

Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING THE LOCAL RULES OF PRACTICE AND PROCEDURE FOR THE 7TH JUDICIAL CIRCUIT, LOGAN AND TODD COUNTIES

Upon recommendation of the Chief Circuit Judge of the 7th Judicial Circuit, Logan and Todd counties, and being otherwise sufficiently advised,

The Local Rules of Practice and Procedure for the 7th Circuit, Logan and Todd counties, are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this Court.

Entered this the 24th day of May 2012.


CHIEF JUSTICE JOHN D. MINTON, JR.

**LOCAL RULES OF THE
7TH JUDICIAL CIRCUIT**

Rule 1. INTRODUCTION and ADMINISTRATIVE PROCEDURES

101. These local rules supplement the Kentucky Rules of Civil Procedure (CR), the Kentucky Rules of Criminal Procedure (RCr), the Family Court Rules of Procedure and Practice (FCRPP), all statutory procedural requirements of the Kentucky Revised Statutes, and all Rules and Orders of the Supreme Court of Kentucky governing procedures in the Court of Justice.

102. These rules shall become effective upon approval as required by SCR 1.040(3)(a).

103. These rules shall be cited as "LR 7".

104. Immediately upon being retained, counsel shall file a written entry of appearance, unless counsel's entry of appearance is apparent from the record.

105. On pleadings, motions and in their entry of appearance, counsel shall set forth their office address, mailing address, telephone number, fax number and e-mail address.

106. Once having entered appearance, counsel shall remain of record, unless relieved of responsibilities by the Court upon written motion and notice (with a copy of the motion and notice to be served upon the client), until expiration of the time for filing a notice of appeal after the entry of Final Judgment or Order.

107. Unless counsel specifies otherwise, an entry of appearance is considered to be for all purposes. An entry of appearance for a limited purpose shall specify the limited nature of counsel's representation of the client.

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

201. RULE DAYS

In accordance with CR 78, regular motion days (known locally as “Rule Days”) shall be held in the Logan Circuit Court and in Todd Circuit Court following a written schedule set by court order and located in Appendix A of these local rules. Hearings on motions which exceed 15 minutes may be continued to a special date and time. Hearings are to be scheduled by telephone or in person through the office of the Judge. Counsel scheduling hearings on motions expected to exceed 15 minutes should notify the Court of this fact and request a special date and time for the motion.

Except in cases of default, or routine motions for approval of fees for appointed counsel such as Warning Order Attorney or Guardian Ad Litem fees, all other motions should be noticed for a specific date and time for hearing or filed under CR 78(2). Outside of these exceptions, motions which are neither scheduled for hearing on a specific date nor filed under CR 78(2) may be considered defective and void.

202. Counsel must confer with opposing counsel concerning the date and time (see Code of Professional Courtesy attached as Appendix D) and file written notice pursuant to the Civil Rules.

203. All notices of hearing are to be served on opposing counsel not less than five days before the hearing and all responses and replies thereto are to be filed and served on opposing counsel not less than two days prior to the date of the hearing. For good cause shown, the Court may grant relief from these notice requirements.

204. **MOTIONS UNDER CR 78(2)**

Motions concerning matters which counsel believes may not be contested may be made under CR 78(2) without oral hearings upon brief written statements of reasons in support and opposition.

The notice must state that the motion is made under CR 78(2) and shall direct the attention of the opposing attorney (or party, if there is no attorney) to the fact that under this local rule the motion may be granted routinely by the Court ten days after filing unless a response is filed. The notice shall be substantially in the following form:

The foregoing motion is submitted to the court for decision pursuant to CR 78(2). This motion will routinely be granted by the court in ten days unless a response is filed.

Should the party opposing the motion under CR 78(2) wish to have an oral hearing on the question, he may in his response so state and schedule a hearing on rule day as set forth above.

This rule is intended for motions routinely granted such as motions to amend a complaint or to bring in a 3rd party defendant. The following are examples of motions which should **not** be filed under CR 78(2): Motions concerning contested discovery matters; motions for contempt or requesting sanctions; motions to set a case for trial or to schedule hearings on specific dates; motions to schedule deadlines.

205. **UNCONTESTED MATTERS** such as agreed orders and motions for default judgment may be tendered to the Circuit Clerk for submission to the Court without notice or hearing.

Counsel should not tender matters as uncontested without first confirming that all requirements of the law and of these rules have been met. Counsel tendering uncontested

divorce decrees shall comply with the requirements of FCRPP 3(1) and should confirm that the parties have attended the Parent Education Clinic if ordered to attend, that jurisdictional and separation requirements (60 days pursuant to KRS 403.170) have been met, and that the file contains the vital statistics form required by KRS 213.116(4). In the event an uncontested matter needs immediate attention, counsel should deliver the material directly to the Circuit Judge and request immediate action.

