Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING THE RULES OF COURT PRACTICE AND PROCEDURE FOR THE 49TH JUDICIAL CIRCUIT, FAMILY COURT DIVISION, ALLEN AND SIMPSON COUNTIES

Upon recommendation of the Judges of the 49th Judicial Circuit, and being otherwise sufficiently advised,

The Rules of Court Practice and Procedure for the 49th Judicial Circuit, Family Court Division, Allen and Simpson 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 30th day of April 2012.

CHIEF JUSTICE JOHN D. MINTON, JR.

FAMILY COURT RULES FOR THE 49TH JUDICIAL CIRCUIT
ALLEN AND SIMPSON COUNTIES

RULE 1. INTRODUCTION/ADMINISTRATIVE PROCEDURE

101 Introduction/Preface

These are the Rules of Practice of the Family Court for the 49th Judicial Circuit. These Rules supplement the Kentucky Rules of Civil Procedure (CR), the Kentucky Rules of Criminal Procedure (RCr), and the Family Court Rules of Procedure and Practice (FCRPP). These rules supersede the Local Family Court Rules of Procedure, 49th Judicial Circuit, approved by the Supreme Court of Kentucky on October 8, 2008.

102 Effective Date

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

103 Citation

These rules shall be cited as "LFCR" for Local Family Court Rules.

104 Assignment of Cases

The jurisdiction of the Family Court is as set forth in KRS 23A.100 and FCRPP 1(2), and all cases within its jurisdiction shall be assigned to the Circuit Court, Division II.

105 Holidays

Court will not be in session on any holidays established by or for the Kentucky Court of Justice.

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

201 Regular Motion Hour/Trial Schedule

The following is a hearing/trial schedule for cases before the Family Court:

ALL MONDAYS	**SIMPSON COUNTY**
	9:00 a.m. Motion Hour
	1:00 p.m. Motion Hour
1st, 3rd and 5th TUESDAYS	**ALLEN COUNTY**
	9:00 a.m. Domestic Violence Cases
	10:30 a.m. Paternity & Juvenile Child Support Cases

	1:00 p.m. Dependency, Neglect & Abuse Cases
	3:15 p.m. Status Offense Cases
2nd & 4th TUESDAYS	**ALLEN COUNTY**
	9:00 a.m. Domestic Violence Cases (4th Tuesday only)
	10:30 a.m. Paternity & Juvenile Child Support Cases
	1:00 p.m. Domestic Violence Cases (2nd Tuesday only)
	3:15 p.m. Status Offense Cases
1st, 3rd and 5th WEDNESDAYS	**SIMPSON COUNTY**
	9:00 a.m. Domestic Violence Cases
	10:30 a.m. Dependency, Neglect & Abuse Cases
2nd and 4th WEDNESDAYS	**SIMPSON COUNTY**
	9:00 a.m. Domestic Violence Cases
	10:30 a.m. Dependency, Neglect & Abuse Cases
	1:00 p.m. Paternity & Juvenile Child Support Cases
	3:15 p.m. Status Offense Cases
ALL THURSDAYS	**ALLEN COUNTY**
	9:00 a.m. Motion Hour
	1:00 p.m. Motion Hour
1st, 3rd and 5th FRIDAYS	**ALLEN COUNTY**
	9:00 a.m. Trials
	11:00 a.m. Adoptions
	1:00 p.m. Trials
2nd & 4th FRIDAYS	**SIMPSON COUNTY**
	9:00 a.m. Trials
	11:00 a.m. Adoptions
	1:00 p.m. Trials

***** Note: Any party filing a motion shall contact the Judicial Secretary for the assignment of a date and time.**

202 Exceptions to Regular Motion Hour Schedule

Any motion expected to require a lengthy hearing (2 hours or more) may be assigned for a hearing by the Judicial Secretary at a specific time other than the regularly scheduled motion hours. Further, deviations from the above schedule may be made, when possible, in order to avoid unnecessary delay or to address an emergency situation.

