Supreme Court of Kentucky

ORDER

IN RE: **ORDER APPROVING THE RULES OF COURT PRACTICE AND PROCEDURE FOR THE 39TH JUDICIAL CIRCUIT, FAMILY COURT DIVISION, BREATHITT, POWELL, AND WOLFE COUNTIES**

Upon recommendation of the Judges of the 39th Judicial Circuit, and being otherwise sufficiently advised,

The Rules of Court Practice and Procedure for the 39th Judicial Circuit, Family Court Division, Breathitt, Powell, and Wolfe 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 5th day of April 2012.

CHIEF JUSTICE JOHN D. MINTON, JR.

RULES OF COURT
PRACTICE AND PROCEDURE
COMMONWEALTH OF KENTUCKY

39th JUDICIAL CIRCUIT
BREATHITT, POWELL AND WOLFE COUNTIES
FAMILY COURT DIVISION

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RULE 1 INTRODUCTION / ADMINISTRATIVE PROCEDURE

101 PREFACE

These are the Uniform Rules of Court Practice and Procedures of the 39th Judicial Circuit (Breathitt, Powell and Wolfe Counties) Family Court Division (hereinafter referred to as "Family Court"). These Rules supplement the Kentucky Family Court Rules of Procedure and Practice (FCRPP), the Kentucky Rules of Criminal Procedure (RCr) and the Kentucky Rules of Civil Procedure (CR). These rules shall be the only operative Family Court Rules in the 39th Judicial Circuit.

102 EFFECTIVE DATE

The effective date of these rules shall be thirty (30) days after Kentucky Supreme Court approval.

103 CITATION

These Rules shall be cited as 39FCRP.

104 HOLIDAYS

A schedule of Court recognized Holidays may be obtained at the Breathitt, Powell and Wolfe County Circuit Court Clerk's Offices. Holiday schedules shall be consistent with the Circuit Court Clerk's Holiday schedule in the respective counties in the 39th Judicial Circuit, Family Court Division.

<u>Breathitt Circuit Court Clerk's Office</u>
Breathitt County Justice Center
1131 Main Street
Jackson, Kentucky 41339
Telephone: (606)-666-5768
Facsimile: (606)-666-4893
Office Hours: Monday - Friday 8:00 a.m. to 4:00 p.m.

<u>Powell Circuit Court Clerk's Office</u>
Powell County Courthouse
52 Washington Street
P.O. Box 578
Stanton, Kentucky 40380
Telephone: (606)-663-4141
Facsimile: (606)-663-2710
Office Hours: Mondays & Fridays - 8:00 a.m. to 6:00 p.m.
Tuesday, Wednesday & Thursday - 8:00 a.m. to 4:30 p.m.

Wolfe Circuit Court Clerk's Office
Wolfe County Courthouse
10 Court Street
P.O. Box 296
Campton, Kentucky 41301
Telephone: (606)-668-3736
Facsimile: (606)-668-3198
Office Hours: Monday - Friday 8:00 a.m. to 4:00 p.m.
Except 1st Friday of each month 8:00 a.m. to 5:00 p.m.

RULE 2 COURT SCHEDULING/MOTION HOUR/PROCEDURES FOR FILING

201 REGULAR MOTION HOUR SCHEDULE

A. MONDAY- POWELL FAMILY COURT

Motion Hour shall be held on Monday for all Powell County Family Court actions pursuant to the following monthly schedule:

1st Monday	9:00 a.m.	Emergency DNA/Status/ bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Juvenile Dependency, Neglect & Abuse actions
2nd Monday	9:00 a.m.	Emergency DNA/Status/bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Domestic Motion Hour Uncontested Motions to Submit Temporary: custody/timesharing/child support/maintenance/status quo Motions for Final Hearing Dates: Divorce/Custody/Timesharing/Adoption/TPR Motions for: Mediation/Pre-trial/Case Management Conferences Motions for: Summary Judgment/Default Judgment/Show Cause/Contempt Motions to Compel Motions for Appointment/Fees: Guardian Ad Litem/Warning Order Attorney
	1:00 p.m.	Previously set Case Management Conferences/Final Evidentiary Hearings
3rd Monday	9:00 a.m.	Emergency DNA/Status/ bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Paternity/Motions and Hearings Child Support ("J" cases) Child Support ("CI" cases) Motions for: Show Cause/Modification/Arrearages/Wage Assignments
	1:00 p.m.	Civil Child Support/Paternity Contempt Hearings Juvenile Status Offenses

4th Monday	9:00 a.m.	Emergency DNA/Status/bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Domestic Motion Hour Uncontested Motions to Submit Temporary: custody/timesharing/child support/maintenance/status quo Motions for Final Hearing Dates: Divorce/Custody/Timesharing/Adoption/TPR Motions for: Mediation/Pre-trial/Case Management Conferences Motions for: Summary Judgment/Default Judgment/Show Cause/Contempt Motions to Compel Motions for Appointment/Fees: Guardian Ad Litem/Warning Order Attorney
	11:00 a.m.	Juvenile Dependency, Neglect and Abuse
	1:00 p.m.	Previously set Case Management Conferences/Final Evidentiary Hearings

B. TUESDAY- WOLFE FAMILY COURT

Motion Hour shall be held on Tuesday for all Wolfe County Family Court actions pursuant to the following monthly schedule:

1st Tuesday	9:00 a.m.	Emergency DNA/Status/ bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Juvenile Dependency, Neglect & Abuse actions
2nd Tuesday	9:00 a.m.	Emergency DNA/Status/bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Domestic Motion Hour Uncontested Motions to Submit Temporary: custody/timesharing/child support/maintenance/status quo Motions for Final Hearing Dates: Divorce/Custody/Timesharing/Adoption/TPR Motions for: Mediation/Pre-trial/Case Management Conferences Motions for: Summary Judgment/Default Judgment/Show Cause/Contempt Motions to Compel Motions for Appointment/Fees: Guardian Ad Litem/Warning Order Attorney
	1:00 p.m.	Previously set Case Management Conferences/Final Evidentiary Hearings
3rd Tuesday	9:00 a.m.	Emergency DNA/Status/ bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Paternity-Motions and Hearings Child Support ("J" cases) Child Support ("CI" cases) Motions for: Show Cause/Modification/Arrearages/Wage Assignments Civil Child Support/Paternity Contempt Hearings Juvenile Status Offenses
	1:00 p.m.	Previously set Case Management Conferences/Final Evidentiary Hearings

4th Tuesday	9:00 a.m.	Emergency DNA/Status/bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Domestic Motion Hour Uncontested Motions to Submit Temporary: custody/timesharing/child support/maintenance/status quo Motions for Final Hearing Dates: Divorce/Custody/Timesharing/Adoption/TPR Motions for: Mediation/Pre-trial/Case Management Conferences Motions for: Summary Judgment/Default Judgment/Show Cause/Contempt Motions to Compel Motions for Appointment/Fees: Guardian Ad Litem/Warning Order Attorney
	1:00 p.m.	Previously set Case Management Conferences/Final Evidentiary Hearings

C. WEDNESDAY- BREATHITT FAMILY COURT

Motion Hour shall be held on Wednesday for all Breathitt County Family Court actions pursuant to the following monthly schedule:

