

# Supreme Court of Kentucky

## ORDER

**IN RE: ORDER APPROVING AMENDMENTS TO THE LOCAL RULES OF PRACTICE FOR THE 26 JUDICIAL CIRCUIT, HARLAN CIRCUIT COURT**

Upon recommendation of the Circuit Judge of the 26<sup>th</sup> Judicial Circuit, Harlan Circuit Court, and being otherwise sufficiently advised,

The amendments to the Local Rules of Practice for the Harlan Circuit Court 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 7<sup>th</sup> day of September 2010.

  
CHIEF JUSTICE JOHN D. MINTON, JR.

**AMENDED  
RULES OF PRACTICE  
AND  
PROCEDURE  
for the  
26TH JUDICIAL CIRCUIT  
HARLAN CIRCUIT COURT**

Effective the 7th day of September, 2010

**The Honorable Russell Alred,  
Judge, Circuit Court  
P. O. Box 799  
Harlan, Kentucky 40831**

**(606) 573-3242**

**RULES OF PRACTICE  
and  
PROCEDURE  
for the  
26TH JUDICIAL CIRCUIT  
HARLAN CIRCUIT COURT**

**HCPR – 010. PURPOSE**

The purpose of these Rules is to give the elements of order, certainty, consistency, uniformity and predictability to the practice of law in the Harlan Circuit Court; make the administration of the Court's time and resources more efficient; improve the skills, efficiency, professionalism and knowledge of the members of the bar; make the Court and bar more knowledgeable of regional and state rules of practice and procedure; and bring public admiration, credit and respect upon the bar and the Court.

**HCPR – 100. TITLE AND SCOPE OF RULES**

- (1) The title of these Rules is Harlan Circuit Practice and Procedure Rules. They may be cited as such, or by the abbreviation "HCPR."
- (2) These Rules govern procedure and practice in all actions, civil and criminal, in the 26<sup>th</sup> Judicial Circuit in so far as said Rules do not conflict with the Kentucky Rules of Civil Procedure; the Kentucky Rules of Criminal Procedure; the Court Practice and Procedure Rules, Cumberland Region of Judicial Circuits, applicable generally to all individual circuits in said region; the Kentucky Rules of Evidence; special statutory proceedings, in which the procedural requirements of the statute(s) shall prevail over any inconsistent procedures set forth in Rules; or with any statute or other law of the Commonwealth of Kentucky or the United States, at any time legally adopted, in which event any such statute, law, rule or order shall at all times prevail.

**HCPR – 105. SESSIONS.**

The 26<sup>th</sup> Judicial Circuit, Harlan Circuit, Harlan Circuit Court, is a court of continuous session. Cases are scheduled for trial at the discretion of the Court.

**HCPR – 110. STYLE OF PLEADINGS.**

- (1) The style or heading of all pleadings, motions, orders pertaining to particular cases, judgments, decrees and other legal papers to be filed in the 26<sup>th</sup> Judicial Circuit in all civil and criminal cases shall be styled at the beginning and center of the first page thereof as follows:

**“COMMONWEALTH OF KENTUCKY  
26TH JUDICIAL CIRCUIT  
HARLAN CIRCUIT COURT  
CIVIL ACTION NO. \_\_\_\_\_  
INDICTMENT NO. \_\_\_\_\_”**

- (2) All pages of all legal papers referred to in subsection (1) of this Rule shall be numbered at the bottom center of each page.

**HCPR – 115. ATTORNEYS' NAMES,  
ADDRESSES, PHONE NUMBERS and FAX NUMBERS**

All pleadings, motions and any other legal papers requiring the signature of an attorney shall set forth, in addition to that information required in the Rules of Practice and Procedure for the Cumberland Region of Judicial Circuits, more specifically CPR-120, the facsimile of fax number and the e-mail address of the attorney signing said documents, if available.

