Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING THE LOCAL RULES OF PRACTICE AND PROCEDURE FOR THE 15TH JUDICIAL CIRCUIT, CARROLL, GRANT, AND OWEN COUNTIES

Upon recommendation of the Circuit Judge of the 15th Judicial Circuit, Carroll, Grant, and Owen Circuit Courts, and being otherwise sufficiently advised,

The Local Rules of Practice and Procedure for the 15th Judicial Circuit, Carroll, Grant, and Owen counties, are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this Court.

Entered this the 13th day of April 2012.

CHIEF JUSTICE JOHN D. MINTON, JR.

LOCAL RULES OF PRACTICE
of the
CIRCUIT COURT
FIFTEENTH JUDICIAL CIRCUIT
CARROLL, GRANT AND OWEN COUNTIES

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GRANT COUNTY JUDICIAL CENTER
224 South Main Street
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RULE 1. INTRODUCTION/ADMINISTRATIVE PROCEDURES

101. INTRODUCTION / PREFACE

These rules apply to the practice of law in the Fifteenth Judicial Circuit, in both civil and criminal cases, and are intended to supplement the Kentucky Civil, Criminal, and Family Court Rules of Procedure and Practice (FCRPP).

102. EFFECTIVE DATE

These rules shall become effective upon approval by the Chief Justice of the Kentucky Supreme Court.

These rules shall be referred to or cited as "Local Rule__" or "LR__".

RULE 2. COURT SCHEDULING/MOTION HOUR/PROCEDURES FOR FILING

201. REGULAR MOTION HOUR SCHEDULE

Regular Motion Days for the counties in the 15th Judicial Circuit are established by Administrative Order annually and that Order is available to Counsel through the Circuit Judge's Office or the Circuit Clerk's offices in Carroll, Grant & Owen Counties. The Domestic Relations Commissioner shall likewise set Motion Days annually by Order.

202. MOTION DAYS, NOTICE, AND MOTIONS IN GENERAL

A. All motions shall contain a notice of the date and time of the hearing on the motion. Motions not containing that notice will not be heard or filed by the Clerk. "Convenience of the Court" does not constitute notice.

All civil and criminal motions shall be noticed for hearing at 9:00 a.m. on Motion Day. However, the Court will call criminal matters docketed for arraignment, sentencing, and contempt of Court beginning at 8:30 a.m. The civil docket will then be called with criminal cases called immediately thereafter. All counsel for both dockets shall be present at 9:00 a.m., except for those who have items on the 8:30 a.m. criminal docket referenced above.

Uncontested adoption cases shall be set for hearing at 11:00 a.m. in Carroll and Grant Counties and at 10:00 a.m. in Owen County. Motions to set for final hearing or other motions related to the adoption proceeding shall be noticed for 9:00 a.m. If such motions involve confidential matters, counsel shall so advise the Court upon approaching the bench and the matter will then be heard outside the hearing of the public.

B. All motions, except those for summary judgment as noted below, must be filed by the close of business at least seven (7) days prior to the day it is to be heard, unless there is approval from the Court to file the motion after that time. Facsimile copies to the Clerk's office, the Judge's office and opposing counsel shall constitute filing under this rule. However, the facsimile copy shall be followed up with an original of the Motion so that the Clerk can substitute the original for the facsimile upon receipt. The facsimile copies shall only consist of the motion and not any exhibits, affidavits or copies of references as these

items will be included with the original sent to the Clerk, opposing counsel, and to the office of the Judge as provided herein. If counsel chooses to use this faxing procedure rather than simple mailing, the certificate of service shall state that it was faxed and mailed on the date indicated.

C. Copies of all motions, responses to motions, replies and surreplies shall be mailed to the Circuit Judge at the Judge's office address, (Grant County Judicial Center, 224 South Main Street, Williamstown, KY, 41097). **This copy to the judge shall be in addition to the original filed in the Circuit Clerk's Office.**

D. All motions must be filed and will be heard only in the county where the case is pending, unless there is prior approval of the Court to hear the motion in another county.

E. Exhibits and affidavits necessary to the motion, response, reply or surreply must be filed with the motion, response, reply or surreply and copies sent to opposing counsel and to the Court.

F. All motions shall cite the grounds and authority for the relief requested and shall have attached to the copy sent to the Judge a copy of any primary cases or other references cited in the motion.

G. Counsel shall tender with the motion or on motion day a proposed order with each motion. The order shall be prepared on plain white 8 ½" X 11" paper and shall not contain language such as "tendered by" but shall be suitable for the Court's signature without change. The **order shall contain** a certification of mailing of notice of entry for the Clerk under CR 77.04 and a distribution list with mailing addresses for the attorneys or parties listed.

The Clerk's Certificate shall state: "I certify that the above Order was entered and a filed copy of the Order mailed to the following persons this __day of _____, ____.
Clerk/Deputy Clerk

H. Pleadings, motions and other such documents shall contain the name, address and phone number, facsimile number and e-mail address of counsel. If there are several office locations, the address used by trial counsel shall be indicated.

203. GUARDIAN AD LITEM AND WARNING ORDER ATTORNEY MOTIONS AND FEES

A. In the event a party to a domestic relations case is incarcerated, a GAL shall be appointed and a fee assessed initially to the petitioner as costs.

B. A motion for guardian ad litem or substitute warning order attorney shall be compliant with the provisions of LR 2 above but counsel need not appear on the motion unless requested by the Court.

C. In Voluntary Termination of Parental Rights cases where the Cabinet for Health and Family Services is made custodian of the child, the GAL shall submit form FINGAL-1.

D. In Involuntary Termination of Parental Rights cases where the Cabinet for Health and Family Services is the proposed custodian of the child, the GAL shall submit form FINGAL-1.

E. In all other adoption or termination of parental rights cases where a Guardian ad Litem is requested by the Petitioner or otherwise required by statute, the Petitioner shall be responsible for paying for each GAL or WOA appointment as directed by the Court.

204. SUMMARY JUDGMENT MOTIONS

A. A motion for summary judgment shall be filed and served in compliance with LR 2 above not less than thirty (30) days prior to the date noticed for hearing of the motion. Any response to the motion shall be filed and served by opposing counsel not less than seven (7) days prior to the date noticed for the motion.

B. The motion for summary judgment or response thereto shall be accompanied by a memorandum of law supporting the motion and shall have attached to the copy sent to the Judge (Grant County Judicial Center, 224 South Main Street, Williamstown, KY, 41097) copies of primary cases or other references cited in the memorandum.

205. DEFAULT JUDGMENT MOTIONS

A motion for default judgment shall be in compliance with LR 2 above. Furthermore, a defendant in default shall be provided notice of any motion for default judgment before that motion will be considered by the Court. Appearance in court by counsel is not required for these motions.

In addition to the normal default affidavit of Counsel, the Motion must include a Plaintiff's Affidavit establishing the judgment amount requested.

RULE 3. ADOPTIONS/TERMINATIONS OF PARENTAL RIGHTS

See FCRPP 32 through 36 for statewide uniform rules. There are no local rules in the 15th Judicial Circuit relating to Adoptions and Termination of Parental Rights cases.

RULE 4. DOMESTIC VIOLENCE PROTOCOL AND 24 HOUR ACCESS POLICY

The Twenty-Four Hour Accessibility to Emergency Protective Orders and Local Joint Jurisdiction Domestic Violence Protocol for the 15th Judicial Circuit and District is attached hereto in Appendix "A" incorporated by reference herein as if set out fully.

RULE 5. DOMESTIC RELATIONS PRACTICE

See Appendix "B," "Domestic Relations Practice," and FCRPP 2 through 9.

RULE 6. MISCELLANEOUS RULES RELATING TO FAMILY LAW PRACTICE

There are currently no miscellaneous rules relating to family law practice.

RULE 7. CIVIL / CRIMINAL PRACTICE RULES

701. JURY TRIALS

A. The Clerk shall keep a jury docket for the Court. Upon motion of any party a civil action may be placed on the jury docket if there is an issue triable of right by a jury or if the Court in its discretion determines that there should be a trial by jury of any issue.

