

# Supreme Court of Kentucky

## ORDER

**IN RE: ORDER APPROVING AMENDMENT TO RULE 13 OF THE LOCAL RULES OF PRACTICE FOR THE 53<sup>rd</sup> JUDICIAL CIRCUIT, ANDERSON, SHELBY AND SPENCER, CIRCUIT COURTS**

Upon recommendation of the Chief Circuit Judge of the 53<sup>rd</sup> Judicial Circuit, Anderson, Shelby, and Spencer, Circuit Courts and being otherwise sufficiently advised,

The amendment to Rule 13 of the Local Rules of practice for the Anderson, Shelby, and Spencer, Courts 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 the 15<sup>th</sup> day of December, 2008.

  
CHIEF JUSTICE

**AMENDMENTS TO THE  
LOCAL RULES OF PRACTICE  
OF THE  
53RD JUDICIAL CIRCUIT,  
ANDERSON, SHELBY AND SPENCER CIRCUIT COURTS**

The Local Rules of Practice of the 53<sup>rd</sup> Judicial Circuit, Anderson, Shelby and Spencer Circuit Courts, and amendments thereto, were approved by Order of the Kentucky Supreme Court dated January 14, 2008. The Local Rules of Practice for the 53<sup>rd</sup> Judicial Circuit are hereby amended as follows:

**RULE 13  
PRACTICE BEFORE THE MASTER COMMISSIONER**

**A. JUDICIAL SALES**

**1. Master Commissioner Approval**

In addition to other requirements of these Rules, all judgments or orders directing the sale of property by the Master Commissioner, directing the disbursement of monies held by the Commissioner or directing the delivery of a deed must be submitted along with the record to the Commissioner for certification that it complies with all applicable statutes and rules. The Commissioner shall then deliver the judgment or order to the Court for approval and entry at its next motion hour.

**2. Deposit for Advertisement and Appraisal**

When any order is submitted to the Commissioner requiring advertisement or appraisal, the party submitting the order shall deposit with the Commissioner an amount sufficient to pay the estimated costs of the proposed advertisement and/or appraisal, but not less than two thousand five hundred dollars (\$2,500.00). The Commissioner shall not submit the order to the Court nor cause an advertisement or appraisal to be made until such deposit is made.

When more than one sale is set for the same date, the Commissioner may advertise all such sales in one advertisement that includes the required information applicable to each action and sale. The total cost of advertising shall be apportioned among each of the various cases to which the advertisement applies based on the proportionate number of words or lines used to describe each sale property.

### 3. Orders of Sale and/or Delivery of Deed

Every order or judgment of this Court directing the Commissioner to sell property or to execute or deliver a deed shall contain :

- a. The legal description of the property including a street address (or if it has no street address, a brief description of its location and size);
- b. The name of the parties or parties whose interest is being sold or conveyed;
- c. The source of that party (or parties') title with deed book, page number and date of deed or recording date of deed;
- d. A specific designation of all costs, liens, and/or encumbrances to be paid. Regarding liens to be released, the judgment and order of sale shall specify the name and address of the entity and/or person(s) holding a lien and/or encumbrance, the payoff amount as of the end of the month in which the judgment and order of sale is drafted, and a per diem amount if applicable.
- e. A blank space for the insertion of the sale date by the commissioner's office;
- f. A signature line for the master commissioner indicating certification and compliance;
- g. A prepared by signature line of the attorney submitting order;
- h. A certificate of service by the Circuit Court Clerk;
- i. Appropriate number of copies for all parties including submitting attorney and master Commissioner; and
- j. Self addressed stamped envelopes for all parties including submitting attorney.
- k. If a mobile home or trailer is situated upon the property described herein, it shall *not* be sold as a part of the real estate if the mobile home or trailer is licensed and/or taxed as a motor vehicle, and in such event, title to any such mobile home or trailer shall not be transferred by a Master Commissioner sale. Only if the mobile home or trailer is not licensed or taxed as a motor vehicle, and is permanently affixed to the real estate, shall title to same pass via a Commissioner's Deed.
- l. Neither the Master Commissioner nor anyone in his employ including, but not limited to, office staff, auctioneers, or appraisers, shall act as surety on the bond of any purchaser of property at any judicial sale.
- m. All orders shall be submitted to the master commissioner prior to Court approval.

#### 4. Terms and Conditions of Sale

Unless otherwise ordered all sales shall be conducted by the Commissioner or Special Commissioner at the time announced in the advertising in the appropriate County Courthouse, upon the following terms and conditions:

a. Before conducting a sale the Master Commissioner shall advertise in a newspaper meeting the requirements of KRS 424 .120, 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 consecutive weeks next preceding the date of sale.

b. If required by order or statute, the Master Commissioner before making a sale of real property shall have the property appraised by two intelligent, disinterested housekeepers of the appropriate County who are not related to any parties to the action. Before making appraisals, the appraisers shall be sworn by the Master Commissioner. They shall return their appraisals in writing to the Master Commissioner who shall file same as a part of the record.

c. The property shall be sold to the highest bidder provided:

1). At the time of sale the successful bidder shall either pay cash or make a deposit of at least 10% of the purchase price with the balance on credit for thirty (30) days. If the purchase price is not paid in full, the successful bidder shall be required to give bond with good surety for the unpaid purchase price. The bond shall bear interest at the rate of twelve (12%) percent per annum from the date of sale until paid. That should the Plaintiff be the successful purchaser at sale, the bond may be waived by a deposit in the sum of Two Thousand Five Hundred Dollars (\$2,500.00) to the Master Commissioner for costs and fees.

2). The purchaser shall be required to assume and pay all taxes or assessments upon the property for the current tax year, all subsequent years, and all prior years, for which the purchaser shall receive no credit towards the purchase price.

3). The property shall otherwise be sold free and clear of any right, title or interest of all parties to the action and all liens and encumbrances thereon, excepting easements and restrictions of record in the appropriate County Clerk's Office and such right of redemption as may exist in favor of the United States of America or the defendant(s).

4). The terms and conditions hereinabove set out may be adopted by reference to this rule in the order or judgment directing the sale, or shall be restated therein.

d . A party, who is the successful purchaser of the property, may take credit against any judgment in that party's favor against the defendant property owner for the required deposit and 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.

e. Withdrawal or abatement of any judicial sale after entry of a Judgment and Order of Sale thereon shall be made by motion and Order prior to the date and time of the sale.

f. Reinstatement of a judicial sale following an order to withdraw or abate same shall be made by motion and Order.

#### 5. Confirmation of Report of Sale

The Master Commissioner after making the sale shall report his actions to the Court. Ten (10) days after the filing of that report, if no objections have been filed thereto and without motion, the sale shall be deemed confirmed and an order confirming the sale shall be submitted to the Court. A copy of the order of confirmation shall be served upon the purchaser.

#### 6. Fees of the Commissioner

The Commissioner shall be entitled to those fees set forth in Part IV of the Administrative Procedures of the Court of Justice.

#### 7 . Orders of Distribution

a. Orders requiring distribution of funds held by the Commissioner shall set forth all amounts collected, identify the proper recipient(s) and the specific amounts due each under the judgment or order.

b. If disbursements are to be made to taxing authorities, a copy of the pertinent tax bill(s) must be furnished the Commissioner, giving the commissioners office sufficient time to pay the bill(s) with the amount(s) listed in the order.

#### 8. Appraiser's Fees

In all residential sales where an appraisal is required, the fee of each appraiser shall be \$150.00, unless otherwise ordered by the Court. Appraisal fees for commercial, farm and other sales shall be set by the court . The fee shall be paid from the proceeds of sale.

### B. HEARINGS

1. An attested copy of the order referring the case to the Master Commissioner shall be delivered to the Master Commissioner's office.

2. The Commissioner shall then promptly assign a date for a pre-hearing conference and give written notice thereof. The attorney responsible for the case shall be expected to personally attend said hearing. The Commissioner may charge and collect a fee in accordance with Part IV, section 4 of the Administrative Procedures of the Court of Justice.

3. The Master Commissioner's shall designate a specific time in his/her discretion at which time all motions before him or her, unless otherwise designated, shall be heard.

