Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING THE LOCAL RULES OF PRACTICE FOR THE 13TH JUDICIAL DISTRICT, GARRARD, JESSAMINE, AND LINCOLN DISTRICT COURTS

Upon recommendation of the Chief District Judge of the 13th Judicial District, Garrard, Jessamine, and Lincoln counties, and being otherwise sufficiently advised,

The Local Rules of Practice for the 13th Judicial District 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 5th day of March 2013.

CHIEF JUSTICE JOHN D. MINTON, JR.

DISTRICT COURT RULES
THIRTEENTH JUDICIAL DISTRICT

RULE 1. CITATION OF RULES

These rules may be cited as "13th Judicial District Court Rules" or "13th JDCR."

RULE 2. ORGANIZATION

A. The District Court of the Thirteenth Judicial District is a court of continuous session, and the court shall consist of two divisions, namely:

Division One
Division Two

B. The causes in the district court shall be divided between the two divisions as equally as possible as hereinafter provided by these rules.

C. The Judge of either division may preside and hear and determine any case or question in the other division when the Judge of that division is sick, absent from the county, or is not available.

D. After each cause has been assigned to a division, the Judge thereof may for any reason transfer it to the other division.

E. When two or more actions, civil or criminal, have been filed that may, as a matter of right, or may, in the discretion of the Court be consolidated, and such action or actions are pending in the other division of the Court, any party to any of the actions may, with approval of the Court, have any of the actions transferred to that division of the Court in which the first of the actions was filed or assigned. The Judge of the Court may order such transfers to be made without a motion by any of the parties.

F. Causes in the District Court shall be assigned to the two divisions as follows:

1. Probate -
   Probate, for purposes of these rules, means a matter assigned a "P"case number by the District Clerk. All probate matters shall be assigned and case number, and will be assigned randomly to either Division One or Division Two using the Judge Assignment Program.

2. Civil -
   Civil, for purposes of these rules, means any matter assigned a "C" case number by the District Clerk. All civil matters are assigned a case number, and will be assigned randomly to either Division One or Division Two using the Judge Assignment Program.

   Forcible Detainers shall be assigned randomly to either Division One or Division Two using the Judge Assignment Program. However, the Clerk may schedule the matter to be considered by the first available judge in concert with these Rules and relevant General Order(s) of the District Court. See also Rule 3H and Appendix A, B, and C.

3. Criminal and Traffic -
   Criminal and traffic matters are any matters assigned an "F," "M," or a "T" case number by the District Clerk. All criminal and traffic matters shall be assigned a case number. Cases will be assigned randomly to either Division One or Division Two using the Judge Assignment Program, in concert with these Rules and relevant General Order(s) of the District Court.

4. Juvenile -
   Juvenile matters are any matters assigned a "J" case number by the District Clerk. All juvenile public offense charges shall be assigned a case and trailer number by the District Clerk. Cases will be assigned randomly to either Division One or Division Two using the Judge Assignment program, unless the child has previously appeared before a certain Division. If the child has a previous court history with a certain Division, then the Clerk shall assign the recent charge(s) to that Division.

   If an emergency hearing is required, the District Clerk shall assign a case and trailer number to the charge(s), as well as assign it to Division One or Division Two by using the Judge Assignment program, but schedule the emergency hearing to be heard by the first available judge. Thereafter, the matter shall be heard by the Division to which the matter has been assigned by the District Clerk as noted above.

5. Small Claims -
   Small Claims are any matters assigned an "S" case number by the District Clerk. All small claim cases shall be assigned a case number, and will be assigned randomly to either Division One or Division Two using the Judge Assignment program.

6. Adult Mental Health -
   Adult Mental Health matters are any matters assigned an "H" case number by the

District Clerk. All adult mental health cases shall be assigned a case and trailer number by the District Clerk. Cases will be assigned randomly to either Division One or Division Two using the Judge Assignment program, unless the Respondent has previously appeared before a certain Division. If the Respondent has a previous court history with a certain Division, then the Clerk shall assign the recent petition to that Division.

If an emergency hearing is required, the District Clerk shall assign a case and trailer number to the new petition, as well as assign it to Division One or Division Two by using the Judge Assignment program, but schedule the emergency hearing to be heard by the first available judge. Thereafter, the matter shall be heard by the Division to which the matter has been assigned by the District Clerk as noted above.