B. At the time the Order Setting Jury Trial is entered, the Court shall also issue orders, or include in that Order, directives regarding the completion of discovery by schedule and shall set both a Preliminary Pretrial Conference and a Final Pretrial Conference. Details for all of these matters shall be established by Order for each case.

C. The Court will take control of the time-line for the case after a jury trial date is set. For that reason motions for jury trial should not be made until substantial discovery is complete.

702. CRIMINAL PROCEEDINGS

A. DOCKET CALL

The Court will hear motions on criminal matters on Motion Day immediately after the civil docket. Counsel shall have consulted with their parties so that the motions may proceed when called.

B. PRETRIAL CONFERENCE

At the time of arraignment each case shall be assigned a time for plea agreement conference and / or pretrial conference. Pretrial conferences shall be held as a matter of course in all criminal cases.

C. MOTIONS

Counsel of record for the parties shall be in attendance at the final pretrial conference and shall submit all written motions that they expect to be required in the case. No additional motions may be offered after the final pretrial conference, except by leave of the Court, upon a showing of excusable neglect or if it concerns a matter of which counsel was not aware or which did not come to counsel's attention prior to the time of the pretrial conference or in the interest of justice.

D. TRIAL DATE AND REPORT DATE

At a pretrial conference the case shall be assigned for trial on a day certain. The Court may at any time reassign the date of a criminal case to another date.

Unless there are exceptional reasons, jury trials shall be assigned at least one month in advance of the trial, with a designated report date at least seven days prior to trial. After the report date, the Court will not accept or consider plea agreements between Defendant and the Commonwealth.

E. PLEA AGREEMENTS:

All plea agreements between the Commonwealth and the Defendant shall be reduced to writing and submitted to the Court prior to entry of pleas made pursuant to such agreements.

F. GUILTY PLEAS

Pleas will be taken on the record in open court. Those proceedings shall be transcribed and filed with the Clerk only on request of either party and at their expense.

703. GRAND JURY AND TERMS OF COURT

A Grand Jury shall be impaneled every month in each county. As a routine matter the Grand Jury will meet on the first Motion Day of each month in each county, unless called at another time by the Court. There shall be a new Grand Jury in each county every term of court.

There shall be two terms of Court per year. The terms shall start on the first Motion Day of February and August. However, the provisions of CR 6.03(1) are applicable regarding terms of this court.

704. EX PARTE COMMUNICATION

There should be no ex parte communication with the Judge by counsel or parties in criminal or civil actions. Attorneys shall advise their clients and witnesses of proper courtroom decorum, including the impropriety of attempting to discuss pending matters with the Court and the statutory prohibition against communications with jurors.

705. TRIALS WITHOUT A JURY (BENCH TRIALS)

In all cases tried without a jury, each party shall file with the Court at the Judge's office, not less than seven (7) days prior to trial, a trial brief. The brief shall include, at minimum: a brief summary of the facts including a notation whether the facts are disputed or agreed; the issues involved; the party's position on each issue and legal support therefore, with copies of primary cases or other references attached; a list of witnesses; a list of exhibits and copies of the exhibits that can be copied; a statement of the specific relief requested; such other matters as the Court may require by Order or as the party may feel will assist the Court.

706. DRESS CODE

A. All attorneys appearing before the Court shall dress appropriately. The Court shall be the arbiter of what is appropriate in each circumstance. However, as a guide, this requires gentlemen to wear suit and tie or dress coat and tie with appropriate accessories. For ladies this requires formal business attire and accessories. Assistants shall likewise comply.

B. Clients, witnesses, family members and friends accompanying clients or witnesses should be advised that a dress code for all entering the courtroom will be in effect and may bar their entry if they are not compliant. The dress code is, at a minimum, that no one wearing shorts, tank tops, halter tops, apparel with inappropriate messages, sexually suggestive clothing, or other improper attire be admitted. Further, the wearing of sunglasses or hats in the courtroom is prohibited, unless required for medical or religious purposes.

707. APPEALS / PETITIONS FROM DISTRICT COURT

On the filing of any appeal from a judgment of the District Court, or any petition affecting District Court or District Judges, a copy of all documents, to include the Notice of Appeal, Statement of Appeal, Counter-statement of Appeal, the Petition, the Response and all motions shall be sent to the office of the Judge, Grant County Judicial Center, 224 South Main Street, Williamstown, KY 41097, in addition to the copy filed with the Clerk.

Furthermore, the Statement of Appeal shall have attached to it a copy of the Judgment from which the appeal is taken. Both the Statement of Appeal and the Counter-statement shall include, as attachments to the Judge's copy referred to above, copies of statutes, references, and primary cases referred to therein.

708. MEDIATION

This Court finds that under some circumstances the process known as mediation may provide an efficient and cost-effective alternative to traditional litigation, and, further, that the wise and judicious use of mediation may benefit litigants. In particular, resolution through mediation eliminates the potential of years and great expense in appeals courts.

Mediation is intended to help both litigants and the Courts facilitate the settlement of disputes. Litigants should participate in good faith and in an earnest attempt to resolve their differences.

This Rule refers to mediation. Nothing in this Rule shall prohibit parties from resolving disputes through other methods. However, in any case where one party may pose a risk of harm (such as domestic violence) to another party or family member, mediation should not be used.

A. MEDIATION DEFINED

Mediation is an informal process in which a neutral third person called a mediator facilitates the resolution of a dispute between two or more parties. The process is designed to help disputing parties reach an agreement on all or part of the issues in dispute. Decision-making authority remains with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.

B. REFERRAL OF CASES TO MEDIATION

Except as provided in FCRPP 2(6)(a), at any time on its own motion or on motion of any party, the Court may refer a case or portion of a case for mediation. In this decision, the Court shall consider:

(a) the stage of the litigation, including the need for discovery, and the extent to which it has been conducted;
(b) the nature of the issues to be resolved;
(c) the value to the parties of confidentiality, rapid resolution, or the promotion or maintenance of on-going relationships;
(d) the willingness of the parties to mutually resolve their dispute;
(e) other attempts at dispute resolution; and
(f) the ability of the parties to participate in the mediation process.

C. NO STAY OF PROCEEDINGS

Unless otherwise ordered by the Court, mediation shall not stay any other proceedings.

D. APPOINTMENT OF MEDIATOR

Within the time period set out in the Order of referral, normally thirty (30) days, the parties shall agree on a mediator or a mediation service. If the parties cannot agree, they shall notify the Court, and the Court will then select a mediator or a mediation service.

E. MEDIATOR COMPENSATION

The mediator shall be compensated at the rate agreed between the mediator and the parties if the mediator is chosen by agreement. If the mediator is appointed by the Court, the fee for the mediator shall be reasonable and no greater than the mediator's standard rate as a mediator. Unless otherwise agreed by the parties or ordered by the Court, the parties shall equally divide the mediator's professional fees.

F. MEDIATION PROCEDURE

Following selection of the mediator, the mediator shall set a mediation conference within thirty (30) days. The mediation conference shall be held at a site agreed upon by the parties. The mediator may meet with the parties or their counsel prior to the mediation conference for the purpose of establishing a procedure for the mediation conference. The mediator may require the parties to submit a confidential statement of the case or other materials that the mediator may reasonably believe appropriate for efficiently conducting the mediation conference.

G. ATTENDANCE AT MEDIATION CONFERENCE

The parties must attend the mediation conference. Counsel shall attend the mediation conference unless otherwise agreed to by the parties and the mediator or ordered by the Court. If a party is a public entity, it shall appear by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision making body or officer of the entity. If a party is an organization other than a public entity, it shall appear by the physical presence of a representative, other than the party's counsel of record, who has full authority to settle without further consultation. If any party is insured for the claim in dispute, that party shall also be required to have its insurer(s) present by the physical presence of a representative of

the insurance carrier(s) who is not that carrier's outside counsel; this representative must have full settlement authority. The foregoing requirements of attendance may be varied only by stipulation of the parties or by order of the Court for good cause shown.

