

Supreme Court of Kentucky

ORDER

**IN RE: ORDER APPROVING THE LOCAL RULES OF PRACTICE AND
PROCEDURE FOR THE 6TH JUDICIAL CIRCUIT, DAVIESS
CIRCUIT COURT**

Upon recommendation of the Judges of the 6th Judicial Circuit, Daviess
Circuit Court, and being otherwise sufficiently advised,

The Local Rules of Practice and Procedure for the Daviess Circuit Court
are hereby approved. This order shall be effective as of the date of this Order,
and shall remain in effect until further orders of this Court.

Entered this the 22nd day of March 2012.


CHIEF JUSTICE JOHN D. MINTON, JR.

**RULES OF THE DAVIESS CIRCUIT COURT
6TH JUDICIAL CIRCUIT**

TABLE OF CONTENTS

RULE 1. INTRODUCTION/ADMINISTRATIVE PROCEDURE2

 101. CITATION OF RULES2

 102. EFFECTIVE DATE AND APPLICATION OF RULES2

 103. ADDITIONS AND AMENDMENTS2

 104. COURT ORGANIZATION AND CASE ASSIGNMENT2

 105. HOLIDAYS2

 106. APPEARANCES AND SUBSTITUTIONS2

 107. COURTROOM DECORUM2

 108. PUNCTUALITY, EXPEDITION AND SETTLEMENT3

RULE 2. COURT SCHEDULING / MOTION HOUR / PROCEDURES
FOR FILING3

 201. ARRAIGNMENT AND PRE-TRIAL CONFERENCES -
 CRIMINAL3

 202. MOTIONS AND MOTION DOCKET3

 203. PRE-TRIAL CONFERENCES AND REQUIREMENTS -
 CIVIL CASES4

 204. ASSIGNMENT OF JURY TRIALS4

 205. ORDERS AND JUDGMENTS4

 206. GRAND JURY SCHEDULE5

 207. JURY TRIAL SCHEDULES5

RULE 3. ADOPTIONS / TERMINATION OF PARENTAL RIGHTS 5

RULE 4. DOMESTIC VIOLENCE PROTOCOL AND 24 HOUR
ACCESSIBILITY POLICY.....5

RULE 5. DOMESTIC RELATIONS PRACTICE (FCRPP 2 - 9) .5

 501. PRELIMINARY MATTERS5

 502. MATTERS CURRENTLY OR PREVIOUSLY IN DAVIESS
 DISTRICT COURT6

 503. PETITIONS FOR IMMEDIATE ENTITLEMENT TO
 CUSTODY (K.R.S. 620.110)6

 504. MOTIONS6

 505. SETTING HEARINGS BEFORE THE DOMESTIC
 RELATIONS COMMISSIONER7

 506. OBTAINING A DECREE OF DISSOLUTION7

 507. ADDITIONAL CUSTODY/TIME SHARING MATTERS7

RULE 6. MISCELLANEOUS RULES RELATING TO FAMILY LAW
PRACTICE8

 601. PERSONAL IDENTIFIERS8

 602. WRITTEN DISCOVERY - - ANSWER TO REPEAT
 QUESTION8

 603. COURTROOM RESOURCES8

APPENDIX A9

APPENDIX B13

RULES OF THE DAVIESS CIRCUIT COURT

RULE 1. INTRODUCTION/ADMINISTRATIVE PROCEDURE

101. CITATION OF RULES

These rules may be cited as "RDCC" or "Rules of the Daviess Circuit Court" or "LR__". They shall be applicable to both civil and criminal cases.

102. EFFECTIVE DATE AND APPLICATION OF RULES

(a) These rules are adopted pursuant to SCR 1.040(3) (a), RCr 13.02, and other applicable law and shall apply to all actions filed, commenced or pending after the date hereof and certification to the Chief Justice of the Supreme Court of Kentucky. They shall govern all civil and criminal proceedings in both divisions of this Court. The rules shall be effective upon approval of the Chief Justice of the Supreme Court of Kentucky.

(b) The Chief Judge shall cause these rules to be published by the AOC, and shall cause the Clerk to keep available an adequate supply of same in the Daviess Circuit Court Clerk's office for the bar and the public.

103. ADDITIONS AND AMENDMENTS

These rules may be added to, amended or rescinded as the Court deems necessary and as approved by the Kentucky Supreme Court. All former rules, orders and memoranda in conflict herewith are repealed as of the effective date hereof.

104. COURT ORGANIZATION AND CASE ASSIGNMENT

(a) The Daviess Circuit Court shall operate in two (2) divisions, Division I and Division II, and each shall have jurisdiction of both civil and criminal cases. The Circuit court shall also consist of a Master Commissioner and a Deputy Master Commissioner. Each division of the court also has a Domestic Relations Commissioner to which the court may assign matters for evidentiary hearings, findings of fact, conclusions of law and recommendations.

(b) All civil and criminal causes shall be divided between the two divisions as equally as possible and as hereinafter provided.

(c) Each judge may preside over, hear and determine any case or question in the other Division when so agreed between the judges, or when the judge of one Division is sick, absent from the county or otherwise not available.

(d) A judge of either Division may vary, discontinue or extend any trial period whenever the business of the Division requires. Each shall have the power to assign for trial all causes in the Division for such days as, in such judge's discretion, will conduce the convenient dispatch of the business of the Division.

105. HOLIDAYS

In addition to the holidays designated annually by the Administrative Office of the Courts (AOC) the Morton J. Holbrook Judicial Center shall be closed the Friday immediately preceding the annual Owensboro Barbeque Festival.