7. Domestic Violence -
Domestic Violence matters are any matters assigned a "D" case number by the Circuit Clerk. All domestic violence petitions shall be considered by the Family Judge or the first available judge in accordance with the local Domestic Violence Protocol. The matter shall be scheduled for hearing as set forth in the local Domestic Violence Protocol. Once all parties appear before the Family Court, that case shall remain the case of the Family Court Judge presiding on that occasion.

G. All persons who are charged with criminal or traffic violations shall be bonded to appear, cited by peace officers to appear, or brought in custody from jail to appear before the Court as provided by order of the Chief Judge of the District. A copy of said order, or any subsequent amendment thereto, shall be sent to all clerks, jailers, local attorneys and law enforcement agencies by the Chief Judge.

RULE 3. MOTION and MOTION DOCKET

Form of Motion and Docketing.

A. Written motions, other than those that may be heard ex parte, and notice of the hearing thereof, shall be personally delivered at least three (3) days before the time specified for the hearing, unless a different period is fixed by the Rules of Civil Procedure, these Rules, any applicable statute, or by Court order.

B. The Clerk shall keep a motion docket on which he/she will docket in order all motions assigned for hearing on each motion day, either by Court order or by notice duly served. This motion docket will be called on motion day and, unless otherwise ordered, the motions will be heard in the order docketed.

C. Every written motion, other than ones which may be heard ex parte, shall appear upon the motion docket, provided that any motion which is accompanied by an agreed order signed by counsel for all parties affected by the order shall not appear on the motion docket. All motions going to the merits of the case, including motions to dismiss, motions for summary judgment, motions to strike, and motions under CR 12.02, shall be accompanied by a brief statement of the grounds for the motion with citation of authorities relied upon. Failure to file a statement of grounds with supporting authorities may be grounds for overruling said motion. Any party properly served with a motion accompanied by a statement of grounds and authorities, shall file a response containing a statement of grounds for opposing the motion, with citation of supporting authorities. Such response 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.

D. If an agreed order signed by counsel for all parties affected is submitted to the Clerk prior to the call of the motion docket, counsel need not attend the call of the motion docket.

E. Non-jury cases will be assigned for trial only upon motion, at which time the Court shall be informed of the probable duration of the trial and any conflicting obligations of counsel for the parties.

F. At the time motions are called or heard, the record shall be tendered to the Court together with such proposed orders as the attorneys in the case think are proper.

G. Juvenile Case. Any motions to be heard in juvenile matters must be written and filed of record on or before seven (7) days prior to the date of the requested hearing, with proper notice to all interested parties.

H. Forcible Detainers. All forcible detainer cases must be filed with the Jessamine District Clerk's Office on or before 12:00 p.m. on the Friday before the next Wednesday forcible detainer docket in order to be scheduled for that next Wednesday hearing date. Any cases filed after 12:00 p.m. the Friday before the next forcible detainer docket shall be scheduled for the second next Wednesday.

All forcible detainer cases must be filed with the Garrard and Lincoln District Clerk's Office on or before 12:00 p.m. on Monday a week prior to the Monday docket to be heard. Any cases filed after 12:00 p.m. shall be placed on the next second Monday.

I. Probate Case. All probate petitions and/or motions shall be filed with the Jessamine District Clerk's Office on or before 12:00 p.m. the Wednesday directly prior to the Thursday morning hearing date, unless a different period is fixed by the Rules of Civil

Procedure, any applicable statute, or by Court order.

J. Regular weekly court schedules for Garrard, Lincoln and Jessamine County are attached to these Rules as Appendix A, B, and C, respectively.

RULE 4. ANSWERING INTERROGATORIES OR REQUESTS.

When answering interrogatories or request for admission, the replying party shall, as a part of his answer, set forth immediately preceding the answer, the question or the request made with respect to which such answer is given.

RULE 5. PRETRIAL DIVERSION PROGRAM

A. Eligibility Requirements

1. All persons charged in District Court with the commission of a misdemeanor shall be eligible for participation in the Administrative Office of the Courts Pretrial Services Diversion Program (Program) as an alternative to criminal prosecution, subject to the following conditions and exceptions:
    a. The charge of violation of KRS Chapter 189A shall not be diverted;
    b. A person who has previously participated in a pretrial diversion program shall not be eligible for participation in the Program, unless the trial judge and prosecutor deem a defendant eligible for the Program regardless of his/her ineligibility; and
    c. A person who is charged with a violent offense shall not be diverted.

