

# DAYTON MUNICIPAL COURT COURT RULES



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# Contents

Chapter 1: The Judiciary .....	5
Rule 1.1 – The Administrative Judge .....	5
Rule 1.2 – The Election of the Administrative Judge.....	5
Rule 1.3 – Acting Administrative Judge.....	5
Rule 1.4 – Unavailability of Judge .....	5
Rule 1.5 – Public Use of Courtrooms.....	5
Chapter 2: General Rules .....	6
Rule 2.1 – Assignment of Cases and Courtrooms .....	6
Rule 2.2 – Individual Assignment System Sup.R. 36.011 .....	6
Rule 2.3 – Modifications to Assignment System .....	7
Rule 2.4 – Particular Session Case Assignment and Management Sup.R. 36.014.....	8
Rule 2.4.1 – Housing Docket .....	9
Rule 2.4.2 – Dayton Regional Mental Health Court Docket .....	9
Rule 2.4.3 – Safe Harbor Expungement Docket .....	11
Rule 2.5 – Assignment of Refiled Cases Sup.R. 36.017 .....	11
Rule 2.6 – Assignment Following Recusal Sup.R. 36.019 .....	11
Rule 2.7 – Assignment of Applications Requesting Sealing of Record and Applications Requesting Expungement of Record .....	11
Rule 2.8 – Assignment of Cases to New Judges Sup.R. 36.018 .....	11
Rule 2.9 – Case Management of Individual Judge Docket Sup.R. 36.016.....	12
Rule 2.10 – Recording, Broadcasting, and Photographing Court Proceedings .....	12
Rule 2.11 – Notification Administrative Judge All Appeals.....	14
Rule 2.12 – Numbering of Cases .....	14
Rule 2.13 – Form and Signing of Pleadings .....	14
Rule 2.14 – Proof of Service.....	14
Rule 2.15 – Filing and Removal of Papers from Custody of Clerk.....	14
Rule 2.15.1 – Facsimile Filing .....	15
Rule 2.15.2 – Electronic Filing of Court Initiated Documents .....	22
Rule 2.16 – Copies of Complaint .....	23
Rule 2.17 – Duties of the Clerk .....	23
Rule 2.18 – Appearance Call for Certain Civil Actions .....	24
Rule 2.19 – Disposition of Seized Property and Evidence Not Claimed .....	24
Rule 2.20 – Unclaimed Restitution Funds.....	25
Rule 2.21 – Court Record Retention Disposition Schedule .....	25
Rule 2.21.1 – Court Records Policy.....	28
Rule 2.22 – Practice Before the Court .....	31
Rule 2.23 – Withdrawal of Change of Trial Attorney .....	32
Rule 2.23.1 – Assignment of Counsel.....	32
Rule 2.23.2 – Appointed Counsel.....	32
Rule 2.24 – Appointment of Public Defender.....	32

Rule 2.25 – Service on Staff Attorneys Public Defender.....	32
Rule 2.26 – Conflict Trial Court Dates, Continuances, Engaged Counsel .....	33
Rule 2.27 – Motions and Notices Before Trial .....	33
Rule 2.28 – Jury Management Plan.....	34
Rule 2.29 – Foreign Language Interpreter or Sign Language Interpreter .....	38
Rule 2.30 – RESERVED.....	39
Rule 2.31 – Court Security .....	39
Rule 2.32 – DMC Special Projects Fee .....	39
Rule 2.33 – Possession and Use of Electronic Devices .....	39
Rule 2.34 – Acceptable Forms of Payment.....	42
 Chapter 3: Civil Practice .....	 43
Rule 3.1 – Civil Costs .....	43
Rule 3.2 – Pre-Trial Conference .....	43
Rule 3.3 – Trial by Jury or by Court .....	44
Rule 3.4 – Subpoenas for Witnesses .....	44
Rule 3.5 – Civil Magistrate .....	44
Rule 3.6 – Small Claims Division.....	44
Rule 3.7 – Forcible Entry and Detainer Procedure .....	46
Rule 3.8 – Execution (Levy) on Property .....	54
Rule 3.9 – Arbitration Medical, Dental, Optometric, Chiropractic Claims .....	55
Rule 3.10 – Civil Case Management Plan.....	60
Rule 3.11 – Appointment of Special Process Server.....	62
Rule 3.12 – Notice and Order to Discharge Garnishee.....	64
Rule 3.13 – Trusteeship Division .....	64
Rule 3.14 – Mediation.....	65
Rule 3.14.1 – Mediation Services Fee.....	66
 Chapter 4: Criminal Practice.....	 67
Rule 4.1 – Criminal Arraignment Session.....	67
Rule 4.2 – Preliminary Hearing Session.....	67
Rule 4.3 – Continuances of Arraignments .....	67
Rule 4.4 – Pre-Trial Procedure .....	68
Rule 4.5 – Bail in Misdemeanor and Felony Case .....	68
Rule 4.5.1 – Registration of Bail Bond Agents .....	68
Rule 4.6 – Jail Lists.....	68
Rule 4.7 – Appearance of Arrested Persons.....	69
Rule 4.8 – Issuance of Warrants or Capiases in Unassigned Cases .....	69
Rule 4.9 – Subpoenas .....	70
Rule 4.10 – Pleadings, Motions before Trial, Defenses and Objections.....	70
Rule 4.11 – Centralized Payment Division .....	71
Rule 4.11.1 – Post-Conviction Motions on Court Fines, Costs, and Fees.....	71
Rule 4.12 – Notice of Appeal in Criminal Cases .....	71

Rule 4.13 – Criminal Case Management Plan .....	71
Rule 4.14 – Johns School Program.....	72
 Chapter 5: Traffic Practice .....	 73
Rule 5.1 – Sessions of Traffic Court .....	73
Rule 5.2 – Written Pleas .....	73
Rule 5.3 – Demands for Jury Trial.....	73
Rule 5.4 – Subpoenas .....	73
Rule 5.5 – Issuance of Summons or Warrant for Failure to Appear .....	73
Rule 5.6 – Issuance of Notice of Nonresident .....	74
Rule 5.7 – Assessment of Points.....	74
Rule 5.8 – Continuances and Motions .....	74
Rule 5.9 – Traffic Safety Program Fee .....	74
Rule 5.10 – Use of Electronically Produced Traffic Tickets .....	75
Rule 5.11 – Driving Privilege Highway Safety and Special Projects Fees .....	75

## Chapter 1: The Judiciary

### Rule 1.1 – The Administrative Judge

- A. The Administrative Judge shall have full control over the administration, docket, and calendar of the court, pursuant to Sup.R. 4.
- B. The Administrative Judge shall be elected annually by a majority vote of the judges of the court. An incumbent administrative judge may be elected to consecutive terms. The term of office shall be the calendar year. Upon election and before commencement the Administrative Judge shall notify the Chief Justice of the Supreme Court of Ohio of his election.
- C. The Administrative Judge shall cause cases to be assigned to judges as required by the Rules of Superintendence and the DMCR. The Administrative Judge shall require reports from each judge concerning the status of assigned cases to assist him in the discharge of his responsibility to the Supreme Court of Ohio and in the implementation and application of the Rules of Superintendence for the timely termination of the case.
- D. The Administrative Judge may be relieved of a part of his trial duties during his term of office to permit him to utilize a part of his time to manage the calendar and docket of the court.

### Rule 1.2 – The Election of the Administrative Judge

The election of the Administrative Judge for the following year will be held at the December Joint Session of the Judges of the Dayton Municipal Court. This will allow for the adjustment in assignment of cases for the following year. In the event of a vacancy in the office of Administrative Judge caused by resignation or otherwise, such vacancy during a particular term shall be filled by a vote of the majority of the remaining judges. Said election shall occur within ten (10) days after such vacancy.

### Rule 1.3 – Acting Administrative Judge

The Administrative Judge shall designate the judge or judges who shall be the Acting Administrative Judge in the absence of the Administrative Judge.

### Rule 1.4 – Unavailability of Judge

In the absence of a judge, the Presiding Judge or Administrative Judge shall appoint a substitute or request the assignment of a substitute to carry out the duties of the absent judge, pursuant to the Ohio Revised Code and the Rules of Superintendence for the Courts of Ohio.

### Rule 1.5 – Public Use of Courtrooms

- A. Questions of the admission of persons to a courtroom shall be within the province of the judge to whom that courtroom is assigned and within the guidelines of public access to all court proceedings consistent with the order and dignity of the court.
- B. No recordings shall be made of any court proceedings without approval of the Judge conducting the proceeding and pursuant to the Rules of Superintendence.

## Chapter 2: General Rules

### Rule 2.1 – Assignment of Cases and Courtrooms

Judges are assigned to courtrooms and cases by order of the Administrative Judge.

#### A. Case Assignment

Dayton Municipal Court cases are assigned to an individual judge or to a particular session of court, pursuant to the assignment guidelines under Sup.R. 36.011 through Sup.R. 36.019, by order of or under the direction of the Administrative Judge.

1. “Individual assignment system” means the system in which, upon the filing in or transfer to a court or a division of the court, a case immediately is assigned by lot to a judge of the court or division, as applicable, who becomes primarily responsible for the determination of every issue and proceeding in the case until its termination. Sup.R. 36.01.
  - (a) “Assigned by lot” means the assignment of a case to a judge that meets each of the following requirements:
    - (1) The assignment is made by drawing from a pool of judges using paper, balls, or other objects as lots or counters or a computer;
    - (2) The assignment is arbitrated by chance with the determination fortuitous and wholly uncontrolled;
    - (3) The assignment is made using the entire base of the number of judges in the court or division, as applicable.
    - (4) “Assigned by lot” does not include an assignment of cases to judges in an established order of rotation, even if the order of rotation is altered periodically. Sup.R. 36.01.
2. “Particular session of the court” means the system in which cases are assigned by subject category rather than by the individual assignment system. Sup.R. 36.01.

### Rule 2.2 – Individual Assignment System Sup.R. 36.011

#### A. Adoption of Case Assignment System

The Dayton Municipal Court hereby adopts the individual assignment system provided in Sup.R. 36.011, with the exception of modifications adopted by Court Rule.

#### B. The individual assignment system ensures all of the following:

1. Judicial accountability for the processing of individual cases;
2. Timely processing of cases through prompt judicial control over cases and the pace of litigation;

3. Random assignment of cases to judges of the court or division, as applicable, through an objective and impartial system that ensures the equitable distribution of cases between or among the judges of that court or division.
- C. Time of Assignment to an Individual Judge
1. Civil Cases  
A civil case, not listed as a Particular Session case in DMCR 2.4, shall be assigned to an individual judge upon the filing of an answer or motion.
  2. Criminal or Traffic Cases  
A misdemeanor criminal or traffic case shall be assigned to a judge when a plea of "not guilty" or "not guilty by reason of insanity" is entered.
  3. Multiple Misdemeanor and Traffic Cases and Cases Involving Different Defendants  
On a plea of "not guilty" in multiple related cases, the cases shall be assigned to the same judge. Cases relating to different defendants, even if arising out of the same transaction, shall be separately assigned, unless a Motion for Consolidation is granted by the Administrative Judge.
  4. Cases Involving Judges or Court Employees  
Traffic or criminal cases involving a Dayton Municipal Court Judge or Court employee shall be initially assigned to the Administrative Judge to determine whether the case should be reassigned to one of the Judges by random lot, assigned to a visiting judge, or retained and disposed of by the Administrative Judge (by agreement of the parties).

## Rule 2.3 – Modifications to Assignment System

- A. Modifications to the individual assignment system may be adopted by the court in accordance with Sup.R. 36.011(C) to provide for:
1. The redistribution of cases involving the same criminal defendant, parties, family members, or subject-matter.
  2. The direct assignment of a new criminal case involving a person who is currently on probation with the judge to whom the probation case is assigned.
- B. The Dayton Municipal Court adopts the following Modifications to the Individual Assignment System:
1. A misdemeanor criminal or traffic case shall be assigned to the judge who:
    - (a) is assigned to another open case for the same defendant,
    - (b) placed the same defendant on supervised probation and has not terminated probation by court entry, or
    - (c) has other related misdemeanor or traffic cases in which a plea of Not Guilty is entered.
  2. Upon execution of a waiver by the defendant, a minor misdemeanor or a traffic case assigned to a judge shall be referred to a magistrate.

## Rule 2.4 – Particular Session Case Assignment and Management Sup.R. 36.014

- A. A particular session of the court is one in which cases are assigned by subject category rather than by the individual assignment system. Sup.R. 36.01. These types of cases and special proceedings may be heard and processed by a judge or magistrate in a single session.
- B. The Administrative Judge shall equally apportion particular session assignments among all the judges. A judge shall not be assigned to a particular session for more than two consecutive weeks.

### C. Criminal and Traffic Particular Sessions and Case Management

#### 1. Particular Sessions are hereby established for the following:

- (a) Traffic Arraignment (Including cases in which a plea of Guilty or No Contest is entered)
- (b) Criminal Arraignment (Including cases in which a plea of Guilty or No Contest is entered)
- (c) Initial Appearance in Felony cases
- (d) Preliminary Hearings for Felonies (set within the time limits provided by law)
- (e) Extradition Hearings.

#### 2. Case Management

Particular Session criminal and traffic particular session cases shall be set for hearing and processed within the time limits required by law.

- (a) See DMCR 4.1, DMCR 5.1 and other applicable Court Rules regarding the case management of the Particular Session Proceedings listed in DMCR 2.4(C)(1).
- (b) Particular Session criminal and traffic misdemeanors may be referred and heard by Magistrates as provided by Crim.R. 19; DMCR 4.1, DMCR 5.1, and other applicable Rules; and Administrative Order.

### D. Civil Particular Session Cases and Matters

#### 1. Particular Sessions are hereby established for the following civil cases and matters:

- (a) A Civil case in which a Motion for Default Judgment is filed
- (b) A Petition for BMV Reinstatement Fee Payment Plan
- (c) A Petition for Driving Privileges during BMV Suspension for FRA or 12-Point Suspension
- (d) Dog Designation and Impoundment of Companion Animals Hearings
- (e) Forcible Entry and Detainer Actions where right to jury trial was waived or not demanded
- (f) Small Claims cases
- (g) Rent Escrow hearings



- (h) Aid in Execution Hearings
- (i) Trusteeships
- (j) Replevin hearings
- (k) Civil Photo Enforcement Traffic Violation cases.

## 2. Case Management

Particular Session civil cases and matters shall be set for hearing and processed within the time limits required by law. If there are no required time limits, the cases shall be set for hearing within a reasonable time.

- (a) See DMCR 2.18, DMCR 3.6, DMCR 3.7 and other applicable Court Rules regarding the case management of the Particular Session Civil Cases and Matters listed in DMCR 2.4(D)(1).
- (b) Particular Session Civil cases and matters may be referred to the Magistrates as provided by Civ.R. 53(D); DMCR 2.18, DMCR 3.5, DMCR 3.6, DMCR 3.7, and other applicable Rules; and Administrative Order.
- (c) Dismissal

If no action has been taken in a Particular Session Civil case or matter for a six (6) month period, the Clerk may notify the party that the matter will be dismissed within twenty (20) days unless good cause is shown.

### Rule 2.4.1 – Housing Docket

Upon the original filing of a housing violation case, the case shall be referred to the Housing Docket. The Judges of the Court shall annually select a Judge to hear the cases on the Housing Docket. Such judge shall serve for a period of one year, beginning on the first day of January.

### 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.

#### Rule 2.4.3 – Safe Harbor Expungement Docket

Upon the original filing of an application for expungement of the record of a human trafficking victim pursuant to R.C. 2953.36 and R.C. 2953.521, the application shall be assigned to the Safe Harbor Expungement Docket. The Judges of the Court shall annually select a Judge to hear the applications on the Docket. All such applications shall be heard by the Safe Harbor Expungement Docket Judge, who shall serve for a period of one year, beginning on the first day of January.

#### Rule 2.5 – Assignment of Refiled Cases Sup.R. 36.017

If a previously filed and dismissed case is refiled, the case shall be reassigned to the judge originally assigned by lot to hear it unless, for good cause shown, that judge is precluded from hearing the case.

#### Rule 2.6 – Assignment Following Recusal Sup.R. 36.019

##### A. General

Following the recusal of a judge, the Administrative Judge shall randomly assign the case among the remaining judges of the Court who are able to hear the case.

##### B. Request for Visiting Judge

In any case in which the Administrative Judge reasonably believes based on all circumstances that no judge of the Court should hear the case, the Administrative Judge may request a visiting judge be assigned.

#### Rule 2.7 – Assignment of Applications Requesting Sealing of Record and Applications Requesting Expungement of Record

An Application Requesting Sealing of Record or an Application Requesting Expungement of Record shall be assigned to the Judge who was assigned the criminal or civil case associated with the record or that judge's successor. Applications without the defendant's date of birth, social security number, and current address will not be accepted for filing.

A \$50 local court cost, in addition to the \$50 filing fee required by R.C. 2953.32, shall be paid upon the filing of an Application for Sealing or an Application for Expungement of Criminal conviction records. The Clerk shall pay the \$50 filing fee into the funds directed by R.C. 2953.32. The \$50 local court cost shall be paid into the Dayton Municipal Court General Special Projects Fund.