4. An attorney requesting a hearing date before the Master Commissioner may be responsible for providing a Court reporter at all evidentiary hearings.

5. Any money paid into Court pursuant to CR 67 .01 shall be paid to the Master Commissioner who is authorized to charge a fee as follows :

- a. 3% of the first \$2,000 .00;
- b. 2 1/2% of the next \$3,000 .00 ; and
- c. 1 1/2% for any amount in excess of \$5,000 .00,  
total fee not to exceed \$5,000.00.

### C. WRIT OF POSSESSION AND ATTACHMENT PROCEDURE

1. Pursuant to KRS 425 .006, the Master Commissioner and Special Commissioners are appointed judicial officers to perform such duties as may be required of them by Chapter 425 of the Kentucky Revised Statutes.

2. All requests for hearings, or ex parte relief under the provision of that Chapter shall stand automatically referred, without order, to the Commissioner's office for further proceedings.

3. When a hearing has been requested or is required, it shall be the responsibility of the attorney requesting the hearing to notify the Commissioner's office of the request, after which the Commissioner shall fix a time and place for hearing and give written notice thereof to the parties.

4. Requests for ex parte and temporary restraining orders shall be immediately delivered to the Commissioner, along with the record, by the Clerk of this Court or the attorney requesting relief. The Commissioner shall then make a determination.

Except as specifically set out above, the Local Rules of Practice for the 53<sup>rd</sup> Judicial Circuit, Anderson, Shelby and Spencer Circuit Courts, as originally approved by Order of the Kentucky Supreme Court on January 14, 2008, shall remain in full force and effect. The Amendments to the Local Rules of Practice as set out above shall become effective upon the approval by the Chief Justice of the Kentucky Supreme Court.

DONE THIS THE 10<sup>th</sup> day of December, 2008.



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CHARLES R. HICKMAN, JUDGE  
53RD JUDICIAL CIRCUIT  
Anderson Circuit Court  
Shelby Circuit Court  
Spencer Circuit Court

# Supreme Court of Kentucky

## ORDER

IN RE: ORDER APPROVING AMENDMENTS TO THE LOCAL RULES OF PRACTICE FOR THE 53<sup>RD</sup> JUDICIAL CIRCUIT, ANDERSON, SHELBY AND SPENCER CIRCUIT COURTS

Upon recommendation of the Judge of the 53<sup>rd</sup> Judicial Circuit, Anderson, Shelby and Spencer Circuit Courts, and being otherwise sufficiently advised,

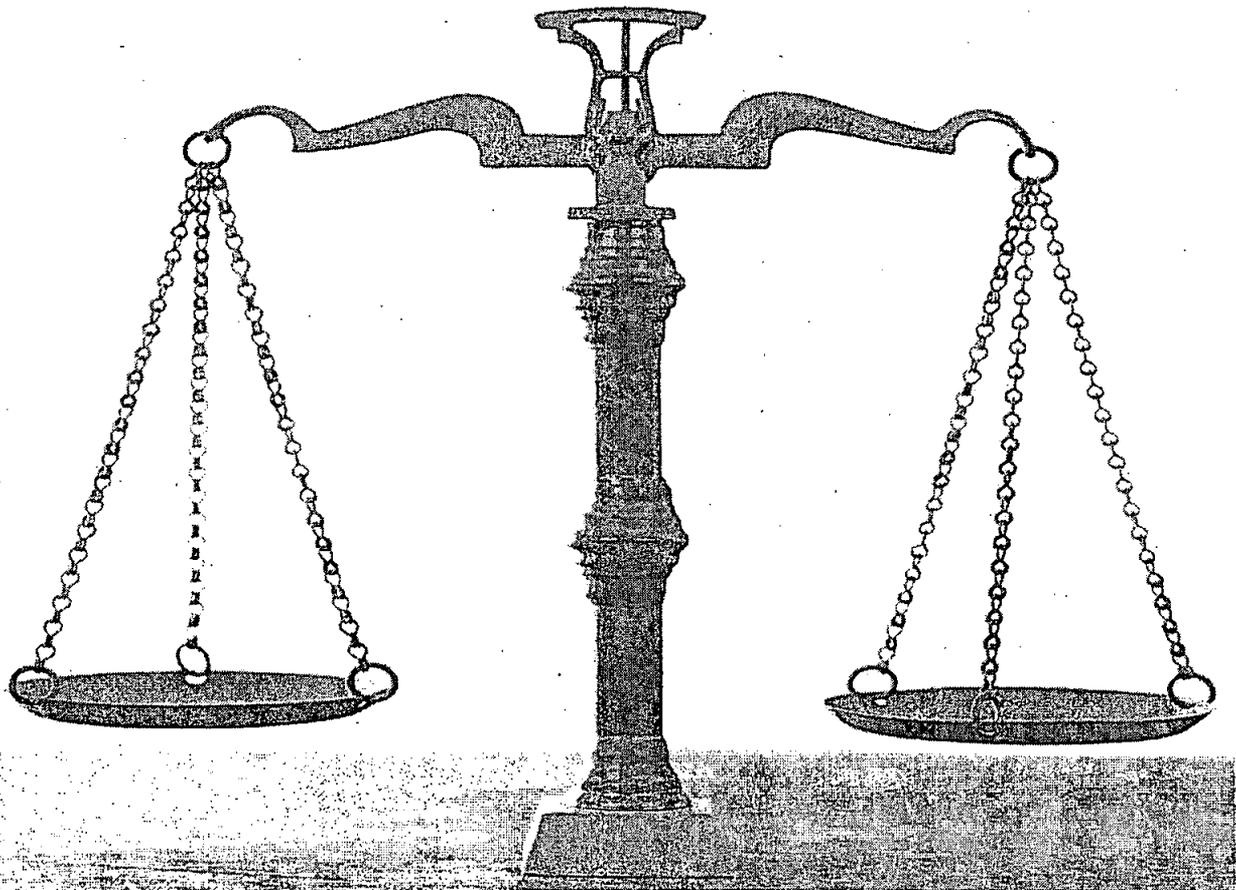
The amendments to the Local Rules of practice for the Anderson, Shelby and Spencer Circuit Courts are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this the 14 day of January, 2008.

  
\_\_\_\_\_  
CHIEF JUSTICE

COMMONWEALTH OF KENTUCKY  
53<sup>RD</sup> JUDICIAL CIRCUIT  
ANDERSON ~ SHELBY ~ SPENCER COUNTIES

**LOCAL COURT RULES FOR  
PRACTICE AND PROCEDURE**



Honorable Charles R. Hickman, Circuit Judge  
501 Main Street, Suite 15  
Shelbyville, Kentucky 40065  
p 502-647-5234 ~ f 502-647-5386  
[www.kycourts.net](http://www.kycourts.net)

**CIRCUIT CLERKS and MASTER COMMISSIONERS**

**ANDERSON CIRCUIT COURT CLERK:**

**MS. JAN ROGERS**

**Anderson County Courthouse**

**151 S. Main Street**

**Lawrenceburg, Kentucky 40342**

**telephone: 502-839-3508**

**fax: 502-839-4995**

**SHELBY CIRCUIT COURT CLERK:**

**MS. KATHY NICHOLS**

**Shelby County Courthouse**

**501 Main Street**

**Shelbyville, Kentucky 40065**

**telephone: 502-633-1287**

**fax: 502-633-0146**

**SPENCER CIRCUIT COURT CLERK:**

**MS. BECKY ROBINSON**

**Spencer County Courthouse Annex**

**P. O. Box 282**

**Taylorsville, Kentucky 40071**

**telephone: 502-477-3220**

**fax: 502-477-9368**

**ANDERSON COUNTY MASTER COMMISSIONER:**

**HON. WILLIAM L. PATRICK**

**Attorney at Law**

**307 South Main Street**

**Lawrenceburg, Kentucky 40342**

**telephone: 502-839-4527**

**fax: 502-839-4504**

**SHELBY COUNTY MASTER COMMISSIONER:**

**HON. THOMAS TODD DAVIS**

**Attorney at Law**

**931 Main Street**

**P. O. Box 40**

**Shelbyville, Kentucky 40066-0040**

**telephone: 502-633-6002**

**fax: 502-633-6003**

**SPENCER COUNTY MASTER COMMISSIONER:**

**HON. CHARLES TICHENOR**

**Attorney at Law**

**P. O. Box 509**

**Taylorsville, Kentucky 40071**

**telephone: 502-477-6412**

**fax: 502-477-2169**

**RULE 1  
APPLICABILITY OF LOCAL RULES**

These Court Practice and Procedure Rules, 53<sup>rd</sup> Judicial Circuit, and the Kentucky Rules of Civil or Criminal Procedure, and other law, insofar as applicable directly or by analogy, shall govern civil and criminal proceedings in the 53<sup>RD</sup> Judicial Circuit, unless the same conflict with any statute or other law of the United States or the Commonwealth of Kentucky, or rule and/or Order of the Supreme Court, Commonwealth of Kentucky, at any time legally adopted; in which event any such statute, law, rule or Order shall at all times prevail. These Rules shall be cited as LCRP-53-\_\_\_\_\_.

