

## NOTICE OF COURT RULES

THE COURT PUBLISHES AND GIVES NOTICE OF THE FOLLOWING COURT RULES:

Rule 2.4.2 – Dayton Regional Mental Health Court Docket

Rule 2.21 – Court Record Retention Disposition Schedule

Rule 2.27 – Motions and Notices Before Trial

Rule 3.8 – Execution (Levy) on Property

Rule 5.2 – Written Pleas

COMMENTS ON THE COURT RULES MAY BE SENT IN WRITING TO:

DAYTON MUNICIPAL COURT  
COURT ADMINISTRATOR ANN MARIE MURRAY  
301 WEST THIRD STREET, ROOM 365  
DAYTON, OHIO 45402

The Dayton Municipal Court ("Court") finds an immediate need to revise Dayton Municipal Court Rule (DMCR) 2.4.2, Dayton Regional Mental Health Court Docket, to update the Rule and add that defendants shall be ineligible for the ACCESS II Program if they are charged with sex offenses requiring registration requirements or they possessed a gun during their offenses. The revised language appears in bold type below:

#### Rule 2.4.2 – Dayton Regional Mental Health Court Docket

A. Establishment of the Dayton Regional Mental Health Court Docket.

The Dayton Municipal Court established a mental health docket, "the ACCESS II Mental Health Docket", in 2003. It is the goal of the ACCESS II Mental Health Program to reduce recidivism among defendants with mental and behavioral health issues who face criminal charges in the justice system; to reduce periods of incarceration by defendants with mental and behavioral health issues; and to provide meaningful psychological treatment intervention to these defendants so they may lead crime-free, stable, and healthy lives free from hospitalization.

**The ACCESS II Docket is now called "The Dayton Regional Mental Health Court Docket" to reflect access for all Montgomery County residents charged with criminal misdemeanors in municipal courts within Montgomery County, Ohio.**

B. Specialized Docket.

**The Court finds that this Mental Health Court Docket is governed by Sup.R.36.20 and the Specialized Docket Standards. A Dayton Municipal Court Judge shall be selected to hear the cases on the "ACCESS II" Dayton Regional Mental Health Court Docket and shall serve for the period provided by the Rules of Superintendence and the Specialized Docket Standards.**

C. Placement on the Dayton Regional Mental Health Court Docket.

To qualify for the Dayton Regional Mental Health Court Docket, a criminal defendant must meet the following legal criteria: be a resident of Montgomery County; be charged with a criminal misdemeanor charge pending in a municipal court within Montgomery County, have a persistent and severe mental illness which would benefit from court monitored treatment; be referred by the judge assigned to the criminal case; and desire to voluntarily enter the ACCESS II Program. Application for placement in the ACCESS II Program shall be subject to initial assessment by the ACCESS II Roundtable (treatment team) based upon the legal and clinical criteria for entering the ACCESS II Program and the approval of the Docket Judge.

Persons charged with traffic offenses **or sex offenses with registration requirements are ineligible for the ACCESS II Program. Defendants will also be ineligible if they possessed a gun during their offense(s).** Any legal issues regarding competency to stand trial or insanity defenses must be resolved before a defendant can enter the Dayton Regional Mental Health Court Docket. Upon referral to the ACCESS II Program, the defendant receives a diagnostic evaluation to confirm that he/she meets clinical criteria. Clinical criteria includes: a diagnosis that is consistent with a severe and persistent mental illness; sufficient stability to understand and comply with program requirements; and the criminal defendant must not pose an unacceptable risk to program staff, family or community. The ACCESS II Roundtable

will determine if the defendant qualifies for the ACCESS II Program, subject to the final approval of the Docket Judge.

D. Case Assignment.

Upon acceptance into ACCESS II, the defendant enters a plea of guilty and the Dayton Regional Mental Health Court Docket Judge imposes supervised community control and a jail sentence suspended pending successful completion of the ACCESS II Program. After entering the ACCESS II Program, the case is transferred to the Dayton Regional Mental Health Court Docket. If the criminal defendant does not enter the ACCESS II Program, then the case is returned to the original referring court to proceed on that court's docket. The judge presiding over the Dayton Regional Mental Health Court Docket has the responsibility for case management of all cases transferred to the Docket. In the event the criminal defendant is unsuccessfully terminated from the ACCESS II Program, all or part of the defendant's criminal sentence may be imposed.

E. Docket Case Management.

Criminal defendants accepted into ACCESS II will participate in counseling for mental health (individual and/or group sessions) and for substance abuse, if appropriate. The treatment plan may also include obtaining stable housing and reliable transportation, completing high school or obtaining a GED, participating in vocational assessment and entering appropriate training, attempting to obtain and/or maintain employment (either part or full time). The Dayton Regional Mental Health Court Program Description, Participant Handbook, and Participation Agreement (as amended from time to time) are incorporated by reference.