#### Rule 2.8 – Assignment of Cases to New Judges Sup.R. 36.018

After the date of election, but prior to the first day of the term of a new judicial position, the Administrative Judge, through a random selection of pending cases, shall equitably reassign cases pending in the court between or among the judges of the Court and shall create a docket similar to a representative docket. Reassignment shall be completed in a manner consistent with this rule and may exclude criminal cases and cases scheduled for trial. Any matters arising in cases assigned to the docket for the new judicial position prior to the date on which the judge elected to that position takes office shall be resolved by the Administrative Judge or assigned to another judge.

## Rule 2.9 – Case Management of Individual Judge Docket Sup.R. 36.016

### A. Authority

Pursuant to Sup.R. 4.01, the Administrative Judge may take necessary action to assist with the case management of an assigned judge's individual docket.

### B. Request

Upon the request of a judge or the Case Management Section of the Supreme Court, the Administrative Judge may, for good cause, take necessary action to assist with the case management of the assigned judge's docket.

### C. Reassignment

Any cases transferred from the assigned judge's docket shall be reassigned by lot among the remaining judges of the Court.

## Rule 2.10 – Recording, Broadcasting, and Photographing Court Proceedings

### A. Procedure

#### 1. Assigned Judge

Requests for permission to broadcast, televise, record, or take photographs in the courtroom shall be in writing and presented to the judge assigned to the proceeding. If the assigned judge is not available, the written request must be presented to the Court Administrator, Presiding Judge, or Administrative Judge.

As provided by law and this rule, the judge shall permit audio, audio-video recording, broadcasting by electronic means, and taking photographs in court proceedings that are open to the public. Only operators and equipment approved by the judge shall be permitted to record, broadcast, and televise court proceedings or take photographs. After consultation, the judge shall specify the place or places in the courtroom where the operators and equipment are to be positioned. The written order of the judge shall be made a part of the record of the proceedings.

#### 2. Request to Record, Broadcast, and Photograph Court Proceedings Form

The Dayton Municipal Court Request to Record, Broadcast, and Photograph Court Proceedings form must be used and can be obtained from the assigned Judge's bailiff or the Court Administrator's Office. The Request form shall be presented as far in advance as reasonably possible to the assigned Judge's office but in no event later than twenty-four (24) hours prior to the trial or hearing to be recorded. All requests to

record proceedings of arraignment shall be made in writing and presented to the arraignment judge as far in advance as reasonably possible but in no event later than one-half hour prior to the arraignment session or quick set hearing/plea to be recorded. Upon a showing of good cause, the judge may waive either of the advance notice provisions.

B. Limitations

1. There shall be no audio recording or audio broadcast of conferences conducted in the Court facility between attorneys and clients or co-counsel, of conferences conducted at the bench, or from the courtroom when court is not in session.
2. The judge shall permit any victim, witness, or juror who objects to being recorded, broadcast, or photographed the opportunity to be heard in advance of testifying. A victim, witness, or juror may not object to the Court recording the proceeding as part of its official record.
3. This rule shall not be construed to grant any greater rights than permitted by law.

C. Revocation of Permission

Upon the failure of any person to comply with the conditions prescribed by this rule or the judge, the judge may revoke the permission to record, broadcast, or photograph the proceeding.

D. Permissible Equipment and Operators

1. Video, still photography, audio recording, or broadcasting of court proceedings shall be limited to one approved videographer, one approved still photographer, and one approved audio technician, unless otherwise ordered by the judge. In the event of multiple requests, the judge may order coverage of court proceedings to be conducted by pool representation. Individuals participating in the pool must be approved by the judge and shall designate a pool representative. Access to video, photographs, and audio shall be shared with the pool. The pool arrangement shall be by agreement of the participants and the judge shall resolve any dispute.
2. The judge shall prohibit equipment or activity that is distracting to the proceedings. No artificial lighting other than that normally used in the courtroom shall be employed. However, if the normal lighting in the courtroom can be improved without becoming obtrusive, the judge may permit modification.
3. For audio recording or broadcast purposes, not more than one audio system shall be permitted in the courtroom. Where available and suitable, existing audio pickup systems in the Court facility shall be used. If existing audio pickup systems are not available, microphones and other electronic equipment necessary for the audio pickup shall be as inconspicuous as possible but shall be visible.
4. Videographers, photographers, and audio technicians shall not move about the courtroom while court is in session.

E. Prohibition on Recording Jurors, Witnesses, and Defendants

No audio recording, video, or photograph of any juror, witness, or defendant shall be taken by any means by a person other than as approved by the judge. This division shall not apply to the Court recording the proceeding as part of its official record.

#### Rule 2.11 – Notification Administrative Judge All Appeals

Whenever a notice of appeal is filed in this court, the Administrative Judge shall immediately be furnished with a copy of the notice of appeal and all papers filed in connection therewith.

#### Rule 2.12 – Numbering of Cases

Rule 43 of the Rules of Superintendence for the Courts of Ohio shall be followed.

#### Rule 2.13 – Form and Signing of Pleadings

All documents, except the complaint offered for filing and required to be served to other parties, shall contain proof of service in the form provided by Civil Rule 5.

#### Rule 2.14 – Proof of Service

All documents, except the complaint offered for filing and required to be served to other parties, shall contain proof of service in the form provided by Civil Rule 5.

#### Rule 2.15 – Filing and Removal of Papers from Custody of Clerk

The Clerk shall file and preserve in his office all papers delivered to him for that purpose. No papers, documents, or exhibits on file in the office of the Clerk of Court shall be allowed to be taken from the custody of the Clerk except as hereinafter provided.

Excepting court personnel, original papers, which shall include transcripts or depositions filed in the action, shall not be taken from the files except upon filing an entry approved by the court and a written receipt, which shall be retained by the Clerk until the file is returned. In no event shall the file be removed for longer than three (3) days, except by court personnel.

By order of a judge of this court, any exhibit may be returned to the witness or party by whom it was produced after the substitution of a photostatic copy thereof; provided, however, that such order may dispense with such substitution in the case of an original record, paper, or object taken from the custody of a public officer which is being returned to such officer, or in the case of an exhibit used only in making proof against a party whose default has been entered, or when a receipt shall be given, or when a written stipulation of all the parties consenting thereto is filed. The application for such an order shall be supported by an affidavit stating all the pertinent facts, except where it is made on stipulation.

The Clerk shall, upon request, furnish extra copies of pleadings or other papers upon the payment of a reasonable fee.

No entry shall be accepted or docketed by the Clerk until it is approved by the appropriate judge or the Administrative Judge in the absence of the assigned judge. In small claims cases, the exhibits shall be returned to the party submitting said exhibits at the completion of the appeal period.

## Rule 2.15.1 – Facsimile Filing

The provisions of this Rule are adopted under Civ.R. 5(E), Civ.R. 73(J), and Crim.R. 12(B), and follow the Model Facsimile Filing Rule for Ohio Courts developed by the Standards Subcommittee of the Ohio Supreme Court Advisory Committee on Technology and the Courts.

Subject to the following conditions, pleadings and other papers may be filed with the Clerk of Courts by facsimile transmission to:

(937) 333-4468 (Civil & Small Claims Division)

(937) 333-4490 (Criminal Division)

(937) 333-7558 (Traffic Division).

Fax filings may not be sent directly to a Judge's or Magistrate's Office.

### A. Applicability

1. This Rule applies to pleadings and papers filed in civil, criminal, traffic, and small claims proceedings in the Dayton Municipal Court that DO NOT require filing fees or service by the Clerk.
  - (a) Some examples of documents that will not be accepted are:
    - (1) Civil or small claims complaints and appeals, motions for summary judgment, wage garnishments and any pleadings and documents that require a filing fee (Including those listed in the Court's website under 'Schedule of Fees and Costs');
    - (2) Applications for sealing conviction, dismissal, or arrest records;
    - (3) Criminal or traffic appeals;
    - (4) Written Not Guilty pleas in criminal domestic violence cases. A personal appearance by the defendant is always required at arraignment in this type of case;
    - (5) Not Guilty pleas in criminal or traffic cases with warrants. (Unless a Motion and Entry to Vacate the Warrant is filed with the plea); and
    - (6) Criminal cases with temporary protection orders; and
    - (7) Entries/Orders Granting Driving Privileges.

### B. Original Filing

1. A document filed by fax shall be accepted as the effective original filing. The person making a fax filing need not file any source document with the Clerk of Court but must, however, maintain in his or her records and have available for production on request by the Court the source document filed by fax, with original signatures as otherwise required under the applicable rules, together with the source copy of the facsimile cover sheet used for the subject filing.
2. The source document filed by fax shall be maintained by the person making the filing until the case is closed and all opportunities for post judgment relief are exhausted.

3. The filer will not receive a time-stamped copy of any pleading filed by facsimile. The filer may request a copy of the pleading, after it is filed, by mailing the request and the appropriate fee for the copy.

#### C. Definitions

As used in these rules, unless the context requires otherwise:

1. A “facsimile transmission” means the transmission of a source document by a facsimile machine that encodes a document into optical or electrical signals and transmits and reconstructs the signals to print a duplicate of the source document at the receiving end.
2. A “facsimile machine” means a machine that can send and receive a facsimile transmission.
3. “Fax” is an abbreviation for “facsimile” and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

#### D. Cover Page

1. The person filing a document by fax shall also provide a cover page containing the following information: [See Appendix (M)(1) for required cover page form.]
  - (a) The name of the court;
  - (b) The title of the case;
  - (c) The case number;
  - (d) The assigned judge;
  - (e) The title of the document being filed (e.g. Defendant Jones’ Answer to Amended Complaint or Plaintiff Smith’s Response to Defendant’s Motion to Dismiss);
  - (f) The date of transmission;
  - (g) The transmitting fax number;
  - (h) An indication of the number of pages included in the transmission, including the cover page;
  - (i) If a judge or case number has not been assigned, state that fact on the cover page; and
  - (j) The name, address, telephone number, fax number, Supreme Court registration number of attorney (if applicable), and e-mail address of the person filing the fax document, if available.
2. If a document is sent by fax to the Clerk of Court without the cover page information listed above, the Office of the Clerk may, at its discretion:
  - (a) Enter the document in the Case Docket and file the document; or
  - (b) Deposit the document in a file of failed faxed documents with a notation of the reason for the failure. In this instance, the document shall not be considered filed with the Clerk of Courts.



3. The Clerk of Court is not required to send any form of notice to the sending party of a failed fax filing.

#### E. Signature

1. A party, who wishes to file a signed source document by fax, shall either:
  - (a) Fax a copy of the signed source document; or
  - (b) Fax a copy of the document without the signature but with the notation “/s/” followed by the name of the signing person where the signature appears in the signed source document.
2. A party, who files a signed document by fax, represents that the physically signed source document is in his/her possession or control.

#### F. Exhibits

1. Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile transmission, for any reason, must be replaced by an insert page describing the exhibit and why it is missing. Unless the Court otherwise orders, the missing exhibit shall be filed with the Court, as a separate document, not later than five (5) court days following the filing of the facsimile document. Failure to file the missing exhibit, as required by this paragraph, may result in the Court striking the document and/or exhibit.
2. Any exhibit filed in this manner shall be attached to a cover sheet containing the caption of the case, which sets forth the name of the court, title of the case, the case number, name of the judge, and the title of the exhibit being filed (e.g., Plaintiff Smith’s Notice of Filing Exhibit “G” to Plaintiff Smith’s Response to Defendant’s Motion to Dismiss), and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this Court. [See Appendix (M)(2) and (M)(2.1) for required exhibit cover sheet and sample exhibit cover sheet.]

#### G. Proof of Service

Faxed pleadings must include a certificate of service showing that all required parties were served by the filer in accordance with Civ.R. 5.

#### H. Time of Filing

1. The Office of the Clerk of Court will be deemed open to receive facsimile transmission of documents on the same days and at the same time the Court is regularly open for business. The Clerk of Court may, but need not, acknowledge receipt of a facsimile transmission. If the filed pleading is time sensitive, the filer shall contact the Judge’s or Magistrate’s office to advise them of the fax filing.
2. Subject to the provisions of this Rule, all documents, sent by fax and accepted by the Clerk’s Office, shall be considered filed with the Clerk of Court as of the date and time the Clerk’s Office time-stamps the document received, as opposed to the date and time of the fax transmission.
3. The risks of transmitting a document by fax to the Clerk of Court shall be borne entirely by the sending party.

I. Verifying Receipt of Facsimile Filing

1. The Clerk of Court is not required to send any form of notice to the sending party regarding receipt or failure of a fax filing. If the filed pleading is time sensitive, the filer shall contact the Judge's or Magistrate's office to advise them of the fax filing.
2. Anyone using facsimile filing is responsible for verifying the filing has been received and accepted by the Office of the Clerk of Court. Filers are urged to use whatever technological means are available, including checking the Clerk's website.
3. Everyone using facsimile filing should be aware that it may take 1 to 2 Court business days for a fax filing to be processed, time-stamped, and notated on the Clerk's website. If the facsimile filing does not appear on the Clerk's website after 2 business days, the filing party may contact the appropriate division of the Clerk's Office.

J. Fees and Costs

1. No fee shall be assessed for facsimile filings.
2. No document filed by facsimile that requires a filing fee shall be accepted by the Clerk of Court for filing. Documents tendered to the Clerk of Court which require payment of court costs will not be filed.

K. Length of Document

1. Civil Division.

Facsimile filings for the Civil and Small Claims Division shall not exceed 10 pages in length, including exhibits or attachments.

2. Criminal and Traffic Divisions.

Facsimile filings for the Criminal and Traffic Divisions, including exhibits or attachments, shall not exceed 20 pages in length.

L. Effective Date

This Rule shall be effective June 4, 2018, and shall govern all proceedings in actions brought after the effective date and also further proceedings in pending actions, except to the extent that, in the opinion of the Court, the application in a particular action pending on the effective date would not be feasible or would work an injustice, in which event the former procedure applies.

M. Appendix to DMCR 2.15.1

1. Facsimile Filing Cover Page
2. Exhibit Cover Page
- 2.1. Sample Exhibit Cover Page

Dayton Municipal Court  
Facsimile Filing Cover Page

**Recipient Information: *Please circle one.***

Civil or Small Claims

937-333-4468

Traffic Division

937-333-7558

Criminal Division

937-333-4490

**Sending Party Information:**

Name: \_\_\_\_\_

Supreme Ct. No.: \_\_\_\_\_

Office/Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**Case Information:**

Case Caption: \_\_\_\_\_

Case Number: \_\_\_\_\_

Title of Document: \_\_\_\_\_

Judge\*: \_\_\_\_\_

\*(if a judge has not been assigned, please state that fact in the space provided.)

**Filing Information:**

Date of Fax Transmission: \_\_\_\_\_

Number of pages — including Cover Page: \_\_\_\_\_

**IN THE DAYTON MUNICIPAL COURT  
DAYTON, OHIO**

_____ Plaintiff	Case No.: _____
v. _____	Judge: _____
_____ Defendent	<b>Notice of Filing Supplement to Facsimile Transmission</b>

\_\_\_\_\_  
[Insert description of document supplemented]  
\_\_\_\_\_

[Insert party], through counsel, hereby files Exhibit "[insert Exhibit label]" to [insert original document title]. The referenced pleading was filed by facsimile transmission with the Dayton Municipal Court on [insert date filed]. Exhibit "[insert Exhibit label]" could not be accurately transmitted by fax and is therefore being timely filed as a separate document with the Court pursuant to DMCR 2.15.1.

Respectfully Submitted,

\_\_\_\_\_  
Attorney Name (Sup. Court Reg. No.)  
Office/Firm  
Address  
Telephone  
Facsimile  
E-mail  
Counsel for [insert party]

**CERTIFICATE OF SERVICE**

I certify that a copy of this Notice of Filing Exhibit "[insert Exhibit label]" was sent by ordinary U.S. mail on [date] to [party served] at [address].

\_\_\_\_\_  
Attorney Name  
Counsel for [insert party]

**IN THE DAYTON MUNICIPAL COURT  
DAYTON, OHIO**

JOHN SMITH  
Plaintiff

Case No.: 1234567

v.

Judge: NOT ASSIGNED

BILL JONES  
Defendent

**Notice of Filing Supplement to Facsimile  
Transmission**

---

PLAINTIFF SMITH'S NOTICE OF FILING EXHIBIT "G"  
TO

PLAINTIFF SMITH'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

---

Plaintiff Smith, through counsel, hereby files Exhibit "G" to Plaintiff Smith's Response to Defendent's Motion to Dismiss. The referenced pleading was filed by facsimile transmission with the Dayton Municipal Court on [insert date filed]. Exhibit "G" could not be accurately transmitted by fax and is therefore being timely filed as a separate document with the Court pursuant to DMCR 2.15.1(F).

Respectfully Submitted,

---

Attorney Name (Sup. Court Reg. No.)  
Office/Firm  
Address  
Telephone  
Facsimile  
E-mail  
Counsel for [insert party]

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Filing Exhibit "G" was sent by ordinary U.S. mail on [date] to Defendent Bill Jones at [address].