1st Wednesday	9:00 a.m.	Emergency DNA/Status/ bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Paternity/Motions and Hearings Child Support ("J" cases) Child Support ("CI" cases) Motions for: Show Cause/Modification/Arrearages/Wage Assignments Civil Child Support/Paternity Contempt Hearings
2nd Wednesday	9:00 a.m.	Emergency DNA/Status/bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Domestic Motion Hour Uncontested Motions to Submit Temporary: custody/timesharing/child support/maintenance/status quo Motions for Final Hearing Dates: Divorce/Custody/Timesharing/Adoption/TPR Motions for: Mediation/Pre-trial/Case Management Conferences Motions for: Summary Judgment/Default Judgment/Show Cause/Contempt Motions to Compel Motions for Appointment/Fees: Guardian Ad Litem/Warning Order Attorney
	1:00 p.m.	Previously set Case Management Conferences/Final Evidentiary Hearings
3rd Wednesday	9:00 a.m.	Emergency DNA/Status/ bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Juvenile Status actions Juvenile Dependency, Neglect & Abuse actions

4th Wednesday	9:00 a.m.	Emergency DNA/Status/bench warrants served Hearings Domestic Violence Hearings
	9:30 a.m.	Domestic Motion Hour Uncontested Motions to Submit Temporary: custody/timesharing/child support/maintenance/status quo Motions for Final Hearing Dates: Divorce/Custody/Timesharing/Adoption/TPR Motions for: Mediation/Pre-trial/Case Management Conferences Motions for: Summary Judgment/Default Judgment/Show Cause/Contempt Motions to Compel Motions for Appointment/Fees: Guardian Ad Litem/Warning Order Attorney
	1:00 p.m.	Previously set Case Management Conferences/Final Evidentiary Hearings

D. Thursdays and Fridays are reserved for case management conferences, emergency, special and final evidentiary hearings as set by the Court in Breathitt, Powell or Wolfe County.

E. All motions shall be timely filed, noticed for hearing on a date and time certain, and served on all parties and counsel pursuant to 39FCRP 203. Counsel or parties may tender a proposed order, decree or judgment on or before the date of the hearing.

F. Every pleading, motion and any other paper filed in the record by counsel or party shall contain the case number, typed or printed name, address, telephone number, facsimile number and original signature of the attorney and/or party signing the paper, except when submitted by the Judge for filing. A rubber stamp shall not be deemed a signature either under this Rule or CR 11.

G. All orders, decrees and judgments tendered to the court shall contain the words "Prepared By" above the signature of the attorney or party tendering same and shall contain the Family Court Clerk's certificate of service to all parties and counsel.

H. Motions in Paternity/Child Support, Dependency, Neglect and Abuse, Status Offense and Domestic Violence actions shall be scheduled for the appropriate and regularly scheduled docket.

I. Emergency Dependency, Neglect and Abuse and Status motions may be heard on any day of the week, with appropriate notice to the parties, upon approval of an assistant county attorney and upon approval of the Family Court Judge. Non-emergency Dependency and Status motions shall be noticed for the appropriate and regularly scheduled docket.

J. Arraignments on paternity bench warrants served shall be heard on the appropriate and regularly scheduled Paternity docket or on the emergency docket with notice to the county attorney.

K. Motions in dissolution of marriage, custody, visitation/timesharing, adoptions, and termination of parental rights actions shall be heard on the appropriate and regularly scheduled Domestic Motion Hour docket.

202 EXCEPTIONS TO REGULAR MOTION HOUR SCHEDULE

There shall be no Motion Hour during any scheduled Judicial College or the Kentucky Bar Association Annual Meeting. If the courthouse is closed for any reason, i.e. Holiday, inclement weather, or the unavailability of the Family Court Judge, then all Motions shall be passed to the next appropriate regularly scheduled Motion Hour in that county unless otherwise ordered by the Family Court Judge.

203 DEADLINE FOR SERVING AND FILING MOTIONS

Motions to be placed on the Motion Docket shall be filed in the county of the proceeding and shall be filed in the Office of the Circuit Court Clerk in that county by the close of business no later than seven (7) days prior to the scheduled Motion Hour. Motion Hour in Powell County is scheduled on the first four (4) Mondays of each month. Motions to be heard on a Monday Motion Docket shall be filed and served on or before the close of business on the preceding Monday, unless that Monday falls on a holiday or a day when the Powell Circuit Court Clerk's Office is closed, in which event, by the close of business on the preceding Friday. Motion Hour in Wolfe County is scheduled on the first four (4) Tuesdays of each month. Motions to be heard on a Tuesday Motion Docket shall be filed and served on or before the close of business on the preceding Tuesday, unless that Tuesday falls on a holiday or a day when the Wolfe Circuit Court Clerk's Office is closed, in which event, by the close of the business day next preceding that Tuesday. Motion Hour in Breathitt County is scheduled on the first four (4) Wednesdays of each month. Motions to be heard on a Wednesday shall be filed and served on or before the close of business on the preceding Wednesday, unless that Wednesday falls on a holiday or a day when the Breathitt Circuit Court Clerk's Office is closed, in which event, by the close of the business day next preceding that Wednesday. All motions not timely filed shall be re-noticed for hearing on a date and time certain.

RULE 3 ADOPTIONS / TERMINATION OF PARENTAL RIGHTS

301 INSPECTION OF ADOPTION RECORDS

Applications to inspect Adoption Records may be obtained from the Circuit Court Clerk's Office and upon completion the Clerk will submit same to the Court (KRS 199.572).

302 TEMPORARY CUSTODY ORDER

Temporary Custody Orders granted pursuant to KRS 199.473(7) shall be SEALED, and not opened to inspection by persons other than the parties to such proceedings and their counsel.

303 ADOPTIONS /TERMINATION OF PARENTAL RIGHTS CASES

A. Motions in Adoption proceedings, including a motion for a final hearing date, shall be served on all parties/counsel and noticed for hearing on the Family Court Domestic Motion Hour docket in the county where the adoption case is filed. Pursuant to FCRPP 33(1), no request for a final hearing date shall be made prior to the filing of the state child protective service agency (CHFS) report pursuant to KRS 199.510, and the guardian ad Litem report, if any, pursuant to KRS 199.515. Upon assignment of a hearing date, the requesting party shall serve notice of the hearing to all necessary parties/counsel in accordance with KRS 199.515.

B. Motions in Involuntary Termination of Parental Rights proceedings, including motions for pretrial conferences and final hearing dates, shall be served on all parties/counsel and noticed for hearing on the Family Court Domestic Motion Hour docket in the county where the termination proceeding is filed. Pursuant to FCRPP 34 upon assignment of a hearing date, the requesting party shall serve notice to all necessary parties/counsel. If an order terminating parental rights is entered, a review hearing pursuant to FCRPP 36 shall be scheduled.

C. Pursuant to FCRPP 32(2)(a), termination of parental rights proceedings involving two (2) or more children with the same parent(s) whose rights are subject to termination must proceed by separate petitions for each child, but may be consolidated for hearing purposes only if ordered by the court.

RULE 4 DOMESTIC VIOLENCE PROTOCOL AND 24 HOUR ACCESS POLICY

401 PROCEDURES FOR FILING AND OBTAINING EMERGENCY PROTECTIVE ORDERS

The attached Appendix A, Twenty-Four Hour Accessibility to Emergency Protective Orders and Local Joint Jurisdiction Domestic Violence Protocol as approved by all Judges in the 39th Judicial Circuit and District and the Chief Justice, is incorporated herein and made a part of these Family Court Rules by reference. During regular office hours Monday – Friday, a verified petition for a Domestic Violence Order (DVO) and ex parte Emergency Protective Order (EPO) may be obtained and filed at the Circuit Court Clerk's Office located at the courthouse/justice center in each county in the 39th Judicial Circuit. After regular office hours and on weekends and holidays a petition for a Domestic Violence Order (DVO) and ex parte Emergency Protective Order (EPO) may be obtained from the County Sheriff or any sworn Sheriff's Deputy, the City Chief of Police or any sworn City Police Officer, any Kentucky State Police Trooper or the local 911/dispatch office (open 7 days a week, 24 hours a day) located in each county in the 39th Judicial Circuit. The petition may be verified and filed by any of the

aforementioned Law Enforcement Officers and a Law Enforcement Officer may be contacted by dialing 911 or the County/City Dispatch Office.