106. APPEARANCES AND SUBSTITUTIONS

(a) Whenever parties have appeared by counsel they may not thereafter appear by different counsel or in their own behalf, unless an order of substitution shall first have been made by the Court after reasonable notice to the attorney for the party and to the opposing attorney. Until this is done the authority of counsel of record shall continue for all proper purposes.

(b) When an attorney of record wishes to cease representation of a party, the attorney shall file a motion therefor and give adequate notice to the client and opposing counsel. If the motion is sustained, a copy of the order shall be served on the client and all attorneys of record by the Clerk pursuant to LR 205 below.

107. COURTROOM DECORUM

(a) Attorneys and litigants will observe the customary and traditional courtesies and decorum. They shall refrain from caustic remarks about and personal reference to opposing counsel.

(b) Examination of jurors and of witnesses should be conducted from the counsel table or from some other suitable distance except when handling documentary or physical evidence or when a hearing impairment or other

physical disability requires the attorneys to take a different position.

(c) Attorneys shall refrain from carrying on conversations among themselves or with others or read newspapers or magazines in the courtroom when court is in session. No one will bring food or drink into the Courtroom. All attorneys shall wear proper courtroom attire in all proceedings.

108. PUNCTUALITY, EXPEDITION AND SETTLEMENT

(a) Attorneys will make every effort consistent with the legitimate interest of their client to expedite litigation and to avoid unnecessary delays.

(b) Attorneys shall be punctual in all court appearances and shall give prompt notice to the court and to all other counsel in the case, of any circumstances requiring his absence or tardiness.

(c) Attorneys shall make a reasonable effort to settle the dispute of their client prior to court appearances. They will promptly inform the court of any settlement, partial or entire, with any party or of the continuance of any matter set for hearing or trial.

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

201. ARRAIGNMENT AND PRE-TRIAL CONFERENCES - CRIMINAL

(a) Arraignment and initial pre-trial conferences will be held commencing at 8:30 A.M. on the Thursday and Friday next after the beginning of the trial period.

(b) Those cases not disposed of by plea, dismissal or otherwise, shall be set for trial on a day certain at the request of either party.

(c) The Clerk shall prepare a docket of the cases set for trial during the current trial period and keep same current from day to day during the trial period. The respective deputy clerks for each division shall make copies of same available in their office for the benefit of court personnel and attorneys. No further notice need be given attorneys.

202. MOTIONS AND MOTION DOCKET

(a) Motions, objections and exceptions shall be heard in each Division as follows:

DIVISION I: Civil

Mondays 10:00 - General motions

Mondays 10:30 - Exceptions/Contempts (3 maximum)

Mondays 1:30 - Confidentials

Wednesdays 9:00 - General Motions

Wednesdays 9:30 - Confidentials

Wednesdays 10:00 - Exceptions/Contempts (3 maximum)

Criminal motions are heard each morning at 8:30 a.m.

Hearings estimated to last more than 30 minutes may be set by calling the Judge's office. These will generally be set at 1:30 on the first available afternoon.

DIVISION II: Civil

Tuesdays 8:30 - General Motions

Tuesdays 9:30-10:30 - Exceptions/Contempts (4 maximum)

Tuesdays 11:00 - Confidentials

**Tuesdays 1:30-2:30 non jury terms months -
Exceptions/Contempts (3 maximum)**

**Criminal motions are heard at 8:30 a.m. on Monday,
Wednesday and Thursday.**

Hearings estimated to last more than 30 minutes may be set by calling the Judge's office.

(b) An attorney desiring a time for hearing shall call the clerk's office to determine an available time. He will then notify the clerk of the half hour on which he wants to be heard and shall include the designated time in the notice to opposing counsel.

(c) In the event of hardship, emergency, or anticipated lengthy or complicated hearing, motions, objections and exceptions may be set at a time other than the weekly motion day, but only after consultation with the Judge and opposing counsel as to a time convenient with everyone.

(d) Written motions, other than those that may be heard ex parte, shall be served at least **five (5)** days before the time specified for hearing unless a different

time is fixed by the CR, any applicable statute, or by court order.

(e) The clerk shall keep a motion docket on which he or she will docket in order all motions assigned to any day for hearing, either by court order or by notice duly served. This motion docket will be called on the date and at the time noticed and, subject to the discretion of the court, will be heard in the order docketed.

(f) All motions going to the merits of the case and/or which will require citation of authority including, but not limited to, applications under CR 12 through 23, 50, 56, 59 through 62, 64, 65 through 71 and motions in criminal cases shall be accompanied by a brief but complete statement of the grounds for the motion and memorandum of points and authorities to be relied upon. Failure to comply with such requirement may be grounds for overruling the motion. Any party properly served with such a motion or application shall file a response containing a statement of grounds for opposing the motion, with a memorandum of points and authorities in support of the opposition. Such responses shall be filed at or prior to the time specified in the notice of hearing of the motion. Failure to file a response may be grounds for sustaining the motion, but the time for filing a response may be extended for good cause shown.

(g) Copies of all photographs and documentary evidence which the movant or the opposing party intends to submit or rely on in support of or opposition to the motion shall also be served on opposing counsel in the manner provided in (f) above. A party referencing any evidentiary matter in a pleading shall make appropriate citation to the record for each statement of fact.

(h) Any moving party who learns that a hearing is no longer necessary, shall immediately notify opposing counsel and the deputy clerk assigned to the appropriate division so that the matter may be removed from the docket; the moving counsel shall file appropriate pleading(s) clarifying the record.

