

Supreme Court of Kentucky

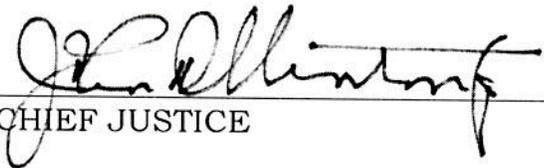
ORDER

IN RE: ORDER APPROVING THE LOCAL RULES OF PRACTICE AND PROCEDURE FOR THE 19TH JUDICIAL DISTRICT, BRACKEN, FLEMING AND MASON COUNTIES

Upon the recommendation of the Judge of the 19th Judicial District, Bracken, Fleming and Mason counties, and being otherwise sufficiently advised,

The Rules of Practice and Procedure for the 19th 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 11th day of December 2015.


CHIEF JUSTICE

**COMMONWEALTH OF KENTUCKY
19TH JUDICIAL DISTRICT
BRACKEN, FLEMING AND MASON DISTRICT COURTS**

**RULES OF PRACTICE
AND PROCEDURE**

RULE 1 INTRODUCTION / ADMINISTRATIVE PROCEDURES

101. Preface

These are the Local Rules of the 19th Judicial District covering Bracken, Fleming and Mason District Courts. These Rules supplement the Kentucky Family Court Rules of Procedure and Practice (FCRPP), the Kentucky Rules of Criminal Procedure (RCr), and the Kentucky Rules of Civil Procedure (CR). These Rules shall be the only operative District Court Rules for the 19th Judicial District in Bracken, Fleming and Mason Counties.

102. Effective Date

The effective date of these Rules shall be thirty (30) days after the Kentucky Supreme Court's approval.

103. Citation

These Rules shall be cited as Bracken/Fleming/Mason District Court Practice and Procedures (BFMDPP).

RULE 2 COURT SCHEDULING / MOTION HOUR / PROCEDURES FOR FILING

201. Regular Motion Hour Schedule for Bracken District Court

<u>1st Tuesday</u>	
9:00 a.m.	Probates, Arraignments, Pre-Trial Conferences, Criminal Motions
10:30 a.m.	Domestic Violence Hearings
11:00 a.m.	Preliminary Hearings, Civil Hearings, Court Trials, Small Claims, & Evictions
1:00 p.m.	Juvenile Hearings for Child Support, Paternity
<u>2nd Tuesday</u>	
9:00 a.m.	Probates, Arraignments, Pre-Trial Conferences, Criminal Motions
10:30 a.m.	Domestic Violence Hearings
11:00 a.m.	Preliminary Hearings, Civil Hearings, Court Trials, Small Claims, & Evictions
1:00 p.m.	Juvenile Hearings (DNA, Status & Public Offenses)
<u>3rd Tuesday</u>	
9:00 a.m.	Probates, Arraignments, Pre-Trial Conferences, Criminal Motions
10:30 a.m.	Domestic Violence Hearings
11:00 a.m.	Preliminary Hearings, Civil Hearings, Court Trials, Small Claims, & Evictions
1:00 p.m.	Juvenile Hearings (DNA, Status & Public Offenses)
<u>4th Tuesday</u>	
9:00 a.m.	Probates, Arraignments, Pre-Trial Conferences, Criminal Motions

10:30 a.m. Domestic Violence Hearings
11:00 a.m. Preliminary Hearings, Civil Hearings, Court Trials, Small Claims,
& Evictions
1:00 p.m. Juvenile Hearings (if none, then Jury Trials/Court Trials)

5th Tuesday

9:00 a.m. Probates, Arraignments, Pre-Trial Conferences
10:30 a.m. Domestic Violence Hearings
1:00 p.m. Disability Trials (if none, then juvenile or other hearings)

202. Regular Motion Hour Schedule for Fleming District Court

1st Thursday

8:30 a.m. New Probates
9:00 a.m. Arraignments
10:30 a.m. Pre-Trial Conferences, Criminal Motions
1:00 p.m. Domestic Violence Hearings
1:30 p.m. Juvenile Hearings

2nd Mondays of the month at 1:30 p.m.