F. Termination from ACCESS II.

Upon successful completion of the ACCESS II Program, the criminal defendant is graduated and his or her charges may be dismissed. If the criminal defendant violates the terms of ACCESS II, a Notice of Violation is filed and a Hearing is scheduled. In the event the Court finds that the terms of the ACCESS II Program have been violated and the defendant should no longer continue, the defendant is terminated from the ACCESS II Program and all or part of the criminal sentence is imposed. A criminal defendant may be neutrally **terminated** if he or she is no longer capable of completing the ACCESS II Program.

The Dayton Municipal Court finds an immediate need to revise Dayton Municipal Court Rule (DMCR) 2.21, Court Record Retention Disposition Schedule, to bring the Rule into compliance with Ohio Rules of Superintendence 26, 26.01, and 26.05. A copy of the revised Court Retention Schedule is attached and incorporated into DMCR 2.21.

It is hereby Ordered that (DMCR) 2.21 shall be revised as follows:

### Rule 2.21 – Court Record Retention Disposition Schedule

The Dayton Municipal Court finds that the following Record Retention Schedule meets the record retention requirements of the Ohio Revised Code and Superintendence Rules 26, 26.01, and 26.05 for records of the Court, the Office of the Dayton Municipal Court Clerk, the Office of the Court Administrator, and the Probation Division.

Pursuant to Superintendence Rule 26, the Court may extend the retention schedules for any records listed in Superintendence Rules 26.01 and 26.05. The Court may also extend the retention period for an individual case file beyond the period specified in the Court Record Retention Schedule.

Records may be retained in a form authorized by Superintendence Rule 26 and R.C. 9.01. These records shall have the same effect at law as the original records, and authenticated or certified copies shall be admissible in evidence.

After the retention period expires, the records may be destroyed or otherwise disposed of pursuant to Superintendence Rule 26, unless the records must be retained by law.

| RECORD TITLE AND DESCRIPTION  | RETENTION PERIOD                             |
|---|--|
| Administrative Journal –<br>Administrative orders on court policies   | Permanent                                    |
| Annual Report – Two Copies<br>Published Court policies, procedures, and information   | Permanent                                    |
| Audit Reports –<br>State Auditor  | Permanent                                    |
| Bank Records –<br>Record of bank transactions   | 3 years, provided audited                    |
| Budgets   | 3 years                                      |
| Canceled Checks   | 3 years, provided audited                    |
| Cash Books –<br>Expense and receipt ledgers   | 3years, provided audited                     |
| Civil Appearance Docket –<br>Record where Clerk enters information historically included for each civil case before the Court | 25 years                                     |
| Civil Case Files –<br>Dismissed or satisfied Civil cases  | 2 years, provided audited                    |
| Dormant Civil Case Files –<br>Civil cases that have not been active for 5 years   | 10 years after dormancy,<br>provided audited |
| Civil General Index –<br>Reference record used to locate the journal, docket, and case files                                  | 25 years                                     |
| Civil Journal –<br>Verbatim record of every court order or judgment   | 25 years                                     |

|   |  |
|---|--|
| Correspondence and General Office Records   | Retained until no longer of value            |
| Court Proceedings –<br>Electronic audio recordings, audio-tape recordings, or court reporter transcriptions   | 5 years after Appeal period                  |
| Criminal Preliminary Appearance Docket –<br>Record where Clerk enters information historically included for each criminal preliminary appearance before the Court | 25 years                                     |
| Criminal Appearance Docket –<br>Record where Clerk enters information historically included for each criminal case before the Court                               | 25 years                                     |
| Criminal Misdemeanor First through Fourth Degree Case Files –<br>Criminal cases where jail is a possible penalty  | 50 years after final order, provided audited |
| Criminal Minor Misdemeanor Case Files –<br>Criminal cases where jail is not a possible penalty  | 5 years after final order, provided audited  |
| Criminal General Index –<br>Reference record used to locate the journal, docket, and case files   | 25 years                                     |
| Criminal Journal –<br>Verbatim record of every court order or judgment  | 25 years                                     |
| Depositions –<br>Out-of-court testimony reduced to writing for use in court   | 60 days after notice to retrieve             |
| Exhibits –<br>Documents or objects submitted into evidence  | 60 days after notice to retrieve             |
| Execution Docket  | 25 years                                     |
| Fiscal Records –<br>Copies of budgeting and purchasing documents such as invoices, bills, and receipts  | 3 years, provided audited                    |
| Foreign Certificate of Judgment   | 2 years, provided audited                    |
| Grant Records   | 3 years after grant ends                     |
| Judges' Monthly Reports   | 3 years                                      |
| Monetary Records  | 3 years, provided audited                    |
| Parking Ticket Records  | Until paid and audited                       |
| Pay-in Orders   | 3 years, provided audited                    |
| Payroll Records   | 3 years, provided audited                    |
| Personnel Applications  | 2 years                                      |
| Personnel Benefits & Leave Records  | 3 years, provided audited                    |
| Personnel History & Discipline  | 10 years after termination                   |
| Probation Division Annual Reports   | Permanent                                    |
| Probation Division Monthly Reports  | Until compiled into Annual Report            |
| Probation Presentence Reports and Individual Case Files   | 10 years                                     |
| Receipt Records   | 3 years, provided audited                    |
| Rental Escrow Account Records   | 5 years after last deposit                   |
| Requests for Proposals, Bids, and Resulting Contracts   | 3 years after contract expires               |
| Small Claims Appearance Docket –<br>Record where Clerk enters information historically included for each small claims case before the Court                       | 25 years                                     |