**RULE 2  
PLEADINGS and ORDERS**

A. The heading of all pleadings and legal papers in all civil and criminal cases shall be styled at the beginning and center of the first page as follows:

**COMMONWEALTH OF KENTUCKY  
53<sup>rd</sup> JUDICIAL CIRCUIT  
ANDERSON (or SHELBY or SPENCER) CIRCUIT COURT**

The case number shall be centered directly under the above.

B. All pleadings and papers requiring a certificate of service shall set forth on the last page thereof the typed name and complete address of counsel, including telephone number AND complete name, address, and telephone number of all opposing counsel.

Example:

(Signature) : \_\_\_\_\_  
Hon. Jane R. Doe  
COUNSEL FOR PLAINTIFF  
Doe, Smith, and Johnson  
111 Main Street  
Taylorsville, Kentucky 40071  
Telephone: (502) 477-xxxx

Hon. Jean S. James  
COUNSEL FOR DEFENDANT

\_\_\_\_\_  
(DEFENDANT)-(name which defendant)  
James, Douglas, and Morris  
617 Main Street  
Lawrenceburg, Kentucky 40342  
Telephone: (502) 839-xxxx

C. All pages of all legal papers shall be numbered at the bottom center of each page as follows:

Page \_\_\_\_\_ of \_\_\_\_\_ (pages)

D. If a page requesting the Judge's signature has no other indicator of the case name and number on said page, a notation of the court name and case number shall be included at the top of said signature page.

Example:

Shelby Circuit Court  
Case number 00-CI-00000

### **RULE 3 JURY TERM and CONTACT WITH JURORS**

Anderson, Shelby and Spencer Circuit Courts will be Courts of continuous session; therefore, a jury will be available in all counties at all times. Juries will serve terms of six (6) months.

### **RULE 4 PROCEDURES IN CRIMINAL CASES**

A. Regular criminal hearing days in Anderson County will be the first Tuesday of the first full week of each month and the third Tuesday thereafter (unless otherwise Ordered), beginning at 9:00 a.m.

B. Regular criminal hearing days in Shelby County will be the first Monday of the first full week of each month and the third Monday thereafter (unless otherwise Ordered), beginning at 8:30 a.m.

C. Regular criminal hearing days in Spencer County will be the first Thursday of the first full week of each month and the third Thursday thereafter (unless otherwise Ordered), beginning at 9:00 a.m.

D. The Court may schedule other criminal matters requiring a hearing greater than ten (10) minutes at any other time available on its calendar.

E. There will be no arraignment scheduled on the Court's calendar without proper service of a summons or warrant prior to the arraignment.

F. Criminal matters shall have priority on the Court's calendar for trial dates.

#### G. Grand Juries

A regular grand jury shall be impaneled pursuant to KRS 29A.210 in January and June of each year in Anderson County, Shelby County and Spencer County; and at such other times as the Judge may find that the ends of justice or the needs of the counties require. A special grand jury may be impaneled by the Judge pursuant to KRS 29A.220 in the manner and for the reasons provided in that section.

#### H. Appointment of the Department of Public Advocacy

If it appears after inquiry and examination that a defendant is not financially able to employ an attorney and is otherwise eligible for the appointment of counsel to represent him, the Court shall appoint the Department of Public Advocacy as defendant's counsel, subject to existing laws and regulations of that agency.

#### I. Pro Se Defendants

In the event a defendant shall insist upon representing himself without counsel, the defendant shall be brought before the Court and be examined by the Court concerning his/her understanding of the proceedings and possible consequences to him/her in the proceedings, his/her right to the assistance of counsel, and all other relevant matters. If the Court is convinced that defendant is aware of his/her rights and has waived them knowingly, voluntarily, and intelligently, the Court shall permit him/her to proceed without counsel and shall, by written Order, relieve any counsel previously appointed. The Court may, in its discretion, appoint advisory or standby counsel to aid the defendant if the Court deems such appointment will advance the ends of justice.

#### J. Notice of Motions

The notice of a motion in a criminal case, other than a motion for shock probation or prerelease probation, shall specify the date, time and place for the hearing thereof. Motions for shock probation or prerelease probation shall not be noticed for a hearing, but such motions shall be heard at the convenience of the court or the court may rule upon the motion without a hearing.

#### K. Filing Deadline

Shelby Circuit Court criminal motions shall be filed with the Clerk before 1:00 P.M. on the Wednesday preceding the motion day designated in the notice. Anderson Circuit Court criminal motions shall be filed with the Clerk before 1:00 P.M. on the Thursday preceding the motion day designated in the notice.

Spencer Circuit Court criminal motions shall be filed with the Clerk before 1:00 P.M. on the Monday preceding the motion day designated in the notice. No motions sent by fax shall be accepted by the Clerks for filing, except those authorized in Section M of this Rule herein.

#### L. Withdrawal of Attorneys

i). An attorney shall not withdraw from employment in a criminal proceeding without permission of the Court. After a criminal case is set for trial, an attorney of record shall not be permitted to withdraw from the case in the absence of a compelling reason.

ii). Retained trial counsel shall secure permission from the court before withdrawing as counsel for a defendant who seeks to appeal a judgment of conviction. Before permission to withdraw is granted, it shall be the responsibility of retained trial counsel to prepare and file the following:

- a. Notice of appeal pursuant RCr 12.04;
- b. Motion, affidavit, and order for leave to appeal in forma pauperis, if applicable;
- c. Designation of record on appeal; and
- d. Order substituting the Department of Public Advocacy as counsel on appeal, if applicable.

#### M. Pretrial Conference, Status Hearing, Docket Pass, and Guilty Pleas.

i). In all criminal cases in which the defendant elects to enter a plea of guilty, the Commonwealth's Offer on a Plea of Guilty and Petition to Enter Plea of Guilty shall be signed by the defendant and attached to the record by 3:00 P.M. one (1) business day before the scheduled motion docket.

ii). In Shelby County cases where the defendant is detained at the Shelby County Detention Center and the defendant intends to request a continuance of the scheduled status hearing before the Court, a Docket Pass Form and Order shall be completed by defense counsel, signed by the defendant and tendered to the Clerk (original or faxed copy) by 3:00 p.m. one (1) business day before the scheduled motion docket so that the defendant whose case is being passed will not be transported from the Shelby County Detention Center for the motion docket.

In all other cases in Anderson, Shelby, and Spencer Counties, if a pass is sought for a defendant(s) in other institutions or detention facilities, then the Form and Order (original or faxed copy) shall be filed with the Clerk by 3:00 P.M. two (2) business days before the scheduled motion docket in order to avoid transport. The original Form and Order shall then be presented to the Judge for signing at the call of the motion docket. Counsel's failure to present the Form and Order in

time to prevent unnecessary transport may result in Rule 11 or contempt sanctions against defense counsel.