203. PRE-TRIAL CONFERENCES AND REQUIREMENTS - CIVIL CASES

(a) Upon motion of either party, or on the Court's own initiative, a scheduling order may be provided in any civil or criminal case. This scheduling order will set deadlines for completion of discovery, disclosure of experts, pre-trial motions, and all other matters

subsequent to getting the case ready to be placed on the trial docket.

(b) A pre-trial conference, pursuant to CR 16, may also include consideration of a scheduling order.

204. ASSIGNMENT OF JURY TRIALS

(a) Motions to set jury trials shall be held approximately two (2) months before the month with available trial dates. The Clerk of each Division shall set the date and time for Motions to be heard in that Division. Any attorney wishing to set a case for jury trial may contact the Clerk for a listing of motion dates.

(b) The Clerk shall docket the motions to assign the civil cases for trial in their order of filing.

(c) Attorneys are discouraged from moving to assign for trial before the pleadings are closed and discovery completed. A motion to assign trial dates should not be filed until the moving party has completed discovery.

(d) Once the case is on the trial docket, with dates certain, the court will enter a trial order outlining the exchange of witnesses and exhibits expected to be offered into evidence and other pertinent matters. If after that time counsel learns of additional witnesses or exhibits, he will immediately notify opposing counsel. Any objections shall be brought to the court's attention at a pre-trial conference, at which time all motions in limine shall be heard.

(e) All attorneys of record in civil cases will be present at assignment hour when possible. If impossible, they will designate some attorney to be present in their stead.

(f) Court trials may be had at any time convenient with the judge, attorneys and parties. They may be set by motion at any monthly assignment day or at any time after consultation with the judge and opposing counsel.

205. ORDERS AND JUDGMENTS

(a) In all civil and criminal cases in which a verbal order or judgment is announced by the Judge, and in the case of a jury verdict, an order or judgment in conformity therewith shall be prepared by counsel for the successful party within seven (7) days after the order or verdict, unless directed otherwise by the Judge. It shall be signed "have seen" or "OK to enter" by all

attorneys of record, and shall be presented to the Court. If the party against whom the order or judgment is entered is not represented by counsel, that fact shall be endorsed thereon. All proposed orders shall contain a distribution list that will identify all counsel and pro se litigants, with addresses. Tendering counsel shall provide a sufficient number of copies of the proposed order for the Clerk to serve in accord with the distribution list.

(b) When signed by the Judge, the order or judgment shall be delivered to the Clerk for entry. The Clerk shall serve the order or judgment upon everyone in the distribution list on the order or judgment.

(c) In Court cases or other matters under submission, the Court may request that all attorneys submit proposed findings of fact, conclusions of law, and judgment. This is not intended to delegate the Court's decision making power, but will be used solely for information and as a guide.

206. GRAND JURY SCHEDULE

A grand jury shall be impaneled on the first Tuesday of January, and the first Tuesday of July (or the next day thereafter not a legal holiday) at 8:30 A.M. by the Judge of the Division having a trial period in those months. Each grand jury shall meet thereafter on the first Tuesday of each month for six months. It is anticipated each session shall be for two days and more if justice requires, but not exceeding the statutory limit of twenty total days during each jury's service. If the first Tuesday falls on a legal holiday, the grand jury shall meet on the next succeeding day that is not a legal holiday.

207. JURY TRIAL SCHEDULES

(a) Jury trial periods shall be held in each Division commencing on the first Monday on every other month except December. However, they will be staggered so that jury trials will be in progress in one Division or the other every month except December.

(b) In odd numbered years, the jury trial periods shall be as follows:

Division I
January
March
May
July
September
November

Division II
February
April
June
August
October

In even numbered years the months shall be reversed for each division and alternately thereafter on an annual basis. Although there will be no jury trials in December, the grand jury shall meet at its designated time that month.

(c) Ordinarily, the first two weeks will be devoted to the trial of civil cases, and criminal cases will be set thereafter. This may be modified by the judge as circumstances require.

RULE 3. ADOPTIONS / TERMINATION OF PARENTAL RIGHTS

There are no local rules relating to Adoptions and Termination of Parental Rights. See FCRPP 32-36 for uniform statewide rules.

RULE 4. DOMESTIC VIOLENCE PROTOCOL AND 24 HOUR ACCESSIBILITY POLICY

The Twenty-Four Hour Accessibility to Emergency Protective Orders and Joint Jurisdiction Protocol for the 6th Judicial Circuit and District is attached as Appendix A and incorporated herein by reference as if set out fully herein.

RULE 5. DOMESTIC RELATIONS PRACTICE (FCRPP 2 - 9)

501. PRELIMINARY MATTERS

(1) As Daviess County utilizes Domestic Relations Commissioners, each Circuit Judge has appointed a separate Domestic Relations Commissioner to serve in their respective divisions. Therefore, FCRPP 4 shall apply to Domestic Relations Practice in Daviess County and the practitioner should refer to said rules for further guidance.

(2) Unless otherwise addressed during a *pendente lite* hearing, a case management conference shall be scheduled before the Domestic Relations Commissioner within thirty (30) days from the date the petition is filed or within ten (10) days of the filing of a response, whichever occurs first, unless the parties have reached a written agreement pertaining to family counseling, parental education classes or a *status quo* order.

(3) Pursuant to FCRPP 4(4), the domestic relations commissioner shall make recommendations to the judge regarding motions for temporary orders of custody, support or maintenance. Any temporary orders shall be entered by the Court upon review of the recommendations.

