

# Supreme Court of Kentucky

## ORDER

**IN RE: ORDER APPROVING THE LOCAL RULES OF PRACTICE AND PROCEDURE FOR THE 44TH JUDICIAL CIRCUIT, BELL CIRCUIT COURT**

Upon recommendation of the Judges of the 44th Judicial Circuit, Bell Circuit Court, and being otherwise sufficiently advised,

The Local Rules of Practice and Procedure for the Bell 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 the 14th day of April 2012.

  
CHIEF JUSTICE JOHN D. MINTON, JR.

RULES OF PRACTICE AND PROCEDURE  
FOR THE FORTY-FORTH JUDICIAL CIRCUIT  
BELL CIRCUIT COURT



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RULES OF PRACTICE AND PROCEDURE  
FOR THE 44TH JUDICIAL CIRCUIT  
BELL CIRCUIT COURT

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SECTION I: GENERAL RULES

**RULE 1: INTRODUCTION; ADMINISTRATIVE PROCEDURE**

**Rule 101. Preface**

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

2. These rules of practice and procedure are intended to supplement the Rules of Civil Procedure (CR), the Rules of Criminal Procedure (RCr), and the Family Court Rules of Procedure and Practice (FCRPP).

3. The rules of practice and procedure contained in Section II below shall apply in all actions described in FCRPP 1(2) that are initiated in, or transferred to, the Bell Circuit Court. The rules of practice and procedure contained in Sections I, III, and V shall also apply to such actions to the extent not inconsistent with any provision of any rule contained in Section II, in which case the rule contained in Section II shall govern.

**Rule 102. Effective Date**

These Rules of Practice and Procedure shall be effective once approved by the Chief Justice of the Supreme Court of Kentucky. Until that time, the Court shall continue to operate under rules of practice and procedure of the Bell Circuit Court now in effect.

**Rule 103. Title and Citation**

These rules shall be known as the Bell Circuit Court Rules of Practice and Procedure, and may be cited as such, or, in shorter form, as the Bell Circuit Rules of Practice, or, in abbreviated form, as "BCRP."

**Rule 104. Sessions**

The 44<sup>th</sup> Judicial Circuit, Bell Circuit Court, is a Court of continuous session. Cases are scheduled for trial at the discretion of the Court.

**Rule 105. Holidays**

The Court shall be closed on the following holidays, subject to the policies of the Kentucky Administrative Office of the Courts:

New Year's Day  
Martin Luther King, Jr. Day  
Memorial Day  
Independence Day  
Labor Day  
Veterans' Day  
Thanksgiving Day  
Christmas Day

An extra day is allotted for the New Year's Day, Thanksgiving Day, and Christmas Day holidays in accordance with the policy of the Kentucky Administrative Office of the Courts. When a holiday falls on a Saturday or a Sunday, it shall be observed by the Court on a business day as determined by the Kentucky Administrative Office of the Courts.

**Rule 106. Use of Equipment During Court Proceedings**

1. If a party to any action desires to make use of the Court's equipment, including electronic equipment, during any court proceeding, that party shall provide the Court at least twenty-four (24) hours notice of the desire to do so and specify to the Court the equipment of which the party desires to make use and the intended purpose for such use.

2. If a party to any action desires to make use of the party's own equipment, including electronic equipment, during any court proceeding, that party shall make such equipment ready for use at least one (1) hour before the commencement of the court proceeding.

3. If a party to any action expects to require the aid of Court personnel in the readying, placement, or operation of the Court's equipment or the party's own equipment, that party shall provide at least twenty-four (24) hours notice to the Court of such expectation.

## **RULE 2: COURT SCHEDULING; MOTION PRACTICE; PROCEDURES FOR FILING**

### **Rule 201. Regular Motion Days**

1. *Civil Motion Days.* (a) All civil motions, except those pertaining to an action described in Rule 1(2) of the Family Court Rules of Procedure and Practice, shall be scheduled for a hearing on the second (2<sup>nd</sup>) and fourth (4<sup>th</sup>) Mondays of each month at 9:00 A.M. Eastern Time.

(b) All civil motions pertaining to an action described in Rule 1(2) of the Family Court Rules of Procedure and Practice shall be scheduled for a hearing on the second (2<sup>nd</sup>) and fourth (4<sup>th</sup>) Mondays of each month at 1:30 P.M. Eastern Time.

2. *Criminal Motion Days.* All criminal motions shall be scheduled for a hearing on the first (1<sup>st</sup>) and third (3<sup>rd</sup>) Mondays of each month at 9:00 A.M. Eastern Time.

### **Rule 202. Exceptions to Regular Motion Days**

1. When the days on which the Court is closed for the holidays described in Rule 105 above include a regularly scheduled motion day as set out in these rules, any motion that might have been noticed for that motion day shall be scheduled for the next available appropriate motion day. The Court, in its discretion, may permit individual motions to be heard on an earlier day upon good cause shown, or may reschedule the motion day falling on a holiday for another day, in which case the Court will so inform the Office of the Bell

Circuit Court Clerk prior to thirty (30) days before the holiday. The Office of the Bell Circuit Court Clerk shall disclose the rescheduled motion day upon the request of any person.

2. A motion may be scheduled for a hearing on a day other than that described in Rule 201 above only as provided in paragraph 1 above, or upon leave of Court.

#### **Rule 203. Arraignments**

1. Arraignments in Circuit Court shall be scheduled for the third (3<sup>rd</sup>) Friday of each month at 9:00 A.M. Eastern Time.

2. An arraignment may be scheduled for a day other than that described in paragraph 1 above only upon leave of Court.

#### **Rule 204. Pretrial Conferences**

1. *Civil Actions.* (a) Counsel to parties in a civil action shall, prior to a pretrial conference, consult with their respective clients regarding the scope of authority to settle, and the predisposition of the clients toward settlement, and shall make a good faith effort to explore an possibility of settlement.

