

CNO REVIEW

September 2017



PUBLIC RECORDS REBOOT

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A Court of Claims program, celebrating one year, opens up a streamlined, low-cost way to argue for the release of records from public agencies (see story on p. 8).

About Court News Ohio

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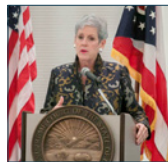


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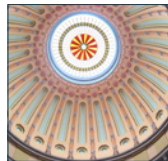


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ON THE COVER: Pictured is Court of Claims staffer **Elterriion Batts**, who serves as the court's assistant clerk and bailiff.

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

Restrictions on Red-Light Cameras Ruled Unconstitutional

The Ohio Supreme Court on July 26 ruled that three key provisions of a 2015 state law regulating the use of red-light and speed cameras are unconstitutional because they infringe on municipal authority without serving an overriding state interest.

In a 5-2 judgment, the Court agreed with the city of Dayton's constitutional challenge to parts of Senate Bill 342, which took effect more than two years ago. The Court found the regulations weren't "general laws" that apply evenly throughout the state, but instead were regulations that improperly "limit legislative power of a municipal corporation" to set police, sanitary, or similar regulations.

Dayton and other cities asked the Court to strike down some requirements in the new law. The Court reinstated the trial court's permanent injunction preventing the provisions from taking effect.

Dayton didn't challenge all of S.B. 342, but only three sections it believed didn't qualify as general laws under the Ohio Constitution, which grants home-rule powers. Dayton challenged the sections that required a law enforcement officer be present where a camera is in use; that fined a driver caught speeding by a traffic camera unless the driver exceeded the speed limit by 6 mph or more in a school or park zone, or by 10 mph in other areas; and that ordered municipalities to perform a safety study and conduct a public information campaign before using a camera.

2015-1549
Dayton v. State
[Slip Opinion No. 2017-Ohio-6909](#)

No Rights Warnings Required to Questioning Intoxicated Driver for Police Vehicle Front Seat

Placing a suspect in the front seat of a police cruiser during a traffic stop does not alone determine if the officer needs to read the suspect his rights before questioning, the Ohio Supreme Court ruled on July 19.

In a 6-1 decision, the Supreme Court declined to draw a "bright-line rule" that requires an officer to provide Miranda warnings to a suspect who has been removed from a stopped vehicle and placed in a police car. Instead, the Court offered guidelines to help determine if the stop is the type of "custodial interrogation" that mandates the warnings.

The decision reversed an Eighth District Court of Appeals' ruling that an Ohio State Highway Patrol trooper improperly questioned a Cleveland motorist about his consumption of alcohol when he pulled the man over and placed him in the front seat of the car. The trooper didn't read the man his Miranda rights before questioning.

Chief Justice **Maureen O'Connor's** majority opinion stated the trooper only asked the typical questions of a routine traffic stop where alcohol is suspected to be a factor, and wasn't "the kind of interrogation – designed to pressure a suspect to confess to illegal conduct – that was of particular concern" to the U.S. Supreme Court when it decided *Miranda v. Arizona*.

2016-0172 and 2016-0282
Cleveland v. Oles
[Slip Opinion No. 2016-Ohio-5834](#)

Court of Appeals

Deputy Not Reckless when Wrecked Car Towed with Injured Man Inside

A Dayton man who was towed away inside his car after he wrecked it lost his claim that the deputy who responded to the scene and the Montgomery County sheriff were reckless, an Ohio appeals court ruled on June 23. However, the man can submit an amended lawsuit against the tow-truck company.

A car that crashed into a utility pole early on Jan. 1, 2015 was towed. Later that morning, a tow-truck employee found the driver still in his car. The driver had a collapsed lung, dislocated hip, and several fractures.

The driver argued that the deputy didn't properly inventory the vehicle at the accident site, didn't follow proper police procedures, didn't remove the driver from a position of peril, and didn't provide adequate and proper emergency or medical care and treatment. The Second District Court of Appeals explained in its decision that law enforcement officers in Ohio are immune from liability unless their acts or omissions are wanton or reckless.

The Second District unanimously concluded that the driver didn't present any information that the deputy knew his conduct at the accident scene would likely result in injury. There were no allegations about what the deputy knew or should have known and, at most, the man's claims suggested that the deputy was negligent, which wasn't enough to impose liability, the court ruled.

However, the driver can submit a revised complaint to the trial court against the tow-truck company because the appeals court couldn't conclude that the effort would have been futile.

Gilliam v. Crowe
[2017-Ohio-5494](#)

HappeningNow

News and Notes from Courthouses Across the Buckeye State

Ohio Chief Justice Seeks Pro Bono Assistance for Texans

Ohio Supreme Court Chief Justice **Maureen O'Connor** urges Ohio lawyers to team up with the Texas Access to Justice Commission to provide free legal aid to Hurricane Harvey victims.