|  |   |
|--|---|
| Small Claims Index –<br>Reference record used to locate the journal, docket, and case files  | 25 years  |
| Small Claims Journal –<br>Verbatim record of every court order or judgment   | 25 years  |
| Small Claims Case Files –<br>Cases limited to \$6,000 Damages  | 2 years, provided audited                       |
| Traffic (Operating) Driving Under Influence Case Files   | 50 years after final order                      |
| Traffic Misdemeanor First through Fourth Degree Case Files –<br>Traffic cases where jail is a possible penalty                       | 25 years after final order,<br>provided audited |
| Traffic Minor Misdemeanor Case Files –<br>Traffic cases where jail is not a possible penalty   | 5 years after final order,<br>provided audited  |
| Traffic Appearance Docket –<br>Record where Clerk enters information historically included for<br>each traffic case before the Court | 25 years  |
| Traffic General Index –<br>Reference record used to locate the journal, docket, and case files                                       | 25 years  |
| Traffic Journal –<br>Verbatim record of every court order or judgment  | 25 years  |
| Transcripts –<br>The official record of proceedings in a trial or proceeding   | 60 days after notice to retrieve                |
| Trusteeship Docket –<br>Record where Clerk enters information historically included for<br>each trusteeship case before the Court    | 25 years  |
| Trusteeship Files and Records  | 2 years, provided audited                       |
| Warrants (Search Warrants)   | 5 years after service                           |
| Witness and Jury Voucher Fee Stubs   | 3 years, provided audited                       |
| Yearly Financial Reports   | Permanent                                       |

The Dayton Municipal Court finds an immediate need to address the filing of Notices of Alibi pursuant to Ohio Criminal Rule 12.1 and Notices of Self-Defense, Defense of Another, and Defense of Residence pursuant to Ohio Criminal Rule 12.2. The new language is in bold type.

Effective immediately, the Court replaces DMCR 2.27 with the following:

## Rule 2.27 – Motions **and Notices Before Trial**

### A. Motions Before Trial.

Unless permitted by the court, no pretrial motion, except for one for continuance or as otherwise provided by law, shall be filed within seven (7) days of **the bench or jury** trial date. All motions shall be served upon all counsel or the parties, if not represented by counsel, on the day of filing, pursuant to the Rules of Procedure.

Any motion other than one for continuance shall be accompanied by a memorandum indicating the issues and authorities in support thereof. If there is no memorandum, said motion shall be stricken from the files.

Opposing memoranda shall be filed not later than fourteen (14) days from the service of the motion or on the day prior to the trial or hearing on the motion, whichever is earlier, or at such other time as set by the assigned judge.

Motions shall be deemed submitted when the opposing memoranda are filed or the time for filing expires, whichever is earlier. Assignment of any motion for oral hearing shall be at the discretion of the Court.

### B. **Notices of Alibi, Self-Defense, Defense of Another, and Defense of Residence.**

#### 1. **Notice of Alibi.**

**A written Notice of Alibi shall be filed with the Court not less than fourteen (14) Days before the bench or jury trial of the misdemeanor case and shall be served upon the prosecuting attorney. The Notice shall state the intention to claim alibi and include specific information as to the place at which the defendant claims to have been at the time of the alleged offense. If the defendant fails to file such written notice, the court may exclude evidence offered by the defendant for the purpose of proving such alibi, unless the court determines that in the interest of justice such evidence should be admitted.**

#### 2. **Notice of Self-Defense, Defense of Another, or Defense of Residence.**

**A written Notice of intent to offer evidence or argue Self-Defense, Defense of Another, or Defense of Residence shall be filed with the Court not less than fourteen (14) days before the bench or jury trial of the misdemeanor case. The Notice shall include specific information as to any prior incidents or circumstances upon which defendant intends to offer evidence related to conduct of the alleged victim, and the names and addresses of any witnesses defendant may call at trial to offer testimony related to the defense. If the defendant fails to file such written notice, the court may exclude evidence**

**offered by the defendant related to the defense, unless the court determines that in the interest of justice such evidence should be admitted.**



The Dayton Municipal Court finds an immediate need to change the title of DMCR 3.8, Execution, Sale, and Confirmation, to "Execution (Levy) on Property," and to generally update DMCR 3.8. Persons requesting a levy on an abandoned manufactured or mobile home or recreational vehicle must use the Court's form "Motion for Writ of Execution on Abandoned Manufactured/Mobile Home or RV." The Court has determined that the fee for the Motion for Writ of Execution is \$75.