402 VIOLATION OF DOMESTIC VIOLENCE ORDERS

A. Without limiting a party's choice of remedies, alleged violations of Domestic Violence Orders should be referred to the Breathitt, Powell or Wolfe County Attorney's Office for possible prosecution, except as set forth in 402 (B).

B. Without limiting a party's choice of remedies, alleged violations of Domestic Violence Orders pertaining to visitation, child support, counseling, or firearms provisions should be initiated through the Breathitt, Powell or Wolfe Circuit Court Clerk's Office and scheduled for show cause/ contempt hearings on the Breathitt, Powell or Wolfe Family Court Domestic Violence Docket.

403 HEARINGS

Hearings of verified petitions for a Domestic Violence Order (DVO) shall be scheduled within fourteen (14) days of the issuance of an Emergency Protective Order (EPO) on the Family Court Domestic Violence Docket in the respective county of the proceeding. Cases will be heard in a timely manner. If parties require more than 15 minutes to present their evidence, the Court may assign the parties to a time at the end of the docket or the parties may be given another date.

RULE 5 PATERNITY

501 MOTION PRACTICE

A. Motions for wage assignments pursuant to KRS 403.215 and KRS 405.465, appointment of Guardian Ad Litem, for Guardian Ad Litem fees, appointment of Warning Order Attorney, for Warning Order Attorney fees, for show cause/contempt and to compel discovery shall be placed on the regular Paternity/Child Support Docket, with notice served on all parties/counsel.

B. Motions for default judgments for failure to plead or otherwise defend, as provided by the Rules of Civil Procedure, and motions for summary judgments shall be scheduled for hearing on the regular paternity/child support docket, with notice served on all parties/counsel.

C. Motions to modify, suspend, or terminate child support and to determine arrearages accrued on child support orders shall be scheduled for hearing on the regular paternity/child support docket, with notice served on all parties/counsel.

D. All matters relating to UIFSA Registration for Enforcement only of a foreign support order, including, but not limited to, contempt proceedings in such actions, shall be filed in and heard on the Family Court paternity/child support docket in the respective county, with notice served on all parties/counsel.

502 PRETRIAL PROCEDURES

Nothing in this Rule shall prohibit the parties from entering into an Agreed Judgment of Paternity and Order of Support and filing same for approval by the Court off docket, unless the Commonwealth of Kentucky, Cabinet for Health and Family Services (CHFS) is a party and/or providing benefits, in which case the Cabinet shall be notified prior to submitting the Order to the Court.

503 GUARDIAN AD LITEM APPOINTED FOR ACTIONS FILED PURSUANT TO KRS 406

A. Any licensed attorney in good standing with the Kentucky Bar Association may be appointed as a Guardian ad Litem. The attorney should have completed AOC approved guardian ad Litem training. The appointment is to be made and compensation paid according to the Statute, Case Law or Civil Rule authorizing the appointment.

B. Motions for compensation shall be accompanied by an affidavit indicating:

   a. The statutory basis for appointment;

   b. The hours of service rendered with a brief description of the services rendered and reasonableness of the fee requested; and

   c. That the action or proceedings have been concluded and date of disposition.

C. Guardians ad Litem appointed to represent unmarried infants, persons of unsound mind, or adult prisoners shall notify the respondent of his/her appointment as a Guardian ad Litem, and inform the respondent of the nature of the proceeding and of the respondent's right to have genetic testing conducted.

D. Within sixty (60) days of the appointment, the Guardian ad Litem shall file an answer on behalf of the respondent or a report stating that, after careful examination of the case, he/she is unable to present a defense.

E. The failure of the Guardian ad Litem to file an answer or report within sixty (60) days of notification of appointment may result in sanctions being imposed against the attorney and removal from the Family Court Guardian Ad Litem appointment list.

504 REOPENING FEE

Pursuant to FCRPP 14(1), a $50.00 reopening fee shall not be paid for motions in cases brought pursuant to Title IV-D of the Social Security Act for child support modification or enforcement. However, where an action is initiated pursuant to Title IV-D but subsequent motions regarding child support, custody or visitation are brought by a private attorney or are filed by a party pro se, rather than by Title IV-D counsel, the fee shall be charged unless the motion is brought in forma pauperis.

505 PERMISSION TO REVIEW AND COPY PATERNITY CASE FILES

Upon receipt by the respective 39th Circuit Court Clerk's Office of an attorney's statement seeking permission to review and copy a paternity case file, **OR** upon the receipt by the Circuit Court Clerk's Office of a party's signed and notarized release authorizing an attorney to inspect the party's paternity case file, for reasons relating to representation in that action of a party thereto, the Clerk's office shall grant the attorney access to such a file.

Pursuant to KRS 406.035, the attorney seeking permission to review and/or copy the paternity file shall sign a statement that the order of judgment is the only information which may be shared with the client and that all other information in the case cannot be disclosed to the client, including information relating to domestic violence or child abuse as well as the addresses of the parties. Regardless of the subsequent representation or non-representation of the party, any information contained in such file is confidential and subject to the attorney-client privilege.

506 ACCESS TO PATERNITY CASES FOR ATTORNEYS AND GUARDIANS AD LITEM REPRESENTING INCARCERATED PARENTS

The Offices of the Circuit Court Clerks in the 39th Judicial Circuit shall allow attorneys and Guardians ad Litem who are representing incarcerated parents in paternity cases to have access to the records of those actions.

RULE 6 DEPENDENCY, NEGLECT, AND ABUSE

601 PROCEDURE FOR EMERGENCY CUSTODY ORDERS

In the 39th Judicial Circuit (Breathitt, Powell and Wolfe Counties) the following procedures shall be followed to obtain an Emergency Custody Order as set forth in FCRPP 19:

A. Any person seeking an Emergency Custody Order may contact the Cabinet for Health and Family Services Office (CHFS), the county attorney's office or the circuit court clerk's office in their respective county as set forth below:

Breathitt County

Cabinet for Health and Family Services
1041 College Avenue
Jackson, Kentucky 41339
From 8:00 a.m. until 4:30 p.m. Monday - Friday - call (606)-666-7506
From 4:30 p.m. to 8:00 a.m. call 1-877-297-2331 or
After hours and on weekends and Holidays call Law Enforcement Agencies or dial 911

Brendon Miller, Breathitt County Attorney
1128 Main St.
Jackson, KY 41339
606-666-4400 or 3808
Fax: 606-666-4422

Powell County

Cabinet for Health and Family Services
P.O. Box 219
121 North Main Street
Stanton, Kentucky 40380
From 8:00 a.m. until 4:30 p.m. Monday –Friday - call (606)-663-2881
From 4:30 p.m. to 8:00 a.m. call 1-877-297-2331 or
After hours and on weekends and Holidays call Law Enforcement Agencies or dial 911

Hon, Robert G. King, Powell County Attorney
Powell County Courthouse
P. O. Box 8
Stanton, KY 40380
(606)663-6647
Fax (606)663-2303

Wolfe County

Cabinet for Health and Family Services
P.O. Box 446
13 Court Street
Campton, Kentucky 41301
From 8:00 a.m. until 4:30 p.m. Monday – Friday - call (606)-668-3101
From 4:30 p.m. to 8:00 a.m. call 1-877-297-2331 or
After hours and on weekends and Holidays call Law enforcement Agencies or dial 911

Hon. Stephen R. Johnson, Wolfe County Attorney
Wolfe County Courthouse
P. O Box 250
Campton, KY 41301
(606)668-3559
Fax (606)668-6868

B. The original Emergency Custody Order shall be filed in the appropriate Circuit Court Clerk's Office upon execution by a judge or trial commissioner or at 8:00 a.m. the next business day if the Clerk's Office is closed. The Clerk's Office shall forward a copy of the Emergency Custody Order to the Family Court Judge's office by e-mail on the date of filing.