Chief Justice O'Connor recently sent a request to more than 40,000 practicing Ohio attorneys, urging them to offer legal assistance to low-income Texans.

“Legal needs for Hurricane Harvey victims will overwhelm the local legal community without help from other states’ attorneys,” Chief Justice O'Connor said. “So, I’m encouraging Ohio attorneys to give of their expertise, and carve out time, to help Texans get through legal problems caused by the storm and flooding.”

The Texas Access to Justice Commission grants funds to assist nonprofit organizations in providing free legal assistance to low-income Texans who desperately need help.

Disasters like Hurricane Harvey can create legal nightmares for families. These scenarios include job loss, filing claims with the Federal Emergency Management Agency, losing track of mortgage payments, or being scammed by contractors during home reconstruction.

Ohio attorneys interested in providing their services can contact the Texas Access to Justice Commission at Trish.McAllister@TEXASATJ.ORG or the Texas Access to Justice Foundation at btorres@teajf.org.

Professional Conduct Board Provides Online Access to Disciplinary Case Information

The Ohio Board of Professional Conduct’s new [online docket](#) provides real-time access to case information and documents in lawyer and judge disciplinary cases. Ohio becomes the first jurisdiction to offer a searchable, online docket dedicated exclusively to providing information and documents relative to disciplinary cases awaiting adjudication before a state disciplinary board.

The board’s online case docket contains information about the status of cases pending before the board and the disposition of disciplinary cases filed since January 2015. For cases pending before the board, the public can view the complete case docket, determine the status of the case, and view and download case-related documents. The online docket will include general information about disciplinary complaints filed with the board prior to 2015, although case documents will not be available in those cases.

The online docket allows the public to search for case information by party name or case number and to sort information by case number, date filed, or case status. If the board has filed a report and recommendation with the Supreme Court, the individual case docket will include a case-specific link to the Supreme Court’s online docket and a link to the Court’s disciplinary opinion once the Court enters a final disciplinary order.

Board of Professional Conduct Concludes Dual Employment of Specialized Docket Employees Prohibited

The Ohio Board of Professional Conduct on Aug. 11 issued an advisory opinion concerning the dual employment of court employees in both a specialized drug court and a nonprofit drug treatment center under contract with the court.

In [Advisory Opinion 2017-6](#), the board concludes that the dual employment is ordinarily prohibited under the Ohio Ethics Law and raises issues under the Ohio Code of Judicial Conduct. Such an employment arrangement creates a prohibited financial interest in a public contract under R.C. 2921.42(A), unless the court employee is able to prove that the exception in R.C. 2921.42(C) is satisfied. Under the judicial conduct code, the dual employment can impact the independence, integrity, and impartiality of the judge and raise an appearance of impropriety that necessitates disqualification.

Story continues on p. 15.

New Toolkits Help Juvenile Courts' Work with Children and Families

Two new resource toolkits intended to help juvenile courts assess current practices were released Sept. 8 by the Ohio Supreme Court's Children & Families Section.

A [Caregiver Notice Toolkit](#) and a [Youth Engagement Toolkit](#) will allow court and child-welfare staff to review statutes and best practices and work with greater care and efficiency with the families and children involved in court cases.

"The Caregiver Notice toolkit is intended to help courts identify ways to provide notice to caregivers and obtain information from caregivers for hearings," said **Veronica Burroughs**, court improvement program analyst in the Court Services Children & Families Section. "The ['Tips for Youth in Court'](#) brochure from the Youth Engagement Toolkit is aimed at youth, and can be distributed by the courts, CASA/GALs, caseworkers or child attorneys. This guide helps children understand their right to be at their hearings and understand what to expect while there."

Director of Court Services **Stephanie Graubner Nelson** pointed out that juvenile courts must make difficult decisions every day in cases involving abuse, neglect, or dependency – decisions that impact a child's safety and well-being.

"These decisions can mean that a child is moved, separated from family and friends, possibly even moved to a new county, without having their voice heard in the courtroom," Graubner Nelson said. "Ohio institutes safeguards to require advocates for children in the courtroom, such as a child's attorney and a guardian ad litem. However, best practices recommend that the child be present and have a voice. The youth toolkit was developed to help engage children in court hearings."

In 2006, according to Graubner Nelson, the federal government recognized the importance of the child's voice with the passage of the Child and Family Services Improvement Act, which required that the court consult with the child, in an age appropriate way, about their permanency plan at any permanency hearings.

To further strengthen a youth's voice in permanency decisions, the federal government increased this requirement in 2014, with the passage of the Preventing Sex Trafficking and Strengthening Families Act,

Story continues on p. 15.



Justice **Judith L. French** speaks to visitors from the Ohio State University Mandela Washington Fellows program about the Ohio Supreme Court in mid-July.