H. COMPLETION OR TERMINATION OF MEDIATION

The mediator may terminate the mediation conference after a settlement is reached or when the mediator determines that continuation of the process would be unproductive. After the initial mediation conference, mediation shall continue only by the agreement of the parties, their counsel and the mediator, or by order of the Court.

I. REPORT TO THE COURT

The mediator shall report to the court that the mediation has not occurred, has not been completed, or that the mediation has been completed with or without an agreement on any or all issues. With the consent of the parties, the mediator may also identify those matters that, if resolved or completed, would facilitate the possibility of a settlement.

J. AGREEMENT AND ORDER

If an agreement is reached during the mediation conference, it shall be reduced to writing and signed by the parties. The parties shall be responsible for the drafting of the agreement, although the mediator may assist in the drafting of the agreement with the consent of the parties.

The parties shall then submit to the Court an Agreed Order of Settlement and Dismissal with such details as they deem necessary.

K. CONFIDENTIALITY

(1) Mediation sessions shall be closed to all persons other than the parties, their legal representatives, and other persons invited by the mediator with the consent of the parties.

(2) Mediation shall be regarded as settlement negotiation for purposes of K.R.E. 408.

(3) Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matters shall be considered confidential and privileged in nature except on order of the Court for good cause shown. This privilege and immunity reside in the mediator and may not be waived by the parties.

(4) Nothing in this rule shall prohibit the mediator from reporting abuse according to KRS 209.030, KRS 620.030, or other applicable law.

709. MASTER COMMISSIONER SALES

A. NECESSARY AFFIDAVITS IN FORECLOSURE CASES:

(1) Any complaint involving the foreclosure sale on a mortgage or other lien shall

include an affidavit of plaintiff's counsel stating that a title examination was conducted on the subject property and that all lien holders are named as parties.

(2) Further, in any action where a defendant is deceased and unknown heirs, devisees, etc. are named as parties, plaintiff's counsel shall file an affidavit with the complaint stating that a reasonable search has been completed to determine if a probate case has been filed for the estate of the deceased defendant.

(3) If the real estate that is being foreclosed contains a mobile home, doublewide or manufactured home that has been affixed to the real estate, a copy of the Affidavit of Conversion filed with the County Clerk's Office shall be attached to the complaint. If there is no Affidavit of Conversion filed, then a copy of the perfected title lien statement shall be attached to the complaint.

In every case, the plaintiff shall make a statement in the complaint or in a separate affidavit regarding the presence of a mobile home, doublewide, or manufactured home on the property. (i.e.: There is/is not a mobile home, doublewide or manufactured home located on the property.")

(4) When a Motion for Judgment and Order of Sale is made, it shall include a status of account affidavit signed by the Plaintiff or its representative setting out the breakdown of the balance due under the obligations of the note and mortgage, to include attorney's fees, up to the date of filing of the Motion. The Motion should also include a military affidavit regarding any individual defendants.

B. A copy of all motions for judgment and order of sale or motions relating thereto **shall be sent to the Master Commissioner** (in addition to the copy sent to the Judge) prior to the motion hour at which the motion is to be heard, in order to be reviewed and approved by the Master Commissioner prior to the motion hour. The tendered orders must be in format suitable to the Master Commissioner and the Court. (Sample is provide herein as Appendix MC). The Master Commissioner will provide any additional guidance for those not familiar with local format.

C. Within seven (7) days after the entry of the Judgment and Order of Sale, the Plaintiff shall forward to the Master Commissioner a certified check or money order in the sum of One Thousand Dollars ($1,000.00) as an advance for expenses to be incurred by the Master Commissioner in relation to the sale. The amounts used from that advance shall be taxed as costs and included in the Plaintiff's judgment. Any surplus shall be refunded to the Plaintiff in the Master's final accounting. Failure of the Plaintiff to advance said sum within this time period shall result in the cancellation of the sale by the Master Commissioner.

D. The terms of all Master Commissioner Sales, unless otherwise ordered by the Court, shall be as follows:

(1) At least ten percent (10%) cash payment at the time of sale, and the balance on a credit of thirty (30) days bearing interest at the rate of twelve percent (12%) per annum from date of sale. The successful bidder shall provide surety on his/his purchase bid bond satisfactory to the Master Commissioner, and

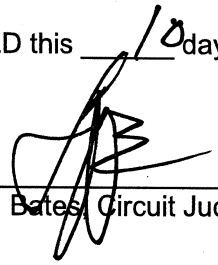
(2) If the property sold includes insurable improvements, the successful bidder at the sale shall, at bidder's own cost, carry fire and extended insurance coverage on the improvements from the date of sale until the purchase price is fully paid. The insurance shall be in the amount of the Court appraised value of the improvements or the unpaid balance of the purchase price, whichever is less, as a minimum, with a loss payable clause to the Master Commissioner of the Circuit Court; and,

(3) All unpaid, past due and owing city and county real estate taxes shall be paid from the sales proceeds.

E. CANCELLATION OF SALES: Any motion to cancel a judicial sale, including a motion by Plaintiff or joint motion, shall be filed and noticed in accordance with LR2 above, to include provision LR2 B that requires filing seven days prior to the Motion Day on which it is noticed.

As an alternative to filing a motion, for instance when there isn't sufficient time to file the motion, the sale will only be cancelled upon receipt by the Court of an agreed order of cancellation signed by <u>all parties</u> who are not in default.

APPROVED this 10 day of April 2012.



Stephen L. Bates, Circuit Judge

APPENDIX A

TWENTY-FOUR HOUR ACCESSIBILITY TO EMERGENCY PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION DOMESTIC VIOLENCE PROTOCOL 15th JUDICIAL CIRCUIT AND DISTRICT CARROLL, GRANT AND OWEN COUNTIES

Pursuant to KRS 403.735, and in compliance with Family Court Rules of Procedure and Practice (FCRPP) Section IV, this local domestic violence protocol is established to ensure twenty-four hour accessibility to emergency protective orders and to establish written procedures for domestic violence matters in which there may be joint jurisdiction between the circuit/family and district courts.

I. Uniform Protocol for Processing Cases

A. Circuit court clerks shall process domestic violence cases in accordance with the procedures set forth in the "Domestic Violence Proceedings" section of the Kentucky Circuit Court Clerk's Manual.

B. All cases will be assigned a "D" case number with the appropriate trailer number within the court case management system and may not be consolidated with any other case type.

C. Domestic violence matters may be reassigned from the district court division to circuit/family court when there is a dissolution/custody proceeding pending.

D. No jurisdiction shall adopt a blanket "no-drop" policy. Domestic violence cases are civil matters within the purview of CR 41.01.

E. Domestic violence cases shall be reassigned or transferred to the circuit court or another circuit under the following circumstances:

1. If, while a domestic violence matter is pending in the District Court, a dissolution/child custody proceeding is filed in Circuit Court or is finalized in Circuit Court, the presiding judge may, in the judge's discretion or after consultation with the Circuit Judge, enter or continue such protective orders and process deemed necessary and reassign the matter for final hearing with the Circuit Court. Domestic violence matters reassigned from District Court to Circuit Court shall be heard on regular Circuit Court Motion Days during the 9:00 A.M. civil docket.
2. If a domestic violence petition is filed in the 15th Judicial Circuit and District and it is then discovered that a dissolution/child custody proceeding is pending in another venue, it is in the discretion of the District Judge as to whether the petition shall be transferred to that venue. In compliance with

FCRPP 12, if the District Judge determines the case should be transferred, an emergency protective order shall continue and the summons shall be reissued by the initiating court, pursuant to KRS 403.740(4), for a period not to exceed fourteen days if service has not been made on the adverse party by the date of transfer, or as the court determines is necessary for the protection of the petitioner. Thereafter, reissuance of the summons shall occur as needed in the court of transfer.