C. After hours and on weekends and holidays, the Cabinet for Health and Family Services shall contact the 39th Judicial Circuit's Family Court Judge, or in his absence the local District Court Trial Commissioner, if any, or in his absence the District Court Judge to obtain an Emergency Custody Order. The Cabinet for Health and Family Services shall file the original Emergency Custody Order in the appropriate Circuit Court Clerk's Office at 8:00 a.m. on the next business day.

D. A Law Enforcement Officer may take a child into protective custody for up to twelve (12) hours pursuant to KRS 620.040(5)(c) pending the issuance of an Emergency Custody Order.

602 PETITONS

A. All petitions shall be filed in accordance with FCRPP 20 and shall be submitted to the local County Attorney or an Assistant County attorney, who shall check the petition for legal sufficiency prior to its filing and initial it upon approval. If the petition is rejected by the County Attorney, it shall be submitted to a Family Court Judge for determination of legal sufficiency. If the Judge determines that the petition fails to state grounds for action pursuant to KRS Chapter 620, the petition shall be dismissed. If the petition is approved, the Assistant County Attorney or Judge, as appropriate, shall initial the petition for filing. The original petition shall be filed in the 39th Judicial Circuit's respective Circuit Court Clerk's Office. A copy shall be distributed to the Assistant County Attorney assigned to prosecute the action. The Clerk's Office shall e-mail a copy of the petition to the Family Court Judge's office on the date of filing.

B. Any petition filed with this Court shall comply with the following conditions:

1. Citations to specific statute and factual allegations relied upon in asserting the Court's jurisdiction; and

2. Full information concerning the child's parents and their address(es). The petitioner shall make diligent efforts to locate the child's parents, including but not limited to, initiating contact with the Child Support Division of the local County Attorney's Office, friends and relatives of the parents and local jails.

603 THE EFFECTS OF SERVICE ON ONLY ONE PARENT/PERSONS EXERCISING CUSTODIAL CONTROL OR SUPERVISION

The judge may permit the Temporary Removal Hearing, the Adjudication Hearing and the Disposition Hearing to go forward when the non-custodial parent has not been served in accordance with FCRPP 18(1) if it is established on the record that petitioner has made diligent efforts to serve all other parties, including initiating contact with the Child Support Division of the County Attorney's Office in an attempt to locate any absent parent, and that parent is not the named perpetrator of the alleged neglect or abuse. The petitioner shall make continuing diligent efforts after the hearing to locate and notify all persons who were not served.

604 TIME FOR TEMPORARY REMOVAL HEARING

The Temporary Removal Hearing shall be held according to the following guidelines:

The Temporary Removal Hearing shall be scheduled on the Family Court Juvenile Dependency, Neglect and Abuse Docket if that docket will be held within 72 hours, excluding weekends and holidays, of the issuance of the Emergency Custody Order. If that docket will not be held within 72 hours, the Temporary Removal Hearing will be scheduled for an emergency hearing by the Judge within 72 hours of the issuance of the Emergency Custody Order.

605 GUARDIANS AD LITEM AND PARENT ATTORNEYS

The Court shall appoint a Guardian ad Litem for the minor child/children, and an attorney for any named party, parent or custodian upon their request and execution of a DNA 11 Financial Statement, Affidavit of Indigence and Request for Counsel Form and qualification.

606 DUTY OF GUARDIAN AD LITEM AND PARENT ATTORNEY TO CONTINUE

After a Guardian ad Litem or parent/party attorney accepts an appointment, representation shall continue through all stages of the dependency, neglect and abuse action, and termination of parental rights and adoption proceedings, if applicable.

607 RECORDS AND TRANSCRIPTS

A videotaped record of all proceedings shall be kept and copies shall be available to the parties and their counsel upon request in accordance with the provisions of FCRPP 27.

608 DISPOSITIONAL HEARING

A. Pursuant to FCRPP 28, the child protective services agency (CHFS) shall provide the court with the information required by completing and filing form DNA-12 in the respective Circuit Court Clerk's Office three (3) days prior to the Disposition Hearing. CHFS shall deliver or e-mail a copy of its DNA-12 dispositional report to the Family Court Judge's office five (5) days in advance of the disposition hearing date. Failure to timely submit the CHFS DNA-12 report to the Family Court Judge's Office may result in a continuance of the disposition hearing.

B. Pursuant to FCRPP 29, CHFS shall file the out of home case plan, any visitation agreement or case permanency plan and any prevention or safety plan developed by CHFS, in the respective Circuit Court Clerk's Office and provide a copy to all parties prior to the Disposition Hearing.

609 PERMANENCY HEARING/REVIEW HEARING/PERMANENT CUSTODY HEARING

Prior to any Permanency Hearing, Review Hearing and Permanent Custody Hearing, CHFS shall complete and file in the local Circuit Court Clerk's Office a Permanency Hearing or Review Hearing or Permanent Custody Hearing report and mail or hand deliver copies to all parties and counsel. A copy of said report shall be delivered or e-mailed to the Family Court Judge's office five (5) days in advance of the hearing date.

610 NOTICE TO FOSTER PARENTS

CHFS shall provide notice to all foster parents of all hearings scheduled by the Court and foster parents shall be given the right to be heard at all hearings.

611 ACCESS TO RECORDS

The Guardian ad Litem and attorneys for any party to a juvenile action shall have access to CHFS records and files for reasons relating to their representation in that action only. The information shall remain confidential and shall not be used by the attorney or party for any other purpose.

RULE 7 DOMESTIC RELATIONS PRACTICE

701 REQUIRED CASE INFORMATION

A. A Case Data Information sheet shall be filed with the petition (Form AOC-FC-3).

B. In any divorce or custody action where the parties/families are ordered to attend a counseling or education program the Circuit Court Clerk's Office shall provide a copy of the Case Data Information Sheet to the program coordinators.

C. Pursuant to FCRPP 2(6), no matter shall be scheduled for Final Hearing until a Case Management Conference has been held unless otherwise ordered by the court. Pursuant to FCRPP 2 and FCRPP 3, all parties shall submit Financial Disclosure Statements on the required AOC forms prior to the Case Management Conference, if applicable. Each party shall make a good faith effort at settlement at the Case Management Conference. Pursuant to FCRPP 3(4), the attorneys or parties, if pro se litigants, shall identify any expert witnesses they intend to call at the final hearing and produce any documents they intend to submit as exhibits at the final hearing prior to or at the Case Management Conference. A parties' Preliminary Verified Disclosure Statement may be adopted as his/her Final Verified Disclosure Statement if there have been no changes and the court has been given notice thereof.

D. Subject to FCRPP 2(6)(a), Status Quo Orders may be entered upon motion of any party with notice and opportunity to be heard by opposing parties.

E. Subject to FCRPP 3(1), attorneys or parties may file a Motion to Submit a dissolution matter for Final Decree, and submit same directly to the Judge for approval by the Court off-docket, which shall contain executed Notices and Waivers of Hearings and/or the requisite Financial Disclosure Statements required by the FCRPP along

with a Settlement Agreement, Jurisdictional Deposition and a proposed decree of dissolution of marriage.

