Supreme Court of Kentucky

ORDER

IN RE: **ORDER APPROVING AMENDMENTS TO THE LOCAL RULES OF PRACTICE FOR THE 48TH JUDICIAL CIRCUIT, FRANKLIN CIRCUIT COURT**

Upon recommendation of the Judges of the 48th Judicial Circuit, Franklin Circuit Court, and being otherwise sufficiently advised,

The amendments to the Local Rules of practice for Franklin 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 27 day of March, 2006.

CHIEF JUSTICE

COMMONWEALTH OF KENTUCKY
48TH JUDICIAL CIRCUIT
FRANKLIN COUNTY
RULES OF COURT

RULE 1: DEFINITIONS

The following definitions apply for the purpose of these Rules:

1.01 Court: Division I or Division II of the Franklin Circuit Court, either individually or collectively; "Court" in these Rules does not include Division III (Family Court).

1.02 Clerk: the Franklin Circuit Court Clerk.

1.03 Judge: a judge from either Division I or Division II of the Franklin Circuit Court, unless otherwise indicated.

1.04 Party: either counsel or client, or both, in a respective party, unless otherwise indicated.

RULE 2: ORGANIZATION OF THE FRANKLIN CIRCUIT COURT

2.01 The Franklin Circuit Court is a court of continuous session and consists of three divisions. Divisions I and II hear criminal felony cases and civil actions satisfying the jurisdictional amount in controversy. In addition, Divisions I and II have appellate jurisdiction under KRS 138.140. Division III is the Family Court of Franklin County, and is governed by a separate set of rules.

2.02 The Chief Circuit Judge shall appoint one Master Commissioner. The Master Commissioner shall serve both Divisions I and II for a term of four (4) years, or until further order of the Chief Circuit Judge.

2.03 The Court is a video court. All hearings where evidence is taken shall be recorded. If the party or parties so request, any other hearing may be taped. Copies of these tapes may be obtained for a fee from the Franklin Court Administrator. Parties may use an additional court reporter at their own provision and expense.

RULE 3: SESSIONS

3.01 Civil Motion Hour for both Divisions I and II is held in the courtroom each Monday and Wednesday, beginning at 9:00 a.m.

3.02 Criminal Motion Hour is held in the courtroom beginning each Friday at 9:00 a.m. for Division I, and 10:00 a.m. for Division II.

3.03 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
Spring Holiday	Memorial Day
Independence Day	Labor Day
Presidential Election Day	Veteran's Day
Thanksgiving Day	Christmas Day

An additional day is allocated for Thanksgiving, Christmas, and New Year's.

RULE 4: <u>MOTIONS</u>

4.01 Parties shall file notice, motions, and copies with the Clerk not less than five (5) business days before the date of a hearing. Parties shall attach supporting memoranda to the motions at the time of filing. The Court has discretion to grant leave to a party to file memoranda later than the date for filing. Parties must file their responses to memoranda one (1) business day before the hearing.

4.02 Supporting memoranda to motions shall not exceed twenty (20) pages in length (excluding exhibits and appendices) without leave of Court.

4.03 All motions that require a hearing shall be noticed for a specific hearing date.

4.04 All motions that involve real property shall be noticed for a specific hearing date.

4.05 If a party reasonably anticipates oral argument on a motion will last ten (10) or more minutes in duration, the party shall request a separate hearing outside of motion hour.

4.06 If a party who has been served with notice and motion is prevented from being present at the assigned hearing time, that party shall promptly notify the serving party, serving counsel, and the Clerk. If the parties agree, they may have a continuance by the Court to either the same day the following week or another time to which the parties agree. However, after one continuance, a party must

show good cause to the Court why more time is needed in order to obtain any additional continuances.

4.07 In matters where the Court has appellate jurisdiction, once both the appeal and the answer to the appeal are filed, it is the responsibility of the parties to ensure proper motions for the briefing schedule are submitted to the Court.

RULE 5: ASSIGNMENT OF CASES

5.01 When either the filing of an original complaint commences a civil action or the Grand Jury returns an indictment in a criminal action, the case shall be assigned to a division of the Court. The Clerk will determine assignment by lot.

5.02 Upon assignment, the Clerk shall stamp or write the division number on the complaint, and shall indicate the proper division on all documents filed in that action. Thereafter, it is the responsibility of the parties to indicate the correct division on all subsequent pleadings tendered to the Court.

5.03 Each Judge of any of the three (3) divisions of the Franklin Circuit Court may hear questions or cases in any of the other divisions of the Franklin Circuit Court, when the Judge of the assigned division is ill, absent, disqualified or otherwise unavailable.

5.04 Upon motion of the Court or a party and if both Judges involved agree, an action may be transferred from one division of the Court to the other. Once transferred, the Clerk shall properly endorse the transfer.