(4) These Rules shall be applicable to the procedure and practice in all actions pertaining to dissolution of marriage, custody and support, visitation and timesharing, property division and maintenance.

(5) In accordance with the Family Court Rules of Procedure and Practice (FCRPP), self represented litigants shall be held to the knowledge of these rules the same as parties represented by counsel.

(6) Court Ordered Family Counseling or Education.

In all proceedings for the dissolution of marriage in which children of the marriage are minors, or in any custody proceeding, the court may order the parents or custodians and children to participate in counseling or divorce education, which shall be at the expense of the parties. The parties may also agree to such counseling or divorce education by Agreed Order.

502. MATTERS CURRENTLY OR PREVIOUSLY IN DAVIESS DISTRICT COURT

(1) Matters originated from K.R.S. Chapters 620-625

(a) All motions to determine De Facto Custodian status under the definition of KRS 403.270(1) involving children with pending Dependency, Neglect or Abuse Cases in District Court, shall be heard in the District Court in which the Dependency, Neglect or Abuse action is pending. The moving party shall bring such motion before the District Court, giving notice to all parties

necessary in accordance with **FCRPP 21**. The hearing on the motion to determine De Facto Custodial Status must be heard prior to action on a custody petition in Circuit Court.

(b) All motions and petitions for custody involving a possible De Facto Custodian without a pending Dependency, Neglect or Abuse Action in District Court, shall be heard by the Domestic Relations Commissioner in the Circuit in which the Petition was filed for the Domestic Relations Commissioner to hear and make recommendations regarding the matter in accordance with FCRPP 4 and KRS 403.270.

(2) Matters Originating from K.R.S. 406.005 et seq and FCRPP 14(2):

(a) All motions, pleadings and demands for establishment, enforcement and modification of child support, clarification of orders previously entered by the District Court and matters agreed by the parties shall be filed in the District Court.

(b) All contested motions, pleadings and demands for custody, and time-sharing shall be filed in the Circuit Court which shall thereafter retain jurisdiction for child support purposes.

503. PETITIONS FOR IMMEDIATE ENTITLEMENT TO CUSTODY (K.R.S. 620.110)

(1) All Petitions for Immediate Entitlement to Custody, pursuant to K.R.S. 620.110 and filed in Circuit Court shall list and serve notice upon all parties that are involved with the District Court Juvenile Dependency, Neglect, and Abuse case, including, but not limited to: all parents, temporary custodians, attorneys of record and the Cabinet. The Circuit Court file created for the Immediate Entitlement Petition shall be kept under seal, and the clerk shall provide the District Court Juvenile file under seal to the assigned Circuit Judge.

504. MOTIONS

(1) Any *ex parte* motion shall be accompanied by a supporting affidavit sufficient to state grounds for injunctive relief and, if granted, shall be set for a hearing with all parties at the earliest available date.

(2) Any *pendente lite* motions shall be served

on the opposing party seven (7) days in advance and set for a hearing before the court unless otherwise agreed by the parties.

(3) Any motions for temporary child support and maintenance, as referenced in **FCRPP 5 and 9** may be combined in the same pleading. Thus, only one (1) affidavit need be filed incorporating the information referenced in said Rules.

(4) A motion for payment of debts requires the same disclosures as set forth in **FCRPP 5**.

(5) In addition to the requirements set forth in **FCRPP 5** and **FCRPP 9** concerning Motions to Modify Support, all such **documentation shall be served upon the opposing party seven (7) days** in advance before the hearing before the court, unless otherwise agreed to between the parties, to allow the opposing party to comply with **FCRPP 9**.

(6) Non-Divorce Custody/Time Sharing Proceedings. The rules regarding the filing of Motions, both temporary (*Pendente Lite*) and post-decree, shall apply to any non-divorce custody/time sharing proceeding.

505. SETTING HEARINGS BEFORE THE DOMESTIC RELATIONS COMMISSIONER

(1) Motions. All hearings for motions of any kind will be scheduled through the clerk's office in the event that the matter can be heard within 30 minutes. If not, then the matter will be scheduled for a special time through the Commissioner's office. No matters shall be scheduled for a 30 minute hearing that cannot be heard within 30 minutes. Both parties will have 15 minutes, each, in which to complete their proof which shall include direct and cross examination. The Commissioner will keep time. Likewise, a special hearing time will be divided equally between the parties. The Commissioner may apportion the costs in his recommended order.

(2) Obtaining a Final Hearing Date. A party seeking a final hearing date shall coordinate with opposing counsel and schedule a Case Management Conference in accordance with **FCRPP 2(6)** through the Commissioner's Office at the Judicial Center; however, a Case Management Conference shall not be conducted, except in the discretion of the Commissioner, until the Preliminary Verified Disclosure Statements have been

exchanged as required under **FCRPP 2(3)**. A final hearing date will be assigned at the Case Management Conference. Furthermore, the Commissioner shall also recommend whether or not the parties shall file in the record a Joint Trial Disclosure Statement within (7) seven days prior to the final hearing date to advise the court as to the issues which are agreed upon and what issues remain to be decided along with each party's position regarding said issue.

506. OBTAINING A DECREE OF DISSOLUTION

Matters Not Requiring a Hearing (FCRPP 3(1)). If the parties reach an agreement on all issues, a decree of dissolution may be obtained without a hearing by filing a motion or agreed order to submit for decree of dissolution of marriage. Counsel shall comply with **FCRPP 2 and 3** and file the documents with the Clerk for entry. A Decree shall not be final until the original is submitted and approved by the Domestic Relations Commissioner signed and entered by the Court.

