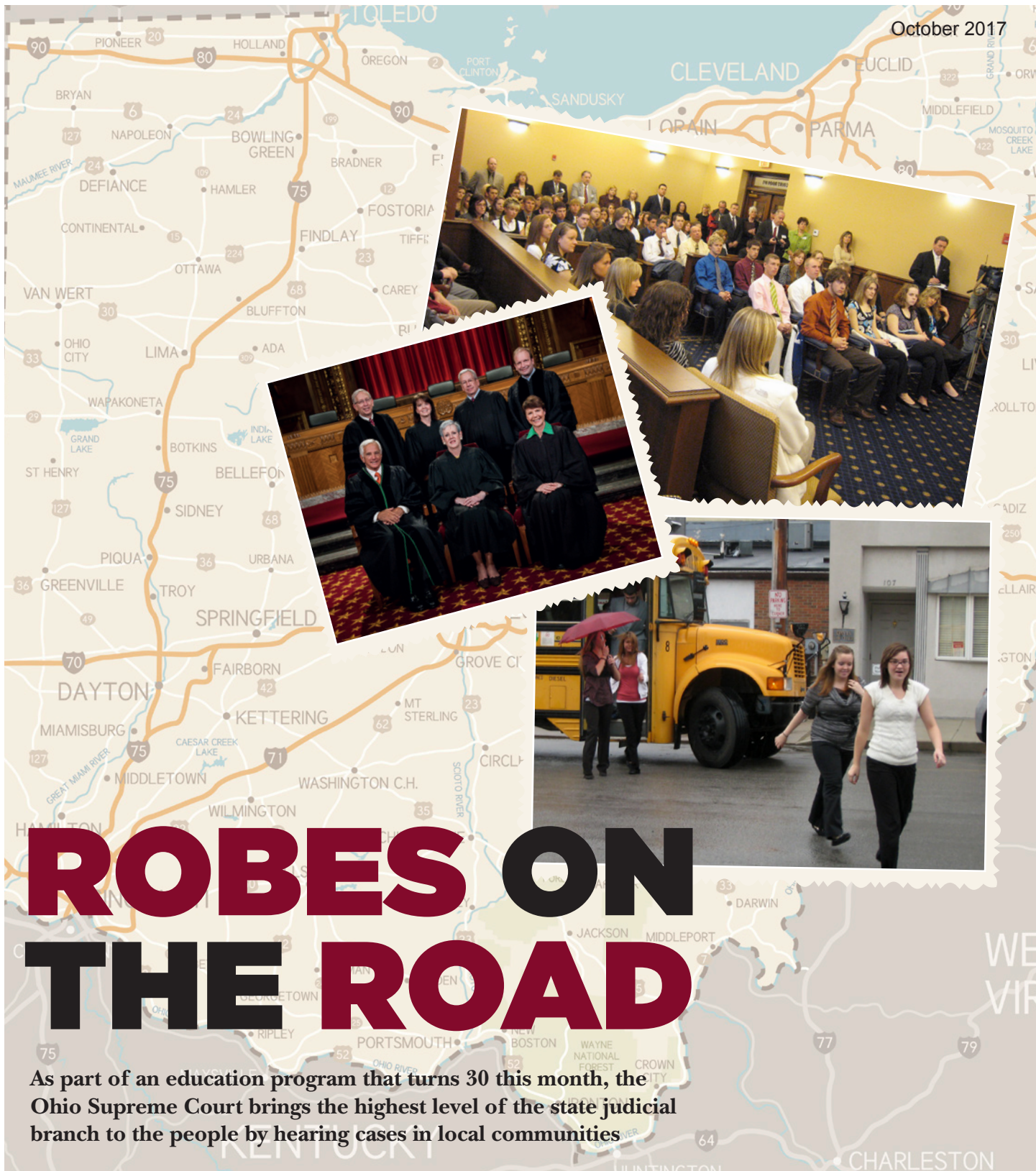


CNO REVIEW



October 2017

ROBES ON THE ROAD

As part of an education program that turns 30 this month, the Ohio Supreme Court brings the highest level of the state judicial branch to the people by hearing cases in local communities

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](https://www.facebook.com/courtnewsohio)), a Twitter feed ([@courtnewsohio](https://twitter.com/courtnewsohio)), and a YouTube channel ([youtube.com/CourtNewsOhioTV](https://www.youtube.com/CourtNewsOhioTV)).