RULE 6: ARRAIGNMENTS

6.01 The Clerk shall assign an arraignment date when an indictment is returned by the Grand Jury.

6.02 The Court shall assign pretrial and trial dates after an arraignment. The Court shall include those dates in the arraignment order.

RULE 7: PRETRIAL CONFERENCES AND SETTLEMENT CONFERENCES—CIVIL ACTIONS

7.01 At least five (5) business days prior to any pretrial or settlement conference, each party shall file with the Clerk and serve on all other parties:

(a) the facts and legal authority the party contends entitles it to the relief sought, or which constitutes a defense to each claim asserted against that party (in whole or in part);

(b) all items and amounts of both general and special damages claimed by that party, along with any supporting documentation, evidence, and calculations; and

(c) a description of the nature and extent of the injury claimed, along with supporting documentation, evidence, and calculations.

7.02 The Court has discretion to order settlement conferences in civil actions. All clients and principals shall attend. Where an insurer is defending, either a representative of the insurer or counsel with full settlement authority shall attend. Failure to attend may result in sanctions pursuant to 14.03(d) of these rules.

RULE 8: JURY TERMS

8.01 The Court shall convene a Petit Jury during the months of January, March, May, July, September, and November for a term of sixty (60) days. The Chief Circuit Judge may order these terms extended.

8.02 The Court shall convene a Grand Jury during the months of January, March, May, July, September, and November for a term of sixty (60) days.

RULE 9: ENTRY OF ORDERS AND JUDGMENTS

9.01 Counsel shall make the notation "Have Seen" on any judgment or order before the signature of the Court or entry, in all cases where the Court has directed counsel to tender an order.

9.02 Any party who tenders an order shall include a distribution list with the name and address of each party who is to receive a copy of the order. Envelopes must be from the Court. Returned mail must come back to the clerk.

RULE 10: DEFAULT JUDGMENT ORDERS

10.01 A party who tenders a default judgment order shall include a distribution list containing the names and addresses of all parties involved. Envelopes must be from the Court-returned mail must come back to the Clerk. A.party shall NOT include with a default judgment anything that either states or implies that the order is also a debt collection instrument.

RULE 11: ORDER OF SUBMISSION

11.01 Counsel shall not submit a case for final judgment by the Court without an order of submission signed by the Judge and filed by the Clerk. This order shall be kept separate from any previous order such as a briefing schedule, etc. The parties shall complete AOC form 280 and deliver it to the Clerk (that form is available both in the Clerk's office and also electronically on the world wide web at www.kycourts.net). The Clerk shall then deliver the record to be submitted to the Judge of the respective division. Upon submission for final adjudication, the Court has ninety (90) days from the date of filing of AOC-280 to adjudicate the case and enter the order.

RULE 12: DISMISSAL FOR LACK OF PROSECUTION

12.01 On motion of either party or on the Court's own motion, the Court may dismiss a civil action for failure to prosecute when that action has remained on the civil docket for one year or more without any step being taken which would indicate an intent to prosecute that action, pursuant to CR 41.02(1) and CR 77.02(2).

RULE 13: MONEY ORDERED PAID BY THE COURT

13.01 The Clerk shall place into an interest bearing account any money the Court orders paid. The Clerk shall distribute this money pursuant to an order by the Court. (NOW account is interest bearing but does not pay out interest. Escrow accounts pay interest and must have a court order for each account.)

RULE 14: MEDIATION

14.01 Cases subject to mediation: Except for habeas corpus matters or cases involving election contests, administrative appeals, or appeals from the District Court, any Judge may refer any civil case to mediation at either the completion of the pleadings or at any other time before trial.

14.02 Referral to mediation:

(a) The Judge may refer the case to mediation with or without the parties' consent. Either party may move the Court to refer the case to mediation. The Court shall refer mediation to either a Court-approved mediator or an appropriate mediation facility according to that facility's guidelines.

(b) Any party may move to disqualify a mediator from a case for good cause. If the Court disqualifies a mediator from a case, the Court shall

enter an order naming a qualified replacement. Nothing in this provision precludes mediators from either disqualifying themselves or refusing an assignment. The time for mediation is tolled during any period in which a motion to disqualify is pending.

(c) Referral of a case to mediation is not a stay of discovery proceedings unless otherwise ordered by the Court or agreed to in writing by the parties.

14.03 Mediation conferences:

(a) The parties shall schedule a mediation conference with the mediation facility or mediator within five (5) business days from the entry of the Court's order to schedule a mediation conference. The parties shall hold the mediation conference within thirty (30) days from the entry of the order or later if by agreement of both parties.

(b) The parties shall attend the mediation conference once an order to mediate has been entered. Counsel for each party may attend. The mediator shall conduct the conference to consider:

(1) settlement of the case;

(2) simplification of the issues; and

(3) any other matters that either the mediator or the parties, or both, determine may aid the disposition of the case.