(b) At scheduled pretrial conferences in civil actions, the parties shall be prepared to consider and discuss any relevant matters that may expedite the economical disposition of the action, including, but not limited to: (i) whether the pleadings are completed and all issues of fact have been joined; (ii) the progress or completion of discovery, whether a good faith effort to complete discovery has been, or is being, made, and any allegations of non-compliance; (iii) the stipulation of undisputed facts; (iv) material points of law; (v) the nature of the case, the theories of the parties, admitted facts, and facts remaining in dispute; (vi) the exchange of any documents or exhibits to be employed at trial, including medical reports, lab reports, and evidence of special damages, including medical bills; (vii) any foreseeable special accommodations or considerations for witnesses; and (viii) the estimated length of trial.

(c) The Court may at any pretrial conference order the parties to submit memoranda of law regarding any issues expected to arise at trial.

2. *Criminal Actions.* (a) At scheduled pretrial conferences in criminal actions, the parties and counsel shall be present, along with the chief prosecuting witness(es), if practicable.

(b) At such times, the parties shall be prepared to inform the Court of any alleged non-compliance by the opposing party with any discovery or reciprocal discovery previously ordered by the Court.

(c) Counsel for a defendant shall, prior to a pretrial conference, consult with the defendant regarding the propriety and feasibility of a plea agreement; and the Commonwealth shall, prior to a pretrial conference, consult with and advise the prosecuting witness(es) concerning the same.

### **Rule 205. Trials**

1. *Scheduling.* (a) Trials in all actions, civil or criminal, shall be scheduled to begin on Tuesdays or Thursdays only. At the time the trial is scheduled, the parties shall inform the Court of the expected length of the trial to enable the Court to set aside an appropriate number of days.

(b) At any time, the Court may *sua sponte* reassign the trial of an action to another date.

2. *Continuances.* Any party may file of record with the Bell Circuit Court Clerk a motion for a continuance at any time before ten (10) days prior to trial. Such a motion shall be noticed for a hearing at the convenience of the Court, and shall state the reason(s) for the requested continuance. If another party objects to a continuance, he shall file of record such objection within five (5) days thereafter. Oral motions for a continuance may be made at any scheduled court appearance preceding the trial, or during the trial. However, no motion made after ten (10) days before the trial shall be granted except in cases of substantial necessity.

3. *Jury Instructions.* (a) Unless the Court orders otherwise, the parties shall tender to the Court and to one another any proposed jury instructions at least two (2) days prior to the day on which it is expected the jury will receive instructions. However, a party may request

to modify its proposed jury instructions at any time before the Court rules upon the final instructions to be submitted to the jury.

(b) During trial, the parties shall have and make available for the Court a copy of proposed jury instructions in electronic format on a readily accessible media device (e.g. a USB drive, or compact disk), which may be used by the parties and the Court in the composition of the final jury instructions to be submitted to the jury.

#### **Rule 206. Motion Practice**

1. *Timing of Filing and Service of Motions.* (a) Unless otherwise agreed upon by the parties, and except as otherwise provided in these rules of practice and procedure, all motions shall be filed of record with the Bell Circuit Court Clerk, and served upon all other parties, no later than seven (7) calendar days before the date on which the motion is noticed to be heard.

(b) Unless otherwise agreed upon by the parties, (i) all motions filed of record in a civil action described in FCRPP 1(2), (ii) all motions to dismiss, (iii) all motions made pursuant to CR 12.02, and (iv) all motions going to the merits of the case, including but not limited to motions for judgment on the pleadings and motions for summary judgment, shall be filed of record with the Bell Circuit Court Clerk, and served upon all other parties, no later than ten (10) calendar days before the date on which the motion is noticed to be heard.

(c) If a movant fails to comply with the provisions of this paragraph, the motion may, in the discretion of the Court, be passed to the next appropriate motion day, or to a time agreed upon by the parties.

2. *Manner of Filing and Service of Motions.* (a) An original of all motions shall be filed of record with the Bell Circuit Court Clerk. A movant may submit a motion by fax or email to the Bell Circuit Court Clerk, who shall accept same and mark the motion as filed. However, the original motion must be filed within three (3) business days of the receipt of the faxed or emailed copy. The original shall be attached to the faxed or emailed copy and shall be considered filed of record as of the date the faxed or emailed copy was received and marked as filed. Failure of the movant to file the original within 3 business days of the Court's receipt of the faxed or emailed copy may result in the Court's denial of the motion or

another appropriate sanction. Nothing in this rule shall preclude a party from re-filing any such motion that may have been previously denied under this rule.

(b) All motions shall be served upon other parties by both mail and facsimile transfer.

3. *Notice of Hearing.* (a) All motions shall contain a notice of hearing specifying the date, time, and place of hearing. Unless otherwise agreed to by the parties, all motions shall be assigned for a hearing on the next appropriate motion day on which the motion may be heard under these rules of practice and procedure, and at the appropriate time on that day. If it appears that a formal hearing on the motion is not reasonably appropriate, the motion shall be noticed for hearing at the convenience of the Court.

(b) Failure to notice a motion for a hearing in accordance with subparagraph (a) above may be grounds for denial of the motion.

4. *Memoranda.* Unless by the nature of the motion it would not be reasonably appropriate, all motions shall be accompanied by a brief memorandum of the grounds for the motions with citation of authorities relied upon. Unless otherwise allowed by the Court, the memorandum shall not exceed twenty-five (25) pages in length. Failure to include a memorandum may be grounds for denial of the motion.

5. *Responsive Filings.* (a) Any party properly served with a motion accompanied by a memorandum as provided in subparagraph (a) above shall, if the party opposes the motion, file of record a responsive memorandum of the grounds on which the party opposes the motion with citation of authorities relied upon. Unless otherwise allowed by the Court, the memorandum shall not exceed twenty-five (25) pages in length. Failure to timely file of record a responsive memorandum may be grounds for granting of the motion.

(b) Unless otherwise ordered by the Court, a party may file of record responsive filings in the nature of a reply or surreply, however such shall not be required. No responsive filings beyond those in the nature of a surreply shall be permitted without leave of Court.

(c) Unless otherwise allowed by the Court, all responsive filings shall be filed of record no later than two (2) calendar days before the date on which the motion is to be heard. A party opposing a motion may request of the Court, by oral or written motion, and for good cause shown, an extension of time to file of record a responsive memorandum as described in subparagraph (a) above. If such an extension is granted, failure to file of record a responsive

memorandum in accordance with this subparagraph shall not be grounds for granting of the motion.