RULE 3. ADOPTIONS/TERMINATION OF PARENTAL RIGHTS

No additional local rules are established at this time pertaining to adoption or termination of parental rights cases. For uniform statewide rules see FCRPP 32 – 36.

RULE 4. DOMESTIC VIOLENCE PROTOCOL AND 24 HOUR ACCESS POLICY

Domestic Violence cases shall be governed by the Domestic Violence Protocol Order for Allen and Simpson Counties incorporated in these rules (See Appendix "A").

RULE 5. PATERNITY

No additional local rules are established at this time pertaining to paternity cases. For uniform statewide rules see FCRPP 14 and 15.

RULE 6. DEPENDENCY, NEGLECT AND ABUSE

601 An Emergency Custody Order may be issued by the Family Court Judge. If the Family Court Judge is not available, then the District Court Judge may issue the Emergency Custody Order. If both the Family Court Judge and District Court Judge are not available, then the Simpson County Trial Commissioner may issue the Emergency Order.

RULE 7. DOMESTIC RELATIONS PRACTICE

701 Motion hour shall be as set forth in Family Court Rule 201. Motions shall be filed at least seven (7) days prior to the scheduled hearing date. Responses, if any, shall be filed and served at least two (2) days prior to the hearing date. Service of the motion shall occur at least five (5) business days prior to the hearing date. These time limits may be waived by the court on a showing of good cause or in the interest of justice.

702 All motions, except those included in an answer, when served on the adverse party, shall contain a date on which said motion shall be heard. Any motion noticed which fails to include the date of the hearing shall be treated as if no motion has been filed.

703 All motions to compel discovery shall contain a certificate, by counsel, that she or he has conferred or corresponded with opposing counsel and that they are unable to reconcile their differences without a hearing.

704 Motions relating to child custody shall be accompanied by an affidavit(s) that contains a statement of the extent to which the child/children have been in the physical possession of each parent within the Commonwealth of Kentucky for the past six (6) months.

705 Motions relating to child visitation shall contain a statement setting forth specific reasons why the time-sharing/visitation guidelines incorporated in these rules should not be followed. (See Appendix "B").

706 Disputed Child Custody and/or Visitation Arrangements

A. The parties are encouraged to reach an agreement regarding custody and visitation times that are in the best interest of the children.

B. At such time that it is determined that custody and/or visitation time arrangements are in dispute and the parties are unable to resolve the conflict, a party may seek or the Court, sua sponte, may order appropriate action to address the custody and/or visitation time arrangement. Pursuant to FCRPP 6, such appropriate actions may consist of one or more of the following:

1. Custody evaluation;

2. Psychological evaluation(s) of a party or parties, and/or children;

3. Family counseling;

4. Mediation/evaluation (except in cases of domestic violence) where the parties are assisted in reaching their own resolution of conflict; however, if this process fails, the Court may order a custody evaluation which is to be reported to the Court and the parties;

5. Appointment of a guardian ad litem to represent the best interest of the children;

6. Appointment of independent counsel to represent the children;

7. The appointment of other suitable professionals for opinions or advice which the Court deems appropriate;

8. Such other action deemed appropriate by the Court.

In requesting one of the alternatives presented above, counsel for a party shall provide in detail the reasons supporting the request.

707 Trial Memorandum

When requested by the Court, Petitioner and Respondent shall file trial memoranda which address the following:

1. A summary of the general facts;
2. A statement of any stipulated facts;
3. A listing of all issues of fact and law for adjudication;

4. A concise statement of each general issue in dispute;
5. Argument with ample supportive citations of authority pertinent to each issue of fact and law;
6. Conclusion setting forth the specific relief sought from the Court;
7. Any updated witness lists, trial exhibits; etc., and
8. A statement of the status of mediation (if applicable).