(c) The mediator shall schedule sessions as necessary to complete the mediation process. Mediation shall continue until either:

(1) the parties have reached a settlement;

(2) the parties are unwilling to proceed further; or

(3) the mediator determines that further efforts are futile.

(d) Appearance at mediation; sanctions:

(1) Upon motion, the Court may impose sanctions against a party if that party fails to appear at a duly noticed mediation conference, unless the party shows good cause why they failed to appear. Possible sanctions include, but are not limited to, either an award of attorney's fees or other costs of mediation, or both.

(2) If a party to mediation is a public entity, that party has appeared if a representative with both full authority to negotiate on behalf of the entity and to recommend settlement to the decision-making body of the entity is physically present at the mediation conference.

(3) In all other cases, a party has appeared at the mediation conference if the party (or a representative with full authority to settle without further consultation, other than the party's counsel) and a representative of the insurance carrier for any insured party with full authority to settle without further consultation, other that the insurance carrier's counsel, is physically present at the mediation conference.

(e) The mediator may request that the parties bring either documents or witnesses (including expert witnesses) or both to the mediation conference, but has no authority to order the parties to do so.

14.04 Confidentiality:

(a) Except as in 14.04(d) of these rules, all mediation documents and communications made during mediation conferences are both privileged and confidential. They are not subject to disclosure through discovery or any other process, and are not admissible into evidence in any judicial or administrative proceeding.

(b) No part of a mediation proceeding is considered public record.

(c) No part of a mediation proceeding is subject to either the Kentucky Open Meetings Act or the Kentucky Open Records Act.

(d) There is no privilege and no restriction on disclosure to the extent that:

(1) the parties consent in writing;

(2) the mediation communication or document gives the mediator either knowledge or reasonable cause to suspect that either a child or a spouse has been abused, or a child has been neglected; or

(3) the mediation communications were made in furtherance or the commission of a crime or fraud or as part of a plan to commit a crime or fraud.

(e) Nothing in this rule permits an individual to obtain immunity from prosecution for criminal conduct.

(f) Except as in 14.04(d) of these rules, a party has a privilege both to refuse to disclose and to prevent any other person from disclosing any communications or documents produced or generated during mediation proceedings between or among the parties to the case.

(g) A mediator, mediation facility, or employees and agents of a mediator or mediation facility, in relation to parties or entities that engaged in mediation, have a privilege not to:

(1) testify as a witness either in discovery or at trial, in any administrative proceeding, or civil or criminal litigation; and

(2) produce any documents disclosed or generated during the mediation proceedings, or any documents used in the normal course of business by the mediator or mediation facility.

(h) Any party in an administrative proceeding, or civil or criminal litigation, who tries to:

(1) subpoena as a witness; or

(2) compel the production of any documents from

any mediator, mediation facility, or any of their agents or employees, shall be liable for payment to those people for all reasonable costs and attorney's fees incurred in defending the particular action or quashing the particular motion.

14.05 Reporting to the Court:

(a) Either the mediator or mediation facility shall promptly notify the Court when they decline to accept a case for mediation.

(b) Either the mediator or mediation facility may refer a case back to the Court for good cause shown at any time after the mediator or mediation facility accepts a case for mediation. Either the mediator or mediation facility shall make the referral in writing.

(c) If a case is settled either prior to or during mediation, one of the parties shall prepare and submit to the Court an order stating a settlement has been reached. That party shall deliver a file-stamped copy of the order to the mediator. Any party who tenders an order shall include a distribution list with the name and address of each party who is to receive a copy of the order. The tendering party shall also provide

addressed envelopes (postage not required) with which to send a copy of the order to each party on the distribution list.

(d) The parties shall submit a joint statement to the Court within ten (10) days of termination of mediation proceedings stating both the issues that have been resolved and the issues that remain for trial if:

(1) some, but not all, of the issues in the case are settled during mediation;

(2) agreements are reached to limit discovery; or

(3) agreements are reached on any other matter.

(e) At the termination of mediation, either the mediator or mediation facility shall report to the Court that the mediation proceeding has ended. If the parties have not reached an agreement on any other matter in the mediation proceedings, the mediator shall report the lack of an agreement to the Court without comment or recommendation. If the parties consent, the mediator may identify any pending motions, outstanding legal issues, discovery process, or any other action by any party that would facilitate settlement if resolved or completed.

These rules shall apply to all actions pending in this Court after the date of approval by the Chief Justice of the Supreme Court of the Commonwealth of Kentucky.

All previous Rules of this Court are abolished.

Roger L. Crittenden
Roger L. Crittenden
Judge, Franklin Circuit Court
Division I

William L. Graham
William L. Graham
Judge, Franklin Circuit Court
Division II

O. Reed Rhorer
O. Reed Rhorer
Judge, Franklin Circuit Court
Division III, Family Court