2. Nothing in this rule shall be deemed to limit the authority of the county attorney to withdraw criminal prosecution in any given case.

B. Participation

1. Upon consent of both the county attorney and the defendant, the trial judge shall approve participation in the Program for any individual who meets the eligibility requirements established in Section A above unless the trial judge, in his/her discretion believes that:
    a. There is a substantial risk that the defendant will abscond from the jurisdiction of the court prior to fulfillment of the terms of the diversion contract;
    b. There is substantial risk that the defendant will commit another crime prior to fulfillment of the terms of the diversion contract;

c. The defendant is in need of correctional treatment that can be provided most effectively by commitment to the county jail; or
d. Participation in the Program would unduly depreciate the seriousness of the defendant's crime.

2. The county attorney's consent to a defendant's participation in the Program shall not be unreasonably withheld. If the county attorney refuses to consent to a defendant's participation in the Program, he/she shall state on the record the reasons therefore.

3. Prior to approval for participation in the Program, the pretrial services officer shall present to the trial judge the comments and opinions, if any, of the arresting officer and/or victim of the alleged crime regarding the nature of the offense, the appropriateness of diversion, and the suggested terms of the diversion contract. While not binding on the trial judge, such comments and opinions, if any, may be considered by the trial judge in determining approval for participation in the Program.

4. Upon approval for participation in the Program, the county attorney shall present to the trial judge any special terms, if any, which he/she believes should be included in the diversion contract. While such requests are not binding on the trial judge, they may be considered by the judge when approving the diversion contract.

5. Upon approval for participation in the Program, the defendant must sign a diversion contract and a statement waiving his/her right to a speedy trial. Prior to signing such statements, the defendant shall be given the opportunity to consult with an attorney if he/she so desires.

6. Participation in the Program shall not constitute an admission or presumption of guilt of the crime(s) charged, shall not be proof of guilt in any subsequent legal action, nor shall a Program participant be required to give a confession or admission of guilt.

7. All Program records and all statements made by a defendant to the diversion officer regarding the contract shall be privileged and confidential, and shall not be admissible or discoverable for any purpose. Such information shall be exempt from subpoena. However, Program staff, the trial judge and the chief district judge may access the information for purposes of Program review, monitoring and supervision. The information shall not be released to any other person or entity without prior written consent of the trial judge or the defendant. Nothing in this paragraph shall be deemed to prohibit release of information to the victim regarding a defendant's participation in the Program.

8. The fee for participation in the Program shall be in an amount set by the Director of the Administrative Office of the Courts. The court may assess the fee on a sliding scale basis upon ability to pay or waive the fee entirely in the case of indigence.

C. The Diversion Contract

1. Upon approval of participation in the Program, the defendant shall meet with a diversion officer to establish a formal contract which specifies the court-ordered conditions, the referral services to be used, the length of the contract, and, if required, the need for the defendant to make restitution, enter/complete a treatment program, or perform community service.

2. Individual contract lengths shall be determined by the trial judge, not to exceed twenty-four (24) months.

3. The Program participant shall be required to comply with all provisions of the diversion contract. If the Program participant fails to comply with the conditions of the contract, the diversion officer shall refer the participant to the trial judge for a determination of either termination or modification. The trial judge shall enter an order reflecting said determination. As with the original diversion contract, the participant must agree to the contract modifications, if any, prior to reinstatement. Upon termination for non-compliance, the county attorney may initiate prosecution of the defendant upon the original criminal charge(s).

4. A Program participant may terminate his/her contract, at any time, by submitting a written statement indicating same. Where termination is prior to the expiration of the contract period, the diversion officer shall notify the trial judge and refer the case to the county attorney for the resumption of prosecution.

5. Upon successful completion of the diversion contract, the charge(s) shall be formally and fully dismissed and all official records shall bear the notation that said charge(s) was dismissed with prejudice. The administrative record shall not be expunged, but, rather, will be retained in conformity with the Kentucky Court of Justice Records Retention Schedule.

6. A Program participant will not have to appear before the court for the order of dismissal if he/she has fully completed the diversion contract; rather the pretrial services officer may appear to make his/her final report and recommend dismissal.

RULE 6. PRE-TRIAL CONFERENCES IN CRIMINAL CASES.