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Inside

the October Issue



3 Cases

Strip Club Not Liable for Auto Accident Injuries Caused by Intoxicated Dancer

4 Happening Now

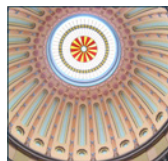
Professionalism Commission Celebrates 25 Years, Honors Long-Time Mentors

5 On the Bench

Unjust Fines, Fees, and Bail Lead Discussion at American Judges Association Conference

6 Cover Story

Robes on the Road



11 Legislative Digest

Compilation of Bills and Resolutions Introduced by the Ohio General Assembly of Interest to the Judicial Community



12 The Agenda

Upcoming Events, Training Opportunities, and Conferences for Judges and Court Staff

ON THE COVER (Clockwise from left): Justices of the Ohio Supreme Court, 2017; Columbiana County, 2009; Highland County, 2011.

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

[Strip Club Not Liable for Auto Accident Injuries Caused by Intoxicated Dancer](#)

Ohio's "Dram Shop Act" limits the legal responsibility of liquor permit holders not only for acts of an intoxicated customer who causes an accident after leaving the establishment where drinks are sold, but also for acts of any intoxicated worker or person after they leave, the Ohio Supreme Court ruled.

The Supreme Court's 6-1 decision on Sept. 6 found the Dram Shop Act applied in a case where a dancer at a Dayton strip club was provided drinks by patrons and, on her drive home, hit a vehicle in which Nichole Johnson was a passenger. Johnson suffered multiple injuries.

Writing for the Court majority, Justice **R. Patrick DeWine** concluded that the law holds the club responsible in limited circumstances including if the owner or an employee knowingly sold drinks to a "noticeably intoxicated person." He wrote the trial court concluded that Montgomery was not noticeably intoxicated when she left and found the club was not liable for the damage.

The Court also ruled the only way to legally pursue a claim for injuries caused off premises against a liquor permit holder is by using the Dram Shop Act. The trial court had allowed Johnson to pursue a separate common-law-negligence claim against the Living Room owners. A jury awarded Johnson \$2.85 million from club, but the Second District Court of Appeals reversed the decision, finding that Johnson could only sue using the Dram Shop Act. The trial court did not allow the jury to consider her Dram-Shop-Act claim, and the Supreme Court decision did not require the trial court to reconsider the case.

Johnson v. Montgomery
[Slip Opinion No. 2017-Ohio-7445](#)

[Admissions of Fault When Coupled with Apologies Cannot Be Used in Lawsuits](#)

A health care provider's statement of apology that expresses fault or admission of liability to a patient or the patient's family cannot be admitted as evidence in a civil lawsuit against the provider, the Ohio Supreme Court ruled.

The Supreme Court ruled on Sept. 12 that "a statement expressing apology" means a statement expressing a feeling of regret for an unanticipated outcome of the patient's medical care, and may include an acknowledgment that the patient's care was substandard.

The ruling resolved a split among Ohio appeals courts that differed on whether the term "apology" excluded a provider's apology that included an admission of fault. The majority decision, written by Justice **Sharon L. Kennedy**, affirmed rulings by lower courts not to admit the statements of Dr. Rodney E. Vivian in a medical malpractice lawsuit brought against him by the family of a woman who committed suicide.

Because the General Assembly did not define "apology," the Court turned to the dictionary definition of the term, and concluded that an "apology" is "an acknowledgment intended as an atonement for some improper or injurious remark or act: an admission to another of a wrong or discourtesy done him accompanied by an expression of regret"

The Court unanimously agreed that Ohio's "apology statute," R.C. 2317.43, shields apologies that include admissions of fault. However, two justices concluded that Vivian's statements were not an apology and the trial court should have allowed his comments to be presented in the case.

Stewart v. Vivian
[Slip Opinion No. 2017-Ohio-7526](#)

Court of Claims

[State Pays Marion Man \\$70,000 After Lawn Mower Threw Rock at His Face](#)

After the Ohio Supreme Court concluded in 2016 that the Ohio Department of Natural Resources (ODNR) wasn't immune from a lawsuit by a Marion man struck in the face by a rock when fishing at Indian Lake State Park, the department agreed to settle the case on Aug. 2 for \$70,000.