708 Mediation

Pursuant to FCRPP 2(6), mediation may be ordered on the Court's own motion or may be voluntarily submitted by the parties upon agreement. Mediation may be scheduled by motion or by contacting the office of the Family Court Judge for referral and order. Cases shall be referred to a domestic relations mediator trained and approved by the Kentucky Court of Justice unless the parties agree to another mediator. Any such mediator must have the same qualifications as a mediator on the approved Court of Justice list.

RULE 8. STATUS OFFENSES

801 When appropriate, the Court will consider alternatives to detention as authorized by the Kentucky Revised Statutes and FCRPP 44, including, but not limited to, programs or placements available through the Justice Cabinet and other community partners.

RULE 9. MISCELLANEOUS

901 These Rules are subject to the Family Court Rules of Procedure and Practice, the Kentucky Rules of Civil Procedure and all applicable provisions of the Kentucky Revised Statutes.

902 All attorneys practicing in the 49th Judicial Circuit are directed to adhere to the Code of Professional Conduct and to be familiar with the provisions of these local rules and the FCRPP.

903 An attorney shall forthwith file an entry of appearance in a case as soon as he or she becomes involved in the case. If an attorney is being substituted as counsel of record for another attorney, a motion shall either be filed or an agreed order submitted.

904 All pleadings must comply with the requirements of KRS Chapters 205, 403, 405, and 407 by providing the personal identifying information required in those chapters. However, where personal identifiers are required by statute or contained in other documents or exhibits filed with the court, parties shall comply with CR 7.03(1)(b) by filing one copy from which any personal data has been redacted and filing an unredacted copy in a marked and sealed envelope. The clerk of the court shall allow the unredacted 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. As used in this

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

This 15th day of March, 2012.

G. Sidnor Broderson

G. SIDNOR BRODERSON, JUDGE
49TH JUDICIAL CIRCUIT
DIVISION II – FAMILY COURT

Janet J. Crocker

JANET J. CROCKER, JUDGE
49TH JUDICIAL CIRCUIT
DIVISION I

Martha B. Harrison

MARTHA BLAIR HARRISON, JUDGE
49th JUDICIAL CIRCUIT
SIMPSON ALLEN-DISTRICT COURT

APPENDIX A

TWENTY-FOUR HOUR ACCESSIBILITY TO EMERGENCY
PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION
DOMESTIC VIOLENCE PROTOCOL
49TH JUDICIAL CIRCUIT AND DISTRICT
ALLEN AND SIMPSON COUNTIES

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

I. Uniform Protocol for Processing Cases

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

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

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

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

Whenever a dissolution or child custody action is pending in another county of the Commonwealth, the domestic violence action may be retained or transferred, in the discretion of the presiding judge.

Consistent with FCRPP 12, when the local domestic violence protocol requires that a case be transferred to another circuit due to a pending dissolution or custody matter, an emergency protective order shall continue and the summons shall be reissued by the initiating court, pursuant to KRS 403.740(4), for a period not to exceed fourteen days if service has not been made on the adverse party by the date of transfer, or as the court determines is necessary for the protection of the petitioner. Thereafter, reissuance of the summons shall occur as needed in the court of transfer.

II. Twenty-four Hour Accessibility

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

Office of the Allen Circuit Clerk
Office of the Simpson Circuit Clerk
Office of the Allen County Sheriff
Office of the Simpson County Sheriff
Scottsville Police Department
Franklin Police Department
Every Clerk, Deputy Clerk, Sheriff, Deputy Sheriff, Chief of Police, and Police Officer of the various offices listed above is authorized to take the oath of the person petitioning for an Emergency Protective Order. Additionally, the Allen and Simpson Circuit Clerks and Deputy Clerks are authorized to take the oath of any person seeking a motion to amend a Domestic Violence Order. Any such person administering the oath shall affix his/her signature and office in the space provided on the form.