6. *Courtesy Copies.* (a) A copy of all motions filed of record with the Bell Circuit Court Clerk shall be forwarded to the Court no later than the date on which the motion is filed of record. The copy shall include all memoranda, exhibits, and other addenda filed of record along with the motion.

(b) A copy of all responsive filings filed of record with the Bell Circuit Court Clerk shall be forwarded to the Court no later than the date on which the responsive filing is due under paragraph 5 above. The copy shall include all memoranda, exhibits, and other addenda filed of record along with the responsive filing.

**Rule 207. Attorneys' Names, Addresses, Telephone, Facsimile and E-Mail**

All pleadings, motions and 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 transfer number of the attorney signing said document, and electronic mailing address, if available.

**Rule 208. Agreed Orders**

Agreed orders, decrees or judgments may be submitted to the Court at any time and need not be noticed for a hearing.

**Rule 209. Entry of Orders and Judgments**

1. Whenever any ruling is made or opinion rendered, an order or judgment in conformity therewith will be prepared and entered by the Court or the Court will direct the prevailing party (if represented by counsel) to submit an Order or Judgment in conformity with the Court's ruling. If the Court takes a matter under submission, all parties may submit proposed orders or judgments within ten (10) days of the hearing.

2. When signed by the Judge, the Order or Judgment shall be delivered to the Bell Circuit Court Clerk for entry and distribution.

## SECTION II: CIVIL RULES—FAMILY LAW ACTIONS

### **RULE 3: ADOPTIONS; TERMINATION OF PARENTAL RIGHTS**

There are currently no local rules directly addressing matters related specifically to adoptions or the termination of parental rights. For uniform statewide rules see FCRPP 32 through 36.

### **RULE 4: DOMESTIC VIOLENCE PROTOCOL AND 24-HOUR ACCESS POLICY**

The domestic violence protocol and 24-hour access policy for the 44<sup>th</sup> Judicial Circuit are contained in Appendix 1 of these rules and are incorporated herein by reference as if fully set out.

### **RULE 5: DOMESTIC RELATIONS PRACTICE**

#### **Rule 501. Pleadings**

1. *Designation of Pleadings.* The initiating pleading in actions initiated in the Circuit Court shall be termed the “Petition,” and the initiating party the “Petitioner.” The responsive pleading in such actions shall be termed the “Response,” and the responding party the “Respondent.”

2. *Required Information.* (a) In addition to any information and documentation required by the Family Court Rules of Procedure and Practice and other of these rules, the Petition in any action pertaining to custody, child support, visitation and timesharing, termination of parental rights, and adoption, shall contain the following information: (i) a list of any other known Family Law actions in which a party to the Bell Circuit Court action is a party or was a party within the preceding three (3) years, within or without the

Commonwealth, and which are reasonably related in their substance or outcome to the Bell Circuit Court action; (ii) a list of any non-court proceedings involving the Kentucky Cabinet for Health and Family Services, or any division thereof, including but not limited to, investigations, in which a party to the Bell Circuit Court action is involved or was involved within the preceding one (1) year, and which are reasonably related in their substance or outcome to the Bell Circuit Court action; and (iii) if in the Bell Circuit Court action the appointment of a guardian ad litem is required, the identity of any guardian ad litem, practicing in Bell County, known to have been previously appointed to represent a child involved in the Bell Circuit Court action. If upon receipt of the Petition, the Respondent knows of an action or proceeding that should be listed in the Petition in accordance with this rule but is not, the Respondent shall list such action in the Response with the information specified below.

(b) The list required under clause (i) of subparagraph (a) above shall contain the style of the case, the case number, the state, county and court in which the action proceeded, and a brief statement of the nature of the action and its current status. If the list includes an action involving an allegation of domestic violence in which an order addressing the allegation was entered by a court, a copy of the court order shall be submitted with the Petition or Response in the form of an exhibit in accordance with paragraph 3 below, the provisions of which shall apply.

(c) The list required under clause (ii) of subparagraph (a) above shall contain the style of the proceeding, or such equivalent references as would enable the proceeding to be identified, an agency case number, if any, the county in which the proceeding was initiated, and a brief statement of its nature and status.

3. *Submission of Required Information.* The information and documentation required by paragraph 2 above may be included in or with the Petition itself, or, upon the election of the Petitioner, may be submitted in the form of an exhibit attached to the Petition. If submitted in the form of an exhibit, and if the Petitioner so requests, the Bell Circuit Court Clerk shall place the exhibit in the file for the action as a sealed document, which shall not be accessible by non-parties without an order of the Court. If a Respondent intends to list additional actions or proceedings in his or her Response, he shall submit the list in the form of an exhibit attached to the Response, which exhibit shall be placed in the file for the action

as a sealed document not accessible by non-parties without an order of the Court. After thirty-five (35) days from the entry of a final order in the Bell Circuit Court action, and provided no notice of appeal has been tendered to the Bell Circuit Court Clerk, any party may request an order directing the Bell Circuit Court Clerk to remove from the file any exhibits containing information required by paragraph 2 above. A party may retrieve the exhibit(s) submitted by him or her within five (5) days after the entry of an order granting removal; otherwise, the Bell Circuit Court Clerk shall destroy the exhibit(s).

#### **Rule 502. Status Quo Orders**

1. No status quo order shall be issued by the Court without a motion for such and a hearing thereon in compliance with FCRPP 2(5). Notwithstanding the provisions of Rule 206(1)(b) above, a motion for a status quo order may be filed of record contemporaneously with the Petition or at any time thereafter. The hearing on such motion shall be noticed for the next appropriate motion day following the expiration of twenty (20) days from the service of process in the action.

2. Nothing in this Rule shall be construed to limit the availability of injunctive relief pursuant to CR 65 and KRS 403.160.

#### **Rule 503. Case Management Conference and Motions Pendente Lite**

1. *Case Management Conference.* (a) Pursuant to FCRPP 2(6), unless otherwise ordered by the Court, all Family Law actions shall be scheduled for a case management conference in court no later than twenty (20) days from the entry of appearance of the Respondent, by Response or otherwise. If possible, the case management conference shall be scheduled for the first Family Law motion day falling within that twenty-day period.

(b) At the case management conference, the parties shall discuss with the Court, *inter alia*, the possibility of mediation, the objectives of the parties, the most expeditious course toward the final resolution of the matters involved in the action, and any court dates that the parties reasonably foresee will be necessary.