A pair of international legal delegates toured the Thomas J. Moyer Ohio Judicial Center as part of the Columbus International Program's "Rule of Law" tour on Aug. 2. **PICTURED:** Appellate Judge Michel Ilunga (left) from the Democratic Republic of the Congo and attorney Vivian Sdrenia from Greece speak with **Milt Nuzum**, director of the Ohio Supreme Court Judicial & Education Services Division.



Two dozen teachers and administrators from Saudi Arabia visited the Ohio Supreme Court on Aug. 10 as part of Kent State University's "Building Leadership for Change through School Immersion" program. The seven-month program includes attending and reporting on local cultural and government activities. **PICTURED:** Administrative Director **Michael Buenger** provides an overview of the Supreme Court and Ohio's judiciary.



Chief Justice Addresses Courthouse Safety in State of the Judiciary Speech

In the wake of the shooting of Jefferson County Judge **Joseph Bruzzese**, Ohio Supreme Court Chief Justice **Maureen O'Connor** reminded judges of the real potential for violence they can face just doing their jobs.

“Judge Bruzzese was about to get an early start to his day on August 21st. Instead, a cowardly, would-be assassin, who had a pending civil matter in the judge’s court, shot him in the alleyway leading to the courthouse,” said Chief Justice O’Connor. “The judge managed to return fire and the quick action of a probation officer brought down the assailant.”

Chief Justice O’Connor said Judge Bruzzese was released from the hospital, and she hopes he will make a quick recovery and resume his position on the bench. Yet, she said, the shooting served as a dangerous reminder.

“I don’t want to be an alarmist, but ensuring the safety of the judiciary should be a primary, not secondary, concern for you, for us, and for the state. In this day and age, it’s not a quantum leap for a disturbed individual to think that violence against a judge or a family member or court staff is an appropriate way to deal with a problem,” she said.

Those pointed remarks affecting the judicial branch were part of Chief Justice O’Connor’s seventh [State of the Judiciary address](#) before a gathering of hundreds of judges at the annual

Ohio Judicial Conference meeting in Columbus. The meeting’s theme was “Adapting Justice to a Dynamic Society.”

“Our role in the judiciary is clear,” said Chief Justice O’Connor. “We have a responsibility to maintain neutrality and to ensure that the system is perceived by the public as both fair and equitable.”

From fines and fees, the speech turned to the opioid crisis, which has cast an unwelcome spotlight on the state of Ohio. The Ohio Department of Health reported that 4,050 Ohioans died last year from drug poisoning and overdose deaths. Led by Ohio, the Regional Judicial Opioid Initiative launched last year continues to leverage the resources of state judicial, criminal justice, and treatment options to be shared by nine states in America’s heartland.

“We are not just judges. We are also community leaders,” said Chief Justice O’Connor. “We cannot sit behind the bench thinking this is someone else’s problem to deal with. Judges – you and I – have a special place in our communities. We are ‘looked at’ and ‘looked up to’ for leadership in times of crisis. And make no mistake, we are in crisis.”

Other topics covered in her remarks included case workloads for judges and a continued push to produce hard data to tell the story of what the judiciary does for the state and Ohioans.

Chief Justice O'Connor Leads Two National Court Organizations

Ohio Chief Justice **Maureen O'Connor** was elected president of the Conference of Chief Justices (CCJ) and chair of the National Center for State Courts (NCSC) Board of Directors. The one-year positions became effective in August during CCJ's annual conference and NCSC's Board of Directors meetings in Philadelphia.

Founded in 1949 and comprised of the top judicial officers of each state, the District of Columbia, and U.S. territories, CCJ promotes the interests and effectiveness of state judicial systems by developing policies and educational programs designed to improve court operations. CCJ also acts as the primary representative of the state courts before Congress and federal executive agencies.

"Chief Justice O'Connor has earned a national reputation as a strong and effective leader who is committed to improving the justice system," NCSC President **Mary C. McQueen** said. "As co-chair of the National Task Force on Fines, Fees and Bail Practices, she is committed to make significant reforms that improve the justice system for everyone. We will all benefit from her leadership."



Ohio Judge to Head National Juvenile Judge Council

Montgomery County Juvenile Judge **Tony Capizzi** was named 2017-2018 president of the board of directors for the National Council of Juvenile and Family Court Judges. Judge Capizzi

was elected to the Montgomery County Juvenile Court bench in 2004. He previously served as an acting judge for Dayton Municipal Court and was in private practice for more than 25 years.

Retired Judge Recognized at Judicial Conference



Former Wood County Judge **Charles Kurfess** received the 2017 Thomas J. Moyer Award for Judicial Excellence on Aug. 31 during the two-day meeting of the Ohio Judicial Conference in Columbus.

The Ohio State Bar Association (OSBA) established the award in 2010 in honor of the late chief justice to recognize a current or former Ohio state or federal judge who displays outstanding qualities of judicial excellence.