Civil Motions and Hearings
or Court Trials, Small Claims, Evictions

2nd Thursday

8:30 a.m. New Probates
9:00 a.m. Arraignments
10:30 a.m. Pre-Trial Conferences, Criminal Motions
1:00 p.m. Juvenile Hearings, Child Support, Paternity
2:00 p.m. Juvenile Hearings (DNA, Public & Status Offenses)

3rd Thursday

8:30 a.m. New Probates
9:00 a.m. Arraignments, Criminal Motions
10:30 a.m. Pre-Trial Conferences
11:00 a.m. Domestic Violence Hearings
1:00 p.m. Juvenile Hearings (DNA, Status & Public Offenses)

4th Thursday

9:00 a.m. Jury Trials/Court Trials (if no trials, then other hearings)
1:00 p.m. Jury Trials/Court Trials (if no trials, then other hearings)

5th Thursday

9:00 a.m. Arraignments/Disability Trials
11:00 a.m. Domestic Violence Hearings
1:00 p.m. Disability Trials / Other Trials

203. Regular Motion Hour Schedule for Mason District Court

1st Monday

8:30 a.m. New Probates
9:00 a.m. Arraignments
10:00 a.m. Pre-Trial Conferences, Criminal Motions
1:00 p.m. Domestic Violence Hearings, Civil Hearings or
Court Trials, Small Claims, Evictions

1st Wednesday

8:30 a.m. New Probates
9:00 a.m. Arraignments
10:00 a.m. Pre-Trial Conferences, Criminal Motions
1:00 p.m. Juvenile 1st Appearance, Child Support Show Cause (Max
15), Temporary Removal Hearings, Other Juvenile Hearings

2nd Monday

8:30 a.m. New Probates
9:00 a.m. Arraignments
10:00 a.m. Pre-Trial Conferences, Criminal Motions
*After 12:00 p.m., the Court will be in Fleming County

2nd Wednesday

8:30 a.m. New Probates
9:00 a.m. Arraignments
10:00 a.m. Pre-Trial Conferences, Criminal Motions
1:00 p.m. Juvenile Adjudications/Other Juvenile Hearings

3rd Monday

8:30 a.m. New Probates
9:00 a.m. Arraignments
10:00 a.m. Pre-Trial Conferences, Criminal Motions
1:00 p.m. Domestic Violence Hearings, Court Trials (Civil),
Small Claims, Evictions

3rd Wednesday

8:30 a.m. New Probates
9:00 a.m. Arraignments
10:00 a.m. Pre-Trial Conferences, Criminal Motions
1:00 p.m. Juvenile Dispositions, Permanency Hearings/Other
Juvenile Hearings

4th Monday

8:30 a.m. New Probates
9:00 a.m. Arraignments
10:00 a.m. Pre-Trial Conferences, Criminal Motions
1:00 p.m. Court Trials, including Disability Trials

4th Wednesday
9:00 a.m. Jury or Court Trials
1:00 p.m. Jury or Court Trials

5th Monday
8:30 a.m. New Probates
9:00 a.m. Arraignments
10:00 a.m. Pre-Trial Conferences
11:00 a.m. Domestic Violence Hearings
1:00 p.m. Disability or Other Trials

5th Wednesday
8:30 a.m. New Probates
9:00 a.m. Arraignments
10:00 a.m. Disability or Other Trials
1:00 p.m. Trials

204. Exceptions to Regular Motion Hour Schedules

Exceptions to the regular motion hour schedule shall be at the discretion of the District Judge.

205. Deadlines for Filing Motions

In order for a motion to be placed on the docket, the District Clerk must receive motions no later than the following:

Bracken District Court: 4:30 p.m. Tuesday, one week prior to motion hour
Fleming District Court: 4:30 p.m. Thursday, one week prior to motion hour
Mason District Court: 4:30 p.m. Monday or Wednesday, one week prior to motion hour

206. Holidays

The Bracken, Fleming and Mason District Courts will follow the Kentucky Court of Justice holiday schedule, which may be obtained at any office of the Circuit/District, or at <http://courts.ky.gov>. A notice shall be published by the District Judge advising of the closure of District Court in observance of official holidays. An alternate session of District Court may be scheduled at the District Judge's discretion.