**HCPR-120. MOTIONS, PLEADINGS and BRIEFS**

- (1) All motions, pleadings, briefs and orders shall be type written on white, opaque, un-glazed paper, 8 ½ by 11 inches, and must be written with a black-record ribbon which is not worn or faded and with typewritten keys or printers which are clean and do not blur the letters. All motions, pleadings and orders shall be at the option of counsel, either double spaced, or space and one-half, except legal descriptions of real property, cites from case law or statutes or transcripts of testimony, or transcripts of the record and shall have a 1 ½ inch margin on the left hand side. All motions, pleadings and orders shall be written with type never smaller than pica with larger type being preferred, especially in briefs and memorandums.
- (2) Unless otherwise permitted by the Court, the movant's brief or memorandum and the respondent's brief or memorandum, shall be limited to twenty-five (25) pages each. Reply briefs or memorandums shall be limited to five (5) pages each.
- (3) All briefs and memorandums containing cites to case authorities shall (as to the copy served on the Court pursuant to CPR-115(2.) have attached thereto copies of all authority cited. Copies served on opposing counsel shall contain copies of all “out of jurisdiction: authority. No copies of authority need be included in the original brief or memorandum filed with the clerk of the Court.
- (4) An aggravated or habitual violation of this Rule may result in the Court ordering the brief or memorandum ignored in considering the issue(s) before the Court as a possible sanction, among others.

**HCPR – 125. EXHIBITS TO PLEADINGS AND MOTIONS**

If any exhibits, or copy thereof, referred to in a pleading or motion as part thereof, is not filed and served upon the opposing party, then opposing counsel must advise, in writing or by facsimile, the party serving such pleading or motion of the oversight within a reasonable time following receipt thereof.

**HCPR-130. MOTION NOT ACCOMPANIED  
BY NOTICE FOR HEARING ON SPECIFIC DATE AND TIME**

Motions to dismiss, or any other motion, not noticed for hearing on a specified date

and time (except certain motions for default judgment or ex parte motions allowed by law) shall be brought to the Court's attention by the clerk of the Court and the same shall be summarily overruled.

#### **HCPR-135. DEADLINE FILING DATES FOR INCLUSION OF MOTIONS ON MOTION DAY DOCKETS AND FOR FILING RESPONSES**

- (1) This Court shall strictly enforce CPR-110(3), which means that motions to be set for the Thursday motion days must be filed no later than 4:30 p.m., Eastern Time, on the Thursday immediately before said motion day; and that motions to be set for the Monday motion days must be filed no later than noon Eastern Time, on the Wednesday immediately before said motion day. The Clerk, in absence of a court order directing otherwise, shall not docket said late papers on the motion docket. The previous local and customary practice of only 3 days notice, being in violation of CPR-110(3), is hereby abolished. However, motions to submit in uncontested actions for dissolution of marriage, motions for rule returnable and motions for hearing dates may be filed up until 4:30 p.m. on Wednesdays for hearing on the following Monday.
- (2) All responses or replies to timely filed motions shall be filed at least twenty-four (24) hours before the noticed time of hearing.

#### **HCPR-140. CIVIL LAW MOTION DAYS**

All Civil motions (other than Monday motion day domestic relations law motions) shall be set on the second and fourth Thursdays of each month, at 9:00 a. m., Eastern Time. To have a motion put on the civil day docket, the attorney so desiring shall file the original of said motion with the Clerk of the Court and notice the motion for a particular date. Said motion, in accordance with the provisions of CPR-110(3) and HCPR-135, shall be filed no later than 4:30 p.m., Eastern Time, the Thursday before said motion day.