---

Attorney Name  
Counsel for Plaintiff John Smith

## Rule 2.15.2 – Electronic Filing of Court Initiated Documents

Pursuant to Sup. R. 27, the following provisions of DMCR 2.15.2 comply with the Standards for Electronic Filing Processes recommended by the Supreme Court of Ohio Commission on Technology and the Courts:

### A. Definitions

As used in these rules, unless the context requires otherwise:

1. Clerk Review: A review of documents by the clerk in accordance with court rules, policies, procedures, and practices. The clerk may retrieve and review the data and documents electronically submitted to ensure compliance with court rules, policies, procedures, and practices before creating a docket entry or before docketing the case.
2. Case Management System (“CMS”): A court case management system manages the receipt, processing, storage and retrieval of data associated with a case and performs actions on the data.
3. Court Electronic Record: Any document that the court receives in electronic form, records in the CMS and stores in the DMS.
4. Court Initiated Filing: An official court document entered into the docket or register of actions, such as notices or orders. The term “court initiated filing” is a simplification to indicate a document that will be internally created and submitted as part of the electronic court record, but could be submitted using exactly the same process as an external filing if the court so desires.
5. Document: A filing made with the court or by the court, in either electronic format or scanned from paper, which becomes part of the court’s official record.
6. Document Management System (“DMS”): The document management system manages the receipt, indexing, storage and retrieval of electronic and non-electronic documents associated with a case.
7. Electronic Filing (efile/efiling): The electronic transmission, acceptance, and processing of a filing. This definition of electronic filing does not apply to facsimile or email.
8. Official Court Record

For documents that have been efiled pursuant to this rule and its sub-sections, the electronic version constitutes the official court record. Efiled documents have the same force and effect as those filed by traditional means.

### B. Applicability

This rule applies only for the limited purpose of electronically filing certain civil, small claims, criminal, and traffic documents initiated by the court. Court initiated documents could include, but are not limited to: civil and small claims hearing notices, civil summons, civil notices of impending dismissal, civil notices of failure of delivery, and notices of community control sanction violation hearings.

### C. Process of Efiling Court Initiated Documents

1. Submission

The Clerk shall submit the court initiated document for efile using the CMS.

2. Clerk Review

- (a) If the document is accepted for electronic filing, it shall be filed and docketed as part of the court record.
- (b) If the document is rejected for electronic filing, it shall be referred for review and resubmission or other necessary action.

3. Official Time Stamp

After the document is electronically filed, it shall receive an electronic stamp with the date and time of filing, which shall be the official time stamp.

4. Time of Filing

An electronically filed court initiated document shall be deemed filed as of the date and time of the official time stamp.

D. Service of Electronically Filed Court Initiated Documents

Service of electronically filed documents shall be made via ordinary mail with the United States Postal Service.

## Rule 2.16 – Copies of Complaint

Plaintiffs shall tender with the original complaint a sufficient number of service copies for all defendants to be served.

## Rule 2.17 – Duties of the Clerk

- A. The Clerk shall prepare and maintain such dockets, books of record, and indices as are required by law and practical necessity, which shall be the public records of the court, including but not limited to:
  - 1. A Civil Docket in which shall be entered in consecutive order all civil cases brought in this court, together with all proceedings had therein, properly dated, which docket shall be the final and complete record of said cases, except as hereinafter provided;
  - 2. A Criminal Docket in which shall be entered in consecutive order all criminal cases brought in this court, together with all proceedings had thereon, properly dated, which docket shall be the final and complete record of said cases, except as hereinafter provided;
  - 3. A Bond Docket in which shall be entered the originals of all bonds given to stay execution, as well as bonds given by any party for any purpose in connection with any civil case pending in this court, with a proper index thereof;
  - 4. A Journal in which shall be recorded the orders of the court, entered in chronological sequence and identified by specific minute numbers. Where a copy of such records is demanded by a party, the expense is to be prepaid by the requesting party;

5. A General Index giving the name of each plaintiff and defendant in alphabetical order. When an execution is issued, the number shall be entered on the docket in lieu of a separate index;
  6. An Execution Docket, which contains all records in civil cases after judgment;
  7. A Cash Book Journal Sheet containing a record of all payments received by the Clerk of Court;
  8. A Small Claims Docket, which contains small claims cases, together with all proceedings, had therein, properly dated. This docket is the final and complete record of each such case;
  9. A Small Claims Index which is an alphabetical list of the names of plaintiffs and defendants. When an execution is issued, the number shall be entered on the docket in lieu of a separate index.
- B. Once a case has been assigned, the Clerk of Court shall immediately forward the case information to the assigned judge, and immediately notify the assigned judge of any subsequent pleadings, papers or exhibits filed.

#### Rule 2.18 – Appearance Call for Certain Civil Actions

- A. The civil magistrate will hear Objections to Applications for the Appointment of a Trustee under O.R.C. 2329.70 throughout the week as scheduled on the docket.
- B. The civil magistrate will hear the following proceedings as scheduled on the docket:
  1. Garnishment and Bank Attachment
  2. Aid of Execution and Citations in Contempt

In actions in Aid of Execution, where the plaintiff or plaintiff's attorney does not appear at the time for examination set forth in the order, the presence of anyone summoned to appear shall be noted on the docket and the party excused. In such event, the cost of that proceeding shall be taxed to the party who filed the proceedings and be so reflected on the docket, and counsel may be subject to appropriate action by the court.

The failure of any person to appear for examination or to hold funds, as directed under proceedings in Aid of Execution, shall be grounds for the issuance of a citation in contempt against said person. Such citation shall be issued on forms prescribed by the court and heard by the civil magistrate.

On motion reciting that personal service of the proceedings in Aid of Execution was made upon the person who failed to appear or to hold funds as directed therein, an order may issue for the appearance forthwith of said person to show cause why he should not be punished for contempt of court.

#### Rule 2.19 – Disposition of Seized Property and Evidence Not Claimed

Pursuant to O.R.C. 2933.41, all property in the custody of the Dayton Police Department, except contraband, which is no longer needed as evidence and that the Police Department despite reasonable efforts has been unable to locate the person or persons entitled to possession, may periodically be sold at public auction. Contraband in the Dayton Police Department, which is no



longer needed as evidence and is not otherwise subject to other provisions of the law, may be destroyed upon receipt of an appropriate order of the court.

Firearms and dangerous ordnance suitable for police work may be given to law enforcement for that purpose. Firearms suitable for sporting use or as collectors' items may be sold at public auction. Other firearms and dangerous ordnance shall be destroyed pursuant to O.R.C. 2933.41(D)(2).

## Rule 2.20 – Unclaimed Restitution Funds

All funds, including restitution, unclaimed after one year and after notice is given pursuant to O.R.C. 1901.31, shall be treated as unclaimed funds by the Clerk of Court and paid to the City Treasurer.

## Rule 2.21 – Court Record Retention Disposition Schedule

The Dayton Municipal Court finds that the following Record Retention Schedule (Schedule) meets the record retention requirements of the Ohio Revised Code and Superintendence Rules 26, 26.01, 26.05, and 26.06 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 periods for any of the records in the Schedule. The Court may also extend the retention period for an individual case file beyond the period specified in the Schedule.

### A. Form of Records

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. A backup copy of the records shall be made, and any backup copies of records required to be permanently retained shall be stored in a different location.

#### 1. Electronic Format

When pleadings or documents are received or created in, or converted to, an electronic format as provided in R.C. 1901.313, the pleadings or documents in that format shall be considered the official version of the record.

### B. Destruction or Disposal of Records

After the retention period expires for a record and any backup copy, the record may be destroyed or otherwise disposed of pursuant to Superintendence Rules 26 and 26.06, unless the record must be retained by law or pursuant to the Rule.

#### 1. Converted Records

Records converted from their original medium to another medium may have their original or prior medium destroyed upon conversion.

RECORD TITLE AND DESCRIPTION	RETENTION PERIOD
Administrative Journal – Administrative orders on court policies	Permanent
Annual Report – Two Copies Published Court policies, procedures, and information	Permanent
Audit Reports –	Permanent

State Auditor	
Bank Records – Record of bank transactions	3 years, provided audited
Budgets	3 years
Canceled Checks	3 years, provided audited
Cash Books – Expense and receipt ledgers	3 years, provided audited
Civil Appearance Docket – Record where Clerk enters information historically included for each civil case before the Court	25 years
Civil Case Files – Dismissed or satisfied Civil cases	2 years, provided audited
Dormant Civil Case Files – Civil cases that have not been active for 5 years	10 years after dormancy, provided audited
Civil General Index – Reference record used to locate the journal, docket, and case files	25 years
Civil Journal – Verbatim record of every court order or judgment	25 years
Communication, Correspondence, and General Office Records (Includes paper, telephonic, and electronic records)	Retained until no longer of value
Court Proceedings – Electronic audio recordings, audio-tape recordings, or court reporter transcriptions	5 years after Appeal period
Criminal Preliminary Appearance Docket – Record where Clerk enters information historically included for each criminal preliminary appearance before the Court	25 years
Criminal Appearance Docket – Record where Clerk enters information historically included for each criminal case before the Court	25 years
Criminal Case Files – Misdemeanor 1 <sup>st</sup> – 4 <sup>th</sup> Degree (Jail is a possible penalty)	15 years after final judgment (Retain documents from files for 50 years that are admissible evidence of prior conviction and counsel representation /waiver)
Criminal Case Files – Minor Misdemeanors and Unclassified Misdemeanors (Jail is not a possible penalty)	5 years after final order
Criminal General Index – Reference record used to locate the journal, docket, and case files	25 years
Criminal Journal – Verbatim record of every court order or judgment	25 years
Depositions – Out-of-court testimony reduced to writing for use in court	60 days after notice to retrieve
Exhibits – Documents or objects submitted into evidence. (Includes Depositions and Transcripts)	60 days – after notice to retrieve

	<p>One year – Addressee unknown, undeliverable, moved with no forwarding address.</p> <p>After April 1, 2025 – One year after case concluded, no notice required before destruction.</p> <p>Biological Evidence – After final judgment, return to tendering party to retain or destroy.</p>
Execution Docket	25 years
Fiscal Records – 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	Permanent
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 – Record where Clerk enters information historically included for each small claims case before the Court	25 years
Small Claims Index – Reference record used to locate the journal, docket, and case files	25 years
Small Claims Journal – Verbatim record of every court order or judgment	25 years
Small Claims Case Files – Cases limited to \$6,000 Damages	2 years, provided audited
Traffic (Operating) Driving Under Influence Case Files	15 years after final judgment (Retain documents from files for 50 years that are admissible evidence of prior conviction and counsel representation /waiver)

Traffic Case Files – Misdemeanor 1 <sup>st</sup> – 4 <sup>th</sup> Degree (Jail is a possible penalty)	15 years after final judgment (Retain documents from files for 25 years that are admissible evidence of prior conviction and counsel representation /waiver)
Traffic Case Files – Minor Misdemeanors and Unclassified Misdemeanors (Jail is not a possible penalty)	5 years after final order
Traffic Appearance Docket – Record where Clerk enters information historically included for each traffic case before the Court	25 years
Traffic General Index – Reference record used to locate the journal, docket, and case files	25 years
Traffic Journal – Verbatim record of every court order or judgment	25 years
Transcripts – The official record of proceedings in a trial or proceeding	60 days after notice to retrieve
Trusteeship Docket – Record where Clerk enters information historically included for 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

## Rule 2.21.1 – Court Records Policy

### A. Court Records Presumed Open to the Public

All Dayton Municipal Court records, including Court proceeding records, are presumed open to the public unless prohibited from public inspection by R.C. 149.43 or other law.

### B. Mission

1. The Dayton Municipal Court (the Court) is committed to openness as a foundation for a better-informed citizenry, which leads to better government and better public policy. It is the mission and intent of the Court to, at all times, fully comply with and abide by the rules for public access to court records set forth in Rules 44 through 47 of the Rules of Superintendence for the Courts of Ohio.
2. DMCR 2.21.1 is only a summary of the Court's Records Policy, and the Rules of Superintendence should be consulted for matters not addressed here. Federal and state laws may apply and should be consulted regarding access to case documents. Please contact the Dayton Municipal Court Clerk's office for assistance with inspection of Court records.

### C. Court Proceedings

Court proceedings shall be recorded and transcribed by the methods designated by the Court pursuant to Ohio Superintendence Rule 11. Audio and written transcript records of Court proceedings shall be available.

D. Inspection of Court Records

All Court records, including records of Court proceedings, are subject to the current Court Record Retention Disposition Schedule found in Dayton Municipal Court Rule (DMCR) 2.21 (<https://www.daytonmunicipalcourt.org>). Copies of Court records shall be made available for inspection in accordance with this Rule and DMCR 2.21.

E. Direct access to Court Records

A court or clerk of court shall make a court record available by direct access, promptly acknowledge any person's request for direct access, and respond to the request within a reasonable amount of time. A court or clerk of court shall permit a requestor to have a court record duplicated upon paper, upon the same medium upon which the court or clerk keeps it, or upon any other medium the court or clerk determines it can be reasonably duplicated as an integral part of its normal operations.

F. Cost for Obtaining Court Record

1. The current charge for paper copies of Court records is \$0.10 per page. An audio copy of an electronic digital recording of a court proceeding shall be supplied on compact disc at a cost of \$3.00 per disc.
2. A court or clerk of court may charge its actual costs incurred in responding to a request for direct access to a court record. The court or clerk may require a deposit of the estimated actual costs. The written estimated actual costs will be provided to the person paying the deposit.
3. The cost for a written transcript of a Court proceeding must be obtained from the Court employee who prepares the transcript. The employee preparing the transcript may require a deposit of not more than 50% of the estimated actual cost. The written estimated actual cost will be provided to the person paying the deposit for the transcript.

G. Reasonable time

A court or clerk of court shall mail, transmit, or deliver copies of a requested court record to the requestor within a reasonable time from the request, provided the court or clerk may adopt a policy allowing it to limit the number of court records it will mail, transmit, or deliver per month, unless the requestor certifies in writing that the requestor does not intend to use or forward the records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include news reporting, the gathering of information to assist citizens in the understanding of court activities, or nonprofit educational research.

H. Remote access

A court or clerk of court may offer remote access to a court record. If a court or clerk offers remote access to a court record and the record is also available by direct access, the version of the record available through remote access shall be identical to the version of the record

available by direct access, provided the court or clerk may exclude an exhibit or attachment that is part of the record if the court or clerk includes notice that the exhibit or attachment exists and is available by direct access. Nothing shall be interpreted as requiring a court or clerk of court offering remote access to a case document in a case file to offer remote access to other case documents in that case file. Nothing shall be interpreted as prohibiting a court or clerk of court from making available on a website any court record that exists only in electronic form, including an on-line journal or register of actions.

I. Restricted Access

1. Any person, by written motion, may request access to a case document or information in a case document that has been granted restricted public access pursuant to Sup.R. 45(E). The court shall give notice of the motion to all parties in the case and, where possible, to the non-party person who requested that public access be restricted. The court may schedule a hearing on the motion.
2. A court may permit public access to a case document or information in a case document if it finds by clear and convincing evidence that the presumption of allowing public access is no longer outweighed by a higher interest. When making this determination, the court shall consider whether the original reason for the restriction of public access to the case document or information in the case document pursuant to Sup.R. 45(E) no longer exists or is no longer applicable and whether any new circumstances, as set forth in that division, have arisen which would require the restriction of public access.

J. Denial of public access - remedy

Denied requests for court records should first be directed to the Court Administrator's Office for review. A person aggrieved by the failure of a court or clerk of court to comply with the requirements of Sup.R. 44 through 47 may pursue an action in mandamus pursuant to Chapter 2731 of the Revised Code.

K. Liability and immunity

Sup.R. 44 through 47 do not affect any immunity or defense to which a court, court agency, clerk of court, or their employees may be entitled under section 9.86 or Chapter 2744 of the Revised Code.

L. Definitions

As provided by Ohio Superintendence Rule 44, these terms mean the following:

"Court record" means both a case document and an administrative document, regardless of physical form or characteristic, manner of creation, or method of storage.

"Case document" means a document and information in a document submitted to a court or filed with a clerk of court in a judicial action or proceeding, including exhibits, pleadings, motions, orders, and judgments, and any documentation prepared by the court or clerk in the judicial action or proceeding, such as journals, dockets, and indices, subject to the exclusions in Sup. R. 44 (C)(2).

"Case document" does not include a document or information exempt from disclosure under state, federal, or common law; personal identifiers, including forms containing personal

identifiers; a document or information to which public access has been restricted; certain juvenile records; notes, drafts, recommendations, advice, and research of judicial officers and court staff; information on or obtained from the Ohio Courts Network; and certain common pleas court domestic relations and juvenile division documents.

"Administrative document" means a document and information in a document created, received, or maintained by a court that serves to record the administrative, fiscal, personnel, or management functions, policies, decisions, procedures, operations, organization, or other activities of the court, subject to the exclusions in Sup. R. 44 (G)(2). The term "administrative document" does not include a document exempt from disclosure under state, federal, or the common law, or as set forth in the Rules for the Government of the Bar; personal identifiers; a document or information describing the security or security plan in a court facility; an administrative or technical security record-keeping document or information; test questions, scoring keys, and licensing, certification, or court-employment examination documents; computer programs, computer codes, computer filing systems, and other software owned by a court or entrusted to it; information on or obtained from the Ohio Courts Network or through data feeds.

"Transcript" means the official record of a court proceeding.

"Case file" means the compendium of case documents in a judicial action or proceeding.

"File" means to deposit a document with a clerk of court, upon the occurrence of which the clerk time or date stamps and docket the document.

"Submit" means to deliver a document to the custody of a court for consideration by the court.

"Personal identifiers" means social security numbers, except for the last four digits; financial account numbers, including but not limited to debit card, charge card, and credit card numbers; employer and employee identification numbers; and a juvenile's name in an abuse, neglect, or dependency case, except for the juvenile's initials or a generic abbreviation such as "CV" for "child victim."

"Public access" means both direct access and remote access.

"Direct access" means the ability of any person to inspect and obtain a copy of a court record at all reasonable times during regular business hours at the place where the record is made available.