F. All motions filed must have original signatures, except when submitted by the Judge for filing.

702 APPEARANCES, WAIVERS, AND AGREEMENTS

A. Any unrepresented party who signs and acknowledges an appearance and waiver or an agreement shall do so before a notary or deputy clerk.

B. No entry of appearance shall be signed prior to the filing of a petition.

C. All agreements and agreed orders shall contain the correct mailing addresses and telephone numbers for the attorneys and parties.

703 COURT ORDERED PARTY/FAMILY COUNSELING OR EDUCATION

The court may order counseling or divorce education in all proceedings for dissolution of marriage in which children of the marriage are minors, or in any custody proceeding, pursuant to FCRPP 3(5).

704 FINANCIAL DISCLOSURE REQUIREMENTS

The parties may enter into an agreed order waiving the filing of the AOC-238 and AOC-239, Preliminary and/or Final Verified Disclosure Statements, only in the following circumstances:

1. The parties have entered into an agreement which resolves all issues between them.

2. The parties' Separation Agreement or Agreed Order waiving disclosures acknowledges their right to receive disclosures from the other party and their agreement waives disclosures.

3. The parties' Separation Agreement or Agreed Order waiving disclosures contains the parties' acknowledgment that each has made full disclosure to the other of all information that would have been contained in the Final Verified Disclosure Statements.

   If the Court, in making its determination regarding the conscionability of the parties' Separation Agreement deems more information is necessary, the Court may subsequently order the filing of the Preliminary or Final Verified Disclosure Statements despite the parties' agreement to waive said financial disclosures.

705 METHOD OF FINAL HEARING

A. In all contested domestic relations actions, the parties may choose to have the case heard by the Family Court Judge rather than have the testimony taken by deposition. To exercise the option to have the case heard, Petitioner shall make the request in the

Pre-hearing Memorandum filed prior to the Case Management Conference. Unless the Respondent promptly objects prior to the date of the Case Management Conference, it will be considered that both parties have opted to proceed by oral testimony. All hearings shall be conducted on the video record.

B. Upon motion of any party or on its own motion, the Court may order that testimony of witnesses other than the parties be taken by deposition.

706 UNCONTESTED FINAL HEARINGS

A. An uncontested hearing is one in which the parties have agreed to all the necessary elements to dissolve the marriage contract, establish custody, timesharing, support and maintenance and divide the property and debts of the marriage or when respondent is in default or has been served by a Warning Order Attorney and a Warning Order Attorney Report has been filed.

B. In uncontested cases where there is a written Separation Agreement executed by both parties and filed in the record, the parties shall submit proof by deposition or written interrogatories. If parties reach an agreement on all issues, a decree of dissolution may be obtained without a hearing by filing an agreed motion or agreed order to submit in the Circuit Court Clerk's Office in the county where the case is filed and tendering a proposed decree of dissolution of marriage to the Family Court Judge and all the requisite information and attachments required by FCRPP 3(1). In the event no Agreed Order has been signed, either party may file a Motion to Submit in the Circuit Court Clerk's Office in the county where the case is filed and schedule same to be heard on the Family Court Domestic Motion Hour docket, serving notice to all parties and tendering a proposed decree of dissolution of marriage. Alternatively, either party may file a motion for an uncontested final hearing on oral testimony in the Circuit Court Clerk's Office in the county where the case is filed and schedule same to be heard on the Family Court Domestic Motion Hour docket, serving notice to all parties and tendering a proposed decree of dissolution of marriage. Upon assignment of a final hearing date, the requesting party shall serve notice of the hearing to all parties. In uncontested cases involving minor children, a child support worksheet shall be provided so the Court can determine whether any deviation therefrom is proper.

707 CONTESTED FINAL HEARINGS

A. A contested hearing is one in which the parties have not agreed upon the division of property, debts, custody, timesharing, support, maintenance, or any one of these elements, and the taking of evidence is necessary to permit the Court to render a determination.

B. Prior to scheduling a contested final hearing, pursuant to FCRPP 2(6), a Case Management Conference shall be held in all contested cases with counsel and parties in attendance.

C. An attorney or party may schedule a Case Management Conference by filing a motion for same in the Circuit Court Clerk's Office in the county where the case is filed and scheduling the motion to be heard on the Family Court Domestic Motion Hour

Docket, serving notice on all parties. Except for good cause shown, no Case Management Conference will be scheduled unless court ordered Parent/family counseling, other than perpetrator or victim counseling in domestic violence cases, has been completed (if necessary) and the AOC-239, Final Verified Disclosure Statements, have been filed.

D. At least ten (10) days prior to the Case Management Conference each party shall file a Pre-Hearing Memorandum which shall include the following information:

1. All issues in dispute and citations of case law and authority in support of the party's position.

2. All issues resolved by stipulation or agreement.

3. Income Expense Schedule:

   a. Employment status, including income and deductions therefrom;

   b. Income from sources other than employment;

   c. Present monthly expenses;

4. Property Schedule and proposed division of:

   a. Marital real estate including the fair market value and the unpaid balance of any liens thereon;

   b. Marital personal property including the value and the unpaid balance of any liens thereon;

   c. Marital debts including the dates incurred and the balance thereon;

   d. Non-marital real estate including the fair market value, the balance of any liens thereon, and the legal basis relied upon to support such a designation;

   e. Non-marital personal property including the value, the balance of any liens thereon, and the legal basis relied upon to support such a designation;

   f. Non-marital debts including the date incurred and the balance thereon.

5. A List of all witnesses, both expert and lay, a brief statement of the issues about which the witness will testify and any preliminary or final report from all expert witnesses.

6. A List of all documents and exhibits intended to be introduced at the final hearing.

7. Statement of special problems.

8. In contested child custody matters:

   a. A brief statement supporting the party's position on custody and timesharing and citations of any case law and authority in support of the party's position.

   b. A List of all cases involving the child/children including, but not limited to, juvenile, criminal and custody matters.

9. In contested child support matters:

   a. Attach a Child Support Guidelines Worksheet;

   b. A brief statement of the issues in dispute and citations of any case law and authority in support of the party's position.

10. Estimated length of hearing and whether testimony is to be taken by deposition or by oral testimony before the Court.

E. In the event either party fails to file the Pre-hearing Memorandum or either party files an incomplete Pre-hearing Memorandum, the Family Court Judge may order such remedies in regard to the failure that are just, including, but not limited to the following:

   1. The matters set forth in the compliant party's schedule may be taken as established;

   2. The noncompliant party may be prohibited from introducing designated matters into evidence;

   3. The Court may stay further proceedings until the noncompliant party is in compliance; and/or

   4. The Court may assess all costs, including attorney's fees, against the noncompliant parties;

708 TIME-SHARING/VISITATION GUIDELINES

The Time-Sharing/Visitation Guidelines attached as Appendix B are incorporated herein by reference and may be used by the parties and the Court subject to the specific facts in each case.

709 MEDIATION

A. MEDIATION

A party may file a motion for mediation and notice same to be heard on the Family Court Domestic Motion Hour Docket or the parties may agree to mediate at any time or the Court, on its own motion, may order the parties to mediate any issues before further proceedings. If ordered by the court pursuant to FCRPP 2(6), the parties shall

engage in mediation unless the exceptions provided under KRS 403.036 apply. The parties may choose their own mediator or, if the parties are unable to agree, each party shall submit the names of three (3) mediators to the court and the Court will choose one. All mediators must be certified and/or appear on the roster of trained mediators maintained by the Kentucky Administrative Office of the Courts prior to being appointed by the Family Court.