Pre-trial conferences shall be held as a matter of course in all criminal cases in which a jury trial has been requested, and upon the motion of any party or upon the Court's order in all other cases. The attorney for the defendant shall be in attendance at the pre-trial conference and shall be prepared to discuss plea bargaining. At the pre-trial conference, the case shall be assigned for trial at a date and time certain.

RULE 7. PLEA BARGAINING.

The Court expects parties to complete plea negotiations before trial. Accordingly, the Court, in its discretion, may decline last-minute plea agreement. The Court also reserves the right to decline a plea agreement as permitted by law.

RULE 8. PRE-TRIAL CONFERENCES IN CIVIL CASES.

A. Pre-trial conferences shall be held as a matter of course in all jury actions and upon the motion of either party or upon the Court's own order in all other actions.

B. The attorneys attending the pre-trial conference shall be prepared and authorized to make such arguments, stipulations and decisions as may be required during the said conference.

C. Except for good cause shown, before a case is heard at the pre-trial conference, the parties shall comply with the following:

1. Pleadings completed and issues defined.
2. Discovery proceedings complete.
3. At or before the pre-trial conference, submit written instructions incorporating the parties' current understanding of the issues and the law without prejudice to the right to present further instruction as may be indicated by subsequent proceedings.
4. Be prepared to stipulate certain facts as to admissibility of certain documents or other evidence, or withdraw certain allegations or defenses appearing in the pleading whenever possible if same can be done without prejudice to the presentation of the case by either party.
5. In tort actions involving personal injury, be prepared to exchange such medical reports and copies of medical bills or evidence of special damages as are subject to discovery under the Rules of Civil Procedure.

D. If a pre-trial order is not entered at the time, the attorneys shall be responsible for preparation and submission of a pre-trial order, incorporating the Court's rulings, agreements or stipulations of the parties and any matter designated by the Court not later than ten (10) days following the pre-trial conference. The Court may require each party to submit a trial brief, consisting of a short memorandum of his/her view of the facts and law, and, if so, the Court shall fix the time for filing such briefs in the pre-trial order.

E. If the parties have not complied with the provisions of these rules, the Court may decline to set the case for trial, refuse to continue the trial of the case, or take such other actions as the Court deems appropriate.

RULE 9. INSTRUCTIONS TO JURIES.

In both civil and criminal cases, all parties shall submit proposed instructions to the Court no later than the conclusion of the proof in the case. Notwithstanding the foregoing, the parties may tender agreed instructions to the Court.

RULE 10. JURY PAYMENTS AS COSTS.

Whenever the parties to a civil action, which has been assigned a date certain for jury trial, settle the case or plan to ask the Court to cancel the trial for any reason, they shall immediately notify the Clerk that a jury will not be necessary for their case on that date. Failure to notify the Clerk of same in time for the Clerk to notify the jury not to appear will result in the full cost of all jury fees paid to jurors who appear for jury service on that case being taxed as costs, and each party to the action paying a pro-rata share of said costs. A criminal defendant who fails to appear at his/her scheduled jury trial may be ordered to pay the full cost of all jury fees.

RULE 11. DEFAULT JUDGMENTS.

A party seeking a judgment by default where Rules 55.01, 5.01, or 5.03 of the Kentucky Rules of Civil Procedure apply shall file a written motion for such a judgment. The motion must be accompanied by a certificate of the attorney that no papers have been served upon him by the party in default.

When a case is submitted for judgment by default, the entire record in the case and the proposed judgment shall be delivered to the Court by the party seeking the judgment.

RULE 12. WITHDRAWAL OF ATTORNEYS.

In any case in the Thirteenth Judicial District, an attorney who has appeared at any stage of the proceeding in the case who has been noted as attorney of record by the Clerk, may not hereafter withdraw as attorney of record in that pending case or fail to appear at any subsequent proceeding in that case, unless the attorney has appeared before the Court seeking permission to withdraw as counsel of record. If a notice of appeal has been filed of record in a civil or criminal matter, the attorney will not be permitted to withdraw as attorney of record until the appeal has been perfected or dismissed by the Circuit Court. If the Court, at a hearing, grants the motion, the attorney permitted to withdraw as attorney of record shall tender to the Court an order permitting the attorney's withdrawal.

In all divisions of the Court, the motion shall be in writing and properly noticed for hearing before the Court. In criminal and traffic cases, the notice to the defendant/client shall inform the defendant that he/she must personally appear in court for the hearing on the motion to withdraw if substitute counsel has not entered an appearance by that time.