The Ohio Court of Claims approved the settlement between Richard Combs and ODNR. The terms of the agreement state the agency doesn't admit to any wrongdoing, and Combs agreed not to pursue any other claims against the state in exchange for the payment.

In July 2011, Combs was crossing a causeway at Indian Lake where an ODNR employee was using a boom mower to cut weeds and brush along the lakeshore. One of the mower blades hit the riprap and threw a rock that struck Combs in the face. Combs filed a lawsuit alleging the employee negligently operated the mower and caused the injury. ODNR claimed it was immune from a civil lawsuit by Combs. The Court of Claims found that Combs was a recreational user and ODNR had no obligation to keep the park safe for his use. The court rejected his claim, but the Tenth District Court of Appeals reversed it. The Supreme Court affirmed the Tenth District's assessment and remanded the case to the Court of Claims.

The Supreme Court concluded that the General Assembly didn't extend the immunity to a landowner for injury caused by the acts of the landowner or its employees.

Richard Combs v. Ohio Department of Natural Resources, et al.
[Case No. 2013-00428](#)

HappeningNow

News and Notes from Courthouses Across the Buckeye State

Professionalism Commission Celebrates 25 Years, Honors Long-Time Mentors

The Supreme Court's Commission on Professionalism recently celebrated a milestone when it hosted a 25-year commemorative luncheon on Sept. 12 in Columbus.

Joined by the justices of the Ohio Supreme Court, about 50 former and current members celebrated the commission's long-standing work to promote honor and integrity among the state's attorneys and judges. Formed in 1990 by the late Chief Justice **Thomas J. Moyer**, the commission's first task was to draft a professionalism creed, setting the standards of professional conduct for members of the Ohio bar.

The Commission on Professionalism also oversees the Court's mentoring program, which pairs experienced lawyers with new lawyers. The commemorative luncheon also honored a group of 26 attorneys and judges who have served as mentors for nine and 10 years, including Justice **Patrick F. Fischer**, who has been a mentor for nine years.

Additionally, Judge **Arlene Singer** of the Sixth District Court of Appeals was honored as a 10-year mentor and Judge **Michael P. Donnelly** of the Cuyahoga County Court of Common Pleas was honored as a nine-year mentor.



Ohio Supreme Court justices celebrate the Commission on Professionalism's 25th anniversary with current and former commission members.



New certified court executives were recognized at special ceremony at the Ohio Supreme Court.

2017 Class Earns Court Executive Certification

More than 40 staff members of courts throughout Ohio were honored on Sept. 15 during the Court Management Program's certification ceremony in Columbus.

Joined by Chief Justice **Maureen O'Connor** and Supreme Court Administrative Director **Michael L. Buenger**, 43 members of the Court Management Program's 2017 Certified Court Executive Class were lauded for completing the top level of training.

The Court Management Program is a certification program of the National Center for State Courts Institute for Court Management and the Supreme Court's Ohio Judicial College. The program trains court personnel to manage courts and includes two levels: Level I leads to the certified-court-manager credential and Level II earns the top certified-court-executive distinction.

The program has certified more than 300 court managers and executives in Ohio since it began in 2002.

Unjust Fines, Fees, and Bail Lead Discussion at American Judges Association Conference

Ohio Chief Justice **Maureen O'Connor** kicked off the American Judges Association conference in Cleveland in mid-September by analyzing the ongoing impact that court fines, fees, and bail have on communities, especially low-income defendants.

“We must deliver justice while preserving the principal of equal treatment of the law,” said Chief Justice O'Connor. “We must be far more responsible to the public that we serve.”

Many courts impose fines without considering whether the offender has the resources to pay. It can be a frustrating revolving door, leading defendants to choose between court obligations and the basic needs of their families.

“These can become personal disasters, leading to job loss and debts that are often impossible to extricate themselves from,” said Chief Justice O'Connor.

The topic was discussed in great length last fall on the “Tavis Smiley Show,” where Chief Justice O'Connor, former Justice **Yvette McGee Brown**, and Judges **Ronald Adrine** and **Patrick Carroll** took part in a public television panel in Cleveland.