#### **HCPR-145. ENTRY OF ORDERS AND JUDGMENTS**

- (1) Except any order, ruling, opinion, decree or judgment prepared by the Court itself, whenever any ruling is made or opinion is rendered, an order, decree or judgment in conformity therewith, shall be prepared by counsel as directed by the Court. However, if the party against whom the order or judgment is to be entered is not represented by counsel, or is represented by counsel, said party or counsel may request to review the order and sign as "have seen" prior to the entry by the Court.
- (2) In addition to the requirements contained in CPR-130, when an order or judgment or decree is signed by the Court, which has been prepared and submitted by counsel at the direction of the Court, or on the volition of counsel in conformity with the Court's ruling, or an uncontested judgment or judgment in default submitted by counsel to the Court for the judge's signature, then said counsel shall deliver to the Court the original and a sufficient number of copies of said document(s), together with properly addressed plain white legal sized envelopes to enable or permit the clerk of the Court to complete service or distribution of the same. The judgment or order shall contain the names and addresses of all counsel and/or pro se litigants, if known.
- (3) Counsel may waive, in writing or otherwise memorialize by record, the service of any

order, decree, or judgment and the notice of the entry thereof.

### **HCPR-150 AGREED ORDERS**

Agreed Orders, decrees or judgments may be submitted to the Court at any time, so long as at the convenience of the Court, and need not be placed on the motion day docket. The Court reserves the discretion as to whether or not it will sign Agreed Orders.

### **HCPR-155. CASES SUBMITTED ON DEPOSITIONS**

All cases submitted on depositions, other than uncontested divorces, shall be accompanied by legal memorandums or briefs (with appropriate cites to the transcript of testimony, the transcript of the record, and legal authorities) and proposed Findings of Fact, Conclusions of Law, and Judgments, all of which shall be served on opposing parties, pursuant to the provisions of CR5.01.

### **HCPR-160. CASES APPEALED TO HARLAN CIRCUIT COURT**

- (1) Except as otherwise directed by the Court, oral arguments shall be made in all cases that are filed as appeals and in petitions for review filed in this Court whether from the Harlan District Court or any administrative board or governmental board authorized to bring an appeal or petition for review.
- (2) Written briefs are required by the Kentucky Rules of Civil and Criminal Procedure. The appellee shall tender concurrently with the filing of the response brief, a proposed order assigning the action on appeal to a day certain for oral argument; however, the section regarding date and time for said argument shall have appropriate blank spaces for completion by the Court of information regarding the date and time thereof.

### **HCPR-165. PROCEDURE FOR RULES FOR CONTEMPT OR SHOW CAUSE HEARINGS**

The proper procedure for obtaining a rule for contempt or an order directing or ordering a show cause hearing (except in those matters where the Court acts sua sponte) is as follows: (a) a Motion should be filed requesting the rule or an order directing a show cause hearing and the appearance of the alleged offender, and said motion (unless the Court's own motion) should be supported by a duly executed affidavit, containing more than conclusory allegations, showing that the movant is entitled to the rule or show cause order; (b) when a proper motion and affidavit is filed, a rule or show cause order may be issued ex parte (upon the showing of good cause justifying ex parte issued); (c) said rule or show cause order shall not come on for hearing any sooner than five days from the date the rule or show cause order is served, unless otherwise ordered and no rule shall come on for hearing unless the same has been served on the person alleged to be in contempt by an officer authorized, by law, to serve a summons. The rule or show cause order shall be served together with a copy of the motion and affidavit (if applicable) which initiated said rule or order (if said rule or order was issued ex parte) and shall contain a short statement of the grounds for its issuance.

**HCPR-170. ANSWERS AND OBJECTIONS  
TO INTERROGATORIES AND REQUESTS FOR ADMISSIONS**

- (1) Answers and objections to interrogatories, requests for admissions and other similar discovery demands shall identify and quote, verbatim, each interrogatory or request or demand in full immediately preceding the statement of any answer or objection thereto.**
- (2) Any objection to an interrogatory, request for admissions or other similar discovery demand shall set forth grounds in support thereof, together with any authority in support of said objection.**
- (3) Any refusal to answer any interrogatory, request for admissions or other discovery demand shall cite appropriate case authority, including cases interpreting parallel Federal Rules of Procedure, or reasons well grounded in the law of evidence or privilege.**
- (4) Counsel is cautioned that the Court requires that they make a good faith effort to resolve any disagreements regarding discovery before the filing of a motion to compel discovery, for a protective order, or for sanctions, pursuant to CR 26 and/or 37. Concurrently with the filing of any of said motions, the moving party shall file a certification or attach a certification to said motion or motions certifying that counsel has conferred with opposing counsel and that they were unable to resolve their differences.**
- (5) This Court shall give CR 37 sanctions all the consideration to which they are entitled when confronted with flagrant and /or ignorant abuse and misapplication of the rules of discovery.**