(c) Unless otherwise ordered by the Court, the parties as well as counsel shall attend the case management conference.

2. *Motions Pendente Lite*. The parties shall, in accordance with the provisions of Rule 206 above, file of record with the Bell Circuit Court Clerk any motions *pendente lite* before the case management conference, to be heard thereat. A party may petition the Court, on or before the case management conference, for an extension of time to file of record any such motions. However, no motions *pendente lite* may be filed of record after thirty (30) days from the case management conference, except upon order of the Court based on good cause shown. This paragraph shall not be construed to preclude modification at any time of any orders *pendente lite* already in effect.

3. This rule shall not apply to the dissolution of marriage and property division actions that are uncontested.

#### **Rule 504. Mediation in Family Law Actions**

1. It shall be the policy of the Court to prefer mediation in all contested Family Law actions, except when precluded by law.

2. The parties may voluntarily engage in mediation at any time during the pendency of an action, except that in no case shall mediation be undertaken prior to the case management conference, unless the Court orders otherwise.

3. The Court will inquire into the practicability and preferability of mediation at the case management conference, and if it is practicable and preferable, the Court may order mediation as authorized by FCRPP 2(6).

4. If the parties engage in mediation, whether by mutual agreement or upon order of the Court, the provisions of Rule 8 below shall apply.

#### **Rule 505. Wage Assignment Orders**

In all Family Law actions in which a party moves the Court for a temporary or final order of child support, the party so moving the Court shall submit to the Court a completed form AOC-152, "Uniform Child Support Order and/or Wage/Benefit Withholding Order for Kentucky Employees," if applicable.

**RULE 6: MISCELLANEOUS RULES RELATING TO FAMILY LAW PRACTICE**

There are currently no provisions in this local rule. However, practitioners should note the general applicability of the rules contained in Sections I, III and V.

**SECTION III: CIVIL RULES—GENERAL**

**RULE 7: MASTER COMMISSIONER PRACTICE**

**Rule 701. Orders of Sale or Delivery of Deed**

Any order or judgment directing the Master Commissioner to sell property, or to execute or deliver a deed, shall contain (i) the legal description of the property, including a physical address, or if it has no physical address, a brief description of its location and size; (ii) the name(s) of the person(s) whose interest is being sold or conveyed; (iii) and the source of the person's title, including, if applicable, a deed book citation, and the date of the deed and the recording of the deed.

**Rule 702. Terms and Conduct of Judicial Sales**

1. *Advertisement.* (a) Before conducting a sale, the Master Commissioner shall advertise it in a newspaper meeting the qualifications of KRS 424.120, and include the time, terms, and place of sale, together with a description of the property to be sold. The advertisement shall appear once a week for at least three (3) consecutive weeks next preceding the date of sale.

(b) Unless the Court orders otherwise, the party requesting a judicial sale of property shall deposit with the Master Commissioner an amount sufficient to pay the costs of the advertisement or notice. Until such deposit has been made, the Master Commissioner shall not make any advertisement or publish any notice. If no party has requested a judicial sale, the parties shall each deposit a proportionate share of an amount sufficient to pay the costs of the advertisement or notice.

2. *Appraisal.* If required by statute or order of the Court, the Master Commissioner, before making a sale of real property, shall have the property appraised by two intelligent, disinterested housekeepers of Bell County, who shall not be related to the parties to the action. Before conducting their appraisals, the appraisers shall be sworn by the Master Commissioner. The appraisers shall return their appraisals in writing to the Master Commissioner, who shall file the appraisals of record with the Bell Circuit Court Clerk.

3. *Conduct of Judicial Sales.* (a) Unless otherwise ordered by the Court, all judicial sales are to be conducted by the Master Commissioner at the Bell County Courthouse, on the steps facing the Post Office at a time and date designated by the Master Commissioner.

(b) During the conduct of judicial sales, the Master Commissioner shall have the power to keep order, and may elicit the assistance of the Bell County Sheriff to do so.

4. *Terms of Judicial Sales.* (a) Unless otherwise ordered by the Court, the property subject to judicial sale shall be sold to the highest bidder upon the following terms and conditions:

(i) At the time of sale, unless the Court orders otherwise in the order or judgment directing the sale, the successful bidder shall either pay the purchase price in full in cash or make a deposit of ten percent (10%) of the purchase price with the balance on credit for sixty (60) days. If the purchase price is not paid in full, the successful bidder shall be required to give bond with good surety thereon for the unpaid purchase price, which bond or unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the date of sale until paid. If full payment or a sufficient deposit is not made immediately, the Master Commissioner shall reject the bid and resell the property forthwith. In making a resale, the Master Commissioner shall receive no bid from the rejected bidder.

(ii) The purchaser of the property shall be required to assume and satisfy all taxes or assessments upon the property for the current tax year and all subsequent years. All taxes or assessments on the property for prior years shall be satisfied from the sale proceeds, if properly claimed, in writing or a filing of record with the Bell Circuit Court Clerk, by the purchaser prior to the payment of the purchase price.

(iii) Except as provided in clause (ii) above, the property sold shall otherwise be sold free and clear of any right, title, and interest of all parties to the action and all of such parties' liens and encumbrances thereon, excepting easements and restrictions of record in the Office of the Bell County Clerk, and such right of redemption as may exist in favor of the United States and the defendant(s).

(b) If a party to the action in which a judicial sale is ordered is the purchaser of the property sold, that party may take credit against any judgment in his favor against the defendant property owner for the required purchase price to the extent that the sale price is sufficient to pay such judgment considering the priorities and amounts previously adjudicated in the action.

(c) The terms and conditions contained in subparagraphs (a) and (b) above may be adopted by reference to this rule in the order or judgment directing the sale of property, or may be restated therein.

#### **Rule 703. Report of Sale and Confirmation**

1. After the completion of a sale, the Master Commissioner shall report any actions by filing of record with the Bell Circuit Court Clerk a Report of Sale and Costs of Sale. The Report of Sale shall be distributed to all parties.