PICTURED: OSBA President **Randall Comer** presents the Moyer award to Judge Kurfess.

Judicial Appointments

Governor Makes Interim Selections in Fremont, Springfield



Daniel L. Brudzinski
Fremont Municipal Court

Daniel L. Brudzinski was appointed to the Fremont Municipal Court by Gov. John R. Kasich. Brudzinski took the bench on July 24, replacing Judge **Robert G. Hart**, who was appointed by the governor May 8 to the Sandusky County Common Pleas Court.

Brudzinski must win in November's general election to retain the seat for the full six-year term commencing Jan. 1, 2018. Profiles of candidates running for Fremont Municipal Court can be accessed via the [Judicial Votes Count website](#).



Robert Vaughn
Clark County Court of
Common Pleas, Domestic
Relations and Juvenile Division

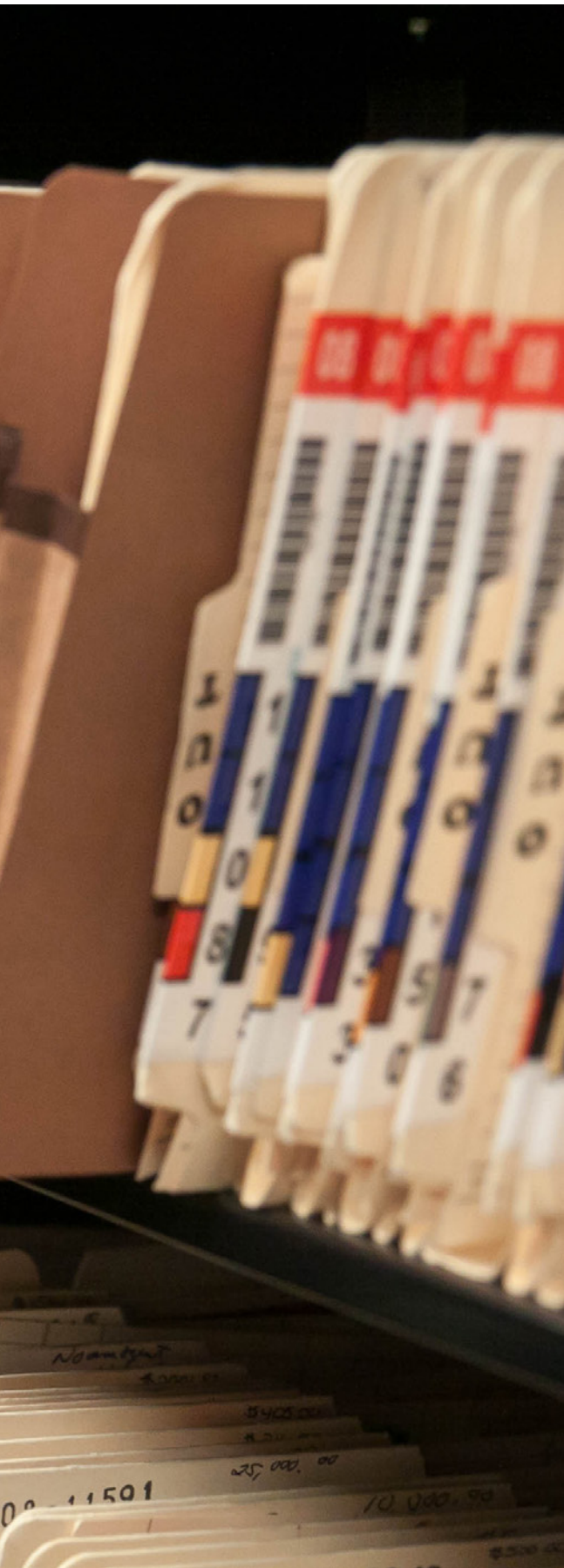
South Charleston (Clark County) lawyer **Robert Vaughn** will leave his job as associate professor and assistant university counsel at Cedarville University and take the bench on the Clark County Court of Common Pleas, Domestic Relations and Juvenile Division.

He replaces Judge **Joseph N. Monnin**, who resigned. Vaughn must run in the November 2018 general election to retain the seat for the full term commencing Jan. 2, 2019.

Vaughn received his bachelor's degree from Ohio State University and his law degree from Capital University. He was admitted to the practice of law in Ohio in November 1998.

He takes office Oct. 2, 2017.





PUBLIC RECORDS REBOOT

By KATHLEEN MALONEY

Last September, legislation took effect that launched a new way for people who think they've been wrongfully denied a public record to challenge their lack of access. The law aims to offer "an expeditious and economical procedure that attempts to resolve disputes" about public records. The appeals are heard in the Ohio Court of Claims, which handles most civil lawsuits against the state, including public agencies and state universities.

One year has passed, and the court accepted 82 public records cases through Aug. 30. Of those, a substantial 75 percent (41 of 55 completed cases) have been resolved through mediation. The resolution of these disputes outside the courtroom forms the foundation of this retooled approach to public records appeals.