If the Court declines to take action on a tendered document, it may give written notice of the reason(s) to be mailed by the clerk to the counsel involved. The document should not be retendered to the Judge until each of the deficiencies listed in the Notice Of Inaction has been addressed.

206. **DEFAULT JUDGMENTS.** Motions for Default Judgment must be in compliance with FCRPP 3(2), if applicable, and accompanied by a certification that to the best of the counsel's knowledge the defendant is not in the military service of the United States. This is in addition to the certification requirements of CR 55.01.

Default Judgments will not be entered where the record indicates that the alleged default is based upon a "summons" containing language suggesting that it was issued by a debt collector or is itself an effort to collect a debt.¹ A tendered judgment will likewise not be entered where it contains such language.

¹ Summons are required to be issued by the Clerk "in the name of the Commonwealth." CR 4.02. The law does not authorize summons to be issued by debt collectors, and debtors receiving a document purporting to be from one might legitimately believe that it presents no obligation to respond. If the debtor believes the document is issued by the Court, then this language presents other problems. Courts are supposed to be impartial. Placement of the "debt collector" language on summons issued by the Court suggests that the courts are engaged in a pro-active effort on behalf of debt collectors. Debtors should not be misled into believing that courts are debt collectors or are engaged in any effort on their behalf. Federal law does not require that the debt collector language be placed upon documents issuing from the Court. Placement of such language upon these documents is incorrect, potentially misleading to litigants and impugns the impartiality of the court.

207. **EX PARTE MOTIONS.** No motion for emergency or ex parte relief shall be filed with the Circuit Clerk unless a proper motion with a tendered order has been first presented directly and personally (telephone and/or facsimile communications are acceptable) to a judge by the attorney for the movant. The civil rules specify alternate judicial officers to whom the order shall be submitted if the Circuit Judge is not present in the county.

The civil rules pertaining to such matter (CR 65.01 through CR 65.05) require 1: bond with surety, 2: affidavit or sworn complaint stating that the applicant's rights are being or will be violated by the adverse party and the applicant will suffer immediate and irreparable injury, loss or damage before the adverse party or his attorney can be heard in opposition, 3: certification by the applicant's attorney concerning the efforts, if any, which have been made to give notice and the reason supporting claims that notice should not be required.

Every tendered ex parte order shall contain blanks for the date and hour of issuance and shall define the injury and state why it is irreparable and why the order was granted without notice. Tendered ex parte orders for injunctive relief shall additionally contain proposed findings of fact and conclusions of law.

Rule 3. ADOPTIONS/ TERMINATION OF PARENTAL RIGHTS

There are currently no local rules relating to Adoption or Termination of Parental Rights. For statewide uniform rules of procedure see FCRPP 32 through 36.

Rule 4. DOMESTIC VIOLENCE PROTOCOL AND 24 HOUR ACCESS POLICY

401. Domestic Violence Petitions shall be governed by the Twenty Four Hour Accessibility to Emergency Protective Orders and Local Joint Jurisdiction Domestic Violence Protocol for the 7th Judicial Circuit and District. This Protocol is attached as Appendix B to these rules and is fully incorporated by reference.

Rule 5. DOMESTIC RELATIONS PRACTICE

501.PARENT EDUCATION CLINIC

If there are minor children of a marriage, a proceeding for dissolution of marriage may not be assigned for final hearing until the parties have attended and completed the approved parent education clinic within 60 days of the date a response is filed or service is made on the Respondent, whichever occurs first, if ordered by the Court pursuant to FCRPP 3(5).

A clinic shall be conducted within this Circuit at least once every 60 days at a time and location according to a schedule approved by the Court. Parties may attend any parent education clinic operated and approved by any other Circuit Court in the State of Kentucky or equivalent court in another state. Judgment dissolving the marriage shall not be entered until the parties have attended and participated in the Parent Education Clinic. A certificate of completion shall be provided to each participant completing the clinic and it shall be the responsibility of each party to file in the court record the certificate.

If a party refuses or fails to attend the clinic after being ordered to attend pursuant to FCRPP 3(5), the Court may make such orders as are just, including, but not limited to one or more of the following: 1) Refusing to assign a trial date or to enter a decree of divorce until the party or parties in violation comply with the order; 2) initiate restrictions

to the custody or visitation rights of the offending party; 3) proceed against the offending party for contempt with penalties of a fine or jail.