2. All objections to the judicial sale, if any, shall be filed of record with the Bell Circuit Court Clerk within ten (10) days after the Report of Sale is filed of record, and shall be stated with specificity. A motion for action upon any objections shall also be filed of record within the same ten (10) day period, and may be noticed for a hearing on the next appropriate motion day, or at the convenience of the Court. If no objections are filed of record, the judicial sale shall be deemed confirmed by the Court after the expiration of the ten (10) day period. If an objection is filed of record within the prescribed period, confirmation shall occur only upon order of the Court after resolution of any objections. Upon confirmation of a judicial sale, a proposed order confirming the sale, with an appropriate number of copies, shall be submitted to the Court. A copy of the final order of confirmation shall be served upon the purchaser.

**Rule 704. Cancellation of Sale**

If property to be sold is withdrawn from sale, or if the property owner has filed for relief in bankruptcy, the judicial sale shall be cancelled and the Commissioner shall give notice of cancellation of sale. If the Master Commissioner, prior to the timely cancellation of a sale, has expended sums in furtherance of the sale, he shall file of record with the Bell Circuit Court Clerk a Report of Sale and Costs of Sale Upon Cancellation, and may therein petition the Court for reimbursement for sums expended from the appropriate party.

**Rule 705. Distribution of Funds**

1. If funds requiring distribution are held by the Master Commissioner, he shall submit a proposed Order of Distribution to the Court, describing all amounts collected, and identifying the proper recipient(s) and the specific amounts to be distributed to the recipient(s) in accordance with the order of judgment of the Court.

2. If disbursements are to be made to a taxing authority, a copy of the pertinent tax bill(s) shall be furnished to the Master Commissioner.

3. If all funds held by the Master Commissioner are distributed in accordance with the Order of Distribution, and there are no further matters for determination by the Court in the action, the action shall be considered concluded and be stricken from the docket of the Court.

**Rule 706. Master Commissioner's Fee**

The Master Commissioner shall be entitled to those fees set forth in Part IV of the Administrative Procedures of the Court of Justice. If a judicial sale is cancelled due to no fault of the Master Commissioner, he shall receive a fee of fifty percent (50%) of the proposed judicial sale fee based upon the appraised value of the property, or \$400, whichever is greater, unless an objection thereto is filed of record with the Bell Circuit Court Clerk. If an objection is made, or if there is no appraisal of the property, the Court shall determine a reasonable fee. If a judicial sale occurs, but it is not confirmed, the Master Commissioner shall receive the sale fee.

### **707. Appraiser's Fee**

When an appraisal of property to be sold is required by statute or rule, the fee of each appraiser shall be a reasonable fee determined by the Master Commissioner. The fee shall be paid from the proceeds of the sale.

## **RULE 8: MEDIATION**

### **Rule 801. Voluntary Mediation**

The parties may voluntarily engage in mediation at any time during the pendency of an action. If the parties expect to do so, they shall notify the Court, jointly or by designation, of such expectation as soon as possible. After notification to the Court, no further court proceedings shall be had until the conclusion of mediation or until the Court orders otherwise.

### **Rule 802. Mediation Ordered by the Court**

1. The Court may at any time order some or all of the parties to engage in mediation. If mediation is so ordered, it shall be scheduled to begin within ninety (90) days after the entry of the order directing mediation, and no further court proceedings shall be had until the conclusion of mediation or until the Court orders otherwise. Any party may move the Court for an extension of time to begin mediation for good cause shown. If ordered, the Court expects that mediation shall be pursued by the parties diligently, expeditiously, and in good faith, with the ultimate goal of the final and just resolution of as many issues as possible.

2. If mediation is ordered in an action, and thereafter, but before the beginning of mediation, it appears to all the parties that mediation is no longer practicable or preferable, the parties shall jointly file of record with the Bell Circuit Court Clerk a Motion to Cancel Mediation, such to be noticed for a hearing at the convenience of the Court.

3. If mediation is ordered in an action, and it is delayed beyond the ninety (90) day period described in paragraph 1 above, the parties, jointly or by designation, shall file of

record with the Bell Circuit Court Clerk a Notice of Delay in Mediation, which shall specify the reason(s) for the delay, and shall certify whether the parties are, or will be, making reasonable efforts to pursue the rescheduling of mediation. If a new mediation date is not obtained within the next thirty (30) days following the expiration of the ninety (90) day period described in paragraph 1 above, the parties shall notice the action for a status conference on the next available appropriate motion day.

**Rule 803. Mediation Rules**

All mediations shall be conducted in accordance with the Model Mediation Rules adopted by the Kentucky Supreme Court in its "Order Amending Rules of the Supreme Court, 99-1." If the Model Mediation Rules are amended in the future, all mediations shall be conducted in accordance with the rules as so amended.

**Rule 804. Discovery Pending Mediation**

If the parties will engage in mediation, whether by mutual agreement or order of the Court, a party may request of the Court a stay of discovery pending the conclusion of mediation.

**Rule 805. Action upon Conclusion of Mediation**

Upon the conclusion of mediation, the parties shall inform the Court of the outcome. If all of the issues in the action have been resolved during mediation, the parties, jointly or by designation, shall file of record with the Bell Circuit Court Clerk a Notice of Resolution, which shall certify that all issues have been resolved and that there is no need for the action to proceed further in court on the substantive issues. If less than all of the issues in the action have been resolved during mediation, the action shall be noticed for a pretrial conference on the next available appropriate motion day.

## **RULE 9: MISCELLANEOUS CIVIL RULES**

### **Rule 901. Cases Submitted on Depositions**

All cases submitted on depositions, other than uncontested divorces, shall be accompanied by legal memoranda 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.

### **Rule 902. Motions for Discovery Orders**

1. No motions for orders pertaining to discovery shall be filed of record with the Bell Circuit Court Clerk unless accompanied by a certificate of moving counsel that counsel or the parties involved in the discovery matter have conferred, and are unable to reconcile their differences, and that counsel or the parties have otherwise exhausted all extrajudicial means in a good faith effort to reconcile their differences.

2. When a motion for a discovery order concerns discovery requests or answers thereto, or documentary items, a copy of the requests, answers, or documentary items about which the motion pertains shall be attached to the motion in the form of an exhibit.

3. This rule shall not apply to submissions of agreed orders to the Court for approval.

### **Rule 903. Filing of Depositions**

Originals or copies of depositions shall not be filed of record with the Bell Circuit Court Clerk unless offered as the subject of, or proof in conjunction with, a motion, evidentiary hearing, or trial.