**HCPR-175. TRANSCRIPTS**

- (1) In all cases in which the Court reporter has made stenographic notes of the proceedings, upon motion of any party, the Court shall order the court reporter to make a full and accurate transcript of the proceedings and such copies thereof as may be required. In absence of said motion and order, the court reporter will be under no duty to prepare any transcript or copies thereof of any proceedings.**
- (2) The Copy of the transcript of evidence required to be filed under CR75.02(1) with the clerk of the Court shall be returned to the counsel for the appellant after the case has been decided by the Supreme Court or Court of Appeals and the original has been returned to the clerk of this Court.**
- (3) In all cases reported on video transcripts, counsel shall be responsible for alerting the Court's reporter of need for an extra video to be made concurrently with the originals required by law.**

**HCPR-180. REMOVAL OF COURT RECORDS.**

- (1) No record in any civil or criminal action (except insofar as permitted under CR 75.07, CR 79.05 and CPR 110(2) shall be removed from the Office of the Clerk of the Harlan Circuit Court until the same is properly signed for by the requesting attorney, or that attorney's employees, in a registered book prepared by said Clerk for such purpose, and said withdrawal shall only be for five working days. Failure to comply with this order may result in the offending person being held in contempt of court, and subject to appropriate sanctions. The Clerk of the Court is DIRECTED to advise the Court of any violation of this Rule. Any and all other orders or memorandums in conflict with this order are hereby revoked and set aside.**
- (2) If any civil or criminal record is removed from the Clerk's office for use by a special judge**

and is retained by that judge, the person removing the record from the clerk's office shall document in the register book the name of the judge having the record including the date of delivery and address of the judge retaining the record.

#### **HCPR-185. VIDEO DEPOSITIONS**

- (1) Subject to the usual requirements pertaining to depositions contained in CR 30.01, 30.02, 30.03 and 30.06 regarding matters such as: the giving of reasonable notice, including the time, date and place of the taking; when leave of the Court is required; the administering of the oath to witnesses; the marking of exhibits; the making of objections; etc., video depositions may be taken as a result of a stipulation between the parties or the Court may, upon motion, rule that the testimony at a deposition of a witness or witnesses be taken by video camera with adequate and operational audio function or capability. Any such order shall designate the person before whom the deposition shall be taken, the manner of the recording, preserving and filing of the deposition to be taken and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. Either party may, at their respective expense, arrange to have a stenographic transcription made.**
- (2) The video deposition will be commenced with administration of the proper oath by the person operating the video recording device or camera, and the camera shall be directed at the witness during the taking of oath and at all times during his testimony, except for the purpose of being directed to any exhibits referred to or described by the witness during said testimony.**
- (3) "Zoom-in-shots" or "close-up-shots" alternating with regular shots shall only be made for the purpose of the examination of an exhibit, a demonstration of its features or functions, or to show any injuries, scars or identifying features of the witness (or if a doctor is testifying, the subject of his examination) which is the subject of the cause of action or relevant to the cause of action.**
- (4) All witnesses at a particular deposition session taken in the same action, shall testify from the same position (with proper background and from a comfortable seat or placement) and the camera taking said testimony shall be positioned in the same place for the taking of all such witnesses. Any "Zoom-ins" or "close-ups" or refocusing or camera readjustments, other than those described in subsection (2) or (3) above, are prohibited for fear that the same would be used to unduly flatter or to annoy, harass or to cast a witness in a less than favorable portrait, light or angle of view.**

#### **HCPR-190. COURTROOM ATTIRE AND DECORUM**

- (1) Attorneys will wear only appropriate and dignified clothing in court.**
- (2) No person shall read a newspaper in the courtroom while court proceedings are in progress.**
- (3) No person shall chew gum, chew tobacco, smoke, spit, sniff snuff or clip nails in the courtroom.**
- (4) No person, except the court reporter, shall bring to court any photographic or recording equipment, audio and/or video, or operate the same without said prior permission of the Court.**
- (5) Small children, except one(s) being called or qualified as a witness(es), shall be excluded from the courtroom if they disturb the proceedings of the court, or if it is reasonable to**

expect such disturbance if children are of early years or are infants.