II. Twenty-four Hour Accessibility

A. The following agencies and officers are authorized to take domestic violence petitions and administer oaths to petitioner **during** regular business hours:
   - The Circuit Court Clerk of each county in the 15th Judicial Circuit

B. The following agencies and officers are authorized to take domestic violence petitions and administer oaths to petitioner **after** regular business hours and weekends:
   - The Sheriff of each county in the 15th Judicial Circuit
   - The County Attorney and his/her staff of each county
   - The Commonwealth Attorney and his/her Assistants of each county
   - The Chief of Police of all established police agencies of each county and sworn officers of those departments; and,
   - Any Kentucky State Police Officer assigned to any of the counties

C. Upon receipt of a petition **during** regular business hours, the authorized agency/officer shall present the petition to the following:
   - If no dissolution/custody proceeding is pending, the clerk shall deliver the appropriate documents to the District Judge or Trial Commissioner; or if unavailable, to the Circuit Judge.
   - If a dissolution/custody proceeding is pending with the Circuit Court or is filed contemporaneously therewith, the clerk shall seek the consideration of the Circuit Judge. If the Circuit Judge is unavailable, the clerk shall seek the consideration of the District Judge or Trial Commissioner.

D. Upon receipt of a petition **after** regular business hours, the authorized agency/officer shall present the petition to:
   - The District Judge or Trial Commissioner, or if unavailable;
   - The Circuit Judge, or if none are available;
   - Any judge of the District Court or Circuit Court in any surrounding county who may sign same and issue an EPO if deemed appropriate.

E. Petitions will be reviewed within an hour of presentation to a judge or trial commissioner unless it is impossible due to the unavailability of a judge or trial commissioner.

F. The schedule for domestic violence hearings is as follows:

District Court Schedule:

Grant County	Tuesday	1:00 PM
Carroll County	Wednesday	9:00 AM
Owen County	Friday	9:00 AM

Circuit Court Schedule:

Grant County	All Motion Days*	9:00 AM
Carroll County	All Motion Days*	9:00 AM
Owen County	All Motion Days*	9:00 AM

*Circuit Court Motion Days are set annually.

III. Contempt Proceedings

A. Pursuant to KRS 403.760, civil and criminal proceedings for violation of a protective order for the same violation of a protective order shall be mutually exclusive.

B. Petitioners seeking to initiate contempt proceedings should contact the County Attorney, their private attorney or the office of the Circuit Clerk to fill out the appropriate forms.

C. If an EPO/DVO is issued by the District Court and not modified by the Circuit Court, then the District Judge shall arraign the Defendant and conduct contempt proceedings.

D. If an EPO/DVO is issued or modified by the Circuit Court as part of the dissolution case, then the District Judge shall arraign the Defendant and order that the case be docketed for the contempt proceeding in the Circuit Court.

E. If a case has been reassigned by the District Court to the Circuit Court, contempt matters shall be heard by the Circuit Court. However, if a new Domestic Violence Petition is filed separate and independent of a contempt charge, and if the next session of the District Court shall occur before the next Circuit Court Motion Day, the new petition may be initially addressed by the District Court and then referred to the Circuit Court at its Motion Day. This procedure should allow the petitioner to come before a forum which could provide the most expeditious relief in an emergency domestic violence matter.

F. No petitioner may be held in contempt for failing to appear at a domestic violence hearing or to prosecute a criminal violation of a protective order.

All general orders, forms, policies and procedures relating to domestic violence within the judicial circuit are attached to this protocol and incorporated by reference.

The above protocol is adopted by all judges in the circuit/district:

Name/Date

Name/Date 4-3-12

Name/Date 4/9/12

Name/Date 4-3-12

APPENDIX B

RULE "DR" - DOMESTIC RELATIONS PRACTICE

DR 1.00. DOMESTIC RELATIONS COMMISSIONERS

Pursuant to FCRPP 4 (1) and approval of the Chief Justice, a Domestic Relations Commissioner and a Special Domestic Relations Commissioner for the 15th Judicial Circuit have been appointed.

DR 2.00 STANDING REFERRALS AND ORDERS

A. All domestic relations matters in Carroll and Grant Circuit Court arising under KRS Chapter 403 are, except to the limited extent otherwise provided for herein and unless otherwise ordered by the Court, referred to the Domestic Relations Commissioner. In those cases over which the Domestic Relations Commissioner is unable to preside for any reason the Court may direct that the matter be heard by the Special Domestic Relations Commissioner or by the Court.

B. Those domestic relations matters in the Owen Circuit Court shall, except for uncontested cases, be referred to either the Domestic Relations Commissioner or the Special Domestic Relations Commissioner upon request. To effect a referral (upon determining that a matter will be contested) counsel for either party shall contact the Circuit Judge's office and advise the Court Administrator of the need for an Order of Referral. Counsel will need to provide the Court Administrator the style of the case and attorneys or parties names, addresses, facsimile numbers, and e-mail addresses. After referral, counsel shall then proceed with the same procedures as provided by these Local Rules, the FCRPP, and any other applicable Civil Rules.

C. The Commissioner shall hear all rules to show cause why a party should not be held in contempt of court arising from domestic relations matters. If incarceration is recommended, the party to be incarcerated shall be entitled to a hearing before the Court at the next regular Motion Day. The Court shall permit additional evidence and shall give the party an opportunity to purge him / her of such contempt.

DR 3.00. CASE CAPTION

A. All motions and pleadings in domestic relations cases shall be captioned in the following manner:

COMMONWEALTH OF KENTUCKY
UNIFIED COURT OF JUSTICE
_____CIRCUIT COURT
CIVIL ACTION NUMBER (DRC)_____

B. Motions for Judgment in Uncontested cases shall be styled:
MOTION FOR JUDGMENT ON UNCONTESTED HEARING

C. Motions for Trial Date in Contested Cases shall be styled:
MOTION FOR TRIAL DATE – CONTESTED CASE

D. Motions for Judgment in Default cases shall be styled:
MOTION FOR JUDGMENT-RESPONDENT IN DEFAULT

DR 4.00. UNCONTESTED DISSOLUTION OF MARRIAGE (Also see FCRPP 3 (1) and (2))

(1) Proof will be taken on the record in open Court

(2) Counsel shall submit proposed findings, conclusions and a decree.

(3) Other methods of proceeding with an uncontested dissolution of marriage must have prior approval of the Court.

(4) In matters that are filed *pro se*, **both parties** to the proceeding shall appear in ***open court* for final hearing** unless leave of the Court or is granted under circumstances warranting the absence of one of the parties.

DR 5.00. CONTESTED MATTERS (Also see FCRPP 3(3), (4) and (5))

In all contested dissolution of marriage cases, custody matters and support matters there shall be a hearing in open Court following a motion for a contested hearing. The Court will enter an order setting the date of the hearing and stating the requirements for pretrial compliance, which will, at a minimum, include compliance with FCRPP 3 (3) and (4) and the requirements of and date for filing of each party's Trial Brief.

DR 5.01. PARENTS EDUCATION PROGRAM REQUIREMENTS

(1) In a proceeding for the dissolution of marriage where there are minor children of the parties, if the parties are ordered to attend a parent education program, no matter shall be assigned for final hearing until the parties have attended, and participated in, a class designed to advise the parents on the impact of divorce on children.

(2) The Court may make such orders in regard to the failure or refusal to comply with DR 5.01(1) as are just and, among other things, order the following:

a. Refuse to assign a trial date until the party requesting the trial date attends the program;
b. Decline to set or enforce permanent or temporary visitation rights for the disobedient parent until the disobedient party attends the program.
c. Reserve the granting or approval of final custody; and
d. In lieu of any of the foregoing or in addition thereto, may find a party in contempt for failure to obey an order to attend the program.

(3) Fees shall be paid by each party at the time of attending the program.

DR 5.02. CHILD SUPPORT AND WAGE ASSIGNMENTS

In all cases in which child support is requested, compliance with FCRPP 9 and DR 11.00 below shall be required.