A fee in an amount to be approved by the Court shall be paid by each party at the time of attending the clinic. Children shall not be permitted to attend the clinic and it is the responsibility of the parties to make necessary arrangements for child care.

Rule 6. MISCELLANEOUS RULES RELATING TO FAMILY LAW PRACTICE

There are currently no miscellaneous local rules relating to Family Law Practice.

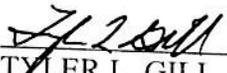
Rule 7. CRIMINAL PRACTICE RULES

701. The Supreme Court has approved a Class D Felony Diversion Protocol for this Circuit effective December 16, 1999. This protocol is attached to these rules and the terms of the protocol are incorporated herein in Appendix C by reference.

Rule 8. CODE OF PROFESSIONAL COURTESY

801. Counsel are expected to comply with the Kentucky Bar Association Code of Professional Courtesy. This code is contained in Appendix D to these rules and incorporated by reference verbatim.

Dated 5/7/12



TYLER L. GILL, Judge
7th Judicial Circuit

APPENDIX A

SEVENTH JUDICIAL CIRCUIT
COURT SCHEDULE

RULE DAY - TODD COUNTY
CRIMINAL Wednesday 8:30 a.m.-10:30 a.m.
CIVIL Wednesday 10:30 a.m. or 1:30 p.m.

LOGAN COUNTY

CRIMINAL Thursday 8:30a.m. - 12:00 p.m.
CIVIL Thursday 2:30 p.m.-4:30p.m.

(May be subject to cancellation due to Jury Trials)

**For hearings anticipated to take more than 15 minutes, please
call the judges office for a special date and time.**

DOMESTIC HEARINGS REQUIRING EVIDENCE SHALL BE SCHEDULED
TODD COUNTY MONDAYS @ 1:30 p.m.
LOGAN COUNTY TUESDAYS @ 9:00 a.m. or 1:30 p.m.

Note that there is no separate Family Court in this Circuit and all hearings are subject to
being rescheduled when jury trials conflict.

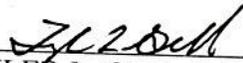
JURY TRIALS are generally scheduled as follows:

LOGAN COUNTY:

January
February
April
May
August
September

TODD COUNTY:

March
July
November



TYLER L. GILL, Judge
7th Judicial Circuit

Supreme Court of Kentucky

ORDER

**IN RE: ORDER APPROVING AMENDMENT TO APPENDIX B OF THE
LOCAL RULES OF PRACTICE AND PROCEDURE FOR THE 7TH
JUDICIAL CIRCUIT, LOGAN AND TODD COUNTIES**

Upon the recommendation of the Judges of the 7th Judicial Circuit,
Logan and Todd counties, and being otherwise sufficiently advised,

The amendment to Appendix B of the Local Rules of Practice and
Procedure for the 7th Judicial Circuit is hereby approved. This order shall be
effective as of the date of this Order, and shall remain in effect until further
orders of this court.

Entered this 9th day of December 2015.


CHIEF JUSTICE

**TWENTY-FOUR HOUR ACCESSIBILITY TO PROTECTIVE ORDERS AND LOCAL JOINT
JURISDICTION PROTOCOL
SEVENTH JUDICIAL CIRCUIT AND DISTRICT
LOGAN AND TODD COUNTIES**

Pursuant to KRS 403.735 and KRS 456.030, and in compliance with Family Court Rule of Practice and Procedure Section IV, this local protective order protocol is established to ensure twenty-four hour accessibility to emergency protective orders (EPOs) and temporary interpersonal protective orders (TIPOs) and to establish written procedures for matters in which there may be joint jurisdiction between the Circuit/Family and District Courts.

I. Uniform Protocol for Handling Cases

- A. All petitions requested, completed and signed by persons seeking protection under KRS Chapter 403 or KRS Chapter 456 shall be made on form AOC-275.1, and shall be accepted and filed with the court. KRS 403.725, KRS 456.030.
- B. All protective order cases must be processed consistent with the rules and procedures set forth in the Kentucky Circuit Court Clerk's Manual.
- C. All cases will be assigned a "D" case number with the appropriate trailer number within the court case management system and may not be consolidated with any other case type.
- D. "No drop" policies which place limitations on a petitioner's right to modify or withdraw a petition for a protective order are not permitted. Pursuant to KRS 403.740 and KRS 456.060, any orders for relief issued directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse, dating violence and abuse, stalking, or sexual assault shall not order the petitioner to take any affirmative action.
- E. Cases may be reassigned within the judicial circuit and, pursuant to FCRPP 12, a case may be transferred to another circuit if there is a pending dissolution or custody matter. If reassignment or transfer occurs, the issuing judge shall re-issue a summons until the matter may be heard by the receiving judge.
- F. The court shall review a petition for a protective order immediately upon its filing. KRS 403.730, KRS 456.040. Petitioners shall not be sent away or left waiting for extended periods of time. Petitions should be reviewed within an hour of presentation to a judge or trial commissioner unless impossible due to no judge or trial commissioner being available.