B. REQUIREMENTS FOR PROPERTY MEDIATION

The parties shall exchange and provide to the mediator, in no less than five (5) working days prior to the mediation conference, the following:

1. Supplement to financial disclosure statement regarding any material change:

2. A short statement including definition of the issues to be addressed by the mediator and a brief narrative statement of any special problems affecting the case (e.g. closely held corporation, medical problems of any family member, etc.).

   a. Copies of all documents supporting valuation of assets;

   b. Copies of all documents verifying monthly payments and outstanding balances on all debts; and

   c. All information and copies of all documents requested by the mediator prior to the mediation conference.

C. ADJOURNMENT

The mediator may suspend or terminate mediation whenever, in the opinion of the mediator, the matter is not appropriate for further mediation or at the request of either party.

D. COUNSEL

The parties shall attend the mediation conference and shall appear promptly at the time and location for the scheduled mediation conference. The attorneys for each party may attend and participate, subject to the defined roles of the mediator, and shall at all times be permitted to privately communicate with their respective clients.

E. COMPENSATION OF MEDIATOR

1. The mediator shall be compensated at the rate agreed upon by the mediator and the parties.

2. The mediator's fee may include, but is not limited to:

   a. Mediation sessions;

   b. Preparation for sessions;

c. Travel time;

d. Postponement or cancellation of mediation sessions by the parties and the circumstances under which such charges will normally be assessed or waived; and

e. Preparation of the parties' written mediation agreement if prepared by the mediator.

F. COMPLETION OF MEDIATION

1. At the conclusion of mediation, the mediator shall file a report with the Court regarding the outcome of the mediation, (i.e. a full agreement, partial agreement or mediation terminated). A termination or non-agreement shall be without prejudice to either party.

   a. Handwritten or recorded mediation agreements must be typed and signed by all parties and their counsel, if any, within ten (10) working days.

2. The Court shall retain final authority to accept, modify, or reject an agreement.

3. If a case is settled prior to or during mediation, attorneys and pro se litigants shall prepare and submit to the court an order reflecting the fact of settlement and remand any pending hearings concerning resolved issues.

4. If some but not all of the issues in the case are settled during mediation or if agreements are reached to limit discovery or on any other matter, the parties shall submit a joint statement to the court indicating the issues that have been resolved and the issues that remain for trial. This statement shall be submitted within ten (10) days of the termination of mediation. Unsettled cases shall then be returned to the Court's active docket.

G. CONFIDENTIALITY

1. Mediation proceedings shall be held in private and all communications, verbal or written, made in the proceedings shall be confidential. The same protection shall be given to communications between the parties in the presence of the mediator. The only exception to this Rule is that the mediator shall be responsible for reporting abuse according to KRS 209.030, KRS 209A.030 and KRS 620.030.

2. All conduct and communications made during a mediation conference shall be treated as settlement negotiations and shall be governed by K.R.E. 408.

3. Mediators shall not be subpoenaed regarding the disclosure of any matter discussed during the mediation which is considered confidential. This privilege and immunity resides with the mediator and may not be waived by the parties.

RULE 8. STATUS OFFENSES

801 JUVENILE STATUS OFFENSE PROCEEDINGS

If there is a pending Family Court Juvenile Status proceeding in the 39th Judicial Circuit and there is also a pending District Court proceeding regarding the same juvenile in the 39th Judicial Circuit, the Family Court shall transfer the matter to the District Court for disposition.

802 JUVENILE STATUS OFFENDER ORDERS

If a Status Offender Order (JV36) has been entered and has expired (after one (1) year), then no pre-trial diversion efforts will be required upon a new violation and prior to a new petition being filed, within a one (1) year period after the expiration of the Status Offender Order (JV36).

RULE 9 MISCELLANEOUS

901 PROTECTION OF PERSONAL IDENTIFIERS

A. The Family Court Case Data Sheet must be fully completed in all cases. In addition, all pleadings must comply with the requirements of KRS Chapters 205, 403, 405, 406 and 407 by providing the personal identifying information required in those chapters. However, except as set forth in paragraph B below, where personal identifiers are required by statute or contained in other documents or exhibits filed with the court pursuant to the above-stated chapters, parties shall comply with CR 7.03(1)(b) by filing one copy from which any personal data has been redacted and filing an un-redacted copy in a marked and sealed envelope. The clerk of the court shall allow the un-redacted sealed copy of the pleading, document, or exhibit containing personal identifiers to be accessed only by a party to the case, an attorney of record in the case, a judge of the court or other authorized court personnel, a duly authorized employee or agent of the Cabinet for Health and Family Services involved in child support matters attendant to the case, or a person authorized to view the copy by specific orders of the court.

B. As used in this section, "personal identifier" means a Social Security number or tax-payer identification number, date of birth, or financial account number.

C. Pleadings, documents, or exhibits filed in actions deemed confidential by statute need not be redacted, and any access to those files shall be governed by 39FCRP and by KRS 199.570, KRS 610.340, KRS 625.045 and KRS 625.108.

902 VIDEO COPIES OF IN-CHAMBER INTERVIEWS WITH CHILDREN

Pursuant to FCRPP 17, the Circuit Court Clerk's Offices in the 39th Judicial Circuit shall not release any copies of Family Court video in-chamber interviews with a child(ren) without a specific written order from the presiding Family Court Judge. An individual requesting such an order must file a written motion, for the request which specifically indicates the portion of the video record being requested is an in-chamber interview with a child, and set forth the reason for the request and the proposed use thereof.

903 REQUESTS FOR CONFIDENTIAL VIDEO RECORDS

The Circuit Court Clerk's Office in the 39th Judicial Circuit shall not release any copies of a Family Court confidential video record without a specific written order from the presiding Family Court Judge. An individual requesting such an order must file a written motion, with notice to all parties, including the Guardian ad Litem, if any, and set forth the reason for the request and purposed use thereof.

Except that, pursuant to KRS 610.340(2), this shall not apply to public officers or employees engaged in the investigation and prosecution of cases under KRS Chapters 600 through 645 or other prosecutions authorized by the Kentucky Revised Statutes, as certified by that public officer or employee. Said public officer or employee shall use and distribute this information only for investigation or prosecution of offenses under the Kentucky Revised Statutes.

904 CONSOLIDATION AND JOINING TOGETHER OF RELATED ACTIONS

If a case involves the same parties and common questions of law or fact the parties shall file a motion to consolidate or join actions or the Court may consolidate the actions on its own motion. Pursuant to CR 42.01 common issues may be heard in both cases simultaneously but the files shall be maintained separately.

This the 30th day of March, 2012.

Larry W. Miller 3-30-12
Hon. Larry Miller
Family Court Judge
39th Judicial Circuit

Frank A. Fletcher 3/30/12
Hon. Frank A. Fletcher
Circuit Court Judge
39th Judicial Circuit

Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING AMENDMENT TO APPENDIX A OF THE RULES OF COURT PRACTICE AND PROCEDURE FOR THE 39TH JUDICIAL CIRCUIT, FAMILY COURT DIVISION, BREATHITT, POWELL AND WOLFE COUNTIES

Upon the recommendation of the Judges of the 39th Judicial Circuit, Breathitt, Powell and Wolfe counties, and being otherwise sufficiently advised,

The amendment to Appendix A of the Rules of Court Practice and Procedure for the 39th Judicial Circuit, Family Court Division, is 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 11th day of December 2015.

CHIEF JUSTICE

TWENTY-FOUR HOUR ACCESSIBILITY TO PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION PROTOCOL
39th JUDICIAL CIRCUIT AND DISTRICT
BREATHITT, POWELL and WOLFE COUNTIES

Pursuant to KRS 403.735 and KRS 456.030, and in compliance with Family Court Rule of Practice and Procedure Section IV, this local protective order protocol is established to ensure twenty-four hour accessibility to emergency protective orders (EPOs) and temporary interpersonal protective orders (TIPOs) and to establish written procedures for matters in which there may be joint jurisdiction between the Circuit/Family and District Courts.