### **Rule 904. Settlement Agreements**

1. If at any time some or all of the parties to an action reach a settlement agreement with regard to any or all of the issues presented in that action, the parties shall jointly file of record with the Bell Circuit Court Clerk a Notice of Settlement. If all of the issues between the settling parties are resolved by the settlement, the Notice of Settlement need not state the

particular issues that are subject to the settlement. However, if less than all of the issues between the settling parties are resolved by the settlement, the Notice of Settlement shall state the particular issues that are not subject to the settlement. The settling parties shall not be required to state the terms of the settlement agreement.

2. If all of the issues between all the parties are settled, the action shall be removed from the docket of the Court after receipt of the Notice of Settlement.

#### **Rule 905. Dismissal of Action for Failure to Prosecute**

When an action has remained on the docket of the Court for one (1) year or more without any step being taken indicating an intention to prosecute the action, it may be dismissed for want of prosecution by the Court *sua sponte*, or on motion of a party.

### SECTION IV: CRIMINAL RULES

#### **RULE 10: APPEARANCE AND TRANSPORT OF DEFENDANTS**

##### **Rule 1001. Appearance of Defendants and Waiver of Appearance**

1. *Appearance.* Defendants shall be present at all court events, unless otherwise ordered by the Court.

2. *Waiver.* (a) The parties may by mutual agreement waive the requirement of paragraph 1. If the parties agree to waive such requirement in regard to all, or a predetermined set of, court events, the parties shall file their agreement of record with the Bell Circuit Court Clerk. However, if the parties so agree in regard to a single, particular court event, the agreement need not be filed of record.

(b) Notwithstanding subparagraph (a) above, the parties may not waive the appearance of the defendant at arraignment, at evidentiary hearings on motions to suppress, or at trial.

**Rule 1002. Failure to Appear**

1. If a defendant fails to appear at a court event at which he is required to appear, the Bell Circuit Court Clerk shall issue a bench warrant for the arrest of the defendant, except that if the event at which the defendant failed to appear was an arraignment, the warrant issued shall be an indictment warrant.

2. No warrant for the arrest of a defendant shall be issued if the defendant, or another on his behalf, presents to the Court, at or prior to the court event at which the defendant is required to appear, sufficient evidence of good cause whereby he cannot appear.

3. If a warrant for the arrest of a defendant has been issued and has not been served, counsel for the defendant may file of record with the Bell Circuit Court Clerk a motion to recall the warrant, which shall state with specificity good cause for the defendant's failure to appear, and which shall be accompanied with sufficient evidence thereof.

4. If a warrant for the arrest of a defendant has been issued and has been served, the matter shall be scheduled for a review at the next available criminal motion day.

**Rule 1003. Transport of Defendants**

If a defendant is incarcerated outside of Bell County and a court event at which he is required to appear is scheduled in the action against him, the defendant, if the court event is scheduled at the request or notice of the defendant, or the Commonwealth, in all other cases, shall tender to the Court an order directing the appropriate authority to transport the defendant no later than seven (7) days prior to the court event, or as soon as possible after the scheduling of the court event if there are fewer than seven (7) days between the scheduling of the court event and the event itself. The order shall include the following information: (i) the name of the defendant; (ii) the designation of the authority responsible for transporting the defendant; (iii) the physical address of the facility from which, and to which, the defendant is to be transported; (iv) the date, time, and nature of the court event for which the defendant is to be transported; and (v) an instruction, if appropriate, that the defendant shall be returned upon conclusion of the court event for which the defendant is to be transported.

## **RULE 11: WITHDRAWAL OF ATTORNEYS**

### **Rule 1101. Withdrawal Prior to Trial**

An attorney of record shall not be permitted to withdraw from the representation of a defendant after twenty (20) days before a trial, except in the case of good cause shown.

### **Rule 1102. Withdrawal Subsequent to Trial**

After a trial, counsel shall not, without permission of the Court, withdraw from the representation of a defendant who will appeal a judgment of conviction. Permission shall not be granted unless counsel has prepared and filed the following: (i) a notice of appeal pursuant to RCr. 12.04; (ii) if appropriate, a motion to proceed *in forma pauperis*, accompanied by an affidavit and proposed order; (iii) if appropriate, a proposed order substituting the Department for Public Advocacy as counsel on appeal; and (iv) a designation of record on appeal.

## **RULE 12: PLEAS**

### **Rule 1201. Entrance of Pleas**

1. A defendant may move to enter a plea other than a plea of not guilty at any time during the pendency of an action, except as provided in paragraph 3 below. However, unless the defendant expressly waives consultation on the record, no such plea shall be accepted until the defendant has consulted with counsel on such a motion, and unless counsel is present at the entry of the plea.

2. If a defendant desires to enter a plea of guilty, the defendant shall complete a form AOC-491, "Motion to Enter Guilty Plea," or AOC-491.2, "Motion to Enter Guilty Plea Pursuant to North Carolina v. Alford," whichever is appropriate.

3. No plea of guilty, or of guilty but mentally ill, shall be accepted by the Court after 3:00 P.M. the day before the trial is scheduled to begin, except upon good cause shown for delay.

**Rule 1202. Scheduling of Pleas**

If a defendant desires to enter a plea of guilty, the action shall be scheduled for a pretrial conference on a criminal motion day, unless the Court orders otherwise.

**RULE 13: MONETARY OBLIGATIONS UPON CONVICTION**

**Rule 1301. Monetary Obligations**

Unless otherwise prohibited by law, monetary obligations assessed against a defendant shall include fines, restitution, court costs, fees, and any other monetary penalties or reimbursements required under the law.

**Rule 1302. Payment of Monetary Obligations**

1. Unless otherwise provided by law or order of the Court, all monetary obligations assessed against a defendant upon conviction shall be due within fifteen (15) business days after the day of sentencing.

2. At any time prior to the expiration of the fifteen (15) day period described in paragraph 1 above, a defendant may request that the Court establish an installment payment plan for the payment of any monetary obligations, which plan, if permitted, shall specify at minimum the number of payments to be made, the times or intervals at which they are to be made, and, if other than the Bell Circuit Court Clerk, the person to whom payments are to be made. Any request for the establishment of an installment payment plan shall be by motion, which shall be noticed for a hearing at the convenience of the Court.