507. ADDITIONAL CUSTODY/TIME SHARING MATTERS

(1) A parent shall be entitled to time-sharing/visitation as ordered by the court which may also be in accordance with the Daviess Circuit Court Timesharing/Visitation Guidelines unless otherwise agreed to by the parties or ordered by the court. The Timesharing/Visitation Guidelines shall not be used as a default schedule.

(2) Daviess Circuit Court Time-Sharing/Visitation Guidelines are attached in Appendix B to these Rules.

(3) **FCRPP 7(2).** Residency within Kentucky/Moving to Another Location.

a. If either parent intends to move with the child(ren) to another location which would materially affect the child or to another state, he or she shall give written notice to the other parent at least 60 days prior to such move. Either parent may file a motion for change of custody or time sharing if the other parent is not in agreement with the move or an agreed order if

they are in agreement. No relocation of the children shall occur unless the court enters an order modifying the status quo.

b. Pursuant to FCRPP 7(2)(b), if a parent moves from the county where the initial decree or custody order is entered, the court shall apportion the cost of transportation of the child(ren) between the parents, or may assign the entirety of the costs to one parent, considering the economic circumstances of each parent and any other relevant factors.

RULE 6. MISCELLANEOUS RULES RELATING TO FAMILY LAW PRACTICE

601. PERSONAL IDENTIFIERS

(1) All pleadings must comply with the requirements of KRS Chapters 205, 403, 405, 406 and 407 by providing the personal identifying information required in those chapters. However, except as set forth in Paragraph (b) below, where personal identifiers are required by statute or contained in other documents or exhibits filed with the court pursuant to the above-stated chapters, parties shall comply with CR 7.03(1)(b) by filing one copy from which any personal data has been redacted and filing an 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 to be accessed only by an attorney of record in the case, a judge of the court or other authorized court personnel. Otherwise, access to the sealed documents shall be by specific court order only.

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

602. WRITTEN DISCOVERY - - ANSWER TO REPEAT QUESTION

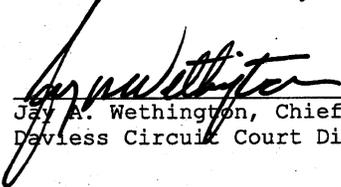
For any discovery responses pursuant to CR 33, 34, or 36, the response shall repeat the question or request as originally propounded.

603. COURTROOM RESOURCES

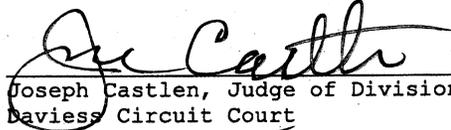
(1) The Daviess Circuit Court has the following resources available for use during a trial or hearing: a television; a VCR; a DVD player; a blackboard; an easel; and a lectern. Parties are responsible for ensuring evidence or material they intend to present in court for consideration are compatible with the resources available or the parties shall make arrangements prior to court appearance to provide resources for presentation of materials in court.

(2) At times the judge may request or direct that materials be provided electronically for the courts considerations. At such times as the Court directs that materials be submitted electronically, the materials shall be submitted to the judge's office in Microsoft Word compatible documents without the use of automatic number systems.

APPROVED: This the 15 day of March, 2012.


Jay A. Wethington, Chief Circuit Judge
Daviess Circuit Court Division I

APPROVED: This 15 day of March, 2012.


Joseph Castlen, Judge of Division II
Daviess Circuit Court

APPROVED: This 15 day of March, 2012.

APPENDIX A

DOMESTIC VIOLENCE PROTOCOL
TWENTY-FOUR HOUR ACCESSIBILITY TO EMERGENCY
PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION
DOMESTIC VIOLENCE PROTOCOL
6th JUDICIAL CIRCUIT AND DISTRICT
DAVISS COUNTY

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. See also RDDC 5 for additional rules relating to Domestic Violence cases.

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. Domestic violence matters may be reassigned from the district court division to circuit court when there is a dissolution/custody proceeding pending.
- D. No jurisdiction shall adopt a blanket "no-drop" policy. Domestic violence cases are civil matters within the purview of CR 41.01.
- E. Domestic violence cases shall be reassigned or transferred to another circuit or district court under the following

circumstances: See RDDC 1D(iv)(c), where there is a recusal pursuant to KRS 26A.015, or when a Judge determines on the record that it is in the interest of justice or judicial economy to do so.

Consistent with FCRPP 12, when a case is transferred to another court, the emergency protective order shall continue and the summons shall be reissued by the transferring 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 receiving the 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:

The Daviess Circuit Court Clerk or any of her officers in the Juvenile Division may both receive Petitions and administer oaths. The Office of Crime Victims' Advocacy may assist in the preparation of a Petition. Any Judge or notary public may also administer oaths, but the Petition itself and any Emergency Protective Order must still be received by the Juvenile Clerk or appropriate Circuit Division where a custody/dissolution exists.

1. The necessary forms can be obtained through the office of the Juvenile Clerk. The Crime

Victims' Advocate can assist in preparing the forms. Crime Victims' Advocate offices are located in the Kirtley Annex behind the Holbrook Judicial Center, and can be contacted at (270) 685-4357.