In addition, the Court finds that the deposit for the costs associated with the sale of personal property, including abandoned manufactured homes, needs to be increased from \$600.00 to \$800.00. The Court finds that there needs to be a \$16.00 deposit for the costs associated with the transfer of title to a manufactured or mobile home. The Deposit for the Sale or Transfer of Title shall be made when paying the \$75 Motion for Writ of Execution fee.

Revised DMCR 3.8 below shall be effective on the filing date of this Order:

### Rule 3.8 – Execution (Levy) on Property

#### A. Execution (Levy).

A party must file a Motion requesting a Writ of Execution on personal property. A party requesting a Writ of Execution on an abandoned manufactured or mobile home or recreational vehicle shall use the Court's form "Motion For Writ of Execution on Abandoned Manufactured/Mobile Home or RV." This form is available through the Clerk of Court Civil Division or the Clerk's website.

1. Motion for Writ of Execution Fee. The fee for the Motion is \$75.

#### B. Deposit on Personal Property or Abandoned Manufactured Home.

At the time of requesting a writ be issued on an execution against personal property or an abandoned manufactured or mobile home or recreational vehicle, an amount sufficient to pay the estimated cost of moving, towing, storing, appraising, advertising, transferring the title, or selling the personal property shall be deposited with the Clerk to secure such expenses. The deposit may increase depending on the actual costs associated with the execution.

1. Sale of Personal Property or Abandoned Manufactured/Mobile Home or RV.

- (a) Deposit for Costs Associated with the Sale of Property - \$800.

If A Writ of Execution is requested in connection with the sale of a vehicle, abandoned manufactured/mobile home or recreational vehicle, or other personal property, the amount of the deposit shall not be less than eight hundred dollars (\$800). The \$800 deposit may not cover all the actual expenditures incurred; therefore, the actual amount paid may increase depending on the actual cost of appraisal, advertising, and other services associated with the execution.

- (b) Notice and Procedure for the Sale of Personal Property.

The party requesting the sale of personal property shall give the notice and follow the procedure required by Chapter 2329.

- (c) Notice and Procedure for Sale of Abandoned Manufactured Home or RV.

The party requesting the sale of an abandoned manufactured or mobile home or recreational vehicle shall give the notice and follow the procedures required by R.C. 1923.14.

(d) Confirmation of Sale.

After the Sale, an Entry of Confirmation and Distribution of Sale shall be filed.

2. Transfer of Title to Abandoned Manufactured/Mobile Home or RV.

(a) Deposit for Transfer of Title - \$16.

At the time of requesting a Writ of Execution to transfer the title to an abandoned manufactured or mobile home or RV, a deposit of not less than sixteen dollars (\$16) shall be paid.

(b) Procedure for Transfer of Title.

The party requesting the transfer of title of an abandoned manufactured or mobile home or recreational vehicle shall follow the procedures required by R.C. 1923.13 and R.C. 1923.14.

The Dayton Municipal Court finds an immediate need to revise DMCR 5.2, Written Pleas, to reflect the change in time for faxing or mailing a not guilty plea in a Traffic case. Traffic Rule 8(C) now allows the not guilty plea to be entered within 10 days after receiving the ticket, instead of 4 days. The new language is in bold type.

Effective immediately, the Court replaces DMCR 5.2 with the following:

#### Rule 5.2 – Written Pleas

- A. The Court may allow the defendant to enter a written plea of not guilty through their attorney pursuant to Traf. R. 8(C), except in cases where prohibited by law. The not guilty plea may be faxed or mailed **within ten (10) days** after the defendant received the ticket. **The faxed or mailed plea must be received by the Clerk of Court before the arraignment date or the defendant must appear on the arraignment date.**
- B. If the mailed or faxed plea is not received before the arraignment date, the defendant shall appear before the Court to enter a plea. It is the responsibility of the defendant to determine if a mailed or faxed plea has been properly filed and received. **Failure to properly file a written plea or appear before the Court can result in a warrant for the defendant's arrest.**
- C. See DMCR 2.15.1 for information on filing a written plea by facsimile transmission.