“The public is understanding more and more that some elected officials want courts to pay their way through fines and fees, making courts the ATMs for municipal governments,” said Chief Justice O'Connor.



Chief Justice Maureen O'Connor

Judicial Voter Website Offers Profiles of Municipal Judge Candidates

Ohio voters can use Judicial Votes Count, the state's only nonpartisan, statewide judicial election resource, to learn more about municipal court candidates before casting their ballots in the November general election.

Nearly 110 municipal court judge seats will be elected in 52 Ohio counties this year. A total of 177 candidates have filed for those seats.

Judicial Votes Count – at judicialvotescount.org – presents profiles of judicial candidates, including their judicial experience and why they are running for judge. Other resources on the website include videos about the different types of courts in Ohio and an explanation of why judges play an important role in their communities.

“Research shows that voters in Ohio want information on judicial candidates,” explained Chief Justice **Maureen O'Connor**. “Judicial Votes Count offers that resource and we hope candidates will fulfill their obligation to present their credentials and that voters, likewise, will educate themselves on judicial candidates before they vote.”

Judicial Votes Count is a nonpartisan partnership that includes Chief Justice O'Connor, the Bliss Institute, the League of Women Voters of Ohio, the Ohio State Bar Association, the Ohio News Media Association, and the Ohio Association of Broadcasters. The project began in 2015 to better educate Ohioans about judges and the Ohio court system. The partnership also seeks to increase meaningful voter participation in judicial elections.



ON THE BENCH



ROBES ON THE ROAD

By Kathleen Maloney

The Ohio Supreme Court didn't step tentatively into its Off-Site Court Program. At launch, the Court scheduled seven sessions in 18 months outside of its Columbus courtroom. That bold start began in 1987 – 30 years ago this October – and was spearheaded by the late Chief Justice Thomas J. Moyer.

The chief justice had entered office only that January, but he wanted to enhance student knowledge about Ohio's judicial system by taking the Court directly to the schools and their communities, said **Ruthie Newcomer**, who coordinated the effort in those early years. Newcomer explained that Chief Justice Moyer once served as Columbus school board president, following in the footsteps of his father, who held the same role in Sandusky.

"Education was a huge priority for Chief Justice Moyer," she said.

The Court organized the inaugural off-site session in Marietta, which in 1987 was celebrating 200 years since becoming the first permanent settlement in the Northwest

Territory. The tradition of the Supreme Court traveling to different locations across the state continues today. To commemorate the program's 30th anniversary, the Supreme Court returns to Marietta on Oct. 18 to hear oral arguments in front of hundreds of high school students at Marietta High School.

Much goes into planning a session involving seven justices and crowds of students, from security, lodging, and food for the justices to coordinating the flow of students through the Court's session and preparing them ahead of time for the experience. Court officials, teachers, and attorneys who've arranged past off-site court sessions said that it's a community gathering well worth the work, with many noteworthy benefits.

Bringing Court to Life

As part of the Court's civic education outreach, the Off-Site Court Program targets high school students to build understanding about how the Ohio Supreme Court, and the



state’s judicial system in general, operates. The bench and bar in local communities invite the Supreme Court to their county for an off-site session, and to date 68 counties have hosted the Court.

When Morgan County prepared for the visit from the Supreme Court earlier this year, Morgan High School Principal **Anita Eldridge** began with the basics. Teachers and staff discussed with students the appropriate behavior for the formality of a court proceeding and practiced entering and exiting the auditorium that would be transformed into a courtroom.

In the weeks leading up to every off-site court session, students study the judicial system’s different levels and the specific cases they will hear argued before the Supreme Court. They are helped by their teachers and local attorneys who volunteer their time to attend classes to delve into the background of the scheduled cases.

Eldridge said that for many of her students a trip to Zanesville, approximately 30 miles from the high school in

rural McConnelsville, would be a major event.

“The visit from the Supreme Court made the students feel special,” she said. “And seeing court for themselves is a good way to make it real, to help students get a better understanding, and more appreciation, of what happens in the judicial system.”