2. The completed forms shall be presented to the office of the Juvenile Clerk. The Juvenile Clerk shall assign the case to a division of the Daviess District Court according to the guidelines set forth in RDDC 104D(3) unless a custody/dissolution exists.
3. The Juvenile Clerk shall give copies of all documents to the Petitioner and shall notify law enforcement to serve Respondent or shall provide Petitioner an extra copy to be given to the law enforcement agency who will serve the Respondent.

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

1. Persons seeking an EPO should contact law enforcement or emergency services. Law enforcement or emergency services shall contact the prosecutor on-call or, if not available, any prosecutor who can be reached, who shall have copies of all necessary forms and will assist Petitioner in preparing the documents and acknowledge affiant's signature and administer the oath.
2. The District Judge serving on-call duty, or such other Judge as

may be available in the event the on-call Judge cannot be reached, shall review the petition and, if an EPO is entered, shall set a hearing date. When reviewing the Petition, the Judge shall administer the oath if such has not already been done. The signing Judge shall see that copies of the forms are provided to the Petitioner and to the law enforcement agency who will be serving Respondent.

3. Upon receipt of the documents, the Juvenile Clerk shall open a file and assign the case to the Division holding Juvenile Court on the date set for the hearing. If upon review, the Juvenile Clerk finds the case should be assigned to a different Division or Circuit, pursuant to RDDC 104D(3), the Juvenile Clerk shall, if practicable, cause an amended notice of hearing to be sent to the parties. If sending an amended notice of hearing is not possible, on the date of the hearing as originally set by the on-call Judge, the Juvenile Clerk shall notify the sitting Judge of the pre-existing or pending case and the sitting Judge may choose to transfer the case and reset the hearing if it serves the interests of justice to do so.

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

The District Judge serving day duty unless that Judge is not present in the courthouse and then any available District Judge or Circuit Judge may review the Petition. If

the Judge reviewing the Petition learns there are related or pending matters before another Judge, the reviewing Judge may request that the Judge with more familiarity review the Petition.

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

The District Judge serving night duty and if that judge cannot be reached then any available District Judge or Circuit Judge may review the Petition. If the Judge reviewing the Petition learns there are related or pending matters before another Judge, the reviewing Judge may request that the Judge with more familiarity review the Petition..

- E. Petitions will be reviewed within an hour of presentation to a Judge unless it is impossible due to the unavailability of a Judge.
- F. **Scheduling:** All petitions shall be set for hearing no more than fourteen (14) days from the issuance of the Emergency Protective Order. At that time, parties should be present with evidence, necessary witnesses, and counsel if so desired. For lack of service or other good cause, the Judge may continue the hearing and re-issue the EPO, if necessary. The schedule for domestic violence hearings is as follows:

Domestic Violence Hearings are conducted routinely in each of the Divisions of Daviess District Court in conjunction with the Juvenile Docket held on Mondays, Wednesdays and Fridays. Where there is a holiday, or when a regular session of Juvenile Court has been cancelled, it may

be necessary for a Judge who is not assigned the case to conduct the hearing on that Judge's Juvenile day. When it is appropriate for the hearing to be held in Circuit Court, the Juvenile Clerk shall contact the Circuit Clerk for a hearing date within the statutory time frame and notify the parties and any counsel.

III. Contempt Proceedings

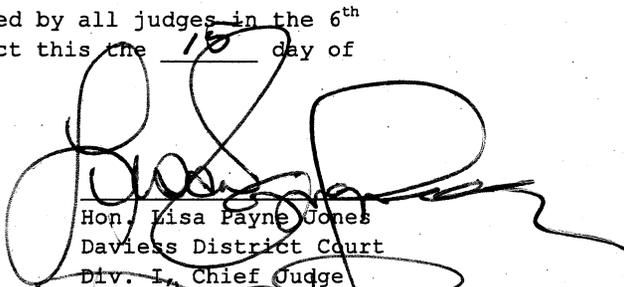
- A. Pursuant to KRS 403.760, civil and criminal proceedings for violation of a protective order for the same violation of a protective order shall be mutually exclusive.
- B. Petitioners seeking to initiate contempt proceedings should contact: The Daviess County Attorney's Office ("County Attorney") for explanation of remedies and possible criminal prosecution
- 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.
- D. Motions for Contempt shall be served upon the Respondent no less than five (5) days before the scheduled hearing.
- E. Pursuant to FCRPP 11(2), the Court shall advise Respondent of his or her rights and, if Respondent cannot afford counsel, shall appoint a Public Defender. The Judge may reset the hearing for the appearance of the Public Defender or for Respondent to obtain counsel.

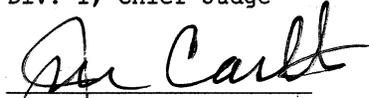
All general orders, forms, policies and procedures unique to this jurisdiction and relating to domestic violence are contained in the Local Rules of the Daviess District and Circuit Court or contained in this protocol. The standard AOC forms for Petition, EPO, Summons, DVO,

and Motions in Domestic Violence proceedings are utilized throughout this jurisdiction and can be obtained through the Daviess Circuit Court Clerk, the Juvenile Clerk, or downloaded from the AOC website at www.courts.ky.gov/forms.