DR 5.03. STATUS QUO ORDER (See FCRPP 2(5) (a) and (b))

In the 15th Judicial Circuit the initial court appearance may not occur for thirty days or more after the initial filing of an action for Dissolution of Marriage. Therefore, if a Motion for a Status Quo Order is filed with the Petition which requests entry of the AOC 237, Status Quo Order, and which states that the Respondent has ten days to file any objection to entry of the Order, the clerk will serve a copy of the Motion with the Summons and Petition on the Respondent. If no response is filed within 10 days of service of the Summons, Petition and Notice of the Motion, the Status Quo Order will be entered by the Court.

DR 6.00 HEARINGS, REPORT AND OBJECTIONS

DR 6.01. OBTAINING HEARING DATES

(1) The regular domestic relations motion docket shall be held on a DRC calendar to be set by the Commissioner at the beginning of each calendar year. The docket for the DRC and SDRC shall be kept by the Clerk of the Court.

(2) Final hearings or trials in contested cases, hearings on motions to modify orders or judgments, hearings on rules to show cause, and extended hearings shall be assigned by the Commissioner at the Motion Hour, upon application for a hearing date by motion and notice in conformance with CR 6.04, LR 2, and DR 6.04. A copy of the motion shall be mailed to the appropriate Commissioner.

(3) All other motions and hearings thereon shall be scheduled by motion and notice in compliance with the Civil Rules and LR2.

(4) Motions requiring more than 10 minutes shall be scheduled in advance through the Commissioner's office.

DR 6.02. CONFIRMATION OF REPORT AND OBJECTIONS

(1) FCRPP (4)(4)(a) governs the procedures with respect to serving objections to the report of the Commissioner. In all cases, the Domestic Relations Commissioner will file his/her report with a recommended order and the Circuit Clerk shall serve a copy of the Report on all parties. The Clerk shall cause the case to be docketed on a "DRC Order Calendar" bearing the same date as the Court's next regular Motion Calendar which is dated not less that fourteen (14) days following the date that the Report is mailed by the Clerk. If no objections are filed within the prescribed time period, then the recommended Order or Decree may be entered.

(2) If objections are filed subsequent to the ruling by the Commissioner, then the proposed orders relating thereto shall be tendered directly by the parties to the Court at the time of appearance on the objections. If objections are filed, the party filing them shall file a motion and notice it for hearing on the next Motion Day that is at least seven (7) days from the date of filing. The opposing party shall file their response thereto as early as possible before the hearing.

(3) A copy of all motions and objections to recommended orders or decrees shall be served on the Domestic Relations Commissioner or Special Domestic Relations Commissioner at the Commissioner's office address and on the Circuit Judge under LR 2.

The objecting party shall include with the copy of the objections served on the Judge, a copy of the Commissioner's Order, Report, or Recommendation that is the subject of the objection.

DR 6.03. WAIVER OF RIGHT TO FILE OBJECTIONS.

The time period in which to serve objections may be waived when all parties agree in writing. The waiver should be in substantially the following form: "The parties hereby waive the right to file objections to the Commissioner's Report and the right to notice pursuant to CR 53.06(2)".

DR 6.04. FILING MOTIONS

All motions must be filed in compliance with LR 2 and a copy sent to the Commissioner's office . A fee of $15 shall be paid upon the filing of the motion and will cover the first quarter hour or any portion thereof of the hearing on the motion. Any fee due for hearings beyond a quarter of an hour will be due at the conclusion of the case and will be

paid by the parties as directed by the Court. Any motion not accompanied by the $15 fee will not be docketed.

DR 7.00. REQUIREMENTS FOR ENTRY OF ORDERS AND DECREES

DR 7.01. FINAL DECREES.

In addition to all other requirements set forth herein, a Motion for Final Decree must be accompanied by:

1. In default cases, a military affidavit;
2. If the wife desires restoration of her former name, a written request for such, unless the request is provided for in prior pleadings or the parties' agreement.

DR 7.02. UNCONTESTED DIVORCES

(1) DEFINITION OF "UNCONTESTED". For purposes of these Rules, a case shall be considered "uncontested" only if **all** issues have been resolved through a signed property settlement agreement.

(2) PROPERTY SETTLEMENT AGREEMENTS. A worksheet for child support shall be attached to all property settlement agreements in which child support is determined. In addition, any agreed order establishing child support that is inconsistent with the guildelines shall contain a recitation to the effect that "The parties are aware of the amount of child support established by the Kentucky Child support Guidelines as reflected on the attached worksheet" and that "No public assistance is being paid on behalf of a child of the parties under the provisions of Part D of Title IV of the Federal Social Security Act". Further, **the agreement shall state with particularity why the guideline amount is unjust or inappropriate and cite the factual grounds therefore.**

Nothing herein shall preclude parties who are fully informed about the child support guidelines from agreeing to child support inconsistent with the guidelines so long as they provide the information above and provided that no public assistance is being paid on behalf of a child under the provisions of Part D of Title IV of the Federal Social Security Act.

(3) AGREEMENT MUST BE FILED PRIOR TO MOTION. A Motion for Judgment on Uncontested Hearing shall not be accepted for filing, nor shall it be heard, unless the signed property settlement agreement has been filed prior to or contemporaneous with the filing of the Motion.

(4) REPORT AND DECREE TO BE FURNISHED. Counsel shall furnish to the Domestic Relation Commissioner for review and signature a Report of the Domestic Relations Commissioner and a Decree of Dissolution. Care should be taken to include the appropriate entry relative to the presence or absence of a waiver of the notice requirement set forth in CR 53.06(2). (See DR 6.03)

DR 7.03. ORDERS / DECREES TO BE RECOMMENDED

All decrees and all orders entered upon motions to modify or terminate decrees, contempt orders and temporary orders entered upon pendente lite motions shall be signed by the Judge, but shall contain the following notation along the left hand margin.

Recommended: DOMESTIC RELATIONS COMMISSIONER

DR 7.04. ADMINISTRATIVE ORDERS OF DRC AND SDRC

All routine orders setting contested and uncontested trial dates, contested hearing dates or affecting purely administrative matters shall be signed by the Commissioner only.

DR 8.00 APPEARANCES, WAIVERS, AND AGREEMENTS

A. Appearances and Waivers may be filed by a party through an Attorney if signed by the party and/or his or her attorney. Separation Agreements must be signed by the party and the party's attorney (either indicating said attorney's preparation of the Agreement or the attorney's approval as to form.)

B. A party not represented by an attorney shall sign Appearances and Waivers and Separation Agreements before the Clerk or deputies or before any person authorized to acknowledge deeds.

C. Each Waiver of Notice shall contain an address to which the party requests the final decree be served. Waivers of Notice notwithstanding, the Clerk shall, upon entry, serve a copy of the decree on both parities.

DR 9.00. OFFICIAL RECORD (See FCRPP 4(3))

The Commissioner shall orally hear all contested and uncontested trials and motions unless otherwise ordered by the Court. Proceedings before the Commissioner may be recorded on audiotape or videotape or reported by stenographic reporter. If a party elects to have testimony reported by a stenographic reporter, he or she shall engage the services of a court reporter and the court reporter's fee shall be paid by the party so requesting the services and shall not be taxed as costs. No transcript prepared from an audiotape or videotape shall be taxed as costs; rather, either party may, at his or her own expense, have the transcript prepared by the reporter and pay for same. A copy of a videotape or audiotape recording may be obtained from the Circuit Court Clerk for a small fee set by AOC or by the Clerk.

DR 10.00 CHILD CUSTODY MATTERS

A. PARENTING TIME

The following schedules are suggested as guidelines for the parents and the Court in establishing parenting time schedules. Each case will present unique facts or circumstances (i.e. distance between parents' homes, unusual work schedules) which shall be considered by the Court in establishing a parenting time schedule and the final schedule established by the Court or agreed to by the parents may or may not be what these guidelines suggest. It is the goal of the Court to allow as equal an amount of parenting time to each parent as possible so long as that division does not unnecessarily negatively impact the life of the child.