Melanie Fahey, a Mansfield attorney who was a magistrate when she worked with students in Richland County for the Ohio Supreme Court’s March 2015 session there, agreed. At their age, high school students have experienced a lot of “mock” things, such as mock trials or mock car crashes in driver’s education, Fahey noted.

“It’s not often that students get to see something in real time that affects real people,” she said.

Students tend to have a fundamental grasp of their rights in a criminal setting, but have little exposure to the appeals process or civil litigation, she said. She added that, as part of the process, students learned that legislation passed by the General Assembly isn’t the only type of law.

“Without personal involvement, it’s hard for them to understand the appellate process, the concept of precedent, and the effect of court decisions on others down the road,” she said. “If you experience it, you will retain it.”

Distinctive Learning Opportunity

Richland County Common Pleas Court Administrator **Tammy Wurthmann**, who enlisted Fahey’s help for the event, noted that all the county’s high schools – 11 in total – attended the Supreme Court’s session, which she described as a “unique educational experience.”

“The attorney educators and I liked, appreciated, and were surprised by the students’ attention and enthusiasm,” Wurthmann said.

Other organizers across the state repeated the positive impression the Supreme Court session and educational activities made on their students. **Debbie Weiskittle**, court administrator for Logan County Common Pleas Court, oversaw the details when the county hosted an April 2013 off-site court event. She also had the unenviable task of shifting the event from the courthouse to the Distance Learning Center at Bellefontaine High School after a severe windstorm damaged the courthouse. Weiskittle mentioned that unlike some other local public-service-oriented events that didn’t always draw high interest from youth, the Supreme Court’s session seemed to strike a different chord.

“**[Off-site court] is the real thing, what the law involves. Students didn’t understand beforehand the magnitude of the event.**”

- **Debbie Weiskittle, court administrator
Logan County Common Pleas Court**

“**It’s not often that students get to see something in real time that affects real people.**”

- **Melanie Fahey, Mansfield attorney**

“Once students saw the Court’s session, they found it’s not like TV. This is the real thing, what the law involves,” Weiskittle said. “Students didn’t understand beforehand the magnitude of the event.”

“Many kids don’t see the positive sides of the law,” Judge **Paula Giulitto** of the Portage County Domestic Relations Court noted. She helped organize the Supreme Court’s September 2014 visit at Ravenna High School and valued the occasion so much that she called each school in the county.

“I wanted every student to be invited and to have a chance to participate,” Judge Giulitto said. “For those students, this was a once-in-a-lifetime opportunity.”

The Portage County off-site court drew one of the highest-ever crowds – about 1,000 high schoolers from 12 schools. Fortunately, she said, Ravenna had a new and large high school with an auditorium and two gyms to accommodate the movement of the students through the event.

Many High Points

Highland County welcomed the Supreme Court in 2011, when it heard the constitutional challenge to the state’s new law banning smoking in public places. Judge **Rocky Coss**, who helped plan the event, was surprised by the community’s response. Many in the public called, asking to attend, Judge Coss said. The court was able to accommodate dozens of people alongside the students. He recounted that a successful local businessman even took his grandson out of school to participate.

“He knew it would be very educational, it was a historic occasion, and it may never happen again,” Judge Coss said.

Judge Giulitto said she especially appreciated the question-and-answer, unscripted discussion that the justices have with students before Court begins. Each justice delivered a brief personal history, including fun nuggets such as one who worked at McDonald’s, the judge noted. She was impressed by the justices’ candor when talking with students and the youths’ respect toward the justices.

“The exchange was amazing, and greatly impacted the students,” she said.

Fahey highlighted the “debriefings” after the Court’s session, when the attorneys who argued the cases discuss with the students the oral arguments and the legal points. It’s



Knox County, 2007

not often that students have the opportunity to talk at length about an educational experience like this, she said, and she was surprised and impressed by the insightful questions the students asked.

“They wanted to understand what the issues were and why they were still in dispute,” Fahey noted. “They got inside issues that are complex for lawyers. The program added a richness to the students’ understanding of how their legal system works.”

Conversation Continues

After the Supreme Court headed home, court officials and educators found themselves inspired to keep the productive dialogue going between courts and youth. Wurthmann said teachers asked if Richland County Common Pleas Judge **Brent Robinson** would take time to speak with students. Now their court hosts a couple groups of students once a year for a Q&A. Wurthmann brings in the judge, jail staff, attorneys, and probation officers to answer student questions.