#### N. Discovery: Duties of Prosecutor, Defense, and Law Enforcement Officers

##### Duty of Commonwealth's Attorney Open File Discovery

i). The Commonwealth shall file with the Court a copy of the discoverable portion of the contents of the Prosecutor's file for the use and inspection of the defendant at arraignment. In the event the Commonwealth withholds any material contents in its file under a claim of same being non-discoverable, the Commonwealth shall state so in writing at the time of the prosecutor's file contents are filed with the Court. Upon written motion by the defense, the Court will consider whether the prosecutor shall release the requested information.

ii). The Commonwealth shall include in its discovery all information in its possession or control, including the information contained in RCr 7.24 and RCr 7.26.

iii). The Commonwealth remains under a continual order to file any supplemental material. All supplemental material must be filed by the final pretrial conference. All supplemental material and information that could have reasonably been ascertained prior to the final pretrial conference that is filed after the final pretrial conference, will not be permitted to come into evidence except upon leave of the Court for good cause shown.

##### Duty of Defense

iv). If an agreement to dispose of the case cannot be reached with the Commonwealth prior to the defendant's next court appearance, defense counsel shall submit such written motions as the attorney shall expect to offer in the case at the next motion hour. No additional motions may be offered after that motion hour except by leave of the court upon a showing of excusable neglect, or if it concerns a matter of which the attorney was not aware or which did not come to the attorney's attention prior to the time of the plea negotiation conference or in the interest of justice.

v). If the Defendant desires a duplicate of any mechanical recording relating to the indictment testimony taken before the Grand Jury, defense counsel shall make an oral request for same to the Commonwealth's attorney and supply the Commonwealth with a sufficient number of blank tapes for duplication. If the Commonwealth has not responded within two (2) weeks, defense counsel may move the Court for same.

## Additional Discovery

vi). The defendant, by and through counsel, may request by written motion additional discovery or seek the Court's assistance in obtaining other relief to which he/she may be entitled. Any motions for additional discovery must be very specific and not general in nature. The Court will summarily overrule broad motions for discovery.

vii). If the Defendant desires to inspect evidence that has been listed in Commonwealth's discovery as being in safekeeping with a law enforcement agency, then defense counsel, shall give reasonable notice to the agency where the evidence is located of his/her intent to inspect. Defense counsel shall inspect, photocopy or otherwise copy said evidence in the presence of a law enforcement agency official or its designate during reasonable business hours as may be agreed upon.

## Duty of Law Enforcement Officers

viii). All law enforcement officers possessing evidence not otherwise provided to the Commonwealth's attorney office, due to impracticality or security reasons, shall make a list of said evidence and the location of safekeeping. This list shall be provided to the Commonwealth's Attorney and shall be made a part of the Commonwealth's discovery filings with the Court. All law enforcement officers that receive additional or supplemental evidence after presentation to the Grand Jury shall immediately provide same to the Commonwealth's Attorney and shall so note the delivery thereof in their files and the Commonwealth's Attorney shall immediately file same with the Court.

Such evidence shall be available to defense counsel for inspection, photography or copy, at the location where the evidence is housed, during reasonable business hours and with reasonable notice to the officer or agency. The notice, availability and inspection of such evidence shall be accomplished without further orders of the Court.

## O. Jury Instructions

The Commonwealth's Attorney and Defense counsel shall tender proposed jury instructions to the Judge's office three (3) business days in advance of trial on a CD or diskette in Microsoft Word format. If the proof at trial would warrant the giving of any different or additional instructions,

the parties will be given the opportunity to tender additional or different instruction(s) at the close of the case and before submission to the jury.

**P. Probation: Allocation of Installment Payments.**

Unless otherwise ordered by the Judge, the Clerk shall allocate installment payments made by defendants who are on probation in the following order:

- i). Payment of Court costs;
- ii). Restitution ordered by the Court;
- iii). Attorney fee to Department of Public Advocacy;
- iv). Probation supervision fee.

**Q. Class D Felony Pretrial Diversion**

The Class D Felony Pretrial Diversion option may be offered to those Defendants who are eligible. Pretrial Diversion is the postponement of imposition of sentence upon any person who qualifies for this program, subject to certain conditions, for a period of time not to exceed five (5) years subject to certain conditions established by the Court. The Protocol for such Pretrial Diversion is attached hereto and made a part hereof as Appendix A.

**RULE 5  
PROCEDURES IN REGULAR CIVIL CASES**

A. Regular civil motion days in Anderson County will be the first Tuesday of the first full week of each month and the third Tuesday thereafter (unless otherwise Ordered), beginning at 1:00 p.m.

B. Regular civil motion days in Shelby County will be the first Wednesday of the first full week of each month and the third Wednesday thereafter (unless otherwise Ordered), beginning at 9:00 a.m.

C. Regular civil motion days in Spencer County will be the first Thursday of the first full week of each month and the third Thursday thereafter (unless otherwise Ordered), beginning at 10:30 a.m.

## MOTIONS IN CIVIL CASES

### D. Form of Motion.

i). All motions to be argued at Motion Hour and notice of the hearing, other than those set forth in (ii) and (iii) below or those that may be heard ex parte, shall be filed with the Clerk, and served by hand delivery or facsimile on opposing parties. Motions to be heard must be received by opposing counsel 72 hours prior to the noticed motion hour. Responses shall be filed within 24 hours of the noticed motion hour. The notice of the hearing shall specify the date, time and place for the hearing.

ii). Motions to dismiss, motions for summary judgment, motions to strike, and motions under CR 12.02 shall be filed and served upon opposing party and/or attorney(s) at least 20 days prior to motion hour and accompanied by a memorandum of the grounds for the motion with citation of authorities relied upon, but not greater than 25 pages in length, unless permitted by prior order. Failure to file a memorandum with supporting authorities may be grounds for overruling the motion. Any party properly served with a motion accompanied by a memorandum and authorities shall file a response opposing the motion, with citation of supporting authorities, but not greater than 25 pages in length except by leave of Court. Such response shall be filed at least 72 hours prior to the time specified in the notice of hearing of the motion. Failure to file a timely response may be grounds for sustaining the motion, but the time for filing a response may be extended upon oral or written motion for good cause shown, including such factors as the length and complexity of the motion and supporting memorandum and time of service of the motion. Any reply memorandum shall be limited to 5 pages in length, and must be filed 24 hours prior to hearing.

iii). Motions for Restraining Orders and Injunctions shall only be heard by the Court. Those motions shall be scheduled through the Circuit Court Judge's Office (502-647-5234).

iv). A motion to compel discovery, for a protective order, or for sanctions may be filed pursuant to CR 26 and/or CR 37 only if counsel are unable to resolve between themselves the discovery dispute. Counsel shall have the duty to make a good faith effort to resolve any disputes which arise in the course of discovery. The moving party shall attach to the motion a certification of counsel that he or she has attempted to resolve the dispute and that they have been unable to do so. The certification should detail the attempts of counsel to resolve the dispute.

v). Motions shall be served on the Master Commissioner where applicable and all orders shall contain a signature line for approval of entry.

vi). Nonjury cases will be assigned for trial only upon motion at the call of the Motion Docket, or at pre-trial conferences, at which time the Court shall be informed of the probable duration of the trial and any conflicting trial obligations of counsel for the parties.

vii). Substitution of counsel or withdrawal of counsel from any proceeding may be by: 1) an Agreed Order which names the "new" counsel and is signed by all parties; or, 2) leave of Court upon proper motion with notice to all parties. "New" counsel shall file an entry of appearance in the record immediately upon being retained.

#### E. Default Judgments

i). A party seeking a judgment by default under CR 55.01 shall file a written motion therefor. The motion shall be accompanied (a) by a certificate of the attorney that no papers have been served upon the attorney by the party in default, the date and method by which the party in default was served and (b) by an affidavit stating whether the party in default is in the military service.

ii). If the party in default has failed to appear in the action, the motion need not appear on the motion docket and no notice thereof need be given the party against whom judgment by default is sought. To submit an action for judgment against a party in default for failure to appear, the party seeking the judgment shall place the entire record of the action, the motion and the proposed judgment, in the Judge's orders/judgments box in the Clerk's office.

iii). If the party in default has appeared in the action, the motion shall appear on the motion docket and the party in default, or if the party is appearing by representative, the party's representative, shall be served with written notice of the motion at least three (3) days prior to the hearing thereon. If the action is ordered submitted at the hearing the party seeking the judgment shall place the entire record of the action and the proposed judgment in the Judge's orders/judgments box in the Clerk's office.