RULE 13. ENTRY OF ORDERS AND JUDGMENTS.

Unless an order is tendered and signed in open court, an order or judgment in conformity therewith shall be attested by counsel for all parties thereto as in conformity to the ruling or opinion, and shall be presented to the Court. If the party against whom the order of judgment is to be entered is not represented by counsel, or is represented by counsel who declines to attest the order of judgment, such fact shall be endorsed thereon.

When signed by the Judge, the order or judgment shall be delivered to the Clerk for entry. Counsel preparing the order of judgment shall also deliver to the Clerk a sufficient number of copies to permit the Clerk to complete service thereof when required by CR 77.04 of the Kentucky Rules of Civil Procedure. Counsel may waive service of any order or judgment, and notice of entry.

All orders and judgments in criminal cases shall be ordered mailed on the day of entry to all parties and counsel of record if said order or judgment is not entered on the Court calendar for that day or not delivered in open court.

RULE 14. SMALL CLAIMS PRACTICE.

Practice before the Small Claims division of District Court shall be in conformity with the provisions of KRS 24A.200 to KRS 24A.360 inclusive. Settlement reached prior to trial shall be in writing and done in conformity with the settlement agreement form obtainable from the office of the District Court Clerk of the Small Claims division.

RULE 15. DISMISSAL OF ACTION FOR FAILURE TO PROSECUTE.

When any civil action or small claims action has remained on the civil docket for one (1) year without any steps being taken indicating an intention to prosecute said action, the actions may be dismissed for want of prosecution on motion of either party, or on the Court's own motion.

RULE 16. EFFECTIVE DATE.

These rules shall apply with full force and effect to all actions filed or pending in the Thirteenth Judicial District immediately upon approval of the Chief Justice of the Supreme Court.

The foregoing rules having been adopted, they are hereby certified to the Chief Justice of the Supreme Court for approval on this the 22nd day of February, 2013.

(2-22-13)

BILL OLIVER
CHIEF DISTRICT JUDGE
THIRTEENTH JUDICIAL DISTRICT
DIVISION ONE

APPENDIX A

GARRARD DISTRICT COURT
SCHEDULE OF REGULAR WEEKLY DOCKET

Monday

9:00 a.m.	Criminal and Traffic Arraignments, Pre-trial Conferences, Preliminary Hearings, Probate, Forcible Detainers

Tuesday

9:00 a.m.	Jury Trials (including Adult Mental Health matters)
11:00 a.m.	Juvenile Proceedings - Public Offenses Adult Mental Health hearings

Thursday

1:00 p.m.	Pre-trial Conferences, Civil/Criminal Motions, Small Claims, Civil Actions, Probate, Preliminary Hearings

APPENDIX B

LINCOLN DISTRICT COURT
SCHEDULE OF REGULAR WEEKLY DOCKET

Monday

1:00 p.m.	Criminal and Traffic Arraignments, Probate, Forcible Detainers
2:00 p.m.	Preliminary Hearings

Tuesday

1:00 p.m.	Juvenile Proceedings - Public Offenses and Mental Health hearings Adult Mental Health hearings

Wednesday

9:00 a.m.	Jury Trials (including Adult Mental Health matters)

Thursday

9:00 a.m.	Pre-trial Conferences, Civil/Criminal Motions, Small Claims, Probate

APPENDIX C

JESSAMINE DISTRICT COURT
SCHEDULE OF REGULAR WEEKLY DOCKET

Monday

9:00 a.m.	Juvenile Proceedings - Public Offenses and Mental Health matters
11:00 a.m.	Adult Mental Health hearings
1:00 p.m.	Interpreter's Docket
2:00 p.m.	Preliminary Hearings

Tuesday

8:30 a.m.	Pre-trial Conferences, Criminal/Traffic
9:00 a.m.	Pre-trial Conferences, Criminal/Traffic
10:00 a.m.	Bench Trials (Criminal/Traffic), Bond forfeiture hearings, Criminal Suppression hearings, Show Cause/Probation Violation Hearings

Wednesday

9:00 a.m.	Arraignments - Traffic
1:30 p.m.	Small Claims, Forcible Detainers

Thursday

9:00 a.m.	Arraignments - Criminal (Bonded)
10:30 a.m.	Probate, Civil Cases

Friday

9:00 a.m.	Jury Trials (including Adult Mental Health matters)