The parent receiving the child at the beginning of any time sharing period or at the end of any parenting time herein shall be responsible for pick-up of the child. Therefore, each parent will only have to transport the child one way.

For those parties who are under existing orders, whether temporary or final, regarding parenting time in which the parties are operating under "Local Rules Visitation", the following schedule will be considered at any review or other hearing conducted after the date these rules become effective.

(1) For the purposes of these rules, weekends are determined by the first Saturday of each calendar month. Therefore, even though parenting time may start on Friday, if the first day of the month falls on Saturday, the first weekend for these calculations will actually begin on the Friday that is the last day of the previous calendar month. If there are four Saturdays in a given month, there are four weekends as used herein. If there are five Saturdays in a given month, there are five weekends as used herein.

(2) The secondary residential parent shall receive parenting time on: the first and third weekends from Friday evenings at 6:00 p.m. to Sunday evenings at 6:00 p.m.; Thursday evenings following the weekend parenting time from 5:30 p.m. to 8:30 a.m. on Friday or until whatever time the child must be at school if school is in session; Tuesday evening following a

weekend of non-parenting time from 5:30 p.m. to 8:30 a.m. on Wednesday or until whatever time the child must be at school if school is in session. Furthermore, the secondary residential parent shall receive parenting time on the fifth weekend of those months with five weekends.

(3) If transfer of the child occurs at some place other than the home of the parent, the child and/or the parent delivering the child shall have no duty to await the other parent for more than thirty minutes. A parent more than thirty minutes late shall forfeit that parenting time. Either parent has the right to refuse parenting time if the other parent is under the influence of intoxicants or drugs.

(4) For the purpose of parenting time there are six holidays to be divided between the parents;

1. New Years' Day
2. Martin Luther King Day
3. Easter
4. Memorial Day
5. July 4th
6. Labor Day

In the odd numbered years (i.e., 2011) the mother shall have the children on the odd-numbered holidays (left column), and the father shall have parenting time on the even-numbered holidays (right column). In the even-numbered years (i.e. 2012) the father shall have the odd numbered holidays and the mother the even-numbered holidays. Parenting time on these holidays shall be from 9:00 a.m. to 9:00 p.m., unless the child is in school the following day, in which case parenting time shall be from 9:00 a.m. to 6:00 p.m.

(5) Each year at Christmas the secondary residential parent shall have the children from the time the local schools dismiss for Christmas vacation (regardless of whether the child is of school age) until 9:00 p.m. on Christmas Eve. The primary residential parent shall have the children from 9:00 p.m. on Christmas Eve until 12:00 p.m. (noon) on Christmas Day after which the secondary residential parent shall have parenting time until 6:00 p.m. on December 26, at which time the primary residential parent shall have the child.

(6) On Mother's Day and Father's Day Weekends, no matter whose turn it is for visitation, the children shall be with the appropriate parent. This parenting time shall be from Saturday at 5:00 p.m. to Sunday at 8:00 p.m.

(7) Each summer, regardless of whether the children are of school age, the summer vacation period for the school district where the primary residential parent resides shall be equally divided between the parents. No visitation period shall be longer than two weeks. So long as it does not interfere with a scheduled vacation away from the area of the parent who has the children, the party who does not have the children shall be entitled to midweek parenting time for each week from Wednesday at 6:00 p.m. to 9:00 a.m. on Thursday.

Each party shall give the other party at least sixty (60) days notice <u>in writing</u> of his or her vacation schedule so that both parties have an opportunity to have the children during his or her vacation from work.

(8) On a child's birthday, the parties shall divide time with the child as best they can agree for the benefit of the child. If they cannot agree, the parent who has the child in their home on the morning of the birthday shall have the child until 6:00 p.m. and the other parent shall have the child until 9:00 p.m.

(9) In alternating years the secondary residential parent shall have the children for a week of any spring break from school which the children may have, provided the children are returned to the custodial parent not less than twenty-four (24) hours before they are to resume school. Unless otherwise agreed, the first spring break vacation with the secondary residential parent shall be the first spring break after the decree or order is signed.

(10) In the calendar years that the secondary residential parent does not have the child for spring break, the secondary residential parent shall have the child for the four day

Thanksgiving holiday. This parenting time shall begin at 9:00 a.m.Thursday morning and end at 1:00 p.m. Sunday afternoon.

(11) HALLOWEEN VISITATION: In cases where there is a child under the age of ten (10) years and the parents live in communities with different trick-or-treat nights, each parent shall have the child from 5:00 p.m. to 9:00 p.m. on their respective trick or treat night. Where the parents live in communities that have the same trick or treat night, then the parties shall equally divide the time permitted by local authorities for trick or treat.

B. USE OF CHILD RESTRAINT SYSTEM

While the child is in his or her physical custody, each parent is required to secure the child in a child restraint system when transporting the child, as provided in KRS 189.125(2).

C. CHILDREN MOVING OUT OF STATE OR MORE THAN 100 MILES

The provisions of FCRPP 7 (2) shall be applied.

DR 11.00 CHILD SUPPORT MATTERS (See also FCRPP 9 (2) and (3))

A. In any action where child support is requested, the initiating party shall file with the petition a child support guidelines worksheet. Upon entry of final decree or other order in any case where child support is ordered, the child support worksheet and form AOC-152 shall be transmitted by the clerk to the Carroll, Grant, or Owen County Attorney's Office Child Support Division who shall thereafter cause same to be uploaded to the state case registry.

B. All wage assignment withholding orders shall be prepared using form AOC-152. For out of state employers the CS 89 shall also be used for wage withholding.

C. Any party subject to or the beneficiary of a child support order shall notify the Child Support Division of the appropriate County Attorney's Office of any change of address within 10 days of moving.

D. The obligor of any child support order shall inform the Child Support Division of the appropriate County Attorney's Office immediately upon changing employment and furnish new employer information.

E. Prior to any child support hearing, each party shall comply with FCRPP 9 (4) and shall also provide the Court and opposing counsel a copy of **the most recent court order establishing or denying support and the child support worksheet related thereto.**

DR 11.01 PENDENTE LITE CHILD SUPPORT MOTIONS

A. VERIFIED SCHEDULE FROM MOVANT: (See also FCRPP 9 (2), (3) and (4))

A motion for pendente lite child support shall be accompanied by a verified schedule for the party filing the motion setting forth separately:

1. Last 4 digits of SSN and birth date of the verifying party;
2. Last 4 digits of SSN and date of birth of each child;
3. Employment status of the verifying party, including name and address of said party's employer, length of employment, and income as shown by periodic wage statements or documented evidence of earnings from said party's employer for the last three (3) months;
4. Any additional sources of income;
5. Monthly expenses of the verifying party for work related child care as shown by past expenditures and anticipated additional expenses, if any, in the immediate future;
6. Monthly expenses of the verifying party for maintenance of health insurance for the child(ren) as shown by past expenditures and anticipated additional expenses, if any, in the immediate future; and

7. Amounts being paid, if any, by the verifying party, under pre-existing orders of child support, copies of which orders shall be annexed to the schedule.

B. NON-MOVANT:

The non-movant party shall not be required to complete a schedule, and the moving party shall obtain relevant information from the non-movant through normal channels (i.e., request for production of documents, subpoena duces tecum, etc.).

C. AGREED ORDERS PENDENTE LITE:

A child support worksheet specified in DR 11.00.A and, unless already made a part of the Court's file, a schedule signed by each party verifying those matter set forth in DR 11.01.A above (without supporting attachments) shall be attached to all agreed orders in which child support is established. In addition, **any agreed order establishing child support <u>that is inconsistent with the guidelines</u>** shall contain the recitation set out in DR 7.02(2).