#### F. Agreed Orders

i). If an agreed order, signed by counsel for all parties affected, relating to a motion appearing on the Motion Docket is submitted to the Clerk prior to the call of the Motion Docket, counsel need not attend the call of the Motion Docket. The agreed order shall set forth the basis for the order.

ii). Out-of-Court resolution of discovery disputes may be effectuated, if desired, by submitting to the Court an agreed order signed by counsel for all parties affected by the order. No supporting motion is necessary, and the matter need not be placed on the Motion Docket.

## G. Docketing and Appearances

i). The Clerk shall keep a Motion Docket on which he or she will docket all motions assigned for hearing on each Motion Day, either by Court order or by notice duly served.

ii). Every motion, except as otherwise provided herein, and other than ones which may be heard ex parte, shall appear on the Motion Docket. **However, no motion or action shall be heard on Motion Day unless the motion is filed with the appropriate Court Clerk before 4:00 P.M. on the Friday preceding the Motion Day designated on the notice in Shelby County, the Thursday preceding the Motion Day designated on the notice in Anderson County, and the Monday preceding the Motion Day designated on the notice in Spencer County, except by leave of Court.**

iii). The Motion Docket will be called and heard in the order docketed, unless otherwise ordered. When the case is called, participating counsel shall stand in place, answer the call, announce their appearances for the record, and advise the Court if a hearing is necessary in the matter. If a hearing is necessary, the case shall be passed to the second call of the docket, or to such time as the Court may direct.

iv). It is the obligation of attorneys scheduled to appear at a given motion hour to ascertain whether the motion hour has been canceled or rescheduled by the Court.

v). Proposed orders shall not be filed or submitted with motions to be heard by the Court.

## **RULE 6 ENTRY OF ORDERS AND JUDGMENTS**

A. Whenever any ruling is made or opinion rendered, an order or judgment in conformity therewith shall be attested by counsel for all parties thereto as being in conformity to the ruling or opinion, and shall be presented to the Court.

B. The endorsement required by paragraph A above shall not be required where:

i). Counsel for the party(s) against whom the order is to be entered refuses to attest the order;

ii). Counsel for the party(s) against whom the order is to be entered fails to return the order to counsel who prepared it within three business days of receipt of order;

iii). The party against whom the order is to be entered is not represented by counsel; or

iv). There was no opposition to the motion at Motion Hour.

Where any of the above apply, preparing counsel shall so attest.

C . When signed by the Judge, the order or judgment shall be delivered to the Clerk for entry. Counsel preparing the order or judgment **SHALL ALSO DELIVER TO THE CLERK A SUFFICIENT NUMBER OF PROPERLY ADDRESSED, STAMPED ENVELOPES** to permit the Clerk to complete service thereof when required by CR 77.04. Counsel may waive service of any order or judgment, and notice of entry.

#### **RULE 7 NOTICES OF SUBMISSION**

A. Upon submission of any matter to the Court for decision or final judgment, the parties shall prepare and present to the Court an order of submission setting forth in particular the issue or issues on which the action is submitted and file an AOC Form-280.

B. An action shall be submitted only upon the entry of a notice of submission and the AOC Form-280. The notice of submission along with the record shall be placed in the Judge's orders/judgments box in the Clerk's Office.

C. No further pleadings, proof or briefs, unless ordered or allowed by the Court for good cause shown, shall be filed after the filing of the notice of submission.

D. The Court may, but need not, pass upon any such action before such notice of submission.

E. After the conclusion date of a trial before the court, counsel shall prepare and submit to the Judge's office proposed Findings of Fact and Conclusions of Law along with a CD or diskette in Microsoft Word format within ten (10) days of the conclusion of the trial.

F. In accordance with KRS 454.350, the Court shall file an opinion or ruling within ninety (90) days of the entry of the order of submission and filing of the AOC Form-280.

**RULE 8  
LEGAL BRIEFS AND MEMORANDA**

Legal briefs or memoranda shall be filed of record in the Clerk's office. Copies of cases cited therein shall not be filed but shall be placed in the Judge's box along with a copy of the legal brief or memorandum.

**RULE 9  
ANSWERING AND FILING INTERROGATORIES OR  
REQUESTS FOR PRODUCTION OR INSPECTION**

Interrogatories propounded under CR 33 and answers thereto, requests for production or inspection under CR 34 and answers thereto, and requests for admission under CR 36 and answers thereto shall not be filed with the Court. A one-page notice of service under CR 33, CR 34 and CR 36, SHALL be filed in the record to prevent the case being placed on the show cause docket.

**RULE 10  
FILING OF DEPOSITIONS**

Originals of depositions shall not be filed in the Court record. The attorney who noticed the taking of a deposition shall be custodian of the record for the original deposition (and video tape, if one is taken), and shall present it when directed by the Court or any party involved in the proceedings. If ordered by the Court, relevant pages of a condensed deposition transcript shall be filed in the record if the deposition is the subject of any motion before the Court.

**RULE 11  
DISMISSAL OF ACTION FOR FAILURE TO PROSECUTE**

When any action has remained on the Civil or Criminal Docket for one year without any step being taken indicating an intention to prosecute, the action may be dismissed for want of prosecution on motion of either party or on the Court's own motion pursuant to CR 77.02 and RCr 13.03.

**RULE 12  
EXHIBIT RETENTION AND DISPOSAL**

A. The Clerk shall take immediate custody of all exhibits introduced and retain same until disposed of pursuant to other sections in this rule.

B. Exhibits introduced by the Commonwealth in a criminal action where a verdict of guilty was returned or a plea of guilty was entered shall be retained by

the Clerk for a period of two years from the expiration of time for an appeal unless an order is entered by the Court extending the time for retaining said exhibits. After the time period has expired, all exhibits shall be delivered to the Commonwealth Attorney who shall review the exhibits and make a motion to the Court as to which exhibits shall be declared contraband and which exhibits shall be declared forfeited under the applicable statutes.

C. Exhibits introduced by the Commonwealth in a criminal action wherein the defendant was found not guilty shall be delivered to the Commonwealth Attorney or returned to the defendant as set forth in D below. The Commonwealth Attorney shall make a motion to the Court to have any property declared contraband or forfeited property as permitted by the statute and make a recommendation to the Court regarding how the exhibits can be disposed. The Commonwealth Attorney shall have the responsibility of disposing of all other exhibits except forfeited property or contraband in accordance with applicable law.

D. Exhibits introduced by the defendant in a criminal action wherein the defendant was found not guilty shall be returned upon order of the Court to the defendant or his attorney within 30 days from notification by the Clerk. If the exhibits are not picked up by the defendant or his attorney within that time, the Clerk shall dispose of said exhibits pursuant to the records retention schedule of the Administrative Office of the Courts, or as ordered by the Court.

E. In all civil cases the Clerk shall notify the attorneys for the parties that exhibits introduced during any proceedings in civil matters shall be picked up within 30 days after the time for appeal has expired. If the attorneys do not pick up the exhibits within that time, the Clerk shall dispose of the exhibits pursuant to the records retention schedule of the Administrative Office of the Courts or as ordered by the Court.

F. Exhibits that are too bulky to be included with the transcript on appeal shall be retained by the Clerk until the final appeal has been decided after which they shall be disposed of in accordance with the foregoing procedure.

G. Notwithstanding any provision to the contrary, the parties with the Court's approval may agree in a civil or criminal case for an exhibit or exhibits to be returned to a party or other entity and to be retained by the party or other entity pursuant to the agreement of the parties.

**RULE 13**  
**PRACTICE BEFORE THE MASTER COMMISSIONER**

**A. JUDICIAL SALES**

**1 . Master Commissioner Approval**

In addition to other requirements of these Rules, all judgments or orders directing the sale of property by the Master Commissioner, directing the disbursement of monies held by the Commissioner or directing the delivery of a deed must be submitted along with the record to the Commissioner for certification that it complies with all applicable statutes and rules. The Commissioner shall then deliver the judgment or order to the Court for approval and entry at its next motion hour.