3. At any time prior to the expiration of the fifteen (15) day period described in paragraph 1 above, a defendant may request that the Court defer payment of such monetary obligations to a future date. Any request for a deferment shall be by motion, which shall be noticed for a hearing at the convenience of the Court. If the defendant's request is granted, a show cause date shall be scheduled by the Bell Circuit Court Clerk, by which date either full payment or the first payment under an installment payment plan will be made.

4. Prior to the date on which any money obligations, or a part thereof, are to become due, a defendant may request an extension of time of up to thirty (30) days to satisfy such monetary obligations or parts thereof. However, if the Court has established an installment payment plan for a monetary obligation, payment shall not be extended beyond the date of the next installment. Any request for an extension shall be by motion, which shall be noticed for a hearing at the convenience of the Court.

5. If a defendant has pending two or more criminal actions against him, and they are disposed of in conjunction with one another, a defendant may submit a single payment to satisfy any money obligations assessed in both cases, or a part thereof. The payment shall be applied to the actions in order of the indictment number, beginning with the earlier number.

6. Notwithstanding any other provision of this rule, (i) except in cases of substantial necessity the full payment of court costs, fees, or other reimbursements to the Court shall not be deferred or extended beyond one (1) year after the day of sentencing; and (ii) if the terms of the payment of restitution are imposed pursuant to a plea agreement with the Commonwealth, the terms of that agreement will not be modified by the Court.

#### **Rule 1303. Excusal of Monetary Obligations**

At any time prior to the entry of final judgment, a defendant who is convicted and against whom monetary obligations are assessed may request that the Court excuse all or part of those monetary obligations. Any request for the excusal of monetary obligations shall be by motion, which shall be noticed for a hearing at the convenience of the Court. The motion shall state with specificity the legal grounds pursuant to which the defendant makes his motion, and shall include any necessary factual information and documentary evidence.

#### **Rule 1304. Nonpayment of Monetary Obligations**

If monetary obligations are assessed against a defendant upon conviction, the Bell Circuit Court Clerk shall schedule a show cause date in the action for the date on which the monetary obligations, or parts thereof, are to be satisfied under the orders of the Court. If a defendant fails to satisfy the monetary obligations by the close of business on the show cause date, the Bell Circuit Court Clerk shall so notify the Court, and thereafter the defendant may

be subject to sanctions or other process authorized by law. A defendant may appear, or, if incarcerated, submit an affidavit to the Court, on the show cause date to show cause why he should not be subject to sanctions or other process authorized by law.

**Rule 1305. Information on Collection of Monetary Obligations**

Upon conviction, and before the date of sentencing, counsel for a defendant, or if a defendant is unrepresented, the Bell Circuit Court Clerk, shall provide to the defendant a copy of BCRP Form I, "Notice of Action Upon Failure to Satisfy Monetary Obligations," the reading of which the defendant shall acknowledge by affixing his signature thereto along with the date of signature. The defendant shall return to the Bell Circuit Court Clerk the completed form, which shall be filed of record in the action in which the defendant was convicted.

**Rule 1306. Deductions from Bail Deposits**

1. If in a criminal action (a) the defendant, or someone other than the defendant utilizing funds of the defendant, has posted bail in the form of an executed bail bond with a deposit of a sum of money equal to ten percent (10%) of the bond; (b) the defendant has complied with all conditions of release and has been discharged of all obligations in the action; and, (c) upon rendition of judgment against the defendant, the sum of money deposited remains on deposit and unforfeited, the Bell Circuit Court Clerk shall deduct from the sum of money deposited, before its return to the person who deposited it, the following, in the order listed: (i) 10% of the amount of the deposit as bail costs, provided that in no case shall the Bell Circuit Court Clerk deduct less than five dollars (\$5.00); (ii) such amount as the Court has ordered in its sound discretion represents a reasonable fee for any public advocate legal or investigative services provided for the defendant under KRS Chapter 31, provided that in no case shall the Bell Circuit Court Clerk deduct less than one hundred dollars (\$100.00); (iii) the amount of any fines adjudged against the defendant in the action in which the bail bond was posted; and (iv) the amount of any court costs adjudged against the defendant in the action in which the bail bond was posted.

2. If in a criminal action (a) someone other than the defendant, utilizing his own funds, has posted bail in the form of an executed bail bond with a deposit of a sum of money equal to ten percent (10%) of the bond, (b) the defendant has complied with all conditions of release and has been discharged of all obligations in the action; and, (c) upon rendition of judgment against the defendant, the sum of money deposited remains on deposit and unforfeited, the Bell Circuit Court Clerk shall deduct from the sum of money deposited, before its return to the person who deposited it, 10% of the amount of the deposit as bail costs, provided that in no case shall the Bell Circuit Court Clerk deduct less than five dollars (\$5.00). No other deductions shall be made.

3. The deductions described in paragraphs 1 and 2 above shall not be made if the defendant has performed all conditions of release and if the defendant is found not guilty of the offense for which bail was posted, or if all charges against him relating to the offense for which bail was posted are dropped or dismissed.

#### **Rule 1307. Notice of Lien Against Real Property**

Any lien created pursuant to KRS 532.164, as well as an release of such a lien, filed with the Bell County Court Clerk shall also be filed with the Bell Circuit Court Clerk, who shall place a notice of the filing or release of the lien in the record for the action giving rise to the judgment that created the lien.

#### **Rule 1308. Criminal Garnishment**

1. If upon conviction there are assessed against a defendant monetary obligations, and such monetary obligations remain unsatisfied after the day on which they are due, the Court shall, upon motion of the Commonwealth, issue a criminal garnishment order for all such monetary obligations in accordance with KRS 532.160. A motion for a criminal garnishment order may be made at any time after the day on which the monetary obligation became due, and shall contain sufficient information for the order to properly identify all garnishees. The motion shall be noticed for a hearing at the convenience of the Court. Notice that such a motion is being made shall be served upon the defendant, or upon the attorney who principally represented the defendant during the pendency of the action against

him. If the defendant was represented by the Department for Public Advocacy, notice shall be served upon that agency though its representation of the defendant may otherwise have concluded.