I. Uniform Protocol for Handling Cases

A. All petitions requested, completed and signed by persons seeking protection under KRS Chapter 403 or KRS Chapter 456 shall be made on form AOC-275.1, and shall be accepted and filed with the court. KRS 403.725, KRS 456.030.

B. All protective order cases must be processed consistent with the rules and procedures set forth in the Kentucky Circuit Court Clerk's Manual.

C. 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.

D. "No drop" policies, which place limitations on a petitioner's right to modify or withdraw a petition for a protective order, are not permitted. Pursuant to KRS 403.740 and KRS 456.060, any orders for relief issued directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse, dating violence and abuse, stalking, or sexual assault shall not order the petitioner to take any affirmative action.

E. Cases may be reassigned within the judicial circuit and, pursuant to FCRPP 12, a case may be transferred to another circuit if there is a pending dissolution or custody matter. If reassignment or transfer occurs, the issuing judge shall re-issue a summons until the receiving judge may hear the matter.

F. The court shall review a petition for a protective order immediately upon its filing. KRS 403.730, KRS 456.040. Petitioners shall not be sent away or left waiting for extended periods of time. Petitions should be reviewed within an hour of presentation to a judge or trial commissioner unless impossible due to no judge or trial commissioner being available.

II. Twenty-four Hour Accessibility

A. The following agencies and officers are authorized to take protective order petitions and administer oaths to petitioner **during** regular business hours:

i. BREATHITT COUNTY

The Breathitt Circuit Court Clerk or any Breathitt Deputy Clerk
Breathitt County Judicial Center
1131 Main Street
Jackson, Kentucky 41339
Phone: (606) 666-5768
Regular Business Hours: Monday-Friday 8:00 a.m. to 4:00 p.m.

ii. POWELL COUNTY

The Powell Circuit Court Clerk or any Powell Deputy Clerk
Powell County Courthouse
52 Washington Street
Stanton, Kentucky 40380
Phone: (606) 663-4141
Regular Business Hours: Monday and Friday 8:00 a.m. to 6:00 p.m.
Tuesday, Wednesday & Thursday 8:00 a.m. to 4:30 p.m.

iii. WOLFE

The Wolfe Circuit Court Clerk or any Wolfe Deputy Clerk
Wolfe County Judicial Center
Hwy 191
Campton, Kentucky 41301
Phone: (606) 668-3736
Regular Business Hours: Monday-Friday 8:00 a.m. to 4:00 p.m.
(5:00p.m. on the 1st Friday of each Month)

B. The following agencies and officers are authorized to take protective order petitions and administer oaths to petitioner **after** regular business hours and weekends:

i. BREATHITT COUNTY

The Breathitt County Sheriff or any Breathitt County Deputy Sheriff
Any Officer of the Jackson Police Department
Any member of the Kentucky State Police

Call 911 or Jackson City Dispatch at (606) 666-2424

ii. POWELL COUNTY

The Powell County Sheriff or any Powell County Deputy Sheriff
Any Officer of the Stanton or Clay City Police Department

Any member of the Kentucky State Police

Call 911 or Powell County Emergency Dispatch at (606) 663-4116

iii. WOLFE COUNTY

The Wolfe County Sheriff or any Wolfe County Deputy Sheriff
Any member of the Kentucky State Police

Call 911 or Jackson City Dispatch at (606) 666-2424

C. Upon receipt of a petition **during** regular business hours, the authorized agency/officer shall present the petition to the following:

i. The verified petition shall be presented to the 39th Judicial Circuit's Family Court Judge. However, if the Family Court Judge is absent or otherwise unavailable the petition shall be presented to the Trial Commissioner for the county of the petition's origin, if any. In the event that Trial Commissioner is absent or otherwise unavailable or the petition's county of origin is Wolfe County, then the petition shall be presented to the District Court Judge in the 39th Judicial Circuit.

ii. If neither the Family Court Judge, Trial Commissioner or District Court Judge is available, then the petition shall be presented to the General Jurisdiction Circuit Court Judge for the 39th Judicial Circuit.

iii. In the event no judge or trial commissioner can be found within the 39th Judicial Circuit then the petition may be presented to any Family Court Judge, District Court Judge or Circuit Court Judge in any surrounding county pursuant to the Regional Program Administration Charter.

D. Upon receipt of a petition **after** regular business hours, the authorized agency/officer shall present the petition to:

i. The verified petition shall be presented to the 39th Judicial Circuit's Family Court Judge. However, if the Family Court Judge is absent or otherwise unavailable the petition shall be presented to the Trial Commissioner for the county of the petition's origin, if any. In the event that Trial Commissioner is absent or otherwise unavailable or the petition's county of origin is Wolfe County, then the petition shall be presented to the District Court Judge in the 39th Judicial Circuit.

ii. If neither the Family Court Judge, Trial Commissioner or District Court Judge is available, then the petition shall be presented to the General Jurisdiction Circuit Court Judge for the 39th Judicial Circuit.

iii. In the event no judge or trial commissioner can be found within the 39th Judicial Circuit then the petition may be presented to any Family Court Judge,

District Court Judge or Circuit Court Judge in any surrounding county pursuant to the Regional Program Administration Charter.

iv. Once an Emergency Protective Order or Emergency Interpersonal Protective Order has been signed by a Judge or Trial Commissioner, the Order shall be sent with the Petition to LINK for entry. Upon service and LINK entry, the Petition shall be returned to the appropriate Circuit Court Clerk's Office to be assigned either to the Family or District Court as set out in this protocol.

III. Assignment of Cases

A. Pursuant to KRS 403.735 and KRS 456.030, jurisdiction over petitions filed under this chapter is concurrent between district, circuit, and family court.

B. The judge reviewing a petition for an order of protection shall indicate in the "Court Action" section of the petition whether the resulting action is a domestic violence action under KRS Chapter 403 or an interpersonal protective order action under KRS Chapter 456.

C. The circuit clerk shall assign interpersonal protective order cases to the District Court.

D. The schedule for hearings on protective orders is as follows:

i. DOMESTIC VIOLENCE ORDER HEARINGS:

a. Breathitt County: 1st, 2nd, 3rd and 4th Wednesdays at 9:00 a.m.
b. Powell County: 1st, 2nd, 3rd and 4th Mondays at 9:00 a.m.
c. Wolfe: 1st, 2nd, 3rd and 4th Tuesdays at 9:00 a.m.

ii. INTERPERSONAL PROTECTIVE ORDER HEARINGS:

a. Breathitt County: Each Monday at 11:00 a.m.
b. Powell County: Each Tuesday at 11:00 a.m.
c. Wolfe: Each Wednesday (except the 1st Wednesday each month) at 11:00 a.m.

E. Cases may be reassigned or transferred between courts if it is determined that there are other actions pending or circumstances indicate that review by the other court is proper. KRS 403.725, KRS 456.030. If reassignment or transfer occurs, the issuing judge shall re-issue a summons until the receiving judge may hear the matter.

IV. Contempt Proceedings

A. Pursuant to KRS 403.763 and KRS 456.180, civil and criminal proceedings for violation of a protective order for the same violation of a protective order shall be mutually

exclusive. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.

B. Petitioners seeking to initiate contempt proceedings should contact:

   i. Their respective County Attorney's Office if they seek to file criminal charges, OR
   ii. Their respective Circuit Court Clerk's Office if they seek to file civil contempt charges.