- (6) Any person disturbing or offending the dignity and decorum of the court or its proceedings shall be removed from the courtroom.

#### **HCPR-195. CRIMINAL MOTION DAYS**

All criminal motions are to be set on the first and third Thursdays of each month at 9:00 a.m. To have a motion placed on the criminal motion day docket, the attorney so desiring shall file the original of said motion with the clerk of the Court and notice the motion for said date. Said motion in accordance with the provisions of CPR 110(3) and HCPR-135, shall be filed no later than 4:30 p. m., Eastern Time, the Thursday before said motion day, except by special permission of the Court for good cause shown.

#### **HCPR-200. CRIMINAL ARRAIGNMENTS AND ATTORNEY'S WITHDRAWAL**

- (1) Unless otherwise ordered, all defendants shall be arraigned in open court on the criminal motion day following the return of service (arrest) on a warrant of indictment or information, and unless there is insufficient time to give adequate notice of the arraignment, in which case the defendant shall be arraigned the following criminal motion day or as directed by the Court.
- (2) Unless waived, the defendant shall be interviewed by the pretrial release officer before his or her arraignment.
- (3) Both defendant and his or her attorney shall be present at the arraignment.
- (4) After appearing with or on behalf of a defendant, unless an attorney notifies the Court he or she has been retained for arraignment purposes only, an attorney shall not be relieved of his or her duties as attorney of record except by order of the Court.
- (5) An attorney of record shall not be permitted to withdraw from a criminal case within twenty days of trial, in the absence of good cause shown.
- (6) Retained trial counsel shall secure permission of the Court before withdrawing as counsel for any defendant who is to appeal a judgment of conviction. Before such permission can be granted, it shall be the responsibility of retained counsel to prepare and file the following:
  - i. Notice of appeal pursuant to RCr 12.04;
  - ii. Motion, affidavit and order for leave to appeal in forma pauperis, if necessary;
  - iii. Order directing preparation of transcript pursuant to HCPR- 180; and
  - iv. Order substituting the Office of Public Advocacy as counsel on appeal.

#### **HCPR – 205. PRE-TRIAL CONFERENCES**

- (1) Pretrial conferences may be held in the Court's discretion or upon the motion of either party.
- (2) In civil actions pretrial conferences may be assigned to a day certain by the Court upon receipt of Notice and Motion to set a case for trial under CR 40, or upon the Court's own order at any time.
- (3) In criminal cases assignment to a day certain for pretrial conference shall be made at the time of arraignment pursuant to HCPR 210, or if a continuance, change of attorney or

other compelling circumstances, create a need for another pretrial conference hearing, then by the Court on its own motion, or by either party upon filing proper Notice and Motion.

#### **HCPR – 210. PRE-TRIAL CONFERENCES- CRIMINAL CASES**

- (1) At the time of arraignment, each criminal case shall be assigned to a day certain for pretrial conference.**
- (2) The attorney for the defendant and his client and the attorney for the Commonwealth and his chief prosecuting witness(es), if practicable, shall be present at the pretrial conference.**
- (3) Defense attorneys shall also be ready to inform the Court of any alleged noncompliance by the Commonwealth with any discovery previously ordered by the Court. The Commonwealth's Attorney shall also be ready to inform the Court of any alleged noncompliance by the defense with any reciprocal provisions of discovery previously ordered by the Court.**
- (4) In advance of criminal pretrial conferences, counsel for the defendant(s) shall consult with his client(s) and the Commonwealth shall confer with and advise the prosecuting witness(es) regarding the feasibility of a plea bargain. A criminal defendant and counsel shall announce whether or not a plea offer has been accepted or refused on the pretrial conference date. If the Defendant refused to accept the plea offer, then a jury trial shall be scheduled date certain within sixty days from the date of the pretrial conference day. Any plea made after the pretrial conference day will be open pleas and the court will not consider the previous plea offer made by the Commonwealth.**
- (5) The Court may at any time and, upon its own motion, reassign the trial of a criminal case to another date.**