II. Twenty-four Hour Accessibility

- A. The following agencies and officers are authorized to take protective order petitions and administer oaths to petitioner during regular business hours:
Circuit Clerks and deputy clerks;

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

All law enforcement agencies within the circuit. All police agencies shall keep and maintain on hand the necessary blank Domestic Violence Petition (AOC-275,1) forms and Emergency Protective Order (EPO) forms (AOC-275.2) to be available to law enforcement officers on all shifts for use when the Circuit Court Clerk's Office is closed. The law enforcement officer involved will then supply a petition form and contact a judicial officer directly by telephone after it is completed by the petitioner as indicated below.

During hours when the Circuit Clerk's Office is open, persons seeking a protective order may be sent to that office to fill out a petition. After office hours, the officer shall follow instructions given by the judicial officer in telefaxing or delivering the completed petition and order form to the judicial officer. Judicial officers may be reached by telephone on a 24 hour basis through the emergency dispatch centers in each county.

Petitions for protective orders may be verified (sworn) before any police officer, notary public, the County Attorney of either county or the Commonwealth Attorney.

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

If no proceeding between the same parties is pending or filed contemporaneously in the Circuit Court, the petition shall be presented to the District Judge. If the District Judge is unavailable, the clerk shall seek the consideration of the Circuit Judge who shall schedule any further hearings for the domestic violence session of the District Court. If neither judge is available, the clerk shall seek the consideration of the Trial Commissioner who shall schedule any further hearing for the domestic violence session of the District Court.

If any action between the same parties is pending or filed contemporaneously in the Circuit Court, the petition shall be presented to the Circuit Judge for consideration. If the Circuit Judge is unavailable, the clerk shall seek the consideration of the District Judge who shall schedule any further hearings for the Circuit Court on a motion day. If neither Judge is available, the clerk shall seek the consideration of the Trial Commissioner who shall schedule any further hearing for the Circuit Court on motion day.

- D. Upon receipt of a petition **after** regular business hours, the authorized agency/officer shall present the petition to the District Judge unless it is known that an action between the same persons is pending before the Circuit Court, in which case it shall be presented to the Circuit Judge. If the Circuit Judge is unavailable, it shall be presented to the District Judge. If the

District Judge is unavailable then it shall be presented to the Circuit Judge. If both judges are unavailable, it shall be submitted to the Trial Commissioner.

III. Assignment of Cases

- A. Pursuant to KRS 403.735 and KRS 456.030, jurisdiction over petitions filed under this chapter is concurrent between district, circuit, and family court.
- B. The judge reviewing a petition for an order of protection shall indicate in the "Court Action" section of the petition whether the resulting action is a domestic violence action under KRS Chapter 403 or an interpersonal protective order action under KRS Chapter 456.
- C. The circuit clerk shall assign interpersonal protective order cases to the District Court, unless an action involving the same parties is pending in the Circuit Court, in which case the matter shall be assigned to the Circuit Court.
- D. The schedule for hearings on protective orders is as follows:

In District Court they shall be heard on Wednesdays at 9:30 a.m. in Logan County and on Tuesdays at the hour of 9:45 a.m. in Todd County. In Circuit Court they shall be heard on Thursdays at 2:30 p.m. in Logan County and on Wednesday's at 10:00 a.m. in Todd County.

- E. Cases may be reassigned or transferred between courts if it is determined that there are other actions pending or circumstances indicate that review by the other court is proper. KRS 403.725, KRS 456.030. If reassignment or transfer occurs the issuing Judge shall re-issue a summons until the matter may be heard by the receiving judge. In Cases where the receiving Judge is in this Circuit and both parties are before the transferring judge, the judge shall order the parties to appear before the other judge at the time regularly scheduled for these matters stated above.

IV. Contempt Proceedings

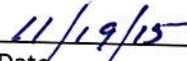
- A. Pursuant to KRS 403.763 and KRS 456.180, civil and criminal proceedings for violation of a protective order shall be mutually exclusive. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.
- B. Petitioners seeking to initiate contempt proceedings should contact:
The County Attorney for a determination of whether the Respondent's actions rise to the level of contempt or whether prosecution, for an offense other than a violation of the order of protection, is appropriate; however, all motions to show cause for civil enforcement may be filed with the circuit clerk.
- C. No petitioner may be held in contempt for failure to appear at a domestic violence hearing or to prosecute a criminal violation of a protective order.