2. Proceedings in pursuit of criminal garnishment shall be in accordance with the provisions of KRS Chapter 425 and CR 69.02, to the extent not inconsistent with KRS 532.160.

3. All monetary obligations shall be combined into a single garnishment order. However, the Commonwealth may elect to seek garnishment for less than all monetary obligations assessed.

4. With regard to fines assessed against a defendant, a criminal garnishment order shall be available only for fines imposed under KRS Chapter 534 or KRS 346.185.

5. A defendant may challenge all or part of the order of garnishment by filing of record with the Bell Circuit Court Clerk a motion to challenge garnishment and accompanying affidavit. If such a motion with accompanying affidavit is filed of record, it shall be scheduled for a hearing thereon within ten (10) days of filing. Garnishment shall continue during the pendency of any challenge; however, the Bell Circuit Court Clerk shall not disburse any garnished funds received after the filing of a motion and accompanying affidavit until the resolution of the challenge.

## SECTION V: MISCELLANEOUS RULES

### **RULE 14: PERSONAL IDENTIFIERS**

#### **Rule 1401. Definition**

As used in this rule, "personal identifiers" means a Social Security number, a taxpayer identification number, a financial account number, and a birth date.

#### **Rule 1402. Protection of Personal Identifiers**

1. Except as provided in paragraph 2 below, where personal identifiers are required by statute or are otherwise contained in documents or exhibits filed of record with the Bell

Circuit Court Clerk, parties shall comply with CR 7.03(1)(b) by filing one copy from which any personal identifiers have been redacted and one unredacted copy in a sealed envelope marked "Sealed Pursuant to CR 7.03(1)." If the Bell Circuit Court Clerk files of record in an action a form AOC-031, "Notice of Firearm Prohibitions," it shall be placed in the record in a sealed envelope marked, "Sealed Pursuant to CR 7.03(1)." Any document(s) sealed under this rule shall not be accessed by any person other than a party, an attorney of record for a party, a judge, court personnel, or a duly authorized employee or agent of the Cabinet for Health and Family Services involved in matters attendant to the action, except upon specific order of the Court.

2. The provisions of paragraph 1 shall not be applicable to actions that are confidential by statute.

## **RULE 15: COURT RECORDS**

### **Rule 1501. Video Records of Interviews with Children**

Unless the Court specifically orders otherwise, the Bell Circuit Court Clerk shall not release a video record of an in-chambers interview with a child, or a copy thereof. A person desiring to view such a record shall submit a request to do so in writing to the Court, which request shall state the purpose of the request, and shall specifically indicate that the portion of the video record being requested is an in-chambers interview with a child.

### **Rule 1502. Video Records of Confidential Proceedings**

1. Unless the Court specifically orders otherwise, the Bell Circuit Court Clerk shall not release a video record of a confidential proceeding, or a copy thereof. A person desiring to view such a record shall file of record with the Bell Circuit Court Clerk a motion requesting an appropriate order, which shall be served upon all parties, including any guardian ad litem, and shall state the purpose of the request.

2. Paragraph 1 above shall not apply to public officers or employees engaged in the investigation and prosecution of actions pursuant to KRS Chapters 600 through 645, or other prosecutions authorized by statute. However, the public officer shall certify that he or she is

engaged in such an investigation or prosecution, and shall use and distribute the records released only for such investigation and prosecution.

**Rule 1503. Removal of Records**

No record in any civil or criminal action shall be removed from the Office of the Clerk of the Bell Circuit Court without permission of the Court, except when pursuant to the provisions of CR 75 and 79.

 /Date April 9, 2012  
Robert Costanzo, Circuit Judge  
44<sup>th</sup> Judicial Circuit

# Supreme Court of Kentucky

## ORDER

**IN RE: ORDER APPROVING AMENDMENT TO APPENDIX 1 OF THE LOCAL RULES OF PRACTICE AND PROCEDURE FOR THE 44TH JUDICIAL CIRCUIT, BELL COUNTY**

Upon the recommendation of the Judges of the 44th Judicial Circuit, Bell County, and being otherwise sufficiently advised,

The amendment to Appendix A of the Local Rules of Practice and Procedure for the 44th Judicial Circuit 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 14th day of January 2016.

  
CHIEF JUSTICE

**TWENTY-FOUR HOUR ACCESSIBILITY TO PROTECTIVE ORDERS AND LOCAL  
JOINT JURISDICTION PROTOCOL  
44TH JUDICIAL CIRCUIT AND DISTRICT  
BELL COUNTY**

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 matter may be heard by the receiving judge.
- 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:

Bell County Circuit Court Clerk's Office

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

Middlesboro (KY) Police Department

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

The Bell County District Court Judge unless a dissolution or child custody proceeding is pending in Bell Circuit Court. If a dissolution or child custody proceeding is pending, the petition shall be presented to the Bell County Circuit Court Judge for consideration. If the District Judge cannot be located during regular business hours, the petition shall be presented to the Circuit Judge.

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

The Bell County District Court Judge. If the District Judge cannot be located after regular business hours, the petition shall be presented to the Circuit Judge.

## 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 Bell District Court, except as provided in section II(C) above.
- D. The schedule for hearings on protective orders is as follows:

Domestic violence and protective order cases shall be heard each Monday at 1:30 P.M. in the Bell District Court. If Monday should fall on a holiday, the designated time shall be the following Monday at 1:30 P.M. Cases assigned to Circuit Court shall be scheduled as ordered by the Court.

- 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 matter may be heard by the receiving judge.

#### 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.

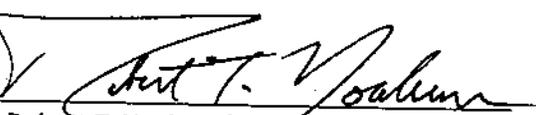
- B. Petitioners seeking to initiate contempt proceedings should contact:

The Office of the Bell Circuit Court Clerk, who will set the matter for a hearing on the next available domestic violence or interpersonal protective order docket.

- 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.

The above protocol is adopted by all judicial officers in the circuit:

  
Robert T. Yoakum/Bell District Judge

11/23/15  
Date

  
Robert V. Costanzo/Bell Circuit Judge

1/4/16  
Date