#### **HCPR-215. PRE-TRIAL CONFERENCES IN CIVIL CASES**

- (1) At a scheduled pretrial conference in a civil case, or at a time specifically ordered by the Court, the parties shall be ready to comply with the following:**
  - a. Determine that the pleadings are completed and all issues of fact have been joined;**
  - b. Announce that completion of discovery, if possible; if not; then show that a good faith effort to complete a significant part of discovery has been made;**
  - c. In tort actions involving personal injury, be prepared to discuss material points of law and to stipulate undisputed facts; and**
  - d. Be prepared to advise the Court of any foreseen special witness problems, i.e. special health needs or conveniences of witnesses or parties, etc.**
- (2) In advance of a civil pretrial, counsel shall consult with their respective clients in order to determine scope of authority for settlement, predispositions of clients toward settlement, and make a good faith effort to explore any possibility of settlement with opposing counsel.**
- (3) At a civil pretrial conference the additional following matters may also be considered by the parties:**
  - a. Estimated length of trial;**
  - b. Any further discovery problems not heretofore anticipated or any allegations of**

- noncompliance;
- c. Any other relevant matters which may expedite the economical and speedy disposition of the action; and
  - d. The feasibility of pretrial mediation.
- (4) At a pretrial conference, the Court may also order the submission of memorandums of law regarding the issues expected to arise at trial.

#### **HCPR-220. DOMESTIC RELATIONS COMMISSIONER**

The Harlan Circuit Court shall utilize and appoint a Domestic Relations Commissioner who shall hear and make a report and recommendations regarding any domestic relations case before it, except adoption cases, domestic violence petitions, temporary motions accompanied by an EPO or DVO which require a hearing on the same day. The Domestic Relations Commissioner shall hear all domestic relations issues. The Court shall hear all matters expressly precluded from the Domestic Relations Commissioner.

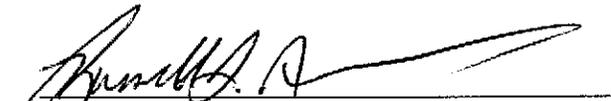
#### **HCPR-225. ADOPTIONS**

Adoption cases shall be scheduled by contacting the Clerk of the Court. Said cases shall be heard on the second and fourth Thursdays of each month and noticed for 1:00 p. m., Eastern Time. Adoption cases shall be given priority.

#### **HCPR-230. PROCEDURE AND PRACTICE BEFORE THE DOMESTIC RELATIONS COMMISSIONER**

All practice and procedure before the Domestic Relations Commissioner shall be subject to these Rules (HCPR's), the CPR's (Cumberland Region of Judicial Circuits Rules of Practice and Procedure), the Kentucky Civil Rules of Procedure, and all other laws and statutes of the Commonwealth of Kentucky enacted by the General Assembly, and Rules enacted by this Court and the Court of Appeals and the Supreme Court of Kentucky. The Domestic Relations Commissioner will hear all domestic motions, except those expressly reserved to the Circuit Judge by HCPR 220, each Monday at 9:00 a. m. in Courtroom "C" of the Harlan Justice Center. The Domestic Relations Commissioner shall assess a fee for these hearings to be paid directly to the Domestic Relations Commissioner. Said fee shall be reasonable and not inconsistent with any rule or law of the Commonwealth of Kentucky. Final hearing dates shall be scheduled at the discretion of the Domestic Relations Commissioner.

These rules shall be effective upon certification and approval of the Chief Justice of the Commonwealth of Kentucky.

  
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RUSSELL ALRED, JUDGE  
HARLAN CIRCUIT COURT