"Remote access" means the ability of any person to electronically search, inspect, and copy a court record at a location other than the place where the record is made available.

"Actual cost" means the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs, or other transmitting costs; and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

## Rule 2.22 – Practice Before the Court

Only attorneys regularly admitted to the practice of law in the State of Ohio or those certified to specially practice by the Supreme Court of Ohio or those authorized by the court shall be permitted to

practice in this court. This rule shall not prohibit a party from acting as his or her own counsel in any proceeding in this court.

### Rule 2.23 – Withdrawal of Change of Trial Attorney

- A. Withdrawal of Trial Counsel: No attorney who entered his or her appearance in any court shall withdraw except by an entry of the court and upon a showing of good cause. Withdrawal of counsel shall not be permitted within five (5) court days of any hearing assignment.
- B. Change of Trial Counsel: Change of trial counsel will be permitted by the judge assigned to the case only upon the filing of an entry containing the designation of new trial counsel and provided such change will not delay the trial.

### Rule 2.23.1 – Assignment of Counsel

When the Court determines that a defendant is legally entitled to counsel and is unable to obtain one pursuant to Crim.R. 44, the Court shall appoint either an attorney from the Mont. Co. Public Defender's Office or private counsel to represent the defendant.

### Rule 2.23.2 – Appointed Counsel

The Court maintains lists of attorneys in private practice for appointment to represent indigent defendants in criminal and traffic cases. The lists are based on the master list maintained by the Montgomery County Common Pleas Court of attorneys who are qualified to serve as appointed counsel.

To ensure equitable distribution of appointments, the lists are arranged alphabetically and the attorneys are contacted in that order until an attorney is reached that can take the case. When selecting the attorney to be appointed, the attorney's skill and expertise in handling that type of criminal case and the attorney's management of his or her current caseload may be considered, pursuant to Sup.R. 8. Periodically, the lists are reviewed for equitable distribution of appointments.

The hourly rate and maximum fees for appointed counsel can be found at the Ohio Public Defender website [www.opd.ohio.gov](http://www.opd.ohio.gov) under '*Reimbursement*'. Information, forms, and assistance with reimbursement are available through the Court Administrator's Office.

### Rule 2.24 – Appointment of Public Defender

Immediately upon approval by the court of representation of a defendant by the Public Defender's Office, that office shall file with the Clerk of Court a journal entry formalizing the appointment.

### Rule 2.25 – Service on Staff Attorneys Public Defender

Personal service is usually made upon staff attorneys of the public defender, but where such service is not possible, pursuant to Crim.R. 57 there shall be maintained in the office of the Criminal Division of the Clerk of Court a "Public Defender Service Box". In addition to other methods of service authorized by Civ.R. 5(B), service may be made upon any public defender by depositing a service copy in the Public Defender Service Box. Such deposit, when made, shall be deemed serviced by delivery, rather than by mail.



Once deposited in the Public Defender Service Box, documents therein shall be deemed in the custody of the Public Defender, who shall be responsible for distribution of such items to the appropriate responsible staff attorney. No person except the Public Defender or his/her authorized representative shall remove any documents from the Public Defender Service Box.

## Rule 2.26 – Conflict Trial Court Dates, Continuances, Engaged Counsel

Sup.R. 41 shall be followed. Additionally, attorneys submitting motions for continuances shall accompany them with an entry providing blank spaces for the new trial or hearing date, time, and courtroom.

## 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.

## Rule 2.28 – Jury Management Plan

### A. Opportunity for Service

1. The selection of jurors for the Dayton Municipal Court shall not be denied nor limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, or any other factor that discriminates against a person or group that may be before the court.
2. Jury service is an obligation of all qualified citizens.

### B. Jury Source List

1. The names of potential jurors shall be drawn from a jury source list compiled from one or more regularly maintained lists of persons residing in the City of Dayton.
2. The jury source list shall be representative and shall be as inclusive of the adult population of the City of Dayton as is feasible.
3. The court will periodically review the jury source list for its representativeness and inclusiveness of the adult population of the City of Dayton.
4. Should the court determine that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action shall be taken.

### C. Random Selection Procedure

1. Random selection procedures shall be used throughout the juror selection process.
2. Departures from the random selection procedures shall be appropriate only when in accordance with Standard 3(C) of the Ohio Trial Court Jury Use and Management Standards. Additional jurors may be summoned to fill the jury panel.

### D. Eligibility for Jury Service

All persons shall be eligible for jury service except those who are less than eighteen (18) years of age; not citizens of the United States; not residents of the City of Dayton; are not able to communicate in the English language; or have been convicted of a felony and have not had their civil rights restored.

### E. Term and Availability for Jury Service

1. Persons will be called upon to perform a term of jury service of one (1) day or the completion of one (1) trial, whichever is longer.
2. The jurors will be provided with a court telephone number to call a recorded message the evening before service to inform them of the status of the scheduled jury.

### F. Exemption, Excuse, and Deferral

Persons may be exempt, excused, or deferred from jury service in accordance with the Ohio Revised Code and Standard 6 of the Ohio Trial Court Jury Use and Management Standards.

G. Voir Dire

1. Voir dire examination shall be limited to matters relevant to determining whether to remove a juror for cause and to determine the juror's fairness and impartiality.
2. To reduce the time required for voir dire, basic background information regarding panel members will be made available to counsel in writing for each party on the day on which jury selection is to begin.
3. The trial judge will conduct a preliminary voir dire examination. Counsel shall then be permitted to question panel members for a reasonable period of time.
4. The judge will ensure that the privacy of prospective jurors is reasonably protected and the questioning consistent with the purpose of the voir dire process.
5. In criminal cases, the voir dire process will be held on the record. In civil cases, the voir dire process shall be held on the record unless waived by the parties.

H. Removal from the Jury Panel for Cause

If the judge determines during the voir dire process that any individual is unable or unwilling to hear the particular case fairly and impartially, that individual should be removed from the panel. Such a determination may be made on motion of counsel or by the judge.

I. Peremptory Challenges

1. In criminal and civil cases, the number of peremptory challenges shall not exceed three (3) for each side. In a civil case, if the court finds that there is a conflict of interest between parties on the same side, the court may allow each conflicting party up to three (3) peremptory challenges. One (1) additional challenge may be allowed for each defendant in a multi-defendant criminal proceeding.
2. In criminal and civil proceedings each side shall be allowed one (1) peremptory challenge if one or two alternative jurors are impaneled. The additional peremptory challenge shall be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

J. Administration of the Jury System

The responsibility for the administration of the jury system shall be vested in the Court Administrator and Clerk of Court, who act under the supervision of the Administrative Judge.

K. Notification and Summoning Procedures

1. The notice summoning a person to jury service and the questionnaire shall be in accordance with Standard 11 of the Ohio Trial Court Jury Use and Management Standards.
2. The summons shall clearly explain how and when the recipient must respond and the consequences of a failure to respond.
3. Policies and procedures shall be established for monitoring failures to respond to a summons and for enforcing a summons to report for jury service.

L. Monitoring the Jury System

The Court will collect and analyze information regarding the performance of the jury system on a regular basis in order to evaluate the representativeness and inclusiveness of the jury source list; the effectiveness of qualification and summoning procedures; the responsiveness of individual citizens to jury duty summonses; the efficient use of jurors; and the cost-effectiveness of the jury management system.

M. Juror Use

1. The court will employ the services of prospective jurors so as to achieve optimum use with a minimum of inconvenience to jurors.
2. The court will determine the minimally sufficient number of jurors needed to accommodate trial activity.
3. The court will coordinate jury management and calendar management to make effective use of jurors. The court will use a "Juror Telephone Service" to coordinate the services and provide information to prospective jurors.

N. Jury Facilities

1. The court shall provide an adequate and suitable environment for jurors.
2. The entrance and registration area will be clearly identified and appropriately designed to accommodate the daily flow of prospective jurors to the courthouse.
3. Jurors shall be accommodated in pleasant waiting facilities furnished with suitable amenities.
4. Jury deliberation rooms shall include space, furnishings, and facilities conducive to reaching a fair verdict. The safety and security of the deliberation rooms shall be ensured.
5. To the extent feasible, juror facilities shall be arranged to minimize contact between jurors, parties, counsel, and the public.

O. Juror Compensation

1. Persons called for jury service shall receive a reasonable fee for their service and expenses.
2. Such fees shall be paid promptly.
3. Employers are prohibited from discharging or penalizing employees who serve as jurors, pursuant to R.C. 2313.18 and Ohio Trial Court Jury Use and Management Standard 15.

P. Juror Orientation and Instruction

1. The court shall have a juror orientation program designed to increase prospective jurors' understanding of the judicial system and prepare them to serve competently as jurors. Orientation shall be presented in a uniform and efficient manner using a combination of written, oral, and audiovisual materials.

2. The court shall provide some form of orientation or instructions to persons called for jury service upon initial contact prior to service; upon first appearance at the court; and upon reporting to a courtroom for voir dire.
3. The trial judge shall:
  - (a) Give preliminary instructions to all prospective jurors.
  - (b) Give instructions directly following empanelment of the jury to explain the jury's role, the trial procedures including note taking and questioning by the jurors, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles;
  - (c) Prior to the commencement of deliberations, instruct the jury on the law, on the appropriate procedures to be followed during deliberations, and on the appropriate method for reporting the results of its deliberations. Such instructions will be made available to the jurors during deliberations;
  - (d) Prepare and deliver instructions which are readily understood by individuals unfamiliar with the legal system; and
  - (e) Recognize utilization of written instruction is preferable.
  - (f) Before dismissing a jury at the conclusion of a case:
    - (1) Release the jurors from their duty of confidentiality;
    - (2) Explain their rights regarding inquiries from counsel or the press;
    - (3) Either advise them that they are discharged from service or specify where they must report; and
    - (4) Express appreciation to the jurors for their service, but not express approval or disapproval of the result of the deliberation.
4. All communications between the judge and members of the jury from voir dire until time of dismissal shall be in writing or on the record in open court. Counsel shall be informed of such communications and given the opportunity to be heard.

**Q. Jury Size and Unanimity of Verdict**

Jury size and unanimity in civil and criminal cases shall conform with existing Ohio law.

**R. Jury Deliberation**

1. Jury deliberations shall take place under conditions and pursuant to procedures that are designed to ensure impartiality and to enhance rational decision-making.
2. The judge shall instruct the jury concerning appropriate procedures to be followed during deliberations in accordance with Standard 16C.
3. The deliberation room shall conform to the recommendations set forth in Standard 14C.
4. The jury shall not be sequestered except under the circumstances and procedures set forth in Standard 19.

5. A jury shall not be required to deliberate after a reasonable hour unless the trial judge determines that evening or weekend deliberations will not impose an undue hardship upon the jurors and are required in the interest of justice.
  6. Training will be provided to personnel who escort and assist jurors during deliberation.
- S. Sequestration of Jurors
1. A jury shall be sequestered only for good cause, including but not limited to insulating its members from improper information or influences.
  2. The trial judge shall have the discretion to sequester a jury on the motion of counsel or on the judge's initiative and shall have the responsibility to oversee the conditions of sequestration.
  3. Standard procedures shall be promulgated to achieve the purpose of sequestration and to minimize the inconvenience and discomfort of the sequestered jurors.
  4. Training will be provided to personnel who escort and assist jurors during sequestration.

## Rule 2.29 – Foreign Language Interpreter or Sign Language Interpreter

The Court shall provide and appoint a foreign language interpreter or sign language interpreter in a criminal, traffic, or civil case, or other court function, in accordance with federal and statutory law and Ohio Superintendence Rules 80 through 89.

### A. Foreign Language Interpreter

The Court shall appoint a foreign language interpreter when:

1. A party or witness who is limited English proficient or non-English speaking requests a foreign language interpreter and the Court determines the services of the interpreter are necessary for the meaningful participation of the party or witness;
2. The Court concludes the party or witness is limited English proficient or non-English speaking and the services of the interpreter are necessary for the meaningful participation of the party or witness.

### B. Sign Language Interpreter

The Court shall appoint a sign language interpreter when:

1. A party, witness, or juror who is deaf, hard of hearing, or deaf and blind requests a sign language interpreter;
2. The Court concludes the party, witness, or juror is deaf, hard of hearing, or deaf and blind and the services of the interpreter are necessary for the meaningful participation of the party, witness, or juror.

### C. Request for Interpreter

In a criminal, traffic, or civil case, the party requesting a court appointed foreign language interpreter or sign language interpreter shall make a written request to the Court at least three

(3) days before the date of the trial or hearing. The Court will determine if an interpreter is necessary, arrange for an interpreter, and appoint one. The Court may waive the written request requirement.

D. Issues with Interpreters

Any issues involving the appointment or services of a foreign language interpreter or sign language interpreter should be reported directly to the Court Administrator's Office.

## Rule 2.30 – RESERVED

## Rule 2.31 – Court Security

- A. In accordance with Sup.R. 9, the Court has developed a Court Security Policy and Procedures Plan that addresses the standards of the Supreme Court/Ohio Judicial Conference Committee on Court Security. The Court has appointed a Local Court Security Advisory Committee to implement the plan, which is not a public record.
- B. In compliance with Court Security Standard 5, the Court will not permit weapons in the court facility except those carried by court security officers or by law enforcement officers acting within the scope of their employment. Any law enforcement officer who is a plaintiff, defendant, witness, or interested party to a judicial proceeding and who is acting outside the scope of employment will not be permitted to bring weapons into the court facility.

## Rule 2.32 – DMC Special Projects Fee

- A. The Dayton Municipal Court has determined that, for the efficient operation of the Court, additional funds are necessary to acquire and pay for special projects of the Court, including, but not limited to: additional facilities or the rehabilitation of existing facilities; equipment; the hiring and training of staff; community service programs; mediation or dispute resolution services; the employment of magistrates; the training and education of judges, acting judges, and magistrates; and other related services.
- B. As of February 1, 2018, the Court shall charge a court special projects fee of \$26.00 in addition to all other court costs, pursuant to R.C. 1901.26(B), on the filing of each action or proceeding for criminal, civil, traffic, judgment by confession and other causes.
- C. All special projects fees shall be paid to the City of Dayton Treasurer for deposit into the Dayton Municipal Court General Special Projects Fund. All monies in the General Special Projects Fund shall be disbursed for special court projects by Order of the Dayton Municipal Court Administrative Judge. Any monies left over in the General Special Projects Fund at the end of each fiscal year shall be carried over to the next year, unless ordered transferred to another account by the DMC Administrative Judge.

## Rule 2.33 – Possession and Use of Electronic Devices

### Generally

Subject to inspection by court security personnel and the restrictions and prohibitions in this section, a person may bring an electronic device into the Dayton-Montgomery County Courts Building and use

the electronic device for the purpose of sending and receiving phone calls and electronic messages, and for any other lawful purpose not otherwise prohibited.

An electronic device means a cell phone, a computer, and any other device that is capable of transmitting, receiving, or recording messages, images, sounds, data, or other information by electronic means or that, in appearance, purports to be a cell phone, computer, or such other device; and a camera, regardless of whether it operates electronically, mechanically, or otherwise and regardless of whether images are recorded by using digital technology, film, light-sensitive plates, or other means.

#### Restrictions and Prohibitions

##### A. Photographs, Video, and Audio

1. Except as permitted by this Rule or by a Dayton Municipal Court Judge, a person in a Dayton Municipal courtroom, designated area, or jury room may not:
2. Take or record a photograph, video, or other visual image;
3. Transmit or receive a photograph, video, or other visual image.
4. Record, transmit, or receive audio or sound.

##### B. Marriage Ceremony

A person may possess and use a camera for the purpose of taking photographs and/or videos of a marriage ceremony and related activities that occur prior to or after the ceremony, in the public lobby areas of the Dayton-Montgomery County Courts Building.

##### C. Courtrooms and Designated Dayton Municipal Court Areas

###### 1. Dayton Municipal Courtrooms:

Only Court approved electronic equipment and devices, necessary to make the official court record and for presenting evidence, may be used during Court proceedings by Court staff, counsel, and other professionals. All electronic devices, including cell phones, brought into a courtroom, shall be turned off and placed out of sight, and may not be used to take, record, transmit, or receive sound, visual images, data, or other information from a courtroom.

###### 2. Dayton Municipal Court Designated Areas

Designated areas include the Dayton Municipal Court public lobby outside of each courtroom, the Dayton Municipal Court Probation area in the Safety Building, and the locations of Probation Classes and Services.

All electronic devices, including cell phones, may not be used to take, record, transmit, or receive sound or visual images from designated Court areas.

Cell phones may be used to make and receive urgent calls in public lobby areas, but may not be used for any other purpose.

###### 3. Counsel, Law Enforcement, and Other Professionals

The above restrictions in (C)(1) and (C)(2) apply to all counsel, law enforcement officers, maintenance and repair persons, and other professionals, who bring



electronic devices and cell phones into a courtroom or Court designated area, with the following exceptions:

- (a) Counsel in a proceeding may use their electronic devices in the courtroom to assist with their case. They may use their cell phones in the courtroom for scheduling, but not for making or receiving calls or texts. Cell phones and other devices should be turned off when they are not in use.

#### 4. The News Media

The News Media may record, photograph, or video court proceedings after receiving permission from the Courtroom Judge and filling out the Court Media form. Persons who do not comply with this Rule may be subject to sanctions, including ejection.

Otherwise, News Media are subject to the same restrictions on electronic devices, including cell phones, as other professionals.