B. The following agencies and offices are authorized to take domestic violence petitions and administer oaths to petitioner **after** regular business hours and weekends:

Office of the Allen County Sheriff
Office of the Simpson County Sheriff
Scottsville Police Department
Franklin Police Department

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

The Division II Circuit (Family) Court Judge. In the event the Division II Circuit (Family) Court Judge is unavailable, then the petition shall be presented as follows:

Allen County
First, the District Court Judge. If said Judge cannot be located, then;
Second, the Trial Commissioner of Simpson County. If the Trial Commissioner cannot be located, then;
Third, the Division I Circuit Court Judge.

Simpson County
First, the Trial Commissioner of Simpson County. If the Trial Commissioner cannot be located, then;
Second, the District Court Judge. If said Judge cannot be located, then;
Third, the Division I Circuit Court Judge.
The Simpson County Trial Commissioner shall, pursuant to SCR 5.030 and SCR 5.040, be authorized to review Domestic Violence Petitions and to issue Emergency Protective Orders when he so finds appropriate, in both Allen and Simpson Counties.

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

The Division II Circuit (Family) Court Judge. In the event the Division II Circuit (Family) Court Judge is unavailable, then the petition shall be presented as follows:

Allen County
First, the District Court Judge. If said Judge cannot be located, then;
Second, the Trial Commissioner of Simpson County. If the Trial Commissioner cannot be located, then;
Third, the Division I Circuit Court Judge.

Simpson County
First, the Trial Commissioner of Simpson County. If the Trial Commissioner cannot be located, then;
Second, the District Court Judge. If said Judge cannot be located, then;
Third, the Division I Circuit Court Judge.
The Simpson County Trial Commissioner shall, pursuant to SCR 5.030 and SCR 5.040, be authorized to review Domestic Violence Petitions and to issue Emergency Protective Orders when he so finds appropriate, in both Allen and Simpson Counties.

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

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

COURT	DAY AND TIME
Allen Circuit Court, Division II	All Tuesdays except 2nd @ 9:00 a.m., 2nd Tuesdays @ 1:00 p.m.
Simpson Circuit Court, Division II	Wednesdays @ 9:00 a.m.

III. Contempt Proceedings

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

B. Petitioners seeking to initiate contempt proceedings should contact the clerk of the Court.

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

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

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

JANET J. CROCKER, JUDGE 49th JUDICIAL CIRCUIT, DIVISION I	March 15, 2012 DATE
G. SIDNOR BRODERSON, JUDGE 49th JUDICIAL CIRCUIT, DIVISION II FAMILY COURT	MARCH 14, 2012 DATE
MARTHA BLAIR HARRISON, JUDGE 49th JUDICIAL DISTRICT	March 15, 2012 DATE

APPENDIX B

TIME-SHARING/VISITATION GUIDELINES

The following schedules are suggested as guidelines for the parents and the court in establishing time-sharing/visitation schedules. Each case will present unique facts or circumstances which shall be considered by the court in establishing a time-sharing/visitation schedule and **the final schedule established by the court or agreed to by the parents may or may not be what these guidelines suggest.**

1. The time-sharing/visitation schedule set by the court for holidays, school breaks and summer break should control over regularly scheduled time-sharing/visitation time, even if this allows successive time-sharing/visitation periods.

2. The parent exercising time-sharing/visitation shall be responsible for timely picking up the child(ren) at the beginning of the time-sharing/visitation period, and the other parent shall be responsible for timely picking up the child(ren) at the end of the time-sharing/visitation period.

3. Times in a time-sharing/visitation schedule should be set in the time zone where the child primarily resides.

4. 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 shall apply.

5. Each parent shall 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.

6. The parent exercising time-sharing/visitation shall be allowed to exercise time-sharing/visitation on alternate weekends from Friday evenings at 6:00 p.m. to Sunday evenings at 6:00 p.m., and on Thursday evenings following the weekend visit from 5:30 p.m. to 7:30 p.m.

