



for the **RECORD**

NEWS FOR THE OHIO COURTS

Adapting With The Tides of Change

You were taught that stability should be the bedrock of your judicial existence. Stare decisis is the legal doctrine upon which a stable society depends. It is solid but not inflexible - open to incremental change. That is the professional life of a judge in a world that seems constantly in a whirlwind of change.

Your OJC Education Committee has settled on a program for the September Annual Meeting that will focus on adapting to change. Revision of the rules for assignment of visiting judges (today's hot topic), a constant flow of legislative changes to the Revised Code, Constitutional Amendments, optional funding for new programs, not enough funding for necessary staff and existing programs ... change is a constant challenge but hardly unique to the judiciary.

Something as small as constantly needing to refresh your passwords for security reasons can be annoying, but for those responsible for protecting the privacy of your work, it is necessary. Decide what to embrace as potentially positive and what to resist as apparently foolish. It is something we all do almost every day and often later conclude we were wrong - what seemed good wasn't and what seemed foolish is actually working out well.

Being willing to change our minds is the most important change of all.

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A CURRENT ISSUE OF CONCERN

CADDELL V. CAMPBELL

Once in a while, a pattern and practice becomes so ingrained in the way a matter is handled that we fail to revisit why the pattern and practice evolved in the first place and to analyze whether it is still legally relevant or correct. Many times the revisit is answered simply by “that’s what we’ve always done”. With that in mind, it is safe to say that because courts are generally open for business during weekdays, folks arrested without a warrant can be seen for a probable cause and bond determination Monday through Friday and that should be good enough. Those picked up on a warrantless basis on Friday will be seen by a judge or magistrate on the very next Monday and all is right with the world. Or is it?

On February 23, 2017, Anselm Caddell was stopped by the Ohio Highway Patrol, arrested and transported to the Butler County Jail on an OVI charge and held without bail or appearance before a judicial officer until Tuesday, February 28, 2017, when he was transported to the Fairfield Municipal Court for arraignment before Judge Joyce Campbell. This fact pattern resulted in Caddell's filing of a complaint on February 1, 2019, in the United States District Court for the Southern District of Ohio, Western Division, where he, under Sec. 1983, sued Judge Campbell and the Butler County Sheriff, both individually and in their official capacities, as Judge and Sheriff respectively, as well as the City of Fairfield.

In his complaint, Caddell alleged that his “five-day detention without appearance before a judicial officer resulted in a deprivation of his constitutional rights guaranteed under the Fourth, Sixth, Eighth, and Fourteenth Amendments. Defendants moved the court for judgment on the

pleadings and the court denied the motion as to defendants the City of Fairfield and the Sheriff of Butler County for reasons that are not the focus of this article.

As to defendant Judge Campbell, her motion for judgment on the pleadings argued 1) that the *Rooker-Feldman* doctrine precluded the federal court from reviewing the claims against her; 2) that she was entitled to absolute judicial immunity; and 3) that she was entitled to qualified and sovereign immunity. The *Rooker-Feldman* doctrine holds that district courts lack subject-matter jurisdiction over challenges to state court determinations and the court here determined that Caddell's claim sought compensatory damages and a declaratory judgment that Judge Campbell's policy and custom was unconstitutional, making the *Rooker-Feldman* doctrine inapplicable.

The district court also denied the judicial immunity argument stating that at this stage of the litigation and without the benefit of discovery, the defendant's motion to dismiss plaintiff's Sec. 1983 claims against Judge Campbell based on judicial immunity was not well taken.

As to the qualified immunity argument, the court once again denied the motion stating that consideration of qualified immunity was premature based on the facts of the pleadings; however, the court in doing so stated that where an arrest is made without a warrant, it generally falls upon the arresting officer to bring the arrested person without unnecessary delay before a court having jurisdiction of the offense, but the custom and practice of the court in being unavailable on Fridays and Mondays would make it difficult to bring the arrested person before the court within a forty-eight (48) hour time frame.

The current law urged by the plaintiff in *Caddell* as controlling of the fact pattern begins with *Gerstein v. Pugh*, 420 U.S. 103 (1974) which held that the Fourth Amendment requires a

judicial determination of probable cause as a prerequisite to extended restraint of liberty following an arrest without a warrant. The court went on to say that the judicial determination may be made by a judicial officer without an adversary hearing and because it is not a critical stage in the prosecution, it would not require appointed counsel.

Seventeen years later, *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) resulted in the high court holding that a prompt judicial hearing should be within 48 hours of arrest and if it can not be done in that time frame, the burden shifts to the state to demonstrate the existence of a bona fide emergency or extraordinary circumstance, which cannot include intervening weekends. The United States Court of Appeals , the Sixth Circuit, in *Alkire v. Irving*, 330 F.3d 802 (2003) placed it's stamp of approval on the above two Supreme Court cases by reiterating that there must be a fair and reliable determination of probable cause made promptly after a warrantless arrest was made and that 48 hours as a general matter would comply with the promptness requirement of *Gerstein*.