#### D. Jury Deliberation Room

Electronic devices, not part of the court case, may not be brought into the jury deliberation room. This includes jurors' cell phones, which must be turned off and given to the Court Bailiff before jurors begin their jury duty. The cell phones will be returned to the jurors each day after jury service is completed and they are ready to leave the Courthouse.

#### E. Non-Disclosure to Witnesses

An electronic device may not be used to facilitate or achieve a violation of a court order concerning non-disclosure of information to a witness who has been excluded from a court proceeding. Doing so may subject a person to criminal penalties.

#### F. Court Order due to Security or Privacy Issues in a Particular Case

The circumstances of a particular case may raise special security or privacy issues justifying a restriction on the possession or use of electronic devices, including cell phones. Due to security or privacy concerns, the Judge may issue an order limiting or prohibiting the possession or use of electronic devices in a courtroom or other designated court area. The order shall provide notice of the designated area and the sanctions for failure to comply with the order.

#### G. Violation of DMCR 2.33 and Sanctions

A person who willfully violates DMCR 2.33:

1. May be asked to turn over the electronic device, including a cell phone, to a Court security officer, bailiff, or other Court employee, who will retain the device until the end of the day and then return it to the person;
2. May be asked to leave the courtroom or Courthouse, and the device may be retained/forfeited until the person leaves or for a specified period after leaving;
3. May be charged for criminal or civil contempt, with the electronic device taken to be entered into evidence;
4. May be fined or receive a jail sentence if found in contempt.

#### H. Liability of Court Security Personnel and Employees

No liability shall accrue to Court security personnel or Court officials/employees due to the misplacement or loss of, or damage to any electronic device brought into the Courthouse.

### Rule 2.34 – Acceptable Forms of Payment

The Dayton Municipal Court has determined that, for the efficient operation of the Court, it is necessary to define acceptable forms of payment. The following forms of payment will be accepted:

- Cash (no more than \$1.00 in coins)
- Money Order
- Certified check
- Traveler's check
- Personal checks

No starter checks will be accepted. Personal checks are not accepted for rent payments on Rent Escrow cases. Personal checks are not accepted for Traffic School Program Fees.

- MasterCard and Visa

Credit cards are subject to a convenience fee. Credit cards cannot be accepted at the Clerk's Office located in the lobby of the Montgomery County Jail.

## Chapter 3: Civil Practice

### Rule 3.1 – Civil Costs

Unless otherwise ordered by the court, costs in civil cases shall be assessed and payable upon filing according to the Schedule of Fees and Costs located in Appendix A at the end of the Dayton Municipal Court Rules of Practice. A Schedule of Fees and Costs is also prominently displayed in the Civil Division of the Clerk of Court. Copies of the Schedule of Costs may be made available upon request and payment of a reasonable fee.

### Rule 3.2 – Pre-Trial Conference

- A. In any civil action, the court may in its discretion, with or without request or motion of a party, assign such cause for pre-trial conference. If a pre-trial is ordered, the pre-trial conference shall be by telephone, unless the court finds an in-person conference is necessary.
- B. Notice of the time and place of such pre-trial conference shall be given by the assignment commissioner to all counsel of record and the parties. Trial counsel, or the parties themselves if not represented by counsel, are to be fully prepared to discuss and consider the following matters at the conference:
  - 1. The possibility of settlement of the case.
  - 2. If a jury has been requested, a decision as to whether the case is to be tried by a jury or whether a jury trial is to be waived.
  - 3. Whether the case may be consolidated with another, or others, for purpose of trial.
  - 4. The date for delivery of a medical and special damages package.
  - 5. The setting of discovery, legal memorandum, and motion filing cut-off dates.
  - 6. The exchange of medical and expert witness reports and the date for revealing the identity of expert witnesses.
  - 7. Determination of the trial date and the probable length of time for said trial.
  - 8. Complete and careful review of all the pleadings filed in the case shall be made at such conference and the necessity and desirability of amendments to such pleadings shall be decided. Also, all jurisdictional questions shall be considered and decided.
  - 9. After such review of the pleadings, a stipulation may be prepared and filed in the case as to what facts are agreed upon.
  - 10. At the conclusion of the pre-trial conference, the court may prepare and file in the case a written order which recites the action taken at the pre-trial conference, setting forth any amendments allowed to the pleadings and the admissions, agreements, and stipulations made by the parties as to all of the matters considered at such conference. Such order shall contain a recital that the issues upon the trial of such case shall be limited to only those issues which were not disposed of by the admissions, agreements, and stipulations of counsel as set forth in the memorandum and order of the court. Such order of the court, when filed in such case, shall control the

subsequent proceeding and trial of the action, unless such order is modified at the trial, in order to prevent manifest injustice to any of the parties.

### Rule 3.3 – Trial by Jury or by Court

Ohio Civ. R. 38 and 39 shall be followed. At the time of filing the civil jury demand, the party making the demand shall deposit the sum of eight hundred dollars (\$800) with the Clerk unless a poverty affidavit approved by the court is filed in lieu of the monetary deposit. Failure to make the \$800 deposit or to file the poverty affidavit within ten (10) days after filing the Jury Demand constitutes a waiver of trial by jury.

### Rule 3.4 – Subpoenas for Witnesses

- A. The praecipe (request) for subpoenas of witnesses in civil cases shall be filed with the Clerk not later than five (5) days (excluding intervening Saturdays, Sundays, and Holidays) before the date of trial. Where the praecipe for subpoenas is not filed in accordance with this rule, the failure of a witness to appear may not be grounds for a continuance of the case.
- B. Service of subpoenas shall be in accordance with Ohio Civil Rule 45. A Standing Special Process Server may be designated by the Court pursuant to DMCR 3.11.

### Rule 3.5 – Civil Magistrate

- A. As provided by Sup.R. 19, Magistrates shall be appointed by the court to hear the following: default proceedings under Civ.R. 55; forcible entry and detainer proceedings under Chapter 1923 of the Revised Code in which the right to trial by jury is waived or not demanded; small claims proceedings under Chapter 1925 of the Revised Code; and other appropriate matters referred by the court for a magistrate's decision.
- B. Magistrates shall have the qualifications specified in Civil Rule 53 and may conduct any civil proceedings authorized by that Rule.

### Rule 3.6 – Small Claims Division

#### A. Small Claims Cases

Pursuant to the Ohio Revised Code, the Court has established the Small Claims Division for cases for the recovery of money where the prayer does not exceed the monetary amount provided in O.R.C. 1925.02. The Small Claims form provided by the Dayton Municipal Court shall be used for the filing of all small claims cases.

#### 1. Service of Summons

Summons shall be served in accordance with the Ohio Rules of Civil Procedure. In the event there is a failure of service, the Clerk of Court shall notify the plaintiff immediately.

#### 2. Failure to Obtain Service

##### (a) Notice of Service Requirements

If service has not been obtained and no action has been taken on a case for ninety (90) days and the case is not set for trial, then the Clerk shall send plaintiff a "Notice of Small Claims Service Requirements."

(b) Notification of Dismissal

If plaintiff fails to obtain service within one hundred and eighty (180) days from the date the cause of action was filed, then the Clerk shall send plaintiff a Notification of Dismissal advising that the case will be dismissed in ten (10) days unless good cause is shown to the contrary.

B. Magistrate

Cases filed in the Small Claims Division shall be heard by a magistrate appointed and assigned under Sup.R. 19. Sessions shall be set by the Administrative Judge as required.

C. Continuance

A motion for continuance must be filed in writing not later than five (5) days (excluding intervening Saturdays, Sundays, and court holidays) before the date of the hearing.

D. Discovery

No depositions or interrogatories shall be taken except by leave of court. All relevant evidence shall be admitted at the discretion of the magistrate.

E. Costs

In all cases, the magistrate may assess costs as provided in O.R.C. 1925.15.

F. Objection Period

The magistrate's decision is subject to a fourteen (14) day objection period pursuant to Civ.R. 53.

G. Adoption by Court

The magistrate's decision shall be effective when adopted by the court, pursuant to Civ.R. 53. Upon consideration of any objections, the court may adopt, reject, or modify the magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions, or hear the matter.

H. Mediation

The Magistrate may find that a Small Claims Case should be mediated and refer that case to Mediation. Attorneys or other designated individuals may accompany the parties and participate in the mediation. The mediator shall keep mediation communications confidential, unless the parties consent to disclosure in writing. The efforts of the mediator shall not be construed as giving legal advice. The case shall be dismissed after a Mediated Agreement is reached and the damages are paid. If the damages are not paid, a Conversion Hearing can be requested to convert the Mediated Agreement into a Judgment.

Mediation shall not be used:

1. As an alternative to the prosecution or adjudication of domestic violence;
2. To determine whether to grant, modify, or terminate a protection order;

3. To determine the conditions and terms of a protection order; or
  4. To determine the penalty for violating a protection order.
- I. Transfer to Civil Docket
- A motion to transfer a case to the regular docket and to transfer a crossclaim or counterclaim exceeding the monetary jurisdiction of the Small Claims Division shall be referred to the Administrative Judge for assignment and handled in accordance with O.R.C. 1925.10.
- J. Payment of Fee
- Where a motion has been granted to transfer a small claims case to the civil docket, the party seeking the transfer shall pay the appropriate fee to the Clerk. Failure to pay the fee will result in the case being retained in the small claims docket.

### Rule 3.7 – Forcible Entry and Detainer Procedure

- A. This Rule applies to all eviction cases, including evictions from manufactured homes, mobile homes, and recreational vehicles where the Tenant is the Owner.
1. Forcible Entry and Detainer Complaint

Forcible entry and detainer (eviction) cases shall be heard by the civil magistrate within the time required by law. The Complaint shall contain the reason for eviction. Copies of the 3-Day Notice, any other required notices, and the lease, land contract, or affidavit (if an oral lease) shall be attached to the Complaint. Failure to attach the required documents to the Complaint may result in dismissal. If plaintiff is representing a trust or estate, a copy of the order appointing plaintiff as trustee or executor must also be attached.

    - (a) Manufactured/Mobile Homes, and Recreational Vehicles

Plaintiff must state on the Complaint the name of the legal owner of the manufactured or mobile home or recreational vehicle. If the Tenant is the legal owner, the procedures under R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14 must be followed.
  2. Causes of Action

The Forcible Entry and Detainer Complaint has two causes of action:

    - (a) First Cause for Restitution of Premises (eviction and restoring possession of the premises).
    - (b) Second Cause for Money Damages (request for back rent or other monetary damages).
- B. Service of Summons
- Service of summons in forcible entry and detainer (eviction) actions shall be in accordance with R.C. 1923.06 and the Ohio Civil Rules.
- C. First Cause for Restitution

The Complaint is attached to the summons and advises defendants (tenants) of the reason for eviction. Defendants (tenants) are directed in the summons to appear on a certain date for the First Cause for Restitution Hearing (eviction trial).

D. Trial by Jury

Trial by jury shall be waived unless on or before the date set for hearing, a written jury demand is filed and the advance jury deposit is paid. A defendant requesting a jury trial shall post a bond in an amount determined by the Court. Upon timely filing of the jury demand and payment of the advance deposit and/or bond, the case shall be set for jury trial.

E. First Cause Restitution Hearing (Eviction Trial)

After the Magistrate determines that the defendant (tenant) was served with the summons pursuant to R.C. 1923.06, plaintiff (owner/landlord) shall present admissible evidence establishing the proper form, content, and service of the 3-Day Notice (R.C. 1923.04) and any other required statutory notices, and the tenant's failure to pay rent or other reason why restitution of the premises is being sought. Once plaintiff presents a prima facie case for restitution of the premises, the defendant (tenant) may cross-examine witnesses and present any legal defenses to being evicted. The plaintiff (owner/landlord) may also cross-examine the defendant and the defendant's witnesses. The plaintiff (owner/landlord) and defendant (tenant) must be ready at the time of the Hearing to present admissible evidence.

F. Failure of Plaintiff to Appear

On the date of the Restitution Hearing, the plaintiff (owner, landlord, agent, or other person required for testimony) and plaintiff's attorney (if plaintiff is a corporation or limited liability company) shall be present in court. Failure to comply with this rule may result in dismissal of the case.

G. Failure of Defendant to Appear

If the defendant (tenant) fails to appear on the date of the Restitution Hearing and the summons was properly served, the Magistrate shall hear the first cause for restitution as though the defendant (tenant) were present, pursuant to R.C. 1923.07.

H. Counterclaims on First Cause of Action

All claims raised by the plaintiff/owner shall be consolidated with any counterclaims by the defendant (tenant) related to the first cause for restitution. The tenant shall serve any counterclaims upon the plaintiff/owner or their attorney. The tenant shall also deposit with the Clerk of Court all rent claimed by the plaintiff to be due and owing, unless this requirement is waived upon a showing of good cause.

I. Restitution Granted

If the Court grants restitution of the premises to the plaintiff, the defendant (tenant) shall vacate the premises and remove all personal property.

1. Manufactured Home, Mobile Home, Recreational Vehicle (Tenant is Owner)

If the Court grants Restitution to a plaintiff who is a manufactured home park, the Entry of Restitution shall include the authority for the plaintiff to permit, in accordance with R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14, the removal and potential sale,

destruction, or transfer of ownership of the defendant's (tenant's) manufactured home, mobile home, or recreational vehicle.

J. Writ of Restitution

If the defendant (tenant) fails to vacate or remove personal property from the premises after restitution is granted by the Court, the plaintiff/owner may initiate a Writ of Restitution within 30 days from the date of the Entry of Restitution, by posting the required fee for the Writ with the Clerk of Court. The 30-day deadline for initiating the Writ may be stayed upon written approval of the Court. Upon receipt of the Writ of Restitution, the Bailiff's Office shall contact the plaintiff/owner to set a specific date for the defendant (tenant) to be evicted and the premises restored to the owner. If the defendant (tenant) vacates the premises before the scheduled eviction date, the plaintiff shall immediately notify the Bailiff's Office.

1. Motion for Writ of Restitution (Manufactured or Mobile Home - Tenant Owner)

When the tenant is the owner of the manufactured home, mobile home, or recreational vehicle, plaintiff may request a writ of restitution by filing the Dayton Municipal Court form "Motion for Writ of Restitution (Manufactured or Mobile Home - Tenant Owner). Plaintiff and the home park operator are responsible for abiding by the commands of the Writ and for following the procedures of R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14.

2. Writ of Execution (Levy) Manufactured or Mobile Home (Tenant Owner)

If the Tenant Owner has been evicted and the manufactured home, mobile home, or recreational vehicle is abandoned pursuant to R.C. 1923.12(A), the plaintiff may request a writ of execution by filing the Dayton Municipal Court form "Motion for Writ of Execution (Levy) Manufactured or Mobile Home (Tenant Owner)," after the plaintiff or home park operator shows proof of compliance with the following:

- (a) The Notice to Remove procedures under R.C. 1923.12 for the Tenant Owner and all parties with a right to the manufactured home, mobile home, or recreational vehicle. Service of the Notice to the Tenant Owner shall be by posting and by ordinary mail sent to the last known address.
- (b) The Affidavit of Value procedures under R.C. 1923.13 for the manufactured home, mobile home, or recreational vehicle.
- (c) All other applicable procedures and requirements under R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14.

3. A Writ of Execution (Levy) shall not be enforced for a manufactured home, mobile home, or recreational vehicle unless there has been compliance with statutory procedures.

K. Notice of Eviction

The Notice of Eviction shall be served upon the defendant (tenant) by posting a copy on the premises and sending a copy by ordinary mail, pursuant to R.C. 1923.06.

1. Manufactured Home, Mobile Home, or Recreational Vehicle (Tenant is Owner)



The Dayton Municipal Court Notice of Eviction for Manufactured Homes form must be used and served on the Tenant (Owner).

2. The Notice of Eviction shall inform the tenant that:

- (a) The Court has granted restitution of the premises to the owner and set a date for eviction;
- (b) The tenant must vacate and remove all personal property before the date of eviction;
- (c) On the date of eviction the tenant will be forcibly evicted; and
- (d) Personal Property.

(1) Any personal property not removed before the date of eviction will be considered abandoned and subject to removal and disposal by the owner of the premises or the landlord.

(2) Manufactured/Mobile Home, Rec. Vehicle (Tenant Owner)

Plaintiff and the Home Park Operator shall comply with R.C. 1923.13 and R.C. 1923.14 regarding personal property that will be left behind after the eviction. Plaintiff and the park home operator will be responsible for securing any personal property left inside the manufactured home, mobile home, or recreational vehicle.

L. Abandoned Property After Eviction

1. After the defendant (tenant) has been evicted and the premises restored, it shall be the responsibility of the plaintiff/owner to remove and lawfully dispose of any litter or abandoned personal property. The plaintiff may hire a company to assist with the removal and disposal. The Court shall not recommend a company. No items may be set out for bulk trash pick-up without first contacting the Department of Public Works for permission and scheduling a pick-up date. Any items scheduled for pick-up must be set out in accordance with Bulk Waste Pick-up Guidelines. Failure to properly dispose of abandoned personal property after an eviction is a violation of R.C.G.O. 93.46.1. Each day the violation continues constitutes a separate offense. The plaintiff/owner shall be responsible for any violations, regardless of who performed the removal or disposal. In addition to any penalties, the Court may order the plaintiff/owner to pay restitution to the City for cleaning up the property.