The undersigned hereby acknowledge that all general orders, forms, policies and procedures relating to domestic violence within the judicial circuit are attached to this protocol and incorporated by reference.

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



Hon. Tyler L. Gill



Date



Kenneth R. Williams, Jr.



Date

APPENDIX C

CLASS D FELONY PRETRIAL DIVERSION PROTOCOL FOR THE SEVENTH JUDICIAL CIRCUIT KRS 533.250

I. Definition

Pretrial diversion is the postponement of imposition of a judgment of conviction and sentence upon any person qualified as being eligible for this program, subject to certain conditions, for a time period not to exceed five (5) years subject to those conditions as established by the Court.

II. 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 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 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), shall be ineligible for this program.

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

F. A person convicted of a sex crime as defined in KRS 17.500 is ineligible for pretrial diversion under KRS 533.250(1)(d).

III. Procedure

A. After indictment and no later than 5 days before trial, any eligible person for the program may petition the circuit court, with notice to the Commonwealth's Attorney, for entry of a pretrial diversion order.

B. In applying for pretrial diversion, counsel for the defendant must state, and the defendant agree, to waive any right to a speedy trial or disposition of the charge(s) against him/her.

C. The Commonwealth's Attorney shall make a recommendation to the Court in response to each petition.

D. Before making a recommendation to the Court, the Commonwealth's Attorney shall:

1. Have a criminal record check made [Pretrial Services at AOC will fax the criminal history to the Commonwealth Attorney. Due to user agreement restrictions, NCIC reports cannot be faxed] and shall supply a copy to the Court and Defendant. The Commonwealth attorney shall also conduct any other investigation deemed necessary as required by KRS 533.252(3).

2. Interview and seek input from the victim and/or victim's family as provided in KRS 533.252(2) and advise them of the time, date and place the petition will be heard by the Court; and

3. When diversion is recommended, the prosecutor 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.

IV. Acceptance and Supervision

The Court may, in its discretion and with the consent of the Commonwealth, order pretrial diversion for eligible defendants upon terms and conditions it deems appropriate. Supervision of the participants in the program shall be performed by the Division of Probation and Parole and the provisions of KRS 533.030 relating to conditions of probation and restitution shall, so far as possible, be applicable to pretrial diversion. No Judgment of Conviction shall be entered on the plea of guilty at the time of the entry of the pretrial diversion order. Judgment of conviction shall be entered on if the Defendant fails to comply with the terms of the Diversion as set forth below.

The duration of the pretrial diversion shall not exceed five (5) years and shall not be less than the time required to make restitution in full.

V. Revocation

A. After a hearing, with notice to the Commonwealth's Attorney and defendant, the Court may revoke or void defendant's participation in the pretrial diversion program upon a showing of failure to comply with the conditions of diversion or failure to make satisfactory progress.

B. If a pretrial diversion program is revoked or voided, a judgment of conviction shall be entered and the defendant shall be sentenced according to law, based on his or her prior plea of guilty.

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 and the matter shall be treated as required by KRS 533.258.

Approved, this the 7th day of May, by [Signature], Chief Circuit Judge, and Garl Geising, Commonwealth's Attorney, to be effective immediately.

[Signature]
Chief Judge, 7th Circuit

[Signature]
Commonwealth's Attorney

APPENDIX D

KENTUCKY BAR ASSOCIATION

CODE OF PROFESSIONAL COURTESY

1. A lawyer should avoid taking action adverse to the interests of a litigant known to be represented without timely notice to opposing counsel unless ex parte proceedings are allowed.
2. A lawyer should promptly return telephone calls and correspondence from other lawyers.
3. A lawyer should respect opposing counsel's schedule by seeking agreement on deposition dates and court appearances (other than routine motions) rather than merely serving notice.
4. A lawyer should avoid making ill-considered accusations of unethical conduct toward an opponent.
5. A lawyer should not engage in intentionally discourteous behavior.
6. A lawyer should not intentionally embarrass another attorney and should avoid personal criticism of other counsel.
7. A lawyer should not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, not for the mere purpose of obtaining tactical advantage.
8. A lawyer should strive to maintain courteous tone in correspondence, pleadings and other written communications.
9. A lawyer should not intentionally mislead or deceive an adversary and should honor promises or commitments made.
10. A lawyer should recognize that the conflicts within a legal matter are professional and not personal and should endeavor to maintain a friendly and professional relationship with other attorneys in the matter -- "leave the matter in the courtroom."
11. A lawyer should express professional courtesy to the Court and has the right to expect professional courtesy from the Court.