DR 11.02 MOTIONS TO MODIFY EXISTING OBLIGATION (See also FCRPP 9 (5) and (6))

A. CONTESTED HEARINGS. Hearings before the Domestic Relations Commissioner are not and shall not be used as discovery proceedings. Discovery should be commenced prior to the filing of a motion to modify, and hearings upon such motions shall be scheduled at least 14 days prior to the date of the hearing to provide a reasonable opportunity for discovery by the responding party and the responding party shall make timely efforts to conduct discovery prior to the hearing.

B. AGREED ORDERS:

Same compliance as in DR 11:01.C above.

DR 11.03 EX PARTE SUPPORT ORDERS

All ex parte motions for child support pursuant to KRS 403.160 shall follow the statutory requirements. The affidavit must indicate that the moving party has physical possession of the children for whom child support is requested. The verified schedule provided for in DR 11.01.A shall also be filed with the motion. All motions must be accompanied by a complete child support worksheet (DR 11.00.A) for monthly child support obligation that is incorporated in the affidavit. All motions must indicate the nature in which they are served on the responding party unless they are to be served by the sheriff, in which case the sheriff's return shall serve as the verification of notice.

DR 12.00 CONTESTED DISSOLUTIONS (See also FCRPP 3 (3) and (4))

DR 12.01. A. TRIAL ORDER TO ISSUE

Upon proper Motion for contested hearing, the Commissioner shall issue a Trial Order which sets forth all information required of the parties prior to hearing and the form for filing same. No hearing shall be conducted unless both parties strictly comply with this Trial Order.

DR 12.02. SANCTIONS FOR NONCOMPLIANCE

No trial date shall be assigned if the Motion therefore is not accompanied by the required schedules, and in the event the opposing party fails to file schedules within the required period, or either party files an incomplete schedule, the Commissioner, on his own initiative or on the motion of either party, may make such recommendations to the Court in regard to the failure as are just, and among others the following;

1. An order that the matters set forth in the obedient party's schedules be taken as established.
2. An Order prohibiting the disobedient party from introducing designated matters in evidence.
3. An order assessing all court costs, including attorney's fees, against the disobedient party.

DR 12.03. CHILD SUPPORT WORKSHEET

Each party shall furnish the Commissioner at the time of filing the Trial Brief, a completed child support worksheet conforming to the proof the party intends to introduce.

DR 12.04. JUDGMENT TO BE TENDERED

Each party may submit to the Commissioner at the time of trial a brief or statement of proposed Findings, Conclusions and Judgment. Following the trial, the Commissioner may require the parties to submit briefs or desired Findings etc. and may set reasonable time limits for the filing of these documents.

DR 13.00 SCHEDULE OF FEES, PAYMENT OF COSTS AND APPORTIONMENT (See also FCRPP 4 (5) and (6))

DR 13.01. DOMESTIC RELATIONS COMMISSIONER'S FEES

(1) Uncontested divorces – Fifteen dollars ($15.00)

(2) In all other matters, sixty dollars ($60.00) per hour, assessed at the rate of $15.00 for each quarter hour or part thereof, including time necessary for the preparation of findings, orders, etc.

(3) All actions involving indigents shall be heard by the Commissioner without prepayment of fees. However, as indigency is established at the time of filing without the taking of proof, the Commissioner shall inquire into the issue of indigency at any hearing, to include the ability of the respondent to pay costs, and shall make findings and orders related thereto, including the ability of a party to make installment payments on costs if warranted by the facts.

(4) The fee for hearing motions to set contested hearings or to withdraw as attorney of record shall be the minimum fee listed in DR 13.01. (1) and shall be paid upon the filing of the motion.

(5) The Commissioner shall have the authority to recommend the apportionment of commissioner and GAL fees for a contested trial in his/her proposed findings of fact and conclusions of law.

DR 13.02 DEPOSIT OF FEES

The moving party shall pay to the *Circuit Clerk*, along with a copy of any motion being filed, the minimum fee for the motion in the amount of fifteen dollars ($15.00)

DR 14.00. JUDICIAL SALES IN DOMESTIC MATTERS

DR 14.01 MASTER COMMISSIONER TO CONDUCT JUDICIAL SALES.

Where the Master Commissioner has also acted as a Domestic Relations Commissioner in a particular case, any judicial sale in the domestic relations actions shall be referred to a special Master Commissioner. Any objection to a recommended judicial sale may be raised by filing an objection to the Commissioner's report as provided for in DR 6.02.

DR 14.02 COUNSEL TO NOTIFY LIEN HOLDER.

Counsel for the Petitioner and Respondent shall, as soon as practicable and not later than five (5) days following the entry of the Court's Order of Sale, and not later than five (5) days following the filing of the Commissioner's Report, if one is filed, serve a copy of the Report and the Order upon all known holders of liens against property ordered to be sold in a domestic relations action. Counsel for the Petitioner shall file with the Court (and shall serve upon the Master Commissioner) counsel's written certification that copies of the Report and Order have been so served, specifying the date and manner of service.

DR 15.00 HEALTH RELATED EXPENSES NOT COVERED BY INSURANCE

Unless otherwise provided for by agreement of the parties, a parent who pays health related expense of a child that is not covered by insurance shall submit same to the non-paying parent in writing with documentation of the expense within thirty (30) days of receiving notice that there is a balance due that is not covered by insurance. The non-paying parent shall then have thirty (30) days to reimburse the paying parent his/her proportionate share of those health related expenses.

APPENDIX C
RULE FD
CLASS D FELONY DIVERSION PROTOCOL
FOR THE 15TH JUDICIALCIRCUIT

PREAMBLE: This Rule is adopted pursuant to the authority and provisions of KRS 533.250 – 533.262. Any amendment thereto which is mandatory relating to matters covered by this Rule shall automatically amend this Rule.

FD 1 DEFINITION

Pretrial diversion is the postponement of imposition of sentence upon any person who qualifies for this program, for a period of time not to exceed five (5) years, subject to certain conditions established by the Court.

FD 2 PERSONS ELIGIBLE – KRS 533.250

A. Any person charged with a Class D felony, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to commission of the current offense, shall be eligible for pretrial diversion.

B. The person charged must enter a plea of guilty, or a plea pursuant to North Carolina v. Alford, before becoming eligible for pretrial diversion.

C. Persons ineligible for probation, parole or conditional discharge under KRS 532.045 shall be ineligible for this program.

D. A person convicted of a Class D felony for which early release is disallowed by statute, including KRS 189A.010(8) and KRS 189A.120(2) shall be ineligible for this program.

E. No person shall be eligible for this program more than once in any five (5) year period.

F. No person shall be eligible for pretrial diversion who has committed a sex crime as defined in KRS 17.500

FD 3 PROCEDURE

A. After indictment or the entering of a criminal information in Circuit Court, and no later than thirty (30) days before trial, any person eligible for the program may apply to the Circuit Court and the Commonwealth for entry of a pretrial diversion order.

B. In applying for pretrial diversion, counsel for the defendant must state, and the defendant must agree on the record, that in the event diversion is granted, any right to a speedy trial or disposition of the charge against him/her is waived.

C. The Commonwealth shall make a written recommendation to the Court in response to each application. KRS 533.250(2).

D. Before making a recommendation to the Court, the Commonwealth shall:

1. Have a criminal record check made by telephoning Pretrial Services at AOC at 1-800-928-6381, or faxing the request to (502) 573-1669. DO NOT send requests to the local Pretrial Services Officer.

2. Interview and seek input from the victim and/or victim's family and advise them of the time, date and place the motion will be heard by the Court.

3. When diversion is recommended, the Commonwealth must make written recommendations to the Court of conditions for the pretrial diversion as well as the appropriate sentence to be imposed if the diversion agreement is unsuccessful. KRS 533.252(3).

4. The Commonwealth will be bound by its recommendation. In the event that diversion is unsuccessful, the Commonwealth will not be permitted to argue for a sentence in excess of the original recommendation. Moreover, the Court cannot impose a sentence greater than the recommendation without allowing the defendant an opportunity to withdraw his/her plea.

5. The Court cannot act on a request for diversion absent a recommendation from the prosecutor and diversion is unavailable absent a favorable recommendation from the Commonwealth.