The same happened in Portage and Highland counties, Judges Giulitto and Coss said. The local bar association in Portage County identified guest speakers from the legal field to periodically visit schools and talk with students. Youth in Highland County regularly tour its historic common pleas courthouse and have the opportunity to sit in on court hearings.

Judge Coss thinks it’s important to bring state government to the people. Not only does the public learn from seeing courts in action, but they might take judicial elections more seriously and be more likely to cast votes for judges, he said, referring to the drop-off of voting down ballot.

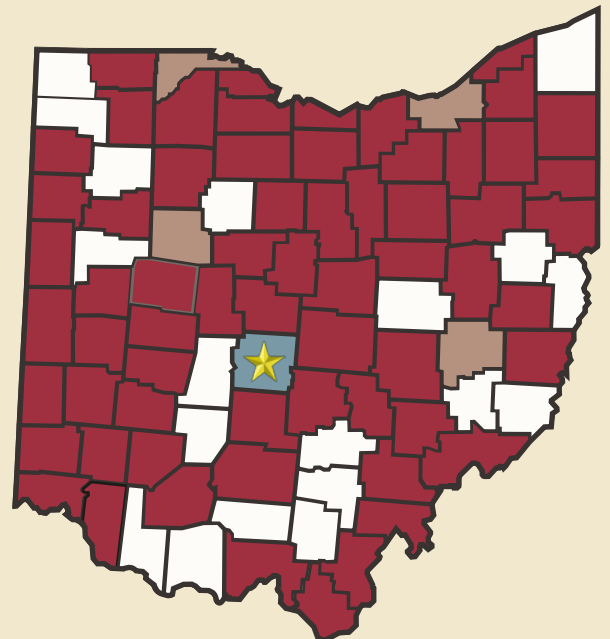
“The program is such a win-win for everyone,” Newcomer said. “We need so much education about the judicial branch of government. Off-site court is a significant step in raising that awareness.”



Mercer County, 1998

Court Visits Cover Most of State

Nearly all Ohio counties have participated in the [Off-Site Court Program](#) over the years. Counties that have hosted once are red on the map, while the brown counties welcomed the Supreme Court more than one time.



Staff in Van Wert County prepare to install the seal of the Ohio Supreme Court for an October 1995 off-site court session.

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>

Oct. 13

Delinquency & Unruly Course Web Conference
Judges & Magistrates

Oct. 17

Probation Officer Training Program
Probation Officers
Akron

Oct. 18

Domestic Relations Court Personnel Course
Court Personnel
Columbus

Oct. 19

Domestic Relations Court Personnel Course
Court Personnel
Columbus

Traffic Law

Judges, Magistrates & Acting Judges
Cleveland

Oct. 20

Judicial Conduct Seminar
Judges & Magistrates
Cleveland

Oct. 23

Fundamentals of Adult Guardianship (6 Hours)
Adult Guardians
Columbus

Oct. 24

Probation Officer Training Program
Probation Officers
Columbus

Oct. 26

Retired Judges Course
Retired Judges
Columbus

Oct. 27

Municipal & Common Pleas Course Web Conference
Judges, Magistrates & Acting Judges

Nov. 1

Guardian ad Litem Continuing Education Course: Divorce
Guardians ad Litem
Youngstown
12:30 - 4 p.m.

Guardian ad Litem Pre Service
Guardians ad Litem
Youngstown

Nov. 2

Fundamentals of Adult Guardianship 6-Hour BROADCAST
Adult Guardians
Broadcast to various Ohio sites

Pretrial Services
Court Personnel
Columbus

Nov. 3

Evidence
Judges & Magistrates
Columbus

Juvenile Traffic Web Conference
Judges & Magistrates

Conferences

Oct. 12 & 13

Ohio Justice Alliance for Community Corrections Annual Conference
Columbus
ojacc.org

Oct. 23 & 24

Specialized Dockets Annual Conference
Columbus

Oct. 24 - 27

Ohio Association for Court Administration (OACA) Fall Conference
Court Personnel Members
Columbus
ohiocourtadministration.org