RULE 3 LOCAL PROTECTIVE ORDER PROTOCOL & 24-HOUR ACCESS POLICY

301. Twenty-four (24) Hour Accessibility to Protective Orders and Local Joint Jurisdiction Protocol

The Twenty-four (24) Hour Accessibility to Protective Orders and Local Joint Jurisdiction Protocol for Bracken, Fleming and Mason Counties is located in **Appendix A** to these local rules, and incorporated as if set out fully herein.

RULE 4 PATERNITY

- 401.** FCRPP 14.02 and 15 shall apply in all Paternity cases filed in the 19th Judicial District. Pursuant to FCRPP 14(1), a fee of \$50 shall be paid by a movant in a paternity case after 6 months from the entry of a paternity judgment unless the movant is proceeding under Title IV-D for child support enforcement or the movant files a motion to proceed in *forma pauperis*.
- 402.** As authorized by KRS 406.051(2), custody and visitation matters will be declined by the 19th Judicial District Judge and will not be considered in any paternity action. Any such matter submitted for a determination in a paternity action will be referred to the Circuit Court as authorized by FCRPP 14(2), and the payment of the appropriate filing fee shall be required of the movant.
- 403.** Child Support. (Please refer to FCRPP 9)

RULE 5 DEPENDENCY, NEGLECT AND ABUSE

501. Procedures for Emergency Custody Orders

To obtain an Emergency Custody Order as set forth in FCRPP 19:

- A. During normal working hours, 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays, persons seeking an Emergency Custody Order (ECO) shall come to the appropriate Circuit Clerk's Office.
- B. After working hours and on weekends and holidays, the assigned on-call trial commissioner or the District Court Judge shall be contacted for consideration of the issuance of an Emergency Custody Order.

502. Petitions

Any petition filed with this Court shall comply with the following conditions:

- A. Citations to specific statute(s) and factual allegations relied upon in asserting the Court's jurisdiction; and
- B. Full information concerning the child's parents and their address(es). The petitioner shall make diligent efforts to locate the child's parents, including but not limited to initiating contact with the Child Support Division of the appropriate County Attorney's Office.

503. The Effects of Service on Only One Parent/Persons Exercising Custodial Control or Supervision

The judge may permit the Temporary Removal Hearing or the adjudicatory hearing to go forward when the non-custodial parent has not been served in accordance with FCRPP 18(1) if it is established on the record that petitioner has made diligent efforts to serve all other parties, including initiating contact with the Child Support Division of the County Attorney's Office, in an attempt to locate any absent parent. The petitioner shall make continuing diligent efforts after the hearing to locate and notify all persons who were not served.

RULE 6 STATUS OFFENSES

There are no local rules relating to Status Offense cases in the Bracken/Fleming/Mason District Court. For uniform statewide rules of procedure, see FCRPP 37 through 44.

RULE 7 MISCELLANEOUS RULES RELATING TO FAMILY LAW PRACTICE

701. Identification of Counsel or Party Required

Every pleading, motion, and any other document filed in the record by counsel or party shall contain the case number, typed or printed name, address, telephone number, and e-mail address (if any) of the attorney or party signing the document. A rubber stamp shall not be deemed a signature either under this Rule, or under CR 11.

702. Protection of Personal Identifiers

- A. 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 containing personal identifiers to be accessed only by a party to the case, an attorney of record in the case, a judge of the court, other authorized court personnel, a duly authorized employee or agent of the Cabinet for Health and Family Services involved in child support matters attendant to the case, or a person authorized to view the copy by specific orders of the court. As used in this section, "personal identifier" means a Social Security number or tax-payer identification number, date of birth, or financial account number.
- B. Pleadings, documents or exhibits filed in actions deemed confidential by statute need not be redacted, and any access to those files shall be governed by KRS 199.570, KRS 610.340, KRS 625.045 and KRS 625.108.