2. Personal Property in Manufactured Home, Mobile Home, or Recreational Vehicle

After the Tenant Owner has been evicted, it shall be the responsibility of the plaintiff and home park operator to follow the procedures of R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14 before removing or disposing of any personal property remaining in the manufactured home, mobile home, or recreational vehicle. The plaintiff and home park operator shall retain and secure the personal property inside the manufactured home, mobile home, or recreational vehicle until claimed by the owner or disposed of pursuant to R.C. 1923.14.

3. Abandoned Manufactured/Mobile Home, Recreational Vehicle (Tenant Owner)

After the Tenant Owner has been evicted, it shall be the responsibility of the plaintiff and home park operator to follow the procedures of R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14 before removing, destroying, selling, or transferring the title to an abandoned manufactured home, mobile home, or recreational vehicle. The plaintiff and home park operator shall be responsible for securing and retaining the manufactured home, mobile home, or recreational vehicle at their current location in the home park until claimed by the owner or disposed of pursuant to R.C. 1923.14.

M. Liability for a Tenant's Personal Property or Abandoned Manufactured Home

Neither the Court nor any Court employee shall assume liability for any tenant's personal property or abandoned manufactured home, mobile home, or recreational vehicle after an eviction. The plaintiff and park home operator should seek legal advice if there is a question on whether to remove or dispose of a tenant's personal property or abandoned manufactured home, mobile home, or recreational vehicle.

N. Second Cause for Money Damages

The Second Cause for Money Damages will be ordered continued at the First Cause for Restitution Hearing. Upon the timely filing of a written answer, a Hearing (trial) shall be set on the Second Cause for Money Damages. Any related counterclaims raised by the defendant (tenant) shall be served upon the plaintiff/owner or their attorney and shall be consolidated for hearing (trial) with the Second Cause for Money Damages. Failure to file a timely written answer to the Second Cause, as directed in the summons, may result in a judgment against the defendant (tenant) for money damages. If plaintiff/landlord files a motion for default or summary judgment, documentary evidence such as invoices, affidavits, photos, etc., establishing the amount of damages, must be attached to the motion. Failure to attach supporting documentary evidence will delay judgment and can cause judgment to be denied.

O. Mediation

Parties may mediate either the first or second cause of the eviction action. See DMCR 3.14, Mediation, for the process and procedures involved in the mediation of the first and second causes of eviction cases.

P. Pay-to-Stay Affirmative Defense

Affirmative Defense. On March 24, 2021, the City of Dayton enacted Revised Code of General Ordinance (RCGO) Sections 93.71, 93.72, 93.73, and 93.74 related to a tenant's defense of eviction within the City of Dayton, Ohio. The Ordinance Sections provide specific conditions in which a tenant may pay past due rent with reasonable late fees and court costs and stay in their residence through an affirmative "Pay-to-Stay" defense. If the tenant chooses to raise the Pay-to-Stay Affirmative Defense, it is their responsibility to meet the requirements of City of Dayton RCGO Sections 93.71, 93.72, 93.73, and 93.74. The tenant can access the Pay-to-Stay RCGO Sections through the City of Dayton website or by calling the City of Dayton. Neither the Court nor the Clerk can provide legal advice on this affirmative defense. A tenant or landlord that needs legal advice should contact an attorney.

Deposit of Tendered Rent. If the tenant chooses to deposit the attempted tender of past due rent with reasonable late fees and court costs with the Clerk of Court, the funds will be recorded and deposited in the Rent Tendered Account on the Eviction Case. The funds will be

held in trust to be applied to the Pay-to-Stay Affirmative Defense on the First Cause for Eviction only. If the tenant proves their Pay-to-Stay Affirmative Defense, the funds will be released to the landlord. If the tenant fails to prove their Affirmative Defense, then the funds will be released back to the tenant. The tenant must provide an alternate address, other than the eviction address, in case their funds need to be returned after they have vacated the premises. The funds in the Rent Tendered Account on the Eviction Case must be held by the Clerk of Court until the objection period is over and the Eviction First Cause of Action is disposed of by the Court. Any release or return of funds may take up to 45 days.

Q. Sealing of Eviction Records

1. Sup.R. 45 provides that a court may restrict public access to a court record when it finds by clear and convincing evidence that the presumption of public access is outweighed by a higher interest. Therefore, the Court has the authority to order the Dayton Municipal Clerk of Court ("Clerk") to seal an eviction record when the interests of justice outweigh the duty to provide public access. The Court shall examine the grounds for sealing each eviction record and may deny sealing a record when criminal activity, such as a violent offense or drug offense, led to the eviction. Whether an eviction record is sealed is up to the discretion of the Court.

2. Eviction Case Records that are Eligible to be Sealed

Closed Cases that have a Final Decision by the Court are eligible to be sealed. An Eviction Case consists of a First Cause for Eviction and may have a Second Cause for Rent or Damages. The entire Case must be closed before it can be sealed. Closed means there is no pending First Cause for Eviction or Second Cause for Rent/Damages still open that needs to be determined by the Court. Eviction Cases are also not eligible to be sealed while objections or appeals are pending. These cases can be considered after the Final Decision on the objections and/or appeals.

- (a) The following Closed Cases may be sealed sixty (60) days after the date of the Final Decision on the First Cause for Eviction:

- (1) Only first cause for eviction was filed, and the first cause for eviction was dismissed or judgment was entered for the Tenant/Defendant; or
    - (2) Court dismissed the first cause for eviction or entered judgment for the Tenant/Defendant, and any second cause for rent or damages, plus court costs, has been satisfied or dismissed; or
    - (3) Landlord/Plaintiff dismissed the first cause for eviction before adjudication of that claim, and any second cause for rent or damages, plus court costs, has been satisfied or dismissed.

- (b) The following Closed Cases may be sealed six (6) months after the date of the Court's Final Decision on the First Cause for Eviction:

Eviction Judgment for Landlord/Plaintiff and Rent/Damages Satisfied

The Landlord/Plaintiff prevailed on the merits and was awarded judgment on the first cause for eviction and any second cause for rent or damages, plus court costs, has been satisfied or dismissed, plus the Applicant has not had

another eviction judgment against them in the Dayton Municipal Court within the past three (3) years.

3. Procedure for Sealing an Eviction Record:

(a) File the Court's Application and Affidavit to Seal Eviction Record form

The party requesting to have an eviction record sealed must use and complete the Court's Application and Affidavit to Seal Eviction Record form.

(1) The Application form

The Application form must be filed with the Court even if the Landlord/Plaintiff does not oppose sealing the record or agrees to seal the record in an Agreed Entry.

(2) Affidavit

The Application form includes an Affidavit attesting to all relevant facts.

(a) Agreed Entry

If an Agreed Entry to Seal Eviction Record Without a Hearing was filed by the parties, a copy of the Agreed Entry must be filed with the Affidavit.

(b) Service of Notice, Application and Affidavit to Seal Eviction Record, and Response

The Notice of Application, the Application and Affidavit to Seal Eviction Record, and the Response to the Application to Seal Eviction Record form (Response) forms will be served on Plaintiff/Landlord or their Counsel by the Clerk through ordinary mail.

(c) Response to Application to Seal Eviction Record

(1) The Plaintiff/Landlord, their Counsel, or other responding party must file their Response to the Application to Seal Eviction Record form (Response) with the Clerk of Court within 21 days after being served. The Clerk of Court shall then serve the Response by ordinary mail upon the Defendant/Tenant.

(2) Failure to file a Timely Response

Failure to file a timely Response to the Application to Seal Eviction Record form with the Clerk may result in the statements on the Application being taken as true, and the eviction record being sealed without a hearing.

(d) Hearing

Either party may request an oral hearing

(1) No Hearing Requested

If no hearing is requested, the matter may be decided without a hearing unless the Court finds one is necessary.

(2) Criminal Activity

A hearing shall always be necessary when criminal activity, such as a violent offense or drug offense, led to the granting of the eviction judgment to the Landlord/Plaintiff. It is the Applicant's burden to show at the hearing that the Applicant did not commit and was not convicted of a violent offense or drug offense that led to the eviction.

(e) The Court Considers the Application

The Court may consider all relevant factors when examining an Application, which may include, but are not limited to:

- (1) The disposition of the eviction case, including whether any second cause for rent or damages, plus court costs, has been satisfied or dismissed;
- (2) Whether the sealing of the record is agreed to or disputed by the opposing party;
- (3) If the Landlord/Plaintiff received judgment on the eviction, the grounds upon which the judgment was granted and whether the Applicant has had an eviction judgment against them in the Dayton Municipal Court within the past three (3) years;
- (4) Whether criminal activity by the Applicant, such as a violent offense or drug offense, led to the eviction; and
- (5) Any other information relevant to the determination of whether justice requires the sealing of the record.

4. Sealing of Record after Application Granted

If the Court grants an Application to Seal an eviction case record, the Clerk shall cause the entire eviction case record to be redacted from all public records to the same extent that it would for the sealing of a criminal case record, including the electronic case index system. The Clerk shall retain both the sealed electronic record and physical file, should one exist, in accordance with its record retention policy. The Clerk shall ensure that the record of the case can be retrieved and unsealed if the Court orders access to the sealed record.

(a) Government Officials Entitled to Access

Upon the filing of a Motion, access to the sealed eviction record may be provided to government officials as required by law.

5. Denied Application to Seal Eviction Record

Once an Application to Seal an eviction record is denied, another Application to Seal may be filed but it will not be granted unless good cause is shown.

6. Procedure for Unsealing Eviction Record

A party to the original action, or any government official or agency entitled to access the sealed eviction record, may file a Motion to Unseal Court Record with Affidavit.

(a) Affidavit Setting Forth Good Cause and Hearing

An Affidavit shall be attached to the Motion to Unseal Court Record, which sets forth good cause why the record should be unsealed. A copy of the Motion to Unseal Court Record shall be served on the parties to the case by the Clerk of Court. A hearing shall be held unless the Court finds one unnecessary.

(b) Entry Ruling on Motion to Unseal Court Record

The Court shall determine whether there is good cause to unseal the Court record and file an Entry granting or denying the Motion. The Clerk shall serve the Entry upon the party or government official requesting the record be unsealed and upon all parties to the case by ordinary mail.

(c) Motion and Entry to Unseal shall be Filed under Seal

The Motion to Unseal Court Record with Affidavit and the Entry Ruling on the Motion to Unseal Court Record shall be filed under seal.

### 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.

### Rule 3.9 – Arbitration Medical, Dental, Optometric, Chiropractic Claims

Upon the filing of any medical, dental, optometric, or chiropractic claim as defined in division (D) of O.R.C. 2305.11, if all the parties to the medical, dental, optometric, or chiropractic claim agree to submit it to nonbinding arbitration, the controversy shall be submitted to any arbitration board as provided below.

A. Appointment of Arbitration Board to Hear Medical, Dental, Optometric, and/or Chiropractic Claims:

1. Medical, dental, optometric, and/or chiropractic malpractice claims shall be submitted to an arbitration board consisting of three arbitrators to be named by the Court
  - (a) The chairperson, herein the arbitrator, of the medical, dental, optometric, and/or chiropractic malpractice arbitration panel shall be appointed by the Court.
  - (b) There shall be two associate arbitrators selected as set forth in paragraph (D) of this rule.
2. The arbitrator and associate arbitrators will receive a reasonable compensation based on the extent and duration of actual service rendered, as set forth in paragraph (P) of this rule, pursuant to O.R.C. 2711.21(A).
3. The arbitrator and associate arbitrators will be officers of the Court and shall be sworn or affirmed to justly and equitably try all matters properly at issue before them. Such

oath or affirmation may be administered to him by any person having the authority to administer oaths.

B. Case for Arbitration

1. Upon filing a medical, dental , optometric, and/or chiropractic malpractice claim as defined in O.R.C. 2305.11, the case shall first be assigned pursuant to DMCR 2.2. The assigned judge will make a determination of poverty if a poverty affidavit and written motion was filed with the claim and upon the filing of an answer, assign the case to the arbitrator, who will assume all responsibility for the disposition of the case through the arbitration process, except those matters which require judicial resolution, i.e., discovery disputes, pre-trial motions, etc.
2. In cases involving issues of both malpractice and other non-related claims, the issues may, upon application to the assigned judge, be bifurcated. The non-related claim will be maintained by the assigned judge for purposes of disposition.

C. Duties of Arbitrator

1. The arbitrator shall upon receipt of a medical, dental, optometric, and/or chiropractic malpractice case:
  - (a) Assign the case for a scheduling conference. The parties may at any time waive their rights to arbitration; provided that, any party who waives this right less than two weeks before an arbitration hearing shall be assessed an arbitration fee for one full day in accordance with paragraph (P) of this rule. If both parties waive the right to arbitration, the case will be referred back to the assigned judge for trial.
  - (b) Designate deadline for appointment of associate arbitrators.
  - (c) Designate discovery cut-off deadlines.
  - (d) Designate an arbitration hearing date.
  - (e) Do all other things necessary for the orderly disposition of the case.

D. Appointment of Associate Arbitrators

1. There shall be one associate arbitrator appointed by plaintiff(s) and one appointed by the defendant(s). In the situation where there are multiple defendants and agreement cannot be reached among them on the name of their associate arbitrator, then application will be made to the assigned judge of this Court for selection of this associate arbitrator from the names submitted to him.
2. If either of the parties fails to submit a name of a prospective associate arbitrator within the time prescribed, the assigned judge, upon motion, may appoint an associate arbitrator for the party or parties failing to comply.
3. The parties, at any time prior to the designated deadline for appointment of associate arbitrators, may waive their right to associate arbitrators and present the case to the arbitrator appointed as the chairperson arbitrator. In this event, the arbitrator's decision and testimony shall have the same effect in the disposition of subsequent trial of the case as would a decision from a full arbitration panel.



4. Exceptions to an arbitrator shall be raised by motion filed within five (5) days of the mailing of the notice of assignment and shall be heard by the assigned judge.
- E. Composition of Board & Disqualification From Appointment
- No business or professional associate of any party shall be appointed as an associate arbitrator and no attorney who is a law partner or associate of an attorney of record in the case shall be appointed as an associate arbitrator.
- F. Discovery
- The assignment of a case to an arbitration panel shall not limit the right of the parties to continue discovery pursuant to the Ohio Rules of Civil Procedure.
- G. Hearings/When and Where Held/Notice
1. Hearings shall be held at a place scheduled by the arbitrator.
  2. No hearing shall be fixed for Saturdays, Sundays, legal holidays, or evenings, except upon agreement of all parties and the arbitrators.
  3. There shall be no communications by counsel or the parties with the arbitrators concerning the merits of the controversy during pendency of the case, except as provided for by these rules.
- H. Oath of Associate Arbitrators
1. When both associate arbitrators are assembled, they shall be sworn or affirmed to justly and equitably try all matters properly at issue submitted to them.
  2. Such oath or affirmation may be administered to them by any person authorized to administer oaths.
- I. Default of Party
1. The arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain a continuance.
  2. An award shall not be made solely on the default of the party. The panel shall require the other party to submit evidence as they may require for the making of an award.
- J. Conduct of Hearing/General Powers
1. The three (3) members of the panel shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary.
  2. All evidence shall be taken in the presence of the arbitrators and all the parties, except where any of the parties has voluntarily absented themselves, have been found to be in default, or have waived their right to be present.
  3. In addition to oral testimony, the arbitration panel may receive the evidence of witnesses by affidavit, deposition, videotape deposition, interrogatories, or written report and shall give it such weight as the panel deems is justified after consideration of any objections which may be made to such evidence.

4. Where a party proposes to offer affidavits or written reports at an arbitration hearing, the party shall furnish copies of such affidavits or reports to all other parties not less than sixty (60) days in advance of the hearing. Such other parties shall have the right to cross-examine the author of the affidavit or report by subpoenaing him to appear at the hearing or by taking his disposition in advance of the hearing.
5. Counsel shall, upon request and whenever reasonable, produce a party or witness at the hearing without the necessity of subpoena.
6. All parties have the right to submit trial briefs to the arbitration panel prior to or at the time of the commencement of the arbitration hearing.
7. No disclosure shall be made to the arbitrators prior to the filing of the report and aware of any offers of settlement made by any party. By mutual consent, the parties may waive this restriction as it pertains to the arbitrator. This would allow the arbitrator to participate in the pre-arbitration settlement conferences.

K. Specific Powers

The panel shall have the general powers of a court, including, but not limited to, the following:

1. Subpoena:

To cause the issuance of subpoenas to witnesses to appear before the panel and to request the issuance of an attachment according to the practice of the courts for failure to comply therewith. Subpoenas will be issued in the same manner as in all other cases.

2. Production of Documents:

To compel the production of all books, papers, and documents that are deemed material to the case.

3. Administration of Oaths, Admissibility of Evidence:

To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by the depositions and to decide the law and the facts of the case submitted to the panel.

L. Witness Fees

Witness fees shall be in the same amount as now or hereafter provided for witnesses in trial in the Dayton Municipal Court, which shall be taxed as costs.

M. Transcript of Testimony

The arbitrators shall be required to make a transcript of the proceedings before them. Any party desiring a copy of any transcript shall be provided with it by the reporter upon payment of the usual charge for transcripts. Proceedings shall be recorded by any means permitted by Sup.R. 11.

N. Report and Award

1. Within thirty (30) days after the hearing, the arbitrator shall file a written report and award with the Clerk of Court and, on the same day, shall mail or otherwise forward copies thereof to all parties or their counsel.

2. In the event that all three (3) members do not agree on the finding and award, the dissenting member shall submit a written dissenting opinion to be filed with the majority report.