**2. Deposit for Advertisement and Appraisal**

When any order is submitted to the Commissioner requiring advertisement or appraisal, the party submitting the order shall deposit with the Commissioner an amount sufficient to pay the estimated costs of the proposed advertisement and/or appraisal, but not less than two thousand five hundred dollars (\$2,500.00). The Commissioner shall not submit the order to the Court nor cause an advertisement or appraisal to be made until such deposit is made. When more than one sale is set for the same date, the Commissioner may advertise all such sales in one advertisement that includes the required information applicable to each action and sale. The total cost of advertising shall be apportioned among each of the various cases to which the advertisement applies.

**3 . Orders of Sale and/or Delivery of Deed**

Every order or judgment of this Court directing the Commissioner to sell property or to execute or deliver a deed shall contain :

- a. The legal description of the property including a street address (or if it has no street address, a brief description of its location and size;
- b. The name of the parties or parties whose interest is being sold or conveyed;
- c. The source of that party (or parties') title with deed book, page number and date of deed or recording date of deed;

d. A specific designation of all costs, liens, and/or encumbrances to be paid. Regarding liens to be released, the judgment and order of sale shall specify the name and address of the entity and/or person(s) holding a lien and/or encumbrance, the payoff amount as of the end of the month in which the judgment and order of sale is drafted, and a per diem amount if applicable.

e. That the Defendant property owner or owners shall, within ten (10) days after entry of this Judgment and Order of Sale, deliver or have delivered to the Master Commissioner's office a key to the dwelling situated upon the above-described property, which will allow the Master Commissioner or his designated Auctioneer to permit interested bidders to make a "walk through" inspection of the dwelling prior to sale. At the time of delivery of the key, the Defendant property owner or owners shall advise the Master Commissioner or his staff of a minimum of three (3) separate dates and times certain that the dwelling may be viewed by interested bidders.

f. In the event Defendant property owner or owners fail to deliver a dwelling key and hereinabove directed, the Master Commissioner shall retain a locksmith to replace the front door lock and deliver the keys to the Master Commissioner's office. The locksmith expenses shall be allowed as a sale expense and shall be paid out of the sale proceeds.

g. If a mobile home or trailer is situated upon the property described herein, it shall *not* be sold as a part of the real estate if the mobile home or trailer is licensed and/or taxed as a motor vehicle, and in such event, title to any such mobile home or trailer shall not be transferred by a Master Commissioner sale. Only if the mobile home or trailer is not licensed or taxed as a motor vehicle, and is permanently affixed to the real estate, shall title to same pass via a Commissioner's Deed.

h. Good cause is found to allow the Master Commissioner to hire a licensed auctioneer to sell real estate which he has been ordered to sell, at a fee not to exceed One Hundred Fifty Dollars (\$150.00). Unless a written objection is properly filed to this order, the Court finds all non-defaulting parties to this action agree that an auctioneer shall be hired to sell the property.

i. Neither the Master Commissioner nor anyone in his employ including, but not limited to, office staff, auctioneers, or appraisers, shall act as surety on the bond of any purchaser of property at any judicial sale.

j. A blank space for the insertion of the sale date by the commissioner's office;

k. A signature line for the master commissioner indicating certification and compliance;

l. A prepared by signature line of the attorney submitting order;

- m. A certificate of service by the Circuit Court Clerk;
- n. Appropriate number of copies for all parties including submitting attorney and master Commissioner; and
- o. Self addressed stamped envelopes for all parties including submitting attorney .
- p. All orders shall be submitted to the master commissioner prior to Court approval.

#### 4. Terms and Conditions of Sale

Unless otherwise ordered all sales shall be conducted by the Commissioner or Special Commissioner at the time announced in the advertising in the appropriate County Courthouse, upon the following terms and conditions:

a. Before conducting a sale the Master Commissioner shall advertise in a newspaper meeting the requirements of KRS 424 .120, 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 consecutive weeks next preceding the date of sale.

b. If required by order or statute, the Master Commissioner before making a sale of real property shall have the property appraised by two intelligent, disinterested housekeepers of the appropriate County who are not related to any parties to the action. Before making appraisals, the appraisers shall be sworn by the Master Commissioner. They shall return their appraisals in writing to the Master Commissioner who shall file same as a part of the record.

c. The property shall be sold to the highest bidder provided:

1). At the time of sale the successful bidder shall either pay cash or make a deposit of at least 10% of the purchase price with the balance on credit for thirty (30) days. If the purchase price is not paid in full, the successful bidder shall be required to give bond with good surety for the unpaid purchase price. The bond shall bear interest at the rate of twelve (12%) percent per annum from the date of sale until paid. That should the Plaintiff be the successful purchaser at sale, the bond may be waived by a deposit in the sum of Two Thousand Five Hundred Dollars (\$2,500.00) to the Master Commissioner for costs and fees.

2). The purchaser shall be required to assume and pay all taxes or assessments upon the property for the current tax year and all subsequent

**years. All taxes or assessments upon the property for prior years shall be paid from the sale proceeds by the purchaser prior to confirmation.**

3). The property shall otherwise be sold free and clear of any right, title or interest of all parties to the action and all liens and encumbrances thereon, excepting easements and restrictions of record in the appropriate County Clerk's Office and such right of redemption as may exist in favor of the United States of America or the defendant(s).

4). The terms and conditions hereinabove set out may be adopted by reference to this rule in the order or judgment directing the sale, or shall be restated therein.

d . A party, who is the successful purchaser of the property, may take credit against any judgment in that party's favor against the defendant property owner for the required deposit and 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.

e. Withdrawal or abatement of any judicial sale after entry of a Judgment and Order of Sale thereon shall be made by motion and Order prior to the date and time of the sale.

f. Reinstatement of a judicial sale following an order to withdraw or abate same shall be made by motion and Order.

## **5. Confirmation of Report of Sale**

The Master Commissioner after making the sale shall report his actions to the Court. Ten (10) days after the filing of that report, if no objections have been filed thereto and without motion, the sale shall be deemed confirmed and an order confirming the sale shall be submitted to the Court. A copy of the order of confirmation shall be served upon the purchaser.

## **6. Fees of the Commissioner**

The Commissioner shall be entitled to those fees set forth in Part IV of the Administrative Procedures of the Court of Justice.

## **7 . Orders of Distribution**

a. Orders requiring distribution of funds held by the Commissioner shall set forth all amounts collected, identify the proper recipient(s) and the specific amounts due each under the judgment or order.

b. If disbursements are to be made to taxing authorities, a copy of the pertinent tax bill(s) must be furnished the Commissioner, giving the commissioner's office sufficient time to pay the bill(s) with the amount(s) listed in the order.

## 8. Appraiser's Fees

In all residential sales where an appraisal is required, the fee of each appraiser shall be \$150.00, unless otherwise ordered by the Court. Appraisal fees for commercial, farm and other sales shall be set by the court. The fee shall be paid from the proceeds of sale.

## B. Hearings

1. An attested copy of the order referring the case to the Master Commissioner shall be delivered to the Master Commissioner's office.

2. The Commissioner shall then promptly assign a date for a pre-hearing conference and give written notice thereof. The attorney responsible for the case shall be expected to personally attend said hearing. The Commissioner may charge and collect a fee in accordance with Part IV, section 4 of the Administrative Procedures of the Court of Justice.

3. The Master Commissioner shall designate a specific time in his/her discretion at which time all motions before him or her, unless otherwise designated, shall be heard.

4. An attorney requesting a hearing date before the Master Commissioner may be responsible for providing a Court reporter at all evidentiary hearings.

5. Any money paid into Court pursuant to CR 67 .01 shall be paid to the Master Commissioner who is authorized to charge a fee as follows :

- a. 3% of the first \$2,000 .00;
- b. 2 1/2% of the next \$3,000 .00 ; and
- c. 1 1/2% for any amount in excess of \$5,000 .00,  
total fee not to exceed \$5,000.00.

## C. WRIT OF POSSESSION AND ATTACHMENT PROCEDURE

1. Pursuant to KRS 425 .006, the Master Commissioner and Special Commissioners are appointed judicial officers to perform such duties as may be required of them by Chapter 425 of the Kentucky Revised Statutes.