FD 4 ORDER OF PRETRIAL DIVERSION

A. The Court may, in its discretion, order pretrial diversion for eligible petitioners upon terms and conditions it deems appropriate. AOC Form 345, styled Order Granting Pretrial Diversion of a Class D Felony was designed for this purpose.

B. The Order of Diversion **shall** include:

1. Restitution, if applicable. Restitution is mandatory where victim has suffered monetary damage per KRS 533.254.
2. Whether the diversion shall be supervised or unsupervised and include supervision fees, which are to be no less than $25.00 per month.
3. Duration of the diversion.
4. Require defendant to obey all rules and regulations imposed by Probation and Parole.
5. As required by KRS 533.030(1) [conditions of probation-restitution], direct the defendant not to commit any offense during the period of pretrial diversion. Specifically, direct the defendant to comply with any other provision of KRS 533.030 or any other condition the Court deems appropriate.

C. The Order of Diversion **may** include:

1. That the petitioner remains drug and alcohol free and is subject to random testing.
2. That the petitioner has no violation of the Penal Code or the Controlled Substances Act.
3. That the petitioners possess no firearm or any other deadly weapon.

D. Duration of the pretrial diversion shall not exceed five (5) years without agreement of the petitioner. Duration of the diversion agreement shall not be less than the time required to make restitution in full.

E. The Court will thereafter advise the parties whether it will accept the diversion agreement. If it is accepted, a specific finding shall be made on the record that the defendant entered the plea and entered into the diversion agreement voluntarily, freely, intelligently and understandingly.

F. If the plea agreement and the diversion agreement are rejected, the Court shall notify the parties and advise the defendant that he/she has the option of 1) withdrawing the plea and proceeding to trial; or 2) maintaining the plea with the knowledge that the Court will not order diversion but instead will impose a sentence within the penalty range permitted by law.

FD 5 VOIDING A DIVERSION ORDER - KRS 533.256

A. Pursuant to the provisions of KRS 533.256 and KRS 533.050, a probation officer, or peace officer acting at the direction of a probation officer, who sees the defendant violate the conditions of diversion may arrest the defendant without a warrant.

After a hearing, with notice to the Commonwealth and to the defendant, the Court may void a person's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or a failure to make satisfactory progress. AOC form 346, styled Order Voiding Pretrial Diversion of a Class D Felony, was designed for this purpose.

B. If an order of pretrial diversion is voided, the defendant shall be sentenced according to law, based on his or her prior plea of guilty/plea pursuant to North Carolina v. Alford. A full PSI shall be ordered and a sentencing hearing shall be scheduled.

C. Under KRS 533.256(2), the same criteria applicable to a probation revocation hearing apply to a proceeding to void an order granting diversion. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A proceeding to determine whether an order granting diversion should be voided also constitutes a miscellaneous proceeding and therefore the Rules of Evidence are inapplicable to such hearings.

FD 6 COMPLETION OF DIVERSION PROGRAM

If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be dismissed and the case shall be closed out as DISMISSED-DIVERTED. However, the successful completion of a diversion contract does not result in automatic expungement of a criminal charge under KRS 431.076.

APPENDIX MC

SAMPLE JUDGMENT AND ORDER OF SALE FOR MASTER COMMISSIONER SALES

COMMONWEALTH OF KENTUCKY
UNIFIED COURT OF JUSTICE
(CARROLL)(OWEN)(GRANT) CIRCUIT COURT
CIVIL ACTION NUMBER_____

_____ PLAINTIFF(S)

VS. JUDGMENT AND ORDER OF SALE

_____ DEFENDANT(S)

This matter having come before the Court pursuant to Plaintiff's Motion for Default Judgment against the Defendant(s), this Court having reviewed the pleadings and affidavits filed herein, and being otherwise sufficiently advised.

IT IS ORDERED AND ADJUDGED that:

1. The Plaintiff shall recover of the Defendant(s), jointly and severally, the principal sum of _____ ($____), together with accrued interest thereon to_____, in the amount of _____ ($_____), and interest thereafter at the rate of _____ ($_____);

2. That to secure payment of its judgment set forth in paragraph 1 the Plaintiff is adjudged a first mortgage lien against the following described real estate, together with all improvements thereon, appurtenances thereto belonging, and the rent, issues and profits thereof, prior and superior to any and all other liens and encumbrances except the following:

a. All unpaid state and county real estate taxes, and all taxes due thereafter

b. Easements, restrictions and stipulations of record;

c. Assessments for public improvements levied against the property;

d. Any facts which an inspection and accurate survey of the property may disclose; and,

Said real estate is situated in _____County, Kentucky, and bounded as following:

[Insert Legal Description with source of title]

3. The relief demanded in the Complaint is granted, the mortgage liens of the parties shall be enforced and the interest of the said Defendant(s) in and to said property shall be sold, and to that end, the Commissioner of this Court is hereby directed to sell the above described property at the _____County Courthouse door on _____, at_____.m. prevailing time;

4. Before making the sale, the Commissioner shall cause the real estate herein before described to be appraised by two (2) disinterested, intelligent housekeepers of _____County, Kentucky, who shall report their appraisals in writing, and the Commissioner shall advertise said sale by publishing advertisements in each newspaper regularly published in _____County, Kentucky, for at least three (3) weekly issues before the date of the sale, which advertisements shall contain the style of this case, the description of the real estate to be sold, the date, hour and place of sale, together with the

terms of the sale and the amount of money to be raised. Advertisements containing the same information shall be published in at least three (3) public places in the vicinity of the property being sold, not less than fifteen (15) days before the date of the sale. The sale shall be a public auction to the highest and best bidder, to be held at the _____County Courthouse door, _____, Kentucky.

5. The property hereinabove described is indivisible and cannot be divided without materially impairing its value or the interest of Plaintiff, and said real estate shall be sold as a whole, subject to those items in paragraph 2 a, b, c and d above, but free and clear of all other liens and encumbrances, and all liens and/or interests arising by virtue of instruments which are recorded in the _____County Court Clerk's Office, or otherwise arise, after the recording of the Plaintiff's lis pendens notice, but the Plaintiff shall not be deemed to have warranted title to any purchaser. The Purchaser shall be responsible for the _____ (current year) real estate taxes.

6. The real estate shall be sold on the terms of ten percent (10%) cash at the time of the sale, except that said deposit shall be waived if the Plaintiff is the successful bidder at the sale, and the balance on a credit of thirty (30) days bearing interest at the rate of twelve percent (12%) per annum from the date of sale. When the purchase price is paid in full, the deed will be delivered to the purchaser. It is further provided that the property sold includes insurable improvements and the successful bidder at said sale shall, at bidder's own expense, carry fire and extended insurance coverage on said improvements from the date of sale until the purchase price is fully paid, in the amount of the unpaid balance of the purchase price, whichever is less, at a minimum, with a loss payable clause to the Commissioner of the _____Circuit Court and the Plaintiff herein. Failure of the purchaser to obtain such insurance shall not affect the validity of the sale or the purchaser's liability there under, but shall entitle, but not require, the purchaser as purchaser's costs.

7. The proceeds of the sale, or a sufficiency thereof, shall be applied to the following items in this order of priority:

To the costs of the sale, including all Commissioner's costs;

To the payment of all City and/or County real estate taxes which are past due;

To the full satisfaction of the judgment in favor of the Plaintiff set forth in paragraph 1;

The balance of the sale proceeds, if any, shall be held by the Commissioner of this Court pending further Orders of this Court;

8. This a final and appealable Judgment and Order of Sale, the Clerk shall enter this Order as there is no just reason for delay in its entry or execution, and shall make distribution of it pursuant to CR 77.04;

9. This action is retained on the Court's docket for such further Orders and proceedings as may be necessary to effect said sale.

ENTERED on this ___day of _____20____.

_____ _____

(Master Commissioner' Name) (Judge's Name)

Clerk's certificate pursuant to **LR 2 G**