Nov. 2 & 3

Ohio Bailiffs & Court Officers Association Fall Conference
Columbus
ohiobailiffs.com

Court Services Training
sc.ohio.gov/JCS/courtSvc

Oct. 17

Advanced Family Mediation Training
Cleveland

Oct. 18

**Parenting Coordination Roundtable
Teleconference**

Oct. 20

Advanced Family Mediation Training
Columbus

Oct. 20

**Oral Exams for Interpreter
Certification**
Columbus

Oct. 25 – 27

**Oral Exams for Interpreter
Certification**
Columbus

Oct. 26 & 27

Parenting Coordination
Columbus

Nov. 3

**Introduction to Court Interpreting and
Interpreter Ethics**
Cincinnati

Nov. 4

Legal Procedure and Terminology
Cincinnati

Nov. 8

**Advanced Parenting Coordination
Training**
Columbus**Parenting Coordination Roundtable
Meeting**11:30 a.m. to 12:30 p.m.
Columbus**Court Roundtables**sc.ohio.gov/JCS/roundtables.pdf**NOTE:** All meetings are at the Thomas J.
Moyer Ohio Judicial Center in Columbus

Nov. 2

Juvenile Court Magistrates
All Counties

Nov. 3

Juvenile Chief Probation Officers
Counties of Less than 100K Population

Nov. 7

Common Pleas Judges
Courts from Midsized and Rural
Counties

Nov. 9

Domestic Relations Magistrates
Courts from Midsized and Rural
Counties**Supreme Court
of Ohio**sc.ohio.gov

Oct. 17

Oral Arguments
Live Stream at 9 a.m.

Oct. 18

**Oral Arguments from Session of Off-
Site Court**
Marietta
Live Stream at 9 a.m.

Oct. 27

**Release of results of the July 2017 bar
exam**

Nov. 1

**Application deadline to take the
February 2018 bar exam**

Nov. 13

Bar Admission CeremoniesOhio Theatre
Columbus

2 Ceremonies: 10:30 a.m. & 2 p.m.

Live stream available for each
ceremony at sc.ohio.gov**5 MORE WAYS TO GET
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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 125 – Court Jurisdictions – Rep. Hearcel Craig (D-Columbus) & Rep. Bill Seitz (R-Cincinnati)

To specify the jurisdiction of municipal and county courts over municipal traffic ordinances and to establish requirements governing fines, fees, or other charges for traffic violations and infractions imposed by a municipal corporation that does not have the authority to establish a mayor's court.

STATUS: Introduced in the House March 9, 2017. Passed the House June 21, 2017 (89-0). Its third hearing in the Senate Local Government, Public Safety & Veterans Affairs Committee was Sept. 26, 2017.

HB 223 – Structured Settlements – Rep. Jonathan Dever (R-Cincinnati)

Relative to transfers of structured settlement payment rights.

STATUS: Introduced in the House May 16, 2017. Passed the House June 21, 2017 (85-0). Its second hearing in the Senate Judiciary Committee was Sept. 19, 2017.

HB 215 – Paulding Courts – Rep. Craig Riedel (R-Defiance)

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 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: Introduced in the House May 9, 2017. Passed the House Sept. 20, 2017 (88-6). Referred to the Senate Judiciary Committee Sept. 27, 2017

HB 331 – Accident Reports – Rep. Catherine Ingram (D-Cincinnati)

To prohibit the use of information obtained from an accident report by any person for commercial solicitation purposes.

STATUS: Introduced in the House Aug. 30, 2017, and referred to the House Economic Development, Commerce & Labor Committee.

HB 341 – Public Records – Rep. Steve Huffman (R-Tipp City) & Rep. Jack Cera (D-Bellaire)

To include judges as individuals whose residential and familial information is exempt from disclosure under the Public Records Law, and whose addresses public offices, upon request, must redact from records available to the general public on the Internet.

STATUS: Introduced in the House Sept. 11, 2017, and referred to the Government Accountability & Oversight Committee.

SB 183 – Business Courts – Sen. Frank LaRose (R-Hudson)

To create the Joint Committee to Study Ohio Business Courts.

STATUS: Introduced in the Senate Aug. 29, 2017. Its first hearing in the Senate Judiciary Committee was Sept. 12, 2017.