2. All requests for hearings, or ex parte relief under the provision of that Chapter shall stand automatically referred, without order, to the Commissioner's office for further proceedings.

3. When a hearing has been requested or is required, it shall be the responsibility of the attorney requesting the hearing to notify the Commissioner's office of the request, after which the Commissioner shall fix a time and place for hearing and give written notice thereof to the parties.

4. Requests for ex parte and temporary restraining orders shall be immediately delivered to the Commissioner, along with the record, by the Clerk of this Court or the attorney requesting relief. The Commissioner shall then make a determination.

#### **RULE 14 REMOVAL OF RECORDS**

No record in any civil or criminal action shall be removed from the Offices of the Clerk's of the 53<sup>rd</sup> Judicial Circuit Courts, except as needed by the Court.

#### **RULE 15 MEDIATION**

##### **A. Cases for Mediation**

The judge may refer any civil or family case to mediation except a habeas corpus case or election contest.

##### **B. Referral to Mediation**

i). The Judge may, by appropriate order, refer the case to mediation with or without the consent of the parties. Cases may be referred to a qualified mediator appointed by the Court or agreed upon by the parties.

ii). Any party may move to enter an order disqualifying the mediator for good cause. If the Court rules that a mediator is disqualified from mediating the case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

iii). Referral of a case to mediation shall not operate as a stay of discovery proceedings unless otherwise ordered by the Court or agreed to in writing by the parties.

## C . Mediation Conferences

i). The parties shall contact the mediator within ten (10) days from the entry of the order to schedule a mediation conference, which shall be held within sixty (60) days from the entry of the order.

ii). If a party fails to appear at a duly noticed mediation conference without good cause, the Court upon motion shall impose sanctions, which may include an award of attorney fees and other costs against the party failing to appear. If a party to mediation is a public or corporate entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. In all other cases, unless stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present :

a. The party, or on behalf of a public or corporate entity, a representative other than the party's counsel of record having full authority to settle without further consultation; and

b. A representative of the insurance carrier for any insured party who is not such a carrier's outside counsel and who has full authority to settle without further consultation. The party's counsel of record, if any, may also be present.

iii). The mediator may request that the parties bring documents or witnesses, including expert witnesses, to the sessions, but has no authority to order such production.

## D. Confidentiality

i). Except as otherwise provided by this rule or ordered by the Court for good cause shown, all mediation documents and mediation communications except signed agreements are confidential and shall not be disclosed. They are not subject to disclosure through discovery or any other process, and are not admissible into evidence in any judicial or administrative proceeding.

ii). No part of the mediation proceedings shall be considered a public record, unless entered into the record by the Court.

iii). There is no confidentiality and no restriction on disclosure under this rule to the extent that:

a. All parties consent in writing to disclosure; or

b. The mediation communication or mediation document gives the

mediator or persons associated with the mediator's office, knowledge of or reasonable cause to suspect that a child or a spouse has been abused or a child has been neglected; or

c. The mediation communications were made in furtherance of the commission of a crime or fraud or as part of a plan to commit a crime or fraud.

iv). Nothing in this rule shall be construed so as to permit an individual to obtain immunity from prosecution for criminal conduct.

#### E. Reporting to the Court

i). The mediator shall notify the Court promptly in writing when a case is not accepted for mediation.

ii). At any time after a case has been accepted, the mediator may refer it back to the Court for good cause, which shall be in writing.

iii). If a case is settled prior to or during mediation, an attorney for one of the parties shall prepare and submit to the Court an order reflecting the fact of settlement as in any other case.

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

v). At the conclusion of cases accepted for mediation, the mediator will report to the Court in writing the fact that the mediation process has ended. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the Court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions, outstanding legal issues, discovery process or other action by any party which, if resolved or completed, would facilitate settlement.

**RULE 16**  
**APPEALS FROM DISTRICT COURT**

A. Upon the filing of a proper notice of appeal in the District Court and the payment of costs as may be required by the Civil Rules, the Clerk shall forward the entire original record as described in CR 72 .04 to the Clerk of the Circuit Court.

B. Upon receipt of the record from the District Court, the Circuit Clerk shall assign the case to a division in the same manner as done with other civil and criminal cases.

C. If the appeal is not perfected by the filing of a statement of appeal as provided by CR 72 .06 within 30 days from the date of filing the first notice of appeal as provided by CR 72.08, and no motion for extension of time is filed within 10 days after that, and no notice of cross-appeal has been filed as provided by CR 74, the Clerk will prepare an order of dismissal and remand, attach same to the record and place the record and order in the box of the Judge.

D. If the statement of appeal is timely filed and no counter- statement is filed pursuant to CR 72 .12 within 30 days thereafter, and no motion for extension of time is filed within 10 days after that, the Clerk will prepare an order of submission, attach same to the record and place the record and order in the box of the Judge.

E. When a counter statement is filed by an appellee or cross-appellant, whether or not a statement of appeal has been filed, the Clerk will prepare an order of submission, attach same to the record and place the record and order in the box of the Judge.

F. All orders of dismissal, submission and opinions and orders affirming or reversing the District Court will be served upon all parties or their attorneys and the trial Court Judge. All orders which make final disposition of an appeal will provide for the payment of costs and remand the case to the District Court. The Clerk will comply with CR 77.04(2) and if no motion for discretionary review is filed pursuant to CR 76 .20 within 30 days thereafter the record will be returned to District Court.

G. All agreed orders deciding or affecting the issues on appeal must clearly state either (a) that the appeal is dismissed and the case remanded to the District Court for specific action or judgment or (b) that certain specified issues remain to be decided. The parties may not agree that the appeal be stayed pending the happening of some event and such relief may only be obtained upon motion and order of the Court.

**RULE 17**  
**WARNING ORDER ATTORNEYS AND GUARDIANS AD LITEM**

**A. Appointment**

Warning Order Attorneys and Guardians Ad Litem shall be appointed from a list of attorneys who are in good standing with the 53<sup>rd</sup> Judicial Bar Association and have been approved by the Judge, with each attorney on the list to receive an equal number of appointments. Any attorney not wishing to receive such appointments may have his or her name removed from the list by written notification filed with the appropriate Circuit Court Clerk.

**B. Fees**

i). Any litigant, except one permitted to proceed in forma pauperis, who desires the appointment of a Warning Order/Military Attorney, shall deposit with the Clerk at the time the action is filed or request made the sum of \$100.00 as an advanced Warning Order Attorney fee.

ii). Any litigant, except one permitted to proceed in forma pauperis, who desires the appointment of a Guardian Ad Litem, shall deposit with the Clerk at the time the action is filed or request made the sum of \$150.00 as an advanced Guardian Ad Litem fee.

iii). Unless objection has been filed, the Clerk shall pay the deposited fee to the Warning Order Attorney or Guardian Ad Litem upon filing of the Warning Order Attorney's report or Guardian Ad Litem's report, or upon entry of final judgment.

**C. Paupers**

Any attorney appointed as Warning Order Attorney or Guardian Ad Litem in an in forma pauperis proceeding will also be appointed in the next non-pauper action where appointment of a Warning Order Attorney or Guardian Ad Litem is requested and in which that attorney is eligible for appointment.

**RULE 18**  
**PRO-SE LITIGATION**

The court may order the Clerk not to file a pro se in forma pauperis action if the Court is not satisfied that the plaintiff is indigent as defined in KRS 453.190(2) or, if the Court is satisfied that the action raises no reasonable or justiciable question or is frivolous or malicious. The order shall be retained by the Clerk in a file maintained for such purpose. A suitable index of the file shall be kept by the Clerk.

**RULE 19**  
**STANDARDS OF CONDUCT AND TECHNOLOGY GOVERNING**  
**ELECTRONIC MEDIA AND STILL PHOTOGRAPHY COVERAGE OF**  
**JUDICIAL PROCEEDINGS, and POST-TRIAL CONTACT WITH JURORS**

The Standards of Conduct and Technology Governing Electronic Media and Still Photography Coverage of Judicial Proceedings as adopted by the Kentucky Supreme Court, effective July 1, 1981, shall apply to all judicial proceedings in the 53<sup>rd</sup> Judicial Circuit and are adopted as a part of these Rules as if fully set forth herein and shall be strictly complied with by all news media.

