

[Cite as *Davis v. Clerk of Court of Cuyahoga Cty.*, 2019-Ohio-873.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 107768

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**DWAYNE DAVIS**

RELATOR

vs.

**CLERK OF COURT OF CUYAHOGA COUNTY**

RESPONDENT

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**JUDGMENT:**  
WRIT DENIED

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Writ of Mandamus  
Motion No. 522235  
Order No. 526282

**RELEASE DATE:** March 13, 2019

## **FOR RELATOR**

Dwayne Davis, pro se  
Inmate No. 644653  
Lake Erie Correctional Institution  
P.O. Box 8000  
Conneaut, Ohio 44030

## **ATTORNEYS FOR RESPONDENT**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
By: Brian R. Gutkoski  
Assistant County Prosecutor  
The Justice Center, 8th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

MARY J. BOYLE, P.J.:

{¶1} On October 5, 2018, the relator, Dwayne Davis, commenced this public records mandamus action pursuant to R.C. 149.43 against the Cuyahoga County Clerk of Courts to compel the clerk to release the following records in the underlying case, *State v. Davis*, Cuyahoga C.P. No. CR-13-574008-A: all journals; case file; full name of all parties involved; American Bar Association numbers of counsel(s); all complaints, affidavits, warrants, verdicts, and reports; appearance docket of case; and extended record.<sup>1</sup> On October 22, 2018, the respondent clerk moved for summary judgment. Davis never filed a reply. For the following reasons, this court

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<sup>1</sup> Davis in his complaint also listed a Cleveland Municipal Court Case for which he wants the same records, but he did not name the municipal court clerk as a respondent in the caption. Moreover, he seeks that relief in another case. *Davis v. Turner*, 8th Dist. Cuyahoga No. 107776. Thus, the present case is limited to the common pleas court clerk.

grants the respondent's motion for summary judgment and denies the application for a writ of mandamus.

{¶2} The court denies the mandamus because Davis did not invoke the proper law. In *State ex rel. Richfield v. Laria*, 135 Ohio St.3d 1468, 2013-Ohio-2512, 989 N.E.2d 68, the Supreme Court of Ohio ruled that public records requests to obtain court records are now controlled by Rules of Superintendence 44 through 47 and denied the writ because the relator invoked the Public Records Act rather than the Rules of Superintendence. *State ex rel. Harris v. Pureval*, Slip Opinion No. 2018-Ohio-4718; and *State ex rel. Yambrick v. Richland Cty. Adult Court*, 5th Dist. Richland No. 15CA66, 2016-Ohio-4622. Because Davis invoked R.C. 149.43, instead of the Rules of Superintendence, his writ is ill-founded.

{¶3} The petition is defective because it is improperly captioned. Davis styled this petition as “*Dwayne Davis v. Clerk of Court.*” R.C. 2731.04 requires that an application for a writ of mandamus “must be by petition, in the name of the state on the relation of the person applying.” This failure to properly caption a mandamus action is sufficient grounds for denying the writ and dismissing the petition. *Maloney v. Court of Common Pleas of Allen Cty.*, 173 Ohio St. 226, 181 N.E.2d 270 (1962); and *Jordan v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 96013, 2011-Ohio-1813.

{¶4} The court further notes that Davis did not aver that he had requested the clerk to provide him with the records. Public records law requires a requester to make a prior request before commencing a mandamus action. Sup.R. 47(D) and *State ex rel. Cincinnati Enquirer v. Deters*, 148 Ohio St.3d 595, 2016-Ohio-8195, 71 N.E.2d 1076.

{¶5} Accordingly, this court grants the respondent's motion for summary judgment and denies the motion to declare relator a vexatious litigator. Relator to pay costs. This court

directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶6} Writ denied.

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MARY J. BOYLE, PRESIDING JUDGE

LARRY A. JONES, SR., J., and  
KATHLEEN ANN KEOUGH, J., CONCUR

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