It even says so in the statute. The court is mandated to hold, or "stay," every public records case it accepts and first turn it over for mediation, unless the designated "special master" to these disputes determines it's "in the interest of justice" not to mediate the matter.

Court Reaches Out to Public Agencies

Once a case moves to mediation, an “initial triage” takes place, said **Mark Reed**, clerk of the court.

Reed and the court’s special master in public records cases, **Jeff Clark**, review every public records filing. Clark, whose experience includes 10 years working on public records matters with the Attorney General’s Office, makes notes for the staff, offering his initial perspective on the points of contention and the law. A staff attorney then typically makes a phone call to the public agency that hasn’t produced the record. During these discussions, the staff attorney may educate both the agency and the person requesting the record about specific parts of Ohio’s public records act and court decisions relevant to the dispute, Clark said.

He describes the phase as “shuttle diplomacy,” where the attorney goes back and forth between the parties to see if the initial information and suggestions can sort out the frustrations and issues. This opening dialogue so far has resolved about one third of the court’s public records cases.

Dani Carlson, a reporter for Cleveland TV station WOIO, last year wanted to obtain the personnel record of a former employee with the city of Green. When she was denied the record, the station sent a letter to the city in spring 2016 explaining reasons the news outlet thought it was entitled to the documents. That went nowhere, Carlson said. A reporter in a journalists’ organization told her that the new law was expected to go into effect in the fall, and she saw an alternative.

“I was looking for a way to fight for access to this record without going through a costly legal process,” Carlson said.

She has high praise for the Court of Claims’ employees who work on these cases.

“The staff is fantastic. They’re very helpful human beings,” she said, describing how they guided her through each step in the process. Carlson eventually received the Green records and records she requested in four other cases.

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I was looking for a way to fight for access to this record without going through a costly legal process.

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DANI CARLSON
Reporter, WOIO, Cleveland

Mediation Sorts Out Many Issues

If the disagreement isn’t resolved during the initial discussions with the court, the next step is formal mediation. The court schedules a phone mediation, usually with Reed. Sometimes it’s a joint discussion with both parties on the phone; other times, Reed talks separately with each side to frankly review the risks and benefits of a party’s choices in the dispute. The calls typically take 45 to 90 minutes.

“Moving people from loggerheads to resolution is key,” Reed said.

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Moving people from loggerheads to resolution is key.

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MARK REED
Clerk, Court of Claims

Carlson said the mediation by phone in the Green case saved the expense in time and money for traveling to Columbus, where the Court of Claims is located. Reed first discussed the issues with her, Carlson said, then he separately talked with the city’s representatives. Because she isn’t a lawyer and represented herself, the reporter said she appreciated the approach, which she found less intimidating.

The staff tries to schedule mediations at times convenient for the parties – in the evening if necessary. The court’s flexibility helps not only the person requesting the record, who may be someone who works during the day, but also the public agency, Clark said. Some public entity officials are from smaller localities, such as a township or a village whose trustees or officers may hold only part-time positions.

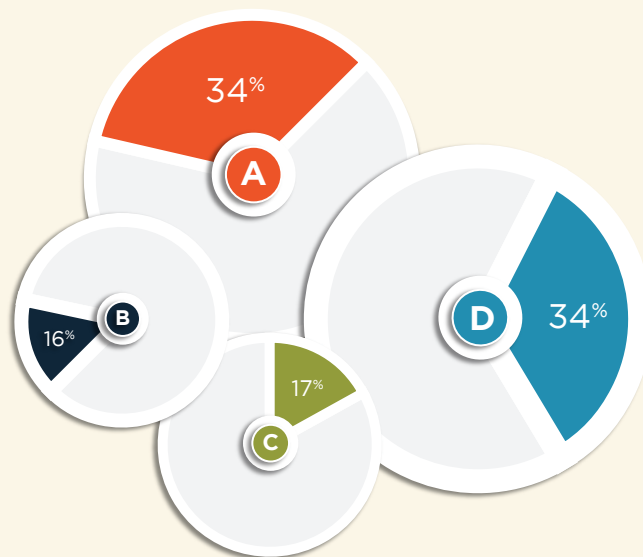
Although mediation isn’t always successful, Reed has been impressed by the good will of everyone involved to date, noticing that each side usually enters the discussion with ideas how to resolve the dispute.