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

The undersigned hereby acknowledge that all general orders, forms, policies and procedures relating to domestic violence within the judicial circuit are attached to this protocol and incorporated by reference.

All judicial officers in the 39th Judicial Circuit adopt the above protocol this 25th day of November 2015.

Hon. Larry Miller
Family Court Judge
39th Judicial Circuit

Hon. Frank A. Fletcher
Circuit Court Judge
39th Judicial Circuit

Hon. Kenneth R. Profitt
District Court Judge
39th Judicial Circuit

APPENDIX B: TIME-SHARING/VISITATION GUIDELINES

39TH CIRCUIT VISITATION/TIME-SHARING GUIDELINES

Time-sharing/visitation is for the child to do things with the parent with whom they do not normally reside. Parents are urged to teach their child skills and engage in activities that make the time rewarding, such as helping the child find friends in your neighborhood to make it more like home to them. The Family Court in the 39th Judicial Circuit encourages liberal time-sharing/visitation arrangements, as contact with both parents is important to the child(ren). Parents are free to agree, and are encouraged to agree, to additional time-sharing/visitation that is beneficial to the child and convenient for the parents. The Court may make changes or modifications to such arrangements if the need for such is shown.

In the event that parents cannot agree on the time and places of visitation, the Court will establish a time-sharing/visitation schedule based on the unique facts or circumstances of each case, with times set for time-sharing/visitation based on the time zone where the child primarily resides. The following guidelines shall not be used as a default, but rather establish the basis from which the parties or the Court establish a schedule. The temporary or final schedule adopted may or may not include some or all of these provisions.

VISITATION SHALL BE AT SUCH TIMES AND PLACES
AS THE PARTIES MAY AGREE
THIS WILL NOT NORMALLY BE LESS THAN:

For time-sharing/visitation times pertaining to school holidays, whether in a formal school or home-schooled, the school holidays where the child(ren) primarily resides should apply. For the first full year after a divorce or custody proceeding has been filed, and alternating years thereafter, the parent exercising time-sharing/visitation should have no less than the following time-sharing/visitation schedule:

1. WEEKENDS: The parent exercising time-sharing/visitation should be given a minimum of every other weekend from Friday at 5:30 pm until Sunday at 6:00 pm, for all children 12 months of age or older and from 10:00 am until 6:00 pm on Saturday and Sunday, for all children less than 12 months of age. The non-residential parent exercising time-sharing/visitation should be responsible for timely picking up the child(ren) at the beginning of

the time-sharing/visitation period and returning the child(ren) in a timely manner at the end of the time-sharing/visitation period to an exchange site ordered by the court or agreed to by the parents. Each parent should provide to the other parent, contact numbers and addresses, unless a domestic violence order is in effect) where the child(ren) can be located during their scheduled time-sharing/visitation time and agree on specific times for reasonable telephone communication.

2. MIDWEEK: The parent exercising time-sharing/visitation shall have one midweek time-sharing/visitation on Wednesday (or such other day as the parties may agree upon) from 5:30 until 8:30 p.m..

3. HOLIDAYS: The time-sharing/visitation schedule set out below for holidays, school breaks and summer breaks shall control over regular time-sharing/visitation periods, even if this allows successive time periods. These holiday schedules apply whether the child(ren) is/are in formal school or home-schooling, and shall be based on the school holiday schedule where the child(ren) primarily resides:

a. If a holiday falls on a Monday following a parent's regularly scheduled timesharing/visitation, then that parent shall be allowed to their extend parenting time until 6:00 p.m. on the holiday unless the parents agree otherwise. Memorial Day and Labor Day attach to the preceding weekend.

b. In the first full year after the divorce or custody action and each alternate year thereafter, ***the non-residential parent should have holiday time-sharing/visitation scheduled as follows:***

   1. **New Year's Day** and **July 4th**, from 9:00 am until 6:00 pm
   2. **Thanksgiving break,** beginning 6 pm the day school ends until 3 pm Thanksgiving Day.
   3. **Christmas/Winter Break**, beginning at 6 pm the day school ends until noon on Christmas Day, December 25.
   4. **Other Holidays,** not specifically listed above that are of special interest to the family, such as religious holidays, or national holidays, shall be assigned to the non-residential parent in time amounts similar to those in (1), (2) and (3) above & alternated each year between the parents.

c. Holiday time not scheduled above to the parent exercising time-sharing/visitation should be with the other parent.

d. Mother's Day and Father's Day, regardless of any conflict with the above schedule, shall be spent with the appropriate parent from 10:00 am until 7:30 pm

e. A holiday falling on a weekend shall be spent with the parent who would normally have the child(ren) for that holiday and the rest of the weekend shall be spent with the parent who would normally have that weekend. These do not have to be made up.

f. Alternating years: For each year thereafter, the time-sharing/visitation set out above should alternate between the parent with whom the child(ren) primarily resides and the parent exercising time-sharing/visitation.

4. **FALL OR SPRING BREAK** as allowed by the child(ren)'s school calendar, should be scheduled for the parent with whom the child(ren) primarily resides in the first full year after the divorce/custody proceedings are filed from 6:00 p.m. the day school ends until 6:00 p.m. the following Friday. If school breaks are longer than one week due to the school schedule, the parent with whom the child(ren) primarily resides should be scheduled for the first half of the break and the other parent should be scheduled for the last half.

5. **SUMMER BREAK** should be scheduled to allow the parent exercising time-sharing/visitation a minimum of two periods of two consecutive weeks during the summer break. Each parent should provide written notice of the time periods he or she desires to the other parent. The non-residential parent should provide the residential parent with written notice of the time periods he or she desires during summer break by May 1st. The residential parent should provide the non-residential parent exercising time-sharing/visitation with written notice of any vacation or special plans by May 1st. The parents should have resolved any scheduling conflicts by May 15th. If children must attend summer school in order to pass to the next grade, summer time-sharing/visitation should not prevent school time. If either parent plans a vacation with their child(ren) out of town, that parent should provide the other parent with a general vacation itinerary and with telephone contact numbers during the out of town vacation.

6. **BIRTHDAYS:** Unless the Birthday falls on a regularly scheduled time-sharing/visitation day, the parent exercising time-sharing/visitation shall have Birthday time from 5:00 pm until 8:00 pm. If the birthday falls on a regular time-sharing/visitation day the custodial parent shall have Birthday time from 5:00 pm until 8:00 pm.

7. **WAITING/TARDINESS/CANCELLATIONS:** The custodial parent and child(ren) have no duty to wait on the non-residential parent exercising time-sharing/visitation for more than 30 minutes.

a. A parent who is late forfeits that time-sharing/visitation period, unless he or she provided prior direct notice to the other parent.

b. If a parent will be more than 30 minutes late, due to reasonable unforeseen circumstances, he or she shall provide direct notice to the other parent or a designated 3rd party and make arrangements for the exchange of the child(ren).

c. If a time-sharing/visitation period is missed through no fault of the parent and reasonable notice was given, that time shall be made up.

d. If the child(ren) is/are ill, the parent who has the child(ren) shall give 24-hour notice, if possible, to the other parent to allow for an appropriate plan to be made. Time lost due to child(ren)'s illness shall be made up.

e. The non-residential parent exercising visitation/ time-sharing shall give 24-hour notice of cancellation of scheduled time-sharing/visitation periods, and cancelled times are forfeited.

f. A custodial parent, or acceptable representative, must be present at the return time to receive the child(ren).

8. TRANSPORTATION: The parents shall transport the child(ren) in a safe manner, which includes the use of an appropriate child restraint system and not driving under the influence of any intoxicants, including alcohol, illegal drugs or prescription medications.

Please put the interests of your child first, and comply with the above provisions.