7. For the purpose of visitation the following seven (7) holidays shall be divided between the parents:

(1) New Years Day	(2) Martin Luther King Day
(3) Easter	(4) Memorial Day
(5) July 4th	(6) Labor Day
(7) Thanksgiving Day	

In the odd-numbered years, i.e. 2011, the mother shall have the child(ren) on the odd-numbered holidays (left column), and the father shall have the child(ren) on the even-numbered holidays (right column). In the even-numbered years, i.e. 2012 the father shall have the odd-numbered holidays and the mother the even-numbered holidays.

Time-share/visitation shall be from 9:00 a.m. – 9:00 p.m., unless the child is in school that day in which case visitation shall be from 5:00 p.m. – 9:00 p.m.

8. During odd-numbered years, i.e., 2011, the father shall receive parenting time from December 18th at 6:00 p.m. until December 24th at 6:00 p.m.; and the mother shall receive parenting time from December 24th at 6:00 p.m. until December 31st at 6:00 p.m. In even-numbered years, i.e., 2012, the mother shall receive parenting time from December 18th at 6:00 p.m. until December 24th at 6:00 p.m., and the father shall receive parenting time from December 24th at 6:00 p.m. until December 31st at 6:00 p.m.

9. On Mother's Day and Father's Day, no matter whose turn for time-sharing/visitation, the child(ren) shall be with the appropriate parent on those days. Time-sharing/visitation shall be from 9:00 a.m. – 9:00 p.m.

10. The non-residential parent shall have four (4) weeks of time-sharing/visitation each summer for child(ren) four (4) years or older provided there shall be no continuous time-sharing/visitation of longer than two (2) weeks at a time. For child(ren) age two(2) to four (4) years, the non-residential parent shall have two (2) weeks time-sharing/visitation. For child(ren) between the ages of one (1) and two (2), there shall be one (1) week of time-sharing/visitation. For a child(ren) under the age of one (1), the non-residential parent may have visitation for three (3) days. Each party shall give the other party at least sixty (60) days notice of his or her vacation schedule so that both parties have an opportunity to have the child(ren) during his or her vacation from work.

11. The child shall celebrate his/her birthday in the home of the residential parent, unless it falls on a time-sharing/visitation day. In the event the non-residential parent does not have the child on his/her birthday an additional, non-scheduled time-sharing/visitation day shall be granted so that the non-residential parent may give the child a birthday if desired.

12. In alternating years the non-residential parent shall have the child(ren) for a week of any fall or spring break from school which the child(ren) may have, provided the child(ren) are returned to the residential parent no less than 24 hours before they are to resume school. Unless otherwise agreed, the first fall or spring break vacation with the non-residential parent shall be in the calendar year after the one in which the decree is granted. Should Easter fall during a spring break when the child is with the residential parent and it is the non-residential parent's turn to have time-sharing/visitation with the child for Easter vacation, then an additional, non-scheduled time-sharing/visitation day shall be granted to the non-residential parent.

13. Waiting/Tardiness/Cancellation.
    a. In the event either parent will be more than 30 minutes late to pick up the child(ren) due to reasonable unforeseen circumstances, he or she should provide direct notice to the other parent or a designated third party and make suitable arrangements for exchange of the child(ren).

b. If time-sharing/visitation is missed through no fault of the parent, and reasonable notice has been given, that time should be made up, if reasonable to do so.
c. If a child is ill, the parent who has the child shall give 24-hour notice, if possible, to allow for appropriate plans to be made.
d. The child(ren) and/or the other parent have no duty to await the parent exercising time-sharing/visitation for more than thirty (30) minutes of the time-sharing/visitation time. A parent exercising time-sharing/visitation arriving to pick up the child(ren) more than thirty (30) minutes late shall forfeit that time-sharing/visitation period. The other parent has the right to refuse visitation if the parent exercising time-sharing/visitation is under the influence of intoxicants or drugs.

14. Transportation: the parents should transport the child(ren) in a safe manner, which includes utilizing the appropriate child restraint systems and not driving under the influence of intoxicants or drugs.