The above having been said, it is considered by this writer most likely that more than one municipal court in Ohio delays an arraignment/probable cause hearing beyond forty-eight (48) hours routinely in two circumstances. Assuming that a court conducts an arraignment each morning for those arrested during the preceding twenty-four (24) hours, the first is the normal weekend, when defendants are arraigned on Friday morning and then not again until Monday morning when a total of at least seventy-two hours has elapsed. The second is when defendants are seen on a holiday weekend, causing an arraignment/probable cause hearing to be delayed for a total of ninety-six (96) hours. There are probably a few other courts that have even greater delays based upon their scheduling practices.

For those judges seeing defendants for the first time on a warrantless arrest in excess of forty-eight (48) hours, the eventual decision and holding in the *Caddell* case could have significant impact on them individually and on their funding authorities. It is this writer's opinion that pending any decision as to judicial or qualified immunity, compliance with what appears like a mandatory 48 hour time frame, could and should be attempted by engaging the sheriff or other detention authorities in the court's jurisdiction with the responsibility of advising the court as to the presence in their jail or jails of those incarcerated for warrantless arrests. An electronic transmission of the defendant's file in possession of the sheriff or other incarcerating entity and a simple, non-adversary review of the charging document and the supporting probable cause affidavits by the court should permit the court to issue a finding on the presence or lack of probable cause and set a reasonable bond to be in compliance with the plaintiff's concern in *Caddell*. Given the incarcerating entity's potential liability concerns, cooperation in the endeavor should not be difficult to obtain.

Judge Gary Dumm, retired

OneOhio Recovery Foundation

Distribution of Funds to Fight the Addiction Crisis Across Ohio

By Kathryn Whittington, Interim Executive Director of the OneOhio Recovery Foundation

After too many years and too many lost and damaged lives, Ohio leaders are succeeding in holding pharmaceutical companies accountable for their role in the opioid epidemic. Through an unprecedented, unified approach to opioid lawsuit litigation and settlements, Ohio is receiving new resources to help repair the damage and strengthen our state's fight against substance abuse.

In 2020, Ohio's state and local leaders announced the OneOhio Plan, which established guidelines for state and local governments to jointly approach settlement negotiations and litigation with drug manufacturers and distributors of opioids. Formalized through the OneOhio Memorandum of Understanding (MOU), the plan also provided a mechanism to distribute opioid litigation awards and settlement funds. A portion of the opioid funds are to be distributed directly to state and local governments, while the remaining 55% will be administered by the OneOhio Recovery Foundation. The Foundation is a private, non-profit, non-government entity established to ensure equal, transparent, and locally-driven distribution of opioid settlement dollars for projects impacting communities in every corner of the state. Its 29-member board is appointed by state and local community leaders in 19 regions.

Following the guidelines established in the OneOhio MOU, Ohio has joined national settlements with nine separate defendant companies. In 2021, Ohio announced an \$808 million settlement with the three largest distributors of opioids: AmerisourceBergen, Cardinal Health and McKesson. With 55% of the distributor settlement dollars alone set to flow to the Foundation over approximately 18 years, the responsibility now comes to the board of directors to make certain these dollars are used wisely.

While the Foundation has not yet received its first payments from the distributor settlement, or any other opioid settlements negotiated under the OneOhio MOU, we expect to receive dollars very soon. Since the first official meeting in June 2022, members of the board have focused on adopting the policies and procedures necessary to responsibly manage and distribute these resources on behalf of Ohioans. Additionally, with every settlement payment received, the board is charged with determining how those funds will be distributed across the state, including for projects in the 19 regions, for statewide initiatives, and for investments so future generations have resources to combat addiction.

Leaders of the OneOhio Recovery Foundation are actively engaging Ohio's addiction prevention, treatment, recovery, and public health communities to get their feedback and

guidance and to build lasting partnerships. We were pleased to meet with leaders of your organization earlier this year. Additionally, the Foundation is making good progress in setting up the processes and criteria for evaluating grant applications and then distributing funds professionally, transparently, and as quickly as possible. Given the large sums of money involved and the importance of this mission, we are careful to consult with leading experts, follow best practices, and make the effort to get things right the first time.

Almost all Ohioans have been personally impacted in their families, neighborhoods or workplaces by drug abuse and addiction. The OneOhio Recovery Foundation is bringing together people from every part of Ohio to work on tackling addiction in communities where its damage is being felt the most. Properly managed, these funds can last as long as Ohio does. Hopefully, however, our work is completed much sooner. Ohio recovers as one. Let's come together as a state in the important work.

To learn more and sign up to receive the latest news from the Foundation, please visit [OneOhioFoundation.com](https://www.oneohiofoundation.com).

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Judicial College Offerings

The Judicial College CLE schedule has been upgraded starting this year. To view the calendar and sign up for courses, please visit this [site](#).

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WEEKLY FYI:

NATIONAL NEWS:

- Arkansas's Cruel and Unusual Killing Spree
- I Went to a Town Hall Meeting in a County Ravaged by Opioids. What I Saw Broke My Heart.
- OxyContin Maker Asks Judge to Toss Case Brought by City
- Gorsuch Might Be Tough to Predict on Criminal Justice Cases

STATE NEWS:

- Justice Insider: Murderer's Attorney Tries Punctuation Defense in Sentencing
- Summit Prosecutor Campaign Reaches out to Victims in Different Languages
- Drunken Driver Gets 180 Days After Coroner's Office Says Crash Victim Died of Cancer
- Retired Stark County Family Court Judge Michael Howard to Speak at 2017 LEAD Conference at Georgetown University



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