O. Legal Effect of Report & Award/Entry of Judgment

1. The report and award shall become final thirty (30) days after its filing and the Court shall enter judgment in accordance therewith unless, within said thirty (30) day period, parties rejecting the report and award file amended pleadings conforming with subsection (2) of this rule. The filing of the amended pleading shall be the only recognized notification of rejection. The parties making such pleading amendments shall serve other parties pursuant to the Ohio Rules of Civil Procedure.
2. If the decision of the arbitration panel is not accepted by all parties thereto, the pleadings shall be amended to aver both the fact that the controversy was submitted to an arbitration panel and the decision of the arbitration panel. The decision of the arbitration panel and any dissenting opinion written by any panel member shall be admitted into evidence at trial upon offer of any party.
3. However, if a party files an application to vacate the award accompanied by a detailed affidavit(s) alleging one or more of the following:
  - (a) That the findings of fact of the arbitration panel were clearly erroneous.
  - (b) The decision is not in accordance with applicable law.
  - (c) The procedures required for conducting the hearing and rendering the decisions were not followed fairly and properly with prejudice to a party, then upon such filing, the assigned judge shall schedule a hearing to inquire into the allegations thereof and determine the merits of the application.
4. If the application is granted, the pleadings shall not be amended to aver both the fact that the controversy was submitted to an arbitration panel and the decision of the arbitration panel, nor shall there be any cross-examination of the arbitrators.
5. If the application is denied, the decision of the arbitration panel and any dissenting opinion will be admitted into evidence upon the offer of any party and the opposing party may cross-examine the arbitrators.

P. Compensation of Arbitrators

1. Each associate arbitrator who has signed an award or files a minority report, unless that arbitrator waives compensation prior to the hearing, shall receive as compensation for services rendered the fee of two hundred dollars (\$200) for the first full day and one hundred dollars (\$100) for each half day thereafter. The arbitrator shall receive three hundred dollars (\$300) per day.
2. When more than one case arising out of the same transaction is heard at the same hearing or hearings, it shall be considered as one case insofar as compensation of the arbitrators is concerned.
3. The members of the panel shall not be entitled to receive their fees until after filing the report and award with the Clerk of Court.

4. Fees paid to arbitrators shall be assessed pursuant to O.R.C. 2711.21.

Q. Poverty Affidavit

1. Plaintiff(s) shall pay a deposit of three hundred fifty dollars (\$350) to the Clerk of Court upon filing of a medical, dental, optometric, and/or chiropractic malpractice claim. Defendant(s) shall pay a deposit of three hundred fifty dollars (\$350) to the Clerk of Court upon filing an answer to a medical, dental, optometric, and/or chiropractic malpractice claim.
2. If there are multiple plaintiffs or defendants, each shall be required to deposit the sum of three hundred fifty dollars (\$350). If a poverty affidavit is filed and accepted by the Court, no deposit will be required. See subsection (4) below.
3. In the event the case proceeds to arbitration, each party's deposit will be applied to his portion of the arbitration expense.
4. Parties may file a poverty affidavit in lieu of cash deposit. Such affidavit is to be in such form as required by the Court. However, it is intended that poverty affidavits are not to be filed to avoid prepayment of court costs and will be subject to court review at any stage in the proceedings.
5. Refund of arbitration deposits will be made when appropriate.

### Rule 3.10 – Civil Case Management Plan

A. Purpose

The purpose of this rule is to establish, pursuant to Sup. R. 5(B)(1), a system for civil case management, which will achieve the prompt and fair disposition of civil cases.

B. Scheduling of Events

The scheduling of a case begins when a civil case is filed. For information on filing pleadings and papers by facsimile transmission, see DMCR 2.15.1.

Thereafter the case is managed in clerical steps and judicial steps.

C. Clerical Steps

1. Summons shall be served in accordance with the Ohio Rules of Civil Procedure. In the event there is a failure of service, the Clerk of Court shall notify plaintiff/counsel immediately.
  - (a) Failure to Obtain Service

If plaintiff/counsel fails to obtain service within one hundred and eighty (180) days from the date the cause of action was filed, then the Clerk shall send plaintiff/counsel a Notification of Dismissal advising that the case will be dismissed in ten (10) days unless good cause is shown to the contrary.
  - (b) No Action on Cases Eligible for Default Judgment

If no action has been taken on a case for ninety (90) days and no answer has been filed by the defendant, then the Clerk shall send plaintiff/counsel a

Notification of Dismissal. The Notification will advise that the case will be dismissed in ten (10) days unless good cause is shown to the contrary or a motion for default judgment is filed with the Court.

#### D. Judicial Steps

##### 1. Status Hearing

After an answer or other responsive pleading is filed, the case will be assigned to a judge and the Clerk will forward the information to the assigned judge. The judge, or magistrate if the case is referred, may then set a status hearing, which may be heard, in court or by telephone. The purpose of the status hearing is to set discovery and motion deadlines so a formal pre-trial can be set.

##### 2. Motions

All motions must be in writing and accompanied by a written memorandum containing citations of authority and the arguments of counsel. Opposing counsel shall respond in like manner within fourteen (14) days. All motions will be deemed submitted at the end of said fourteen (14) day period unless time is extended by the judge or magistrate.

There will be no oral hearings granted in said motions unless the parties request an oral hearing in writing and the judge or magistrate deems it necessary.

##### 3. Pre-trials

For the purpose of this rule, pre-trial shall mean a court-supervised telephonic conference chiefly designed to produce an amicable settlement. The judge or magistrate shall attempt to narrow legal issues, to reach stipulations as to facts in controversy; and, in general, to shorten the time and expense of trial.

- (a) Notice of the pre-trial conference shall be given to all counsel of record not less than fourteen (14) days prior to the conference. Any application for continuance of the conference shall be addressed to the judge or magistrate to whom the case has been assigned.
- (b) Counsel participating in the pre-trial conference must have complete authority to stipulate on items of evidence and must have full settlement authority.
- (c) If the case cannot be settled at pre-trial, then the case will be set for trial at the next available trial date.

##### 4. Continuances

No party shall be granted a continuance of a trial or a hearing without a written motion from the party or counsel stating the reason for the continuance. When a continuance is for the reason that counsel is scheduled to appear in another case assigned for trial on the same date in the same or another trial court of this state, the case which was first set for trial shall have priority and shall be tried on the date assigned. Criminal cases assigned for trial have priority over civil cases assigned for

trial. The granting of any other request for continuance for a scheduled trial is a matter within the discretion of the trial court.

5. Judgment Entries

Counsel for the party in whose favor an order or judgment is rendered shall prepare a journal entry. That entry shall be submitted to opposing counsel within five (5) days of the decision. Opposing counsel shall approve or reject the entry within five (5) days. Within fifteen (15) days of the decision, the journal entry shall be submitted to the judge or thereafter the judge shall prepare the entry.

Entries of settlement may be filed at any time. The avoidance of trial by settlement shall be allowed without the filing of an entry, but such entry shall be filed within thirty (30) days or the case will be dismissed for want of prosecution. The entry shall state which party will pay the court costs.

6. Default Judgment Damages

When a motion for default judgment is filed, plaintiff/counsel shall submit an affidavit of the specific nature of the damages claimed along with a default judgment entry. Failure to do so will result in the court setting a damages hearing.

### Rule 3.11 – Appointment of Special Process Server

A. Special Process Server

A special process server is a person who has been designated by court order to make personal or residence service of civil process pursuant to Civ. R. 4.1.

1. Effecting Service

(a) Personal service

The special process server shall effect personal service by locating the person to be served and tendering a copy of the process and accompanying documents to the person to be served.

(b) Residence Service

The special process server shall effect residence service by leaving a copy of the process and the complaint, or other document to be served, at the usual place of residence of the person to be served with some person of suitable age and discretion residing therein.

2. Notice of Service

When the copy of the process has been served, the special process server shall endorse that fact on the process and return it to the clerk, who shall make the appropriate entry on the docket.

3. Failure of Service

When the special process server is unable to serve a copy of the process within twenty-eight (28) days, the process server shall endorse that fact and the reasons on

the process, and return the process and copies to the clerk, who shall make the appropriate entry on the docket.

**B. Requesting a Special Process Server**

If a party desires a certain person serve civil process on their case(s), the person must apply to be appointed a special process server pursuant to Civ. R. 4.1. To qualify as a civil process server for personal or residence service, the applicant must certify by affidavit that he or she has the following qualifications:

1. Not less than eighteen years of age;
2. Not a party to the proceeding, related to a party to the proceeding, or having a financial interest in the outcome of the proceeding;
3. A United States citizen or a legal resident of the United States;
4. Hold a valid government-issued identification card, passport, or driver's license;
5. Not convicted in the last ten years of any felony, offense of violence, or offense involving dishonesty or false statement, and not currently under community control sanctions, probation, post-release control, or parole;
6. Not currently a respondent under any civil protection order;
7. Familiar with the required procedure for service of process; and
8. Will conduct themselves in a professional manner.

**C. Order Designating a Special Process Server**

If the Applicant has the qualifications listed in division (B) of this rule, the Court may appoint the applicant by court order to make personal or residence service of process for a period up to one (1) year. The appointment can be a one-time appointment for service of process on a specific case of the plaintiff or a standing appointment for service of process on all of the plaintiff's cases. The order shall provide that if the special process server ever fails to satisfy the required qualifications during the appointment, their authority to serve process shall cease.

**D. Application, Affidavit, and Order**

The applicant must file a combined Application, Affidavit, and Order Appointing a Special Process Server provided by the Clerk. A Judge shall then review the applicant's qualifications and may authorize the appointment for a period of up to one year by signing the Order.

**E. Standing Process Server**

In any case thereafter, the Clerk shall accept a time-stamped copy of the order appointing the special process server to be an order appointing a standing process server. When the order appointing the special process server expires, a new Application, Affidavit, and Order must be filed.

**F. Record of Appointment of Special Process Servers**

The Clerk shall record the appointment orders on the Court's general docket and shall retain the original applications, affidavits, and court orders.

### Rule 3.12 – Notice and Order to Discharge Garnishee

When the total probable amount due on a judgment has been paid in full to the judgment creditor, the judgment creditor shall prepare a combined Notice and Order to Discharge the Garnishee in triplicate to be signed by the judge and filed with the court. The Notice and Order shall be served upon the garnishee and the judgment debtor, pursuant to R.C. 2716.041.

### Rule 3.13 – Trusteeship Division

The application for the appointment of a trustee shall include a complete and accurate statement, under oath, of:

1. The debtor's name, address and marital status;
2. The name and address of his employer or employers;
3. The amount of the debtor's gross earnings per pay period (the debtor must supply the Clerk with copies of his or her last two paycheck stubs from each employer); and
4. The name and address of the creditor from whom the fifteen-day written notice of proceeding against his earnings was received.

Upon filing of an application, the Clerk shall become the trustee without formal order of the court. Objections of interested parties to the application shall be heard at the appearance call set by court. The filing of the application shall stay all proceedings against personal earnings of the applicant, provided that, if the order of attachment or the Order in Aid of Execution is served upon the employer or garnishee prior to the time of filing of the application, the personal earnings subject to the order of the court shall be paid to the Clerk of Court for distribution in the case of which said order was made. In the event the application is filed, prior to the time the order of attachment or Order in Aid of Execution is served upon the employer or garnishee, the personal earnings subject to the order of the court shall be ordered paid to the trustee.

A. At the time of filing the application, the debtor or his/her attorney shall also complete for the Clerk

1. Two copies of a Notice of Application for Trustee for each creditor
  - (a) Each Notice shall contain:
    - (1) the name of the applicant;
    - (2) the sum applicant claims is owing the creditor; and
    - (3) statement advising the creditor Objections may be made at the hearing held before the Magistrate.
2. The Clerk shall deposit such notice in the mail within twenty-four hours and indicate on the docket that notices were mailed to the listed creditors. Additional creditors may be listed in the trusteeship upon the application and service of a notice to each additional creditor as heretofore provided.
3. Separate notice of the time and place of the Magistrate's hearing will be sent to the parties by the Magistrate's office.

B. Distribution



The trustee shall make no distribution to anyone except a creditor or an attorney for the creditor. Credit Bureaus or Credit Collection Services are not to receive a distribution unless it is a valid claim of the Collection Service and not that of an agent. The Clerk or deputy appointed shall supervise payments of debts and distribute the funds in each case at least every six months unless the amount available does not equal 25% of the claims listed. When a debtor pays directly, the Clerk shall require the debtor to produce payroll stubs or similar records and the Clerk may refuse to accept payments, or installments thereof which do not equal the amount required by law. The Clerk may not accept payments into a trusteeship where the debtor pays direct unless the tender of payments is made by the debtor, his agent or attorney within four days after the receipt of the personal earnings by the debtor. If the payments are not made for thirty days, the trusteeship shall be dismissed and the proceeds distributed. This requirement can be waived only by the Court.

C. Dismissal

The dismissal of a trusteeship by rule of court or upon motion of counsel for one of the creditors listed therein shall make the debtor filing of said trusteeship ineligible for reinstatement or refile an application for another trusteeship for a period of six months from the date of the dismissal; provided, however, that such trusteeship be reinstated upon the tender and payment to the Clerk of Court as trustee the amount of money required by law to make such trusteeship current to the date of such tender, if the approval of the Court is first obtained.

### Rule 3.14 – Mediation

- A. The Dayton Municipal Court has determined that parties in civil, small claims and eviction cases benefit from having their cases mediated. Whenever possible, the Court shall provide parties willing to mediate their cases with access to mediation services.
- B. The Judges or Magistrates shall determine which cases should be mediated and refer those cases to mediation. The parties shall be notified if they are referred to mediation and the mediation procedure shall be explained to them. For a brief explanation of the mediation process and the answers to frequently asked questions, go to the link for the Dayton Mediation Center that is available through the Dayton Municipal Court website: "[www.daytonmunicipalcourt.org](http://www.daytonmunicipalcourt.org)".
- C. The mediator must meet the qualifications, education, and training requirements of Sup.R. 16.23. The Court shall ensure only qualified individuals provide mediation services pursuant to Sup.R. 16.24. All parties shall be allowed to participate in the mediation and, if they wish, their attorneys or other designated individuals may accompany them and also participate. The mediator shall keep mediation communications confidential, unless the parties consent to disclosure in writing. The efforts of the mediator shall not be construed as giving legal advice.
- D. The mediator may reject or terminate mediation at any time if the mediator finds the case inappropriate or the parties do not cooperate. The mediator shall inform all parties and the Court that the mediation is terminated using the procedure required by the Court. The case shall then be scheduled for trial before the Magistrate or Court.

- E. On Eviction cases, the parties shall discuss the First Cause for Restitution and the Second Cause for back rent and damages. The mediator shall prepare and file a written Mediated Agreement on the First Cause for Restitution and on the Second Cause for Damages. The owner/landlord shall file a motion requesting an Entry Granting Restitution and a Writ of Restitution if the defendant (tenant) fails to comply with the Mediated Agreement for restitution of the premises. The owner/landlord shall request a Conversion Hearing to convert the Mediated Agreement into a Judgment if the defendant (tenant) fails to pay the agreed damages or comply with the Mediated Agreement on the Second Cause. Upon successful completion of all terms and conditions of the First and Second Causes in the Mediated Agreement, the Eviction case shall be dismissed and a Dismissal Entry filed.
- F. On Civil and Small Claims cases, the mediator shall prepare a written Mediated Agreement reflecting any settlement reached by the parties, including the amount of damages. The case shall be dismissed after the Mediated Agreement is filed with the Court and the damages are paid. If the damages are not paid, a party may request a Conversion Hearing to convert the Mediated Agreement into a Judgment.
- G. The Uniform Mediation Act of Chapter 2710 and Ohio Superintendence Rule 16 are incorporated in DMCR 3.14 by reference. In accordance with Ohio Sup.R.16, procedures shall be in place to screen parties for domestic violence and refer suspected victims and other parties needing assistance to legal counsel and other support services.

Further, Mediation shall never be used:

As an alternative to the prosecution or adjudication of domestic violence; to determine whether to grant, modify, or terminate a protection order; to determine the conditions and terms of a protection order; to determine the penalty for violating a protection order.
- H. The Administrative Judge shall establish a process for accepting and considering written comments and complaints regarding the performance of mediators. The Court Administrator shall notify the person making the complaint and the mediator of any action taken by the Administrative Judge and shall maintain a written record for the Court.

### Rule 3.14.1 – Mediation Services Fee

The Dayton Municipal Court has determined that, for the efficient operation of the Court, additional funds are necessary in order to provide mediation services to defendants in eviction and small claims cases. Starting November, 1, 2011, the Court shall charge a mediation service fee of \$10.00 on the filing of each eviction and small claims case, in addition to other court costs, pursuant to R.C. 1901.26(B).

## Chapter 4: Criminal Practice

### Rule 4.1 – Criminal Arraignment Session

- A. The arraignment session duty judge shall conduct initial appearances of all persons charged with felonies, shall arraign all persons charged with misdemeanors and shall hear and dispose of all cases in which pleas of guilty or no contest are entered. The judge so assigned shall also arraign all persons charged with traffic offenses who have not been released from confinement.
- B. Defendants released prior to arraignment, bonded out, or summoned shall appear before the Magistrate handling the Criminal/Traffic docket. The Magistrate may conduct any other criminal proceedings authorized by Criminal Rule 19.
- C. Upon release of a defendant from pre-trial confinement or upon the issuance of summons, the Clerk shall assign an initial appearance or arraignment date. At the initial appearance for a misdemeanor, the defendant or counsel may enter one of the following pleas:
  - 1. not guilty;
  - 2. no contest;
  - 3. guilty; or
  - 4. not guilty by reason of insanity.