Designed as Better Method

The law clearly envisioned an easier path to sort out public records disagreements that already have some precedent for how to resolve, Clark said. According to the statute, if a public records case filed with the Court of Claims presents a novel legal issue of substantial

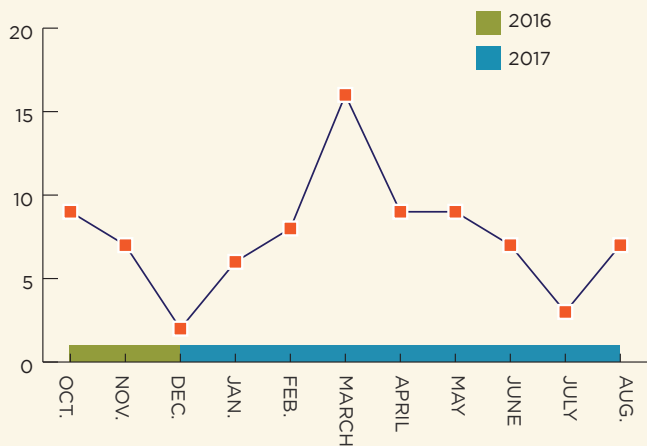
BY THE NUMBERS

The Ohio Court of Claims has a year under its belt handling appeals from people who've been denied access to records they believe belong to the public. As the statistics show, about a third of the court's public record cases have been resolved by just talking through the issues before any formalized mediation takes place. And cases have concluded in about 10 weeks on average. It's a promising start for a novel program designed to give citizens greater access to public records, court officials said.



Cases Filed by Month

From launch of program in late September 2016



Case Resolutions

Outcome of Public Records Appeals

- A** Resolved before formal mediation
- B** Resolved in formal mediation
- C** Special master considered case, issued recommendation
- D** Pending

Time to Disposition

From date complaint is filed until case is resolved



public interest, it must be dismissed and filed in the appropriate court of appeals as a writ of mandamus. The writ was the standard way to make a public records claim before this law passed.

“A writ of mandamus is a full-blown civil action,” Reed explained. “It’s expensive and not an easy legal process, even for lawyers.”

The General Assembly’s desire to implement a simplified method to settle public records disagreements is evidenced by the low \$25 filing fee, the tight timeframes to move through each step in the process, and the preference for mediation over adjudication, Reed noted. The law also specifically curtails discovery, motions, and pleadings, which Reed said “prevents a lot of legal maneuvering.”

“It gives self-represented litigants access to a court to hear their claim fairly quickly and get a quick up-or-down decision on whether they have a right to the record they’re requesting,” Reed said. “It provides the public with greater access to justice.”

Requests Must Be Specific

Clark noted that the positive mediation outcomes in the Court of Claims program built on the successful public records mediation program pioneered by

the Attorney General’s Office. **Damian Sikora**, who oversees the attorney general’s public records unit that represents state agencies in these disputes, has found the disagreements often reflect miscommunication or lack of clarity about what’s being requested.

Reed and Clark agree that determining what record the person making the request truly is seeking can steer a case toward resolution. Reed recalled a situation in which a member of the public wanted to know technical information about security equipment bought for a jail. That raised security concerns from officials about releasing such details. When the requester was asked what he hoped to know, he explained he was interested in what the county paid for the equipment, Reed said, noting that the county easily provided a purchase order showing the cost but no technical specifications.

“Sometimes those asking for records try to model their request on ‘any and all’ language that lawyers use in public records lawsuits, and then the request is overly broad,” Reed said. The court encourages requesters to succinctly state what they are looking for in plain language.

On the public entity side, Reed noted that 70 of Ohio’s counties are rural, many with public agencies that have limited funding and employees. He has found that these agencies sometimes haven’t had time to respond to a public records request because of

Public Records Appeals To Be Discussed at OSBA Law & Media Conference

Friday, Oct. 13, 2017 • 9:30 a.m. - 3:30 p.m. • [OSBA Headquarters](#) • Columbus, Ohio

About the Conference

The annual OSBA Law and Media Conference on Friday, Oct. 13 will feature a session on public records and the Court of Claims process for appealing denials of the release of records. Panelists, including Court of Claims special master **Jeff Clark**, will share how many people are taking advantage of the new program and examine the latest legislative changes and judicial opinions that affect which records must be released. Also on the panel, moderated by Columbus attorney **Mark Weaver**, is the Cincinnati Enquirer’s lawyer **Jack Greiner**.

Keynote Presentation

“Fake News: What It Is (and Isn’t), How to Spot It, and What to Do if You Get Burned by It”

Speaker: **Gregg Leslie**, attorney
Reporters Committee for Freedom of the Press

Registration Open

For more information and to register for the conference, visit <http://bit.ly/2wSWOzd>.
Discounts available for registrations submitted by Oct. 2.

workloads or short-staffing, but once alerted to their obligations they often produce the record.

In Sikora's view, the court is "finding a groove" with the new program. Over time, the mediations have become smoother, shorter, and more focused, he said of the 17 cases his office has handled. They've been surprised, though, that advising clients, writing briefs, and general preparation still has been as time intensive as a traditional mandamus action for public records.

"It's a good start," he said. "Anytime you get people on the phone and talking with each other, it's better than emails passing through the night."