For the purposes of this rule, the terms "media coverage" and "news media" shall be used as a generic term which encompasses television film and videotape cameras, still photography cameras, and audio recording devices, radio broadcast equipment and any similar photographic or audio equipment.

In addition, the following shall apply to proceedings in:

**SHELBY COUNTY**

1. The general public and news media shall enter and exit the Circuit Courtroom on second floor by the main front door of the courtroom and shall, have their photographic equipment in place prior to the commencement of court by prior arrangements with the Shelby County Sheriff and/or his designated Deputy, such arrangements being made the day prior to such proceeding.

2. The second floor back office spaces and hallway are not public spaces and are hereby restricted to the general public and news media, except in instances of access to the second floor by disabled persons and prisoner transport.

3. No interviews shall be conducted on the second floor of the courthouse when either the court or the grand jury is actively in session.

**ANDERSON COUNTY**

1. The general public and news media shall not have access to the office and working spaces on the second floor of the courthouse for petit juries, grand juries and court personnel.

2. No interviews shall take place on the second floor of the courthouse when either the court or the grand jury is actively in session, and cameras shall be permitted in the courtroom so long as prior arrangements for setting up the equipment before court proceedings begin have been made with the Circuit Clerk of Anderson County. These arrangements shall be made the day prior to the court proceeding.

## SPENCER COUNTY

1. The general public and news media shall not have access to the office and working spaces on the second floor of the courthouse for petit juries, grand juries and court personnel.

2. No interviews shall take place on the second floor of the courthouse when either the court or the grand jury is actively in session, and no cameras shall be permitted in the courtroom so long as prior arrangements for setting up the equipment before court proceedings begin have been made with the Circuit Clerk of Spencer County.

## CONTACT WITH JURORS

Except as provided in RCr 10.04 and CR 47.01, jurors on any jury panel for the 53<sup>rd</sup> Judicial Circuit shall not be examined while said jurors are called for jury service on any case. After jurors have been discharged from jury service on said case, the juror may be interviewed, examined, or questioned by any attorney or any other persons to the extent allowed by law. Contact with jurors is discouraged. Prior to any contact, each juror to be contacted should be advised of their right not to have to speak with or discuss, in any way, their service as a juror, their impressions, their beliefs, their position on, or their views concerning any aspect of any trial or proceeding in which they were involved.

## RULE 20 EFFECTIVE DATE

These rules are adopted pursuant to the authority granted by Rule 1.040(3) of the Rules of the Supreme Court and they shall apply with full force and effect to all actions filed or pending as of the date of their approval by the Chief Justice of the Supreme Court, and their promulgation is by order of the Judge of the 53<sup>rd</sup> Judicial Circuit Courts and certification of the Chief Justice of the Supreme Court.

DONE THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

CHARLES R. HICKMAN, JUDGE  
53RD JUDICIAL CIRCUIT  
Anderson Circuit Court  
Shelby Circuit Court  
Spencer Circuit Court

## Appendix A

**Commonwealth of Kentucky  
53<sup>rd</sup> Judicial Circuit  
Anderson Circuit Court  
Shelby Circuit Court  
Spencer Circuit Court**

### CLASS D FELONY PRETRIAL DIVERSION PROTOCOL

#### 1. Definition

Pretrial diversion is the postponement of imposition of sentence upon any person who qualifies for this program, subject to certain conditions, for a period of time not to exceed five (5) years subject to certain conditions established by the Court.

#### 2. Persons Eligible

a.) Any person charged with a Class D felony, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to commission of the current offense, shall be eligible for pretrial diversion.

b.) The person charged must enter a plea of guilty, or a plea pursuant to North Carolina v. Alford, before becoming eligible for pretrial diversion.

c.) Persons ineligible for probation, parole or conditional discharge under KRS 532 .045 shall be ineligible for this program.

d.) A person convicted of a Class D felony for which early release is disallowed by statute, including KRS 189A.010(8) and KRS 189A.120(2), shall be ineligible for this program.

e.) No person shall be eligible for this program more than once in any five (5) year period.

#### III. Procedure

a.) After indictment in circuit court, and no later than thirty (30) days before trial, any person eligible for the program may apply to the Circuit Court and the Commonwealth for entry of a pretrial diversion order.

b.) In applying for pretrial diversion, counsel for the defendant must state, and the defendant must agree on the record, in the event diversion is granted, any right to a speedy trial or disposition of the charge against him/her is waived.

c.) The Commonwealth shall make a written recommendation to the Court in response to each application . KRS 533.250(2).

d.) Before making a recommendation to the Court, the Commonwealth shall :

1. Have a criminal record check made by telephoning Pretrial Services at AOC at 1-800-928-2350, or faxing the request to (502) 573-1669. [DO NOT send requests to the local Pretrial Services Officer.]

2. Make a good faith effort to interview and seek input from the victim and/or victim's family and advise them of the time, date and place the motion will be heard by the Court ; and

3. When diversion is recommended, the Commonwealth must make written recommendations to the Court of conditions for the pretrial diversion as well as the appropriate sentence to be imposed if the diversion agreement is unsuccessful. KRS 533.252(3) .

NOTE: The Commonwealth will be bound by its recommendation. In the event diversion is unsuccessful, the Commonwealth will not be permitted to argue for a sentence in excess of the original recommendation . Moreover, the Court cannot impose a sentence greater than the recommendation without first allowing the defendant the opportunity to withdraw the plea.

#### **IV. Order of Pretrial Diversion**

a.) The Court may, in its discretion, order a pre-sentence investigation by the Department of Corrections prior to the granting of an order for pretrial diversion for eligible petitioners upon terms and conditions it deems appropriate. AOC Form 346, styled Order Granting Pretrial Diversion of a Class D Felony may be utilized by the Court.

b.) The Order of Diversion shall include:

i.) Restitution, if applicable. [Made mandatory by KRS 533.254 where victim has suffered monetary damage].

ii.) Whether the diversion shall be supervised or unsupervised (and include supervision fees, if applicable).

iii.) Duration of the diversion .

iv.) Require defendant to obey all rules and regulations imposed by Probation & Parole.

v.) As required by KRS 533.030(1) [conditions of probation/restitution], direct the defendant not to commit any offense during the period of the pretrial diversion . Specifically, direct the defendant to comply with any other provision of KRS 533.030 or any other condition the Court deems appropriate.

vi.) That the petitioner remain drug and alcohol free and be subject to random testing .

vii.) That the petitioner have no violation of the Penal Code or the Controlled Substances Act.

viii.) That the petitioner possess no firearm or any other deadly weapon.

ix.) Such other terms and conditions as the Court shall deem appropriate, including, but not limited to, public service work and touring of a facility.

C.) Duration of the pretrial diversion shall not exceed five (5) years without agreement of the petitioner. Duration of the diversion agreement shall not be less than the time required to make restitution in full.

#### **V. Voiding a Diversion Order**

A.) After a hearing, with notice to the Commonwealth and the defendant, the Court may void a person's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or failure to make satisfactory progress. [AOC Form 347, styled Order Voiding Pretrial Diversion of a Class D Felony, is available for this purpose.]

B.) If an order of pretrial diversion is voided, the defendant shall be sentenced according to law, based on his or her prior plea of guilt/plea pursuant to North Carolina v. Alford. When revocation is ordered, a full updated PSI will be ordered and a sentencing hearing must be scheduled].

C.) Under KRS 533.256 (2), the same criteria applicable to a probation revocation hearing applies to a proceeding to void an order granting diversion. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A proceeding to determine whether an order granting diversion should be voided also constitutes a miscellaneous proceeding and therefore the Rules of Evidence are inapplicable to such hearings.

D.) Upon affidavit or other sworn statement from a Probation and Parole Officer or the Commonwealth, the Court may, in its discretion, issue a bench warrant for the arrest and detention of the defendant pending the hearing contemplated in §V(A) above .

**VI. Completion of Diversion Program**

If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be dismissed. [NOTE: The successful completion of a diversion contract does not result in automatic expungement of a criminal charge under KRS 431 .076].