The above protocol is adopted by all judges in the 6th Judicial Circuit and District this the 15 day of March, 2012:


Hon. Jay Wethington
Daviess Circuit Court
Div. I, Chief Judge


Hon. Lisa Payne Jones
Daviess District Court
Div. I, Chief Judge


Hon. Joseph Castlen
Daviess Circuit Court
Div. II


Hon. David Payne
Daviess District Court
Div. II


Hon. Nick Burlew
Daviess District Court
Div. III

APPENDIX B

DAVISS CIRCUIT COURT TIMESHARING/VISITATION GUIDELINES

The following guidelines shall be instituted by the Courts of Daviess County in domestic cases where parenting time is at issue. 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 scheduled established by the court or agreed to by the parents may or may not be what these guidelines set forth.**

I. GENERAL PROVISIONS

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 should be responsible for timely picking up the child(ren) at the beginning of the time-sharing/visitation period and returning the child(ren) in a timely manner at the end of the time-sharing/visitation period.
3. Time 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 should apply.
5. Each parent should provide to the other parent contact numbers and addresses (unless a domestic violence order is in effect) where the child(ren) can be located

during their scheduled time-sharing/visitation time.

6. Waiting/Tardiness.

In the event either parent will be more than 30 minutes late to pick up or drop off the child(ren), he or she shall provide notice to the other parent and make suitable arrangements for the exchange of the child(ren). Where the residential parent is responsible for the loss of a non-residential parent's parenting time, the loss of parenting time shall be made up at the next regularly scheduled parenting time. Where the non-residential parent is responsible for the delay, that parent shall forfeit that scheduled parenting time unless the residential parent otherwise agrees.

7. Cancellations.

If the child(ren) is ill, the residential parent should give 24-hour notice, if possible, so appropriate plans can be made. The non-residential parent shall give 24-hour notice to cancel. Any time cancelled by the non-residential parent is forfeited. Time lost for the child(ren)'s illness shall be made up. However, the non-residential parent may opt to keep the scheduled parenting time to parent and care for the ill child(ren).

8. Residency within Kentucky/Moving to Another Location Within Kentucky.

If either parent intends to move from the Commonwealth of Kentucky to another state or more than one hundred (100) miles from the present residence of the child(ren), he or she shall provide written notice to the other parent and file same with the court at least sixty (60) days prior to such move. Either party may file a motion with the court to modify existing orders relative to the child(ren).

9. Intoxicants.

Both parents are ordered not to transport the child(ren) at any time they are under the influence of alcohol or drugs, and are not to use illegal drugs within twenty-four (24) hours of, or during, any parenting time.

10. Miscellaneous.

1. Both parents are required to secure the child(ren) in appropriate child restraint systems when transporting the child(ren), as provided by the Kentucky Revised Statutes.
2. These rules require that both parents understand the following:
 - A. To put the child(ren)'s needs ahead of their own, to actually utilize the timeshare granted, and be responsible for getting the child(ren)'s homework and other activities done during that parent's time with the child(ren).
 - B. That there may be circumstances from time to time with regard to work schedules and/or activities of the child(ren) which requires flexibility and cooperation, and that changes in the scheduling may be required.
 - C. To keep the other parent advised as to current residential address, business address, email address, telephone numbers for home, work, mobile, fax and page for the purpose of notification unless otherwise ordered by the court. In the event that an emergency protective order or domestic violence order is entered by any court, third party contact information must be available to both parents.
 - D. To have the right and responsibility to obtain schedule and activity

information regarding the child(ren)'s school, daycare, healthcare or any other organized activity from any third party.

- E. To ensure the child(ren) is/are not tardy to school while the child(ren) is/are in that party's care.
 - F. To have the opportunity to complete and view the school information for the child(ren), including emergency contact information with the school.
 - G. To keep the other parent advised as to the child(ren)'s serious illness or any other major development, whether medical, educational or otherwise.
3. Each parent shall provide the other with copies of any health, dental, vision or other insurance verification necessary to obtain treatment for the child(ren).

Rules for shared parenting/parenting time:

Each parent is under an affirmative duty to foster the love and affection of the child(ren) for the other parent. Neither parent shall do or say anything that would interfere with the love and affection of the child(ren) for the other parent. Neither parent shall allow third parties to do or say anything to or in the presence of the child(ren) that would interfere with the love and affection of the child(ren) for the other parent. In addition to these general duties, neither parent shall:

- A) have the child(ren) deliver money or messages from one parent to the other parent and thus place the child(ren) in the middle.
- B) Ask the child(ren) to keep a secret from the other parent

- and, in effect, teach the child(ren) to lie.
- C) Quiz the child(ren) about what is going on at the other parents' home and thus turn the child(ren) into a spy.
 - D) Say unkind things about the other parent to the child(ren) or in the presence of the child(ren).
 - E) Try to conduct parental business when exchanging the child(ren) for shared parenting/parenting time.
 - F) Make any threats or start arguments with the other parent when exchanging the child(ren) for shared parenting/parenting time.
 - G) Ask a/the child(ren) directly or subtly, "Which of us do you really want to be with?" and thus place the burden on the child(ren).
 - H) Allow a/the child(ren) to take control of parenting time whenever he or she wants to do so.
 - I) Have the child(ren) refer to a future stepparent as "mother" or "father".
 - J) Eavesdrop on or interrupt the child(ren)'s telephone conversation with the other parent.
 - K) Discuss court proceedings with the child(ren) or attempt to influence the child(ren)'s testimony.
 - L) Not schedule or enroll child(ren) in activities which affect parenting time without first consulting and obtaining written consent of the other parent.

Violation of these rules may affect or limit a parent's right to parenting time or

shared parenting and/or subject to sanctions of the court.

II. PARENTING TIME

Weekend Parenting Time

The non-residential parent shall be entitled to a minimum of every other weekend as parenting time with the child(ren). Weekends shall begin on Friday at 6:00 p.m. and shall continue until Sunday at 6:00 p.m. unless otherwise agreed to by the parties or there are extenuating circumstances relating to the child(ren) which warrant a deviation.