Positive Step with More Potential

If the case doesn't settle, the public agency must file a formal response to the complaint, and Clark most often acts as the special master, who takes the case to completion. Cases that reach this point – 17 percent so far – are more complex and can require a deeper review. The special master can direct the parties to submit additional arguments, information, or documentation, including the denied records for the court's private inspection. From this vantage point, the special master then issues a report and recommendation about whether a record is required by law to be released. Either party may object to the report and recommendation during a seven-business-day window, after which the Court of Claims makes a final decision. The court's rulings can be appealed back to the appellate district where the public entity is located, but to date only two cases have gone that route.

Carlson believes the program is "a good step but not perfect." She thinks the process still can be difficult for someone unfamiliar with the legal system, explaining that she had to research the public records law and write her own briefs for cases that reached Clark.

"A regular person is at a bit of a disadvantage," she said. She has had success through the program and recommends the streamlined process to others, but wonders whether it's changing the culture of agencies that are reluctant to release records or don't fulfill requests within a reasonable time.

Clark hopes agencies are applying what he describes as the excellent public records training available through the attorney general and state auditor, and are using modern technology to simplify the process for themselves and citizen requesters. For example, in a case involving the release of police and fire call logs, he informed the municipality that other agencies have adopted a practice of posting all call logs on their web sites. Its staff balked initially, stating that they're not required to do that. Clark suggested it as an option because online availability would eliminate the time and

effort to fulfill individual requests for the logs one by one.

"Why fix only one case when you can address the bigger problem?" Clark said. "Maybe it will improve the process for all."

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Why fix only one case when you can address the bigger problem? Maybe it will improve the process for all.

”

JEFF CLARK

Public Records Special Master, Court of Claims

He points to other advantages of the program: the availability of a centralized court for any public records appeal; electronic filing of documents with the court; no attorney fees; and the low \$25 cost to file a complaint. Although some public agencies have to hire and pay a lawyer to defend these suits, the shorter timeframes keep those costs lower than a traditional public records lawsuit, he said.

Whenever possible, the Attorney General's Office also makes it a priority to educate public agencies and others about the Court of Claims procedure.

"We appreciate the importance of releasing public records and complying with the public records law," Sikora said. "We use the Court of Claims program to remind clients of the consequences if they don't meet their obligations under Ohio law."

"Openness and transparency in government is necessary for an informed, participatory democracy," Clark added. "Expediting a reporter's or private citizen's request through this program helps make information available, in a more timely way, for public review and debate."

"This program was needed. I'm convinced of that," Reed noted. "I don't think our current caseload is our upper limit. I would like to see citizens' needs for access to public records met, and I don't think we're fully filling that need yet."



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 – Biennial Budget **Rep. Ryan Smith (R-Bidwell)**

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

STATUS: Signed by the governor June 30, 2017, with line-item vetoes.

HB 63 – Prison Terms **Rep. Jim Hughes (R-Columbus)**

To require an additional prison term of six years for felonious assault if the offender also is convicted of a specification that charges that the offender used an accelerant in committing the offense and that the harm caused by the violation resulted in a permanent, serious disfigurement or permanent, substantial incapacity and to name the act's provisions “Judy's Law.”

STATUS: Signed by the governor on July 17, 2017.

HB 233 – Firearms **Rep. John Becker (R-Union Twp.)**

To enact the “Decriminalization Effort For Ending Notorious Deaths (DEFEND)” to provide an opportunity for a concealed handgun licensee or qualified military member to avoid guilt for carrying a concealed handgun into a prohibited place if the person leaves upon request, and to penalize as disorderly conduct failing to leave upon request or returning with a firearm.

STATUS: Passed the House July 6, 2017 (64-31).

HB 305 – Protection Orders **Rep. Nickie Antonio (D-Lakewood) & Rep. Janine Boyd (D-Cleveland Hts.)**

To require a court that issues a protection order to determine if the respondent is prohibited from

carrying or possessing a firearm, to require a court to determine whether an offender who has been convicted of specified offenses is prohibited from carrying or possessing a firearm, and to require a respondent or offender who the court determines is prohibited from carrying or possessing a firearm to transfer all firearms in the person's possession to a law enforcement agency or a federally licensed firearms dealer.

STATUS: Introduced in the House July 18, 2017.

HB 310 – Concealed Weapons **Rep. Nino Vitale (R-Urbana)**

To permit an elected officeholder of the state or a political subdivision of the state who holds a valid concealed handgun license to carry a concealed handgun in a government facility of the state or a political subdivision of this state.

STATUS: Introduced in the House July 24, 2017.

SB 7 – Protection Orders **Sen. Kevin Bacon (R-Minerva Park) & Sen. Gayle Manning (R-North Ridgeville)**

To provide the circumstances when 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.

STATUS: Signed by the governor June 28, 2017. Takes effect Sept. 27, 2017.