- C. In all cases where the Judge has interviewed child(ren) in chambers, the Court will allow attorneys of record, including any Guardian ad Litem, to view the recording of same. However, attorneys not appearing in or not officially connected with said case, nor the parents of the child(ren) interviewed, shall be allowed to view the recording without specific orders of the Court. This rule shall apply whether the child(ren) is a victim or a witness, and shall remain in effect until the child is 18 years of age.

RULE 8 GENERAL CIVIL RULES

801. Motions

- A. General. Unless made orally during the progress of a trial in chief, motions must be in writing, accompanied by legal memorandum. Rebutting memorandums must be served within ten (10) days. Motions, outside of trial, will be decided without oral argument unless oral argument is specifically requested by either party. All motions shall be set for a specific date, in accordance with the Court's set schedule.
- B. Default. Motions for Default Judgments shall be accompanied by the following certificate in addition to the Military Affidavit, if a Military Affidavit is required:

DEFAULT JUDGMENT CERTIFICATE

Plaintiff, by counsel, certifies that:

- A. No papers have been served on plaintiff's counsel by the defendant(s) in default.
- B. Defendant(s) were served on _____ (date)
- C. The balance due on the loan is as follows:
- (1) The amount of the original obligation is: \$ _____
 - (2) The amount paid by defendant(s) to be deducted from the original obligation is \$ _____
 - (3) If there is a small loan, the amount of unearned interest rebate to be deducted pursuant to KRS 288.530(6) is: \$ _____
 - (4) The balance due from defendant(s) is: \$ _____
 - (5) If the balance due on line (4) above is different from the amount sought in the Default Judgment, the reason is: _____
- D. If the basis of plaintiff's claim is a Promissory Note, the original note has previously been filed herein or is filed herewith. If not, the reason is: _____
- E. If the basis of plaintiff's claim is property damage to an automobile, a copy of the repair estimate or other document evidencing the damages sought in the Complaint shall be submitted, accompanied by a statement that the repair estimate does not exceed the fair market value of the automobile.
- F. If the basis of plaintiff's claim is a credit card that is in default, a copy of the credit card billing from the card issuer or credit card company, and a copy of the credit card agreement are to be filed with the Complaint.
- G. If the debt has been assigned from the original creditor, the assignment must be filed with the Complaint.
- H. If attorney's fees are requested, the provision in the contract/security agreement allowing for a claim of attorney's fees should be highlighted and filed with the Complaint, and fully identified in the motion. Further, an affidavit from the attorney must be filed with the motion stating in detail how the requested attorney's fees were determined so that the court may determine if the requested attorney's fees are reasonable.

All motions for default judgment require the presence of the attorney for the plaintiff at the hearing (or an attorney temporarily designated to represent the interests of the plaintiff).

802. Jury Trial & Jury Instructions

- A. Jury Trial. Any party desiring a trial shall, at the time of filing a Motion for a jury trial or removal from Small Claims Court, pay the jury fee to the Clerk as required. Otherwise, his/her right to trial by jury shall be waived. The cost of the jury shall be taxed as costs against the unsuccessful party. When a party who requested a jury no longer desires one, the party shall notify the Court not later than **48 hours** before the case shall be called. Failure to do so shall result in the imposition of jury costs on the requesting party.
- B. Jury Instructions. Written instructions to the jury (in civil cases) shall be tendered to the District Judge at least **48 hours** prior to trial. The court may direct earlier submission of jury instructions in criminal cases.

803. Orders of Delivery

All orders of delivery shall be by seven (7) days notice to the party having possession of the personal property unless a verified statement is filed setting forth the reasons for non-notice. Notice shall also be given to any person who has an interest in the personal property. This notice shall be returnable and heard before the District Court at the time provided for the hearing of said motion by the District Court.