If a jury trial is requested, a written demand for jury trial must be filed with the Clerk of Court pursuant to Crim.R. 23.

- D. Written Pleas
  - 1. Prior to arraignment, the defendant's counsel may file a written appearance and a plea of not guilty, pursuant to Crim.R. 10(B), except in domestic violence cases or where otherwise prohibited by law. No plea or appearance will be accepted by telephone.
  - 2. The written plea may be mailed or faxed and must be received by the Clerk of Court before the arraignment date. 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 the mailed or faxed plea has been properly filed and received. Failure to timely file a written plea or appear before the Court can result in a warrant for the defendant's arrest.
  - 3. See DMCR 2.15.1 for information on filing a written plea by facsimile transmission.

### Rule 4.2 – Preliminary Hearing Session

Preliminary hearings shall be conducted in accordance with Crim.R. 5(B).

### Rule 4.3 – Continuances of Arraignments

The arraignment session duty judge or magistrate may grant a continuance of arraignment not to exceed seven (7) days from the original arraignment date. Additional continuances, without plea, may be granted only with the approval of the duty judge or magistrate upon good cause shown. Continuances allowed shall be scheduled on a specific date.

#### Rule 4.4 – Pre-Trial Procedure

All first through fourth degree misdemeanors are pre-tried unless the defendant is incarcerated. On cases not automatically set for pre-trial, a written request must be filed.

#### Rule 4.5 – Bail in Misdemeanor and Felony Case

Before assignment in misdemeanor cases, the arraignment session duty judge or magistrate may set any bail which is proper pursuant to the considerations listed in Crim. R. 46(F). If the arraignment session duty judge is unavailable, then any judge of the court may set proper bail. In those cases assigned to a judge, no judge shall set aside the bail set by the judge to whom the case is assigned, except in the absence of such judge and then only the Administrative Judge. In felony cases, bail shall be set by the criminal arraignment session duty judge.

##### Rule 4.5.1 – Registration of Bail Bond Agents

- A. The Dayton Municipal Court requires a bail bond agent to register with the Clerk of the Dayton Municipal Court before a bond may be filed in this court. (O.R.C. 3905.87).
- B. To register, a bail bond agent shall file with the Clerk of Court, Criminal Division, a certified copy of the surety bail bond agent's appointment by power of attorney from each insurer that the bail bond agent represents.
- C. The bail bond agent shall keep his or her registration current by filing a certified copy of a renewed power of attorney by the first day of August of each odd-numbered year.
- D. A bail bond agent must produce a current state bail license each time a bond is filed in the Dayton Municipal Court. (O.R.C. 3905.84 & 3905.85).

#### Rule 4.6 – Jail Lists

- A. The jail administrator shall cause every person booked into the Dayton City Jail and not released on bail to be brought before the appropriate judge or magistrate within one (1) court day after booking.
- B. The jail administrator shall cause to be prepared and delivered each morning prior to 8:00 A.M. to all Dayton Municipal Court judges a jail list which shall contain at least the following information:
  - 1. The name, including any known aliases, of every person in custody in the City Jail as of 5:00 A.M. who has not appeared before a judge since being booked;
  - 2. The charge or charges on which such person was booked;
  - 3. Whether the person has been booked on a capias or warrant;
  - 4. If the person is wanted in another jurisdiction, the name of such jurisdiction.

- C. For the convenience of court personnel in arraignment court, the list shall be divided into three sections: felonies, traffic offenses, and criminal misdemeanors. Additionally, for the convenience of Dayton Police Detectives, the felony portion will show the name of the arresting officer(s).
- D. For convenience of all court personnel, the jail list shall also include a separate section with the name, court appearance time, and courtroom assignment of each person in the City Jail scheduled for trial or preliminary hearing on that date.
- E. During the course of the court day (8:00 A.M. to 4:30 P.M.), the jail administrator shall cause the jail list to be continuously updated by advising the court at appropriate intervals of persons booked since the last update, persons released on bail or otherwise, persons unable to appear in court because of mental illness or otherwise, and persons transferred to other institutions.
- F. The jail administrator shall cause the jail personnel to safely keep all documents forwarded to the jail from the court. Such documents shall be kept in such manner as to be readily accessible upon court request in either alphabetic or chronological order and shall be retained by the jail personnel for an indefinite period pending court- ordered destruction or transfer to another facility.
- G. The jail list shall be prepared in a consistent form from day to day.
- H. The jail administrator shall cause to be prepared and attached to the jail list a weekly list of those persons confined in the Montgomery County Jail showing their names, case numbers, status lines, charges, and bonds.

#### Rule 4.7 – Appearance of Arrested Persons

- A. Persons arrested and held in custody shall appear at the next regularly scheduled session of the court, except persons charged with misdemeanors who have been released on bail.
- B. Probable cause hearings are conducted for anyone arrested and held for a minimum of forty-eight (48) hours in order to show good cause to detain without charges being filed.
- C. Defendants charged with misdemeanors who are released on bail shall be given a notice of appearance in writing by the Clerk of Court directing their attention to the time and place for appearance at arraignment. The appearance date in cases where the charge is operating a motor vehicle under the influence of alcohol or any drug of abuse must be set for arraignment within five (5) days of the arrest.
- D. Persons charged with felonies who are released on bail set by a judge shall appear at a time and date set by the judge setting the bond or at the time and date set by the Clerk of Court.
- E. Where the court has issued a warrant for the arrest of a person who has previously failed to answer a notice to appear, citation, or summons, or where the court has issued a bench warrant upon the failure of a person to appear in accordance with the conditions of his release on bail, upon the apprehension or appearance of such person upon such warrant or bench warrant, his case shall be brought before the next regular or special session of the court.

#### Rule 4.8 – Issuance of Warrants or Capiases in Unassigned Cases

- A. Pursuant to Crim. R. 4, statutory law and judicial order, in any case when it appears from the record that the defendant has failed to appear in response to a summons or traffic citation, the Clerk of Court shall issue a warrant or capias for the arrest of the defendant except as provided under Paragraphs B, C, and D.
- B. Minor Misdemeanor Criminal Offenses  
When the defendant fails to appear in court in response to a citation for a minor misdemeanor criminal offense or to exercise an option in lieu of appearance, a supplemental citation shall be issued.
- C. Unclassified Misdemeanor Offenses With Monetary Fines Only  
When the defendant fails to appear in court in response to a citation for an unclassified misdemeanor offense in which confinement is not a penalty, or to exercise an option in lieu of appearance, a supplemental citation shall be issued.
- D. Supplemental Citation  
The supplemental citation shall provide a new date and time to appear in court and inform the defendant of the options in lieu of appearance. If the defendant fails to appear or exercise an option in lieu of appearance within 30 days after the supplemental citation is issued, a warrant shall be issued for the arrest of the defendant pursuant to R.C. 2935.26(F).

#### Rule 4.9 – Subpoenas

Subpoenas shall be processed by the Clerk of Court from a praecipe filed by defense counsel. All other subpoenas are processed by the prosecuting attorney's office. The praecipe shall be filed at least five (5) days in advance of the trial date.

Subpoenas shall be served as follows:

- A. Personally by the Bailiff's Office or by a Standing Special Process Server designated by the Court pursuant to DMCR 3.11. If personal service is not possible, the subpoenas shall be served by ordinary mail. The envelope shall bear a request for return to the Clerk of Court's office if not delivered at once. The Clerk of Court shall make a return on the reverse side of the subpoena showing the name and address where the subpoena was served. When the envelope is returned showing failure of delivery, the Clerk of Court shall attach the envelope to the complaint.
- B. When the Clerk issues a subpoena for the attendance of a Dayton police officer, a deputy clerk shall deliver the subpoena for service to the Supervisor of the Police Court Detail. The Supervisor, as an ex officio bailiff of this court, is designated as the person to make service of subpoenas on Dayton police officers. The Department of Police shall make appropriate arrangements for notifying a subpoenaed officer. Each Dayton police officer, as an ex officio bailiff of this court, is ordered to promptly present himself to the Supervisor of the Court Detail to accept service of any subpoena issued for his attendance, upon receipt of notice of its issuance. The Supervisor or his designee shall serve subpoenas and make due return to the Clerk.

## Rule 4.10 – Pleadings, Motions before Trial, Defenses and Objections

Crim.R. 12 shall be followed.

## Rule 4.11 – Centralized Payment Division

The Centralized Payment Division is established. The Clerk of Court is appointed to collect fines, give receipts therefore and render accounts of the Division and to accept guilty pleas. The Centralized Payment Division shall prominently display a statement of defendants' rights and a schedule of fines and costs. Upon a defendant's entry of a not guilty plea, the case shall be assigned for trial in accordance with DMCR 2.2.

### Rule 4.11.1 – Post-Conviction Motions on Court Fines, Costs, and Fees

- A. Based upon subject matter and the Administrative Order of the Judges, all post-conviction motions on Court fines, costs, and fees, filed with the Clerk of Court, shall be referred for review by the Administrative Judge, who shall:
  - 1. Preside over any proceedings and follow the procedures established by the Judges in their Administrative Order, then issue entries and orders ruling on the motions.
- B. The Exception shall be post-conviction motions submitted by the Warrant Enforcement Division. These motions are ordered referred to the Magistrates. The Administrative Judge may also refer other appropriate post-conviction motions on fines, costs, and fees to the Magistrates.

## Rule 4.12 – Notice of Appeal in Criminal Cases

All notice of appeal must be filed with the Clerk of Court, Criminal Division.

## Rule 4.13 – Criminal Case Management Plan

### A. Purpose

The purpose of this rule is to establish, pursuant to Sup.R. 5, a system for criminal case management to achieve the prompt and fair administration of criminal cases. These rules are to be applied to eliminate the unnecessary delay and expense for all parties involved.

### B. Scheduling of Events

After the initial appearance, the assigned judge shall conduct an early case management conference. Following the early case management conference, each case may be scheduled in four (4) judicial steps:

#### 1. Pre-trials

At any time after the initial appearance, the court may, on its own motion, or upon the written motion of any party, order one or more conferences to consider such matters as will promote a fair and expeditious trial. The pre-trial shall be conducted in accordance with Ohio Crim.R. 17.1. Any attorney who fails to appear for pre-trial

without just cause being shown may be punished for contempt of court. If the parties cannot resolve the case, then the case should be set for trial.

2. Motions

All motions shall be made in writing and accompanied by a written memorandum containing the arguments supporting the motion. All motions shall be set for oral hearing. Motions must be filed within the time limits established by the Ohio Rules of Criminal Procedure. For information on filing motions by facsimile transmission, see DMCR 2.15.1.

3. Trials

Each case not resolved at pre-trial conference shall be set for trial to the court. If a written jury demand is timely filed then the case will be moved to the jury trial schedule.

4. Sentencing

Sentencing hearings shall be set within seven (7) days from trial if no pre-sentence report is requested. After the court receives the pre-sentence report, the court will set the matter for sentencing within seven (7) days.

#### Rule 4.14 – Johns School Program

The Dayton Municipal Court has determined that offenders convicted of offering payment for prostitution services and other related offenses require special rehabilitative programs. The Dayton Municipal Court Probation Department has created a special program for this type of offender called “Johns School”. At Johns School, defendants learn the legal ramifications of their offenses; the dangers inherent with seeking prostitutes, including the potential health hazards; and the impact of their offenses on the community.

The Court finds that an additional fee of \$250 is needed to cover the costs associated with Johns School and orders that this additional fee may be assessed to participating defendants pursuant to R.C. 1901.26(B)(1).



## Chapter 5: Traffic Practice

### Rule 5.1 – Sessions of Traffic Court

The Traffic Court shall consist of two sessions:

- A. The arraignment session shall be held at 8:30 A.M. Monday through Friday and conducted by a Magistrate appointed by the court. The arraignment session shall consider all pleas of guilty or no contest, requests for setting bail, stays of execution, and all other matters to come before the Traffic Court not handled by other sessions. All pleas of not guilty shall be assigned pursuant to DMCR 2.2. The Magistrate may conduct any other traffic proceedings authorized by Traf.R. 14.
- B. The traffic trial session shall be held in accordance with Traf.R. 17.

### 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.

### Rule 5.3 – Demands for Jury Trial

All demands for jury trials in traffic cases shall be made in writing and filed with the Clerk of Court, Traffic Division.

### Rule 5.4 – Subpoenas

DMCR 4.9 shall be followed.

### Rule 5.5 – Issuance of Summons or Warrant for Failure to Appear

- A. Pursuant to Traf.R. 7(A), in any case where it appears from the record that the defendant has failed to appear in response to a traffic ticket, the Clerk of Court shall issue a warrant or capias for the arrest of the defendant except as provided under Paragraphs B, C, and D.
- B. Minor Misdemeanor Traffic Offenses

When the defendant fails to appear in court in response to a ticket or citation for a minor misdemeanor traffic offense or to exercise an option in lieu of appearance, a supplemental citation shall be issued.

C. Unclassified Misdemeanor Traffic Offenses with Monetary Fines Only

When the defendant fails to appear in court in response to a ticket or citation for an unclassified misdemeanor traffic offense in which confinement is not a penalty, or to exercise an option in lieu of appearance, a supplemental citation shall be issued.

D. Supplemental Citation.

The supplemental citation shall provide a new date and time to appear in court and inform the defendant of the options in lieu of appearance. If the defendant fails to appear or exercise an option in lieu of appearance within 30 days after the supplemental citation is issued, a warrant shall be issued for the arrest of the defendant pursuant to R.C. 2935.26(F).

## Rule 5.6 – Issuance of Notice of Nonresident

Traf.R. 7(B) shall be followed.

## Rule 5.7 – Assessment of Points

The Clerk of Court shall, by computer transfer, cause a record to be furnished to the Bureau of Motor Vehicles that indicates the number of points to be assessed in the space designated on the reporting form for each traffic violation. The points to be assessed shall be as provided for in O.R.C. 4507.021.

## Rule 5.8 – Continuances and Motions

A. Continuances

Traf.R. 18 shall be followed when filing continuances.

B. Motions

All motions shall be made in writing and accompanied by a written memorandum containing the arguments supporting the motion. Motions must be filed with the Clerk of Court within the time limits established by the Ohio Rules of Traffic Procedure.

C. See DMCR 2.15.1 for information on filing continuances and motions by facsimile transmission. It is the responsibility of the defendant to determine if a faxed motion has been properly filed and received.

## Rule 5.9 – Traffic Safety Program Fee

The Court has determined that defendants, who are charged with minor misdemeanor traffic offenses, would benefit from a special program on traffic safety. The Court has established the Traffic Safety Program, which offers a class where defendants will learn the dangers inherent in speeding, running traffic lights, or other unsafe driving.

The Court finds that an additional fee of \$250 is needed to cover the costs associated with the Traffic Safety Program and orders that this additional fee be assessed to participating defendants, pursuant to R.C. 1901.26(B)(1).

## Rule 5.10 – Use of Electronically Produced Traffic Tickets

The Dayton Municipal Court provides for the use of a ticket that is produced by computer or other electronic means. A ticket produced by computer or other electronic means shall not require the signature of the defendant. A ticket produced by computer or other electronic means shall conform in all substantive respects to the “Ohio Uniform Traffic Ticket” set forth in the Traffic Appendix of Forms. The provisions of Traf.R. 3(B), relative to the color and weight of paper, size, and method of binding, shall not be applicable to a ticket that is produced by computer or other electronic means. The ticket paper shall be of sufficient quality to allow the court record copy to remain unchanged for the period of the retention schedule for the various traffic offenses as prescribed by Sup.R. 26.05. The court record of the ticket shall be filed with the court or may be filed electronically as authorized by this Rule and Traf.R. 3 (F)(2).

The Dayton Municipal Court provides for the filing of the ticket by electronic means. If a ticket is issued at the scene of an alleged offense, this Rule requires that the issuing officer serve the defendant with the defendant’s paper copy of the ticket as required by Traf.R. 3(E). A law enforcement officer who files a ticket pursuant to Traf.R. 3(F)(1) or (F)(2) and electronically affixes the officer’s signature thereto, shall be considered to have certified the ticket and shall have the same rights, responsibilities, and liabilities as with all other tickets issued pursuant to these rules.

## Rule 5.11 – Driving Privilege Highway Safety and Special Projects Fees

Pursuant to R.C. 4510.13 and R.C. 4510.021, and pursuant to R.C. 4510.022, the Court shall assess a \$2.50 fee for the State Highway Safety Fund (SHSF), and an additional \$2.50 fee for the Municipal Court Special Projects Fund (MCSF) whenever the Court grants:

- A. Limited Driving Privileges with an immobilizing or disabling device, including a certified ignition interlock device; or
- B. Limited Driving Privileges with a continuous alcohol monitoring device; or
- C. Unlimited Driving Privileges with a certified ignition interlock device for first-time OVI offenders.

The \$2.50 SHSF fee and the \$2.50 MCSF fee shall be assessed starting April 6, 2017.

All SHSF fees shall be distributed to the State Highway Safety Fund as provided by law. All MCSF fees shall be used as provided by law or shall remain in the MCSF Fund. Monies from the MCSF Fund shall only be disbursed by the Order of the Dayton Municipal Court Administrative Judge. Any monies left over in the MCSF Fund at the end of each fiscal year shall be carried over to the next year, unless otherwise ordered by the Dayton Municipal Court Administrative Judge.