Rule Amendment Summary

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

Practice and Procedure Rules

A series of rule changes regarding practice and procedure in Ohio's courts – specifically those that alter rules governing civil, criminal, and juvenile proceedings, and rules of evidence – took effect July 1.

Magistrate Rule Changes

The Court adopted rules – effective Jan. 1, 2018 – requiring magistrates to register annually, take an oath of office upon appointment, and file the oath with the local clerk of court. Additionally, the rules require a court's administrative judge to notify the Office of Attorney Services upon a magistrate's appointment or termination.

Under proposed rules, magistrates would have to attend a mandatory orientation program within a year of being appointed and take 40 CLE hours over a two-year period. The Court no longer would charge a \$150 orientation tuition fee. Magistrates also would be required to participate in a mentoring program and take three credit hours of professional conduct coursework out of the 10 required from the Ohio Judicial College. Public comment was due Aug. 30.

Presiding/Administrative Judges

Under rule changes that took effect Aug. 1, local courts can set longer terms – up to three years – for presiding and administrative judges. The changes to the Rules of Superintendence were recommended by the Ohio Judicial Conference, which cited benefits of an increase in courts' ability to meet goals and adding flexibility to account for individual needs.

DUAL EMPLOYMENT | Continued from p. 4

In response to a second question, the board concluded that a court employee may not engage in fundraising for the nonprofit drug treatment center. Citing an earlier board opinion and an opinion issued by the American Bar Association, the board concluded that the code prohibits a court employee from soliciting funds on behalf of a nonprofit organization that contracts with the court to provide drug treatment services.

Advisory Opinions of the Board of Professional Conduct are nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Ohio Rules of Professional Conduct, the Ohio Code of Judicial Conduct, and the Attorney's Oath of Office.

TOOLKITS | Continued from p. 5

requiring that children in a Permanent Planned Living Arrangement be asked about the desired permanency outcome at each permanency hearing.

The Caregiver Notice Toolkit focuses on communication with those who care for children when parents cannot, and should help courts gather information needed to make appropriate decisions for children and families.

"When parents are unable to take care of their children, public children services agencies rely on caregivers to step in and keep the child safe," said **Carla Carpenter**, the Ohio Department of Job and Family Services' state child welfare director. "Caregivers can be relatives, non-relatives, and foster families, but all are tasked with meeting the child's medical, mental health, dietary, and educational needs, while also assisting with the permanency goal.

"Caregivers have extraordinarily rich information about the child's needs, services, and daily progress. Ensuring notice is given to caregivers for every hearing and allowing the caregivers to be heard, enhances the judge's ability to make good decisions," Carpenter said.

In 1997, the federal government recognized the importance of the caregiver's voice in hearings with the passage of the Adoption and Safe Families Act, which required that caregivers be notified of child hearings and that they be notified of their right to be heard at any hearing for the child.

Both toolkits provide sample forms for juvenile courts to use to work with children and caregivers to notify them of hearing dates, as well as their rights to attend and be heard at court proceedings.

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>

Sept. 19

Probation Officer Training Program
Probation Officers
Akron

Sept. 20

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

Sept. 21

Guardian ad Litem Continuing Education Course: Divorce
Guardians ad Litem
Toledo
12:30 – 4 p.m.

Guardian ad Litem Pre Service
Guardians ad Litem
Toledo

Sept. 26

Probation Officer Training Program
Probation Officers
Columbus

Sept. 28

Court Security Officers: Fundamentals
Court Security Court Personnel
Perrysburg

Sept. 29

Court Security Officers: Legal Considerations
Court Personnel
Columbus

Oct. 3

Probation Officer Training Program
Probation Officers
Dayton

Court Services Training

sc.ohio.gov/JCS/courtSvc

Sept. 20

Parenting Coordination Roundtable Teleconference

Sept. 27 & 28

Domestic Abuse Issues for Mediators
Toledo

Oct. 2 & 3

AND Oct. 9-10 Abuse, Neglect and Dependency
Columbus

Court Roundtables

sc.ohio.gov/JCS/roundtables.pdf

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

Sept 19

Juvenile Chief Deputy Clerks
Midsized & Urban Courts in Counties of More than 60K Population

Sept. 21

Municipal/County Court Administrators
All Counties

Sept. 26

Domestic Relations Administrators
All Counties

Oct. 3

Juvenile Courts, Title IV-E
All Counties

Oct. 5

Probate Court Administrators and Clerks
Midsized & Rural Courts

Supreme Court of Ohio

sc.ohio.gov

Sept. 26

Oral Arguments
Live Stream at sc.ohio.gov

Conferences

Sept. 26 - 29

Ohio Association of Municipal/County Court Clerks Fall Conference
Cleveland
oamccc.org

Sept. 27 - 29

Ohio Association of Magistrates (OAM) Fall Conference
Member Magistrates
Columbus
ohiomagistrates.org