804. Monies Paid into Court

All monies paid into District Court shall be paid to the Clerk of the District Court and withdrawn according to rules for the District Court Clerk, except the Court in order to protect an attorney's lien, or otherwise in the furtherance of justice, or for the convenience of administration, may order payment to an attorney of record. The Clerk shall not pay such money to an attorney unless such attorney is so authorized by name in the order of withdrawal. Such order may issue on motion without notice.

805. Witness, Personal Appearance

The personal appearance of a party or witness in aid of execution on a judgment shall be heard by the District Court according to the rules pertaining to same.

806. Witness, Upon Judgment

Whenever a defendant, party or witness has appeared and been examined under oath on a discovery proceeding upon a judgment, such person shall not be compelled to appear again within six months unless an affidavit is filed by counsel showing a change of conditions or circumstances warranting same.

807. Special Bailiffs and Their Compensation

Special bailiffs may be appointed upon the affidavit of the moving party pursuant to KRS 421.135. Under KRS 421.135, the special bailiff shall be allowed by the judge a reasonable compensation for the service, not to exceed that allowed to sheriffs for conveying prisoners to the penitentiary.

808. Dismissing of Action

No action shall be dismissed until all costs have been paid in full to the Clerk, unless good cause is shown by affidavit and motion.

RULE 9 LOCAL CRIMINAL RULES

901. Jury Instructions

Proposed instructions to the jury shall be filed by the County Attorney and by counsel for the Defendant by the last regular court date (for that county) prior to the jury trial.

902. Final Pretrial

The defendant shall appear at the final pretrial conference prior to the jury trial. If the defendant fails to appear, a bench warrant may be issued for the defendant's arrest, and the jury trial will be cancelled.

903. Motions to Suppress

Motions to suppress must be in writing, state the specific grounds in detail, and shall be submitted no later than 45 days after the first Pre-Trial Conference. In accordance with CR 820 and 827, failure to comply with this rule, unless for good cause, shall bar such motion. The Commonwealth must comply with CR 8.27.

904. DUI Pleas on DUI 2nd or Greater

Defendants or their attorneys shall produce a listing from the County Clerk or appropriate agency describing all vehicles registered in Defendant's name at the time of the plea, and shall be prepared to surrender the license plates of those vehicles, or apply for an Interlock License in accordance with Kentucky Revised Statutes.

905. Pay or Stay Bench Warrants

If an individual is picked-up on a "pay or stay" bench warrant and they pay the outstanding fines and costs, and if the person is considered "bonded out," then the clerk is authorized to waive the bond fee.

RULE 10 NON-FELONY DIVERSION PROGRAM

1001. Eligibility Requirements

- A. All persons charged in District Court with the commission of a misdemeanor or violation may be eligible for participation in the Diversion Program (initially, in Bracken County only, which may be expanded in the future to include Fleming and Mason Counties) as an alternative to criminal prosecution, subject to the following conditions and exceptions:
- (1) Except as provided in subsections B and C, a prior conviction for a felony offense, misdemeanor offense or violation, shall preclude eligibility.
 - (2) Prior convictions for violations of traffic regulations under KRS Chapters 186 and 189 shall not preclude eligibility. A prior conviction for DUI will preclude eligibility.
 - (3) Except as provided in subsection C, a person charged with a violent/assaultive crime shall not be eligible for participation in the Diversion Program.
 - (4) Except as provided in subsection C, a person charged with violation of the public trust, under KRS Ch. 522 shall not be eligible for participation in the Diversion Program.
 - (5) Except as provided in subsection C, a person charged with violating any traffic regulation under KRS Ch. 186, 189, or 189A shall not be eligible for participation in the Diversion Program. No one charged with a DUI or no insurance shall be eligible for diversion under this program.
 - (6) Except as provided in subsection C, a person who has previously participated in the Diversion Program in this county/district or any other jurisdiction within or without the Commonwealth of Kentucky shall not be eligible for participation in the Diversion Program.
- B. Where a person is charged with an offense of public intoxication under KRS 525.100 or alcohol intoxication under KRS 222.202, and that person has one or more prior convictions for alcohol-related offenses other than DUI; and where it appears from the person's record and history that his/her criminal activity is related to the disease of alcoholism or drug addiction, that person will be considered eligible for participation in the Diversion Program.
- C. Where reasons of an extraordinary nature are presented which warrant consideration of a person for participation in the Diversion Program, notwithstanding his/her lack of eligibility by virtue of one or more of the above set out exclusions, that person may be considered eligible for participation in the Diversion Program by determination of the trial judge, or upon recommendation of the County Attorney, with the Court's approval.
- D. A Diversion Report shall be prepared by the Pre-Trial Service Office of the court and such report shall contain basic information, record of any past offenses and convictions, record of any prior participation in the Diversion Program or other similar program(s), employment status, length of residence in the area, and any other