Mid-week Parenting Time

Unless otherwise agreed by the parties, the non-residential parent shall be entitled to parenting time during the week on Tuesday beginning at 6:00 p.m., until Wednesday at 8:00 a.m. or when school starts, whichever is earlier, when the child(ren) shall be delivered to child care or school.

Holiday Parenting Time

Holidays of importance to the parties should be divided between the parents pursuant to a mutually agreeable schedule. In the event there is no agreement, then the following shall apply:

1. If a holiday is celebrated on a Monday (such as Martin Luther King Jr. Day, President's Day, Memorial Day and Labor Day), following a parents regularly scheduled parenting time, then that parent shall be entitled to extend their parenting time until 6:00 p.m. on that holiday.
2. These four (4) holidays shall be divided between the parents as follows:
 - (1) New Years Day
 - (2) Easter*
 - (3) July 4th
 - (4) Halloween

In odd-numbered years the non-residential parent shall be entitled to parenting time on the holidays in the left column and the residential parent shall be entitled to parenting time on the holidays in the right column above.

In the even-numbered years the residential parent shall be entitled to parenting time on the holidays in the left column above and the non-residential parent shall be entitled to parenting time on the holidays in the right column above.

Parenting time on these days shall be from 8:00 a.m. until 6:00 p.m., unless it is a school day, in which case parenting time shall be from 5:00 p.m. until 8:00 p.m. that same evening.

* If Easter falls on the weekend before Spring Break the parent entitled to parenting time during Spring Break shall be entitled to parenting time for Easter.

3. **Thanksgiving.**

The non-residential parent shall be entitled to parenting time beginning 6:00 p.m. the day school ends for the Thanksgiving holiday until 3:00 p.m. Thanksgiving Day in every even-numbered year; and, from 3:00 p.m. Thanksgiving Day until 6:00 p.m. the day before school begins after the holiday every odd-numbered year.

The residential parent shall be entitled to parenting time beginning 6:00 p.m. the day school ends for the Thanksgiving holiday until 3:00 p.m. Thanksgiving Day in every odd-numbered year; and, from 3:00 p.m. Thanksgiving Day until 6:00 p.m. the day before school begins after the holiday every even-numbered year.

4. **Christmas.**

The non-residential parent shall be entitled to parenting time beginning 6:00 p.m. the day school ends for the Christmas holiday until 12:00 noon on December 25th in every odd-numbered year, and from 12:00 noon on December 25th until 8:00 a.m. on January 1st in every even-numbered year.

The residential parent shall be entitled to parenting time beginning 6:00 p.m. the day school ends for the Christmas holiday until 12:00 noon on December 25th in every even-numbered year, and from 12:00 noon on December 25th until 8:00 a.m. on January 1st in every odd-numbered year.

5. **Mother's day and Father's day.**

Regardless of any apparent conflict herein, the father shall have the child(ren) on Father's Day. The mother shall have the child(ren) on mother's day. Those parenting times shall be from 8:00 a.m. to 6:00 p.m.

6. **Child's Birthday**

Both parties shall be allowed an opportunity to have the child(ren) for the child(ren)'s birthday. The child(ren) shall celebrate their birthdays in the home of the residential parent, unless it falls within the regularly scheduled parenting time of the non-residential parent. In the event the non-residential parent does not have the child(ren) on their birthday, an additional, non-scheduled parenting time from 8:00 a.m. until 6:00 p.m., unless it is a school day in which case it shall be

5:00 p.m. until 8:00 p.m., shall be granted so that the non-residential parent may celebrate the child(ren)'s birthday.

School Break Parenting Time

1. **Fall Break.**

In odd-numbered years, the non-residential parent shall be entitled to parenting time from 6:00 p.m. on the day school ends for the break until 6:00 p.m. the following Friday, at which time the residential parent shall be entitled to parenting time until 6:00 p.m. on the Sunday before the child(ren) will return to school. In even-numbered years this parenting time shall be reserved.

If the school calendar provides for more or less than two weeks of fall break, or if the child(ren) is/are required to attend (or does attend) extended school during any part of this break, the time remaining (including weekends) shall be equally divided between the parties with the non-residential parent being entitled to parenting time during the first one-half of that period in odd-numbered years and the residential parent being entitled to parenting time during the first one-half of that period in even-numbered years.

2. **Spring Break.**

In odd-numbered years, the non-residential parent shall be entitled to parenting time from 6:00 p.m. on the day school ends for the break until 6:00 p.m. the following Friday, at which time the residential parent shall be entitled to parenting time until 6:00 p.m. on the Sunday before the

child(ren) will return to school. In even numbered years this parenting time shall be reversed.

If the school calendar provides for more or less than two weeks of spring break, or if the child(ren) is/are required to attend (or does attend) extended school during any part of this break, the time remaining (including weekends) shall be equally divided between the parties with the non-residential parent being entitled to parenting time during the first one-half of that period in odd-numbered years and the residential parent being entitled to parenting time during that first one-half of that period in even-numbered years.

3. **Summer Break.**

Each parent shall be entitled to parenting time of two (2) periods of two (2) consecutive weeks (14 consecutive days). Each parent shall give the other parent at least 60 days written notice of his or her vacation schedule to that both parents have an opportunity to have the child(ren) during their vacations.

No summer parenting time shall interfere with the child(ren)'s attendance at summer school if necessary for the child(ren) to pass to the next grade.sar