information necessary to determine eligibility and appropriateness of approval to participate in the Diversion Program.

Prior to approval for participation in the Diversion Program, the Diversion Report shall be made available to the County Attorney, trial judge and the defendant.

Nothing in this rule shall be deemed to limit the authority of the County Attorney to withdraw criminal prosecution in any given case.

1002. Approval for Participation

- A. Upon the consent of both the County Attorney and the accused, the trial judge shall approve participation in the Diversion Program for any individual who meets the eligibility requirements in subsection 1001 above, unless the trial judge is of the opinion that diversion is not appropriate for one of the following reasons:
 1. There is a substantial risk that the defendant will flee from the jurisdiction of the court prior to fulfillment of the terms of the Diversion Contract.
 2. There is a substantial risk that the defendant will commit another crime prior to fulfillment of the terms of the Diversion Contract.
 3. That the defendant is in need of correctional treatment that can be provided most effectively by commitment to the local detention/correctional facility.
 4. That participation in the Diversion Program would unduly depreciate the seriousness of the defendant's crime.
- B. Consent of the County Attorney to the person's participation in the Diversion Program shall not be unreasonably withheld. If the County Attorney refuses to consent to the person's participation in the Diversion Program, he/she shall state on the record the reason(s) therefore.
- C. Upon approval for participation in the Diversion Program, the accused must sign a statement waiving his/her right to a speedy trial. Prior to signing such statement, the accused shall be given the opportunity to consult with an attorney if he/she so desires.
- D. Prior to approval for participation in the Diversion Program, the Pre-Trial Services Office 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 suggested terms of the Diversion Contract. While not binding on the trial judge, such comments and opinions shall be considered by the trial judge in determining approval for participation in the Diversion Program.
- E. Participation by an accused in the Diversion Program shall not constitute an admission or presumption of guilt of the crime charged, and shall not be proof of guilt in any subsequent legal action, nor shall a Divertee be required to give a confession or admission of guilt. However, nothing contained in this paragraph shall alter or affect the Divertee's obligation to perform all the terms of the Diversion Contract, including restitution, where agreed to.

- F. All records of the Diversion Program, and all statements made by the accused to the Diversion Officer regarding the offense for which the accused was placed on diversion shall be privileged, shall not be admissible or discoverable for any purpose; shall be exempt from subpoena, and shall be deemed confidential, except for the program staff, the trial judge, and the chief district judge, for purposes of program review, monitoring and supervision, and shall not be released to any other person or entity without prior written consent of the chief district judge and the accused. However, nothing in this paragraph shall be deemed to prohibit release of information to the victim of a crime regarding an accused's participation in the Diversion Program.
- G. Upon approval for participation in the Diversion 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, or which the arresting officer and/or victim have requested to be included in the Diversion Contract. While such requests are not binding on the trial judge, they shall be considered by him/her when approving the Diversion Contract.
- H. Upon approval for participation in the Diversion Program, the trial judge shall note on the Court docket any special terms which he/she is requiring to be included in the Diversion Contract.

1003. The Diversion Contract

- A. Upon approval of participation in the Diversion Program, the accused shall meet with a Diversion Officer to establish and agree to a formal contract which will specify the conditions required, the referral services to be used, the length of the contract, and the need, if any, for the accused to make required restitution or perform community service.
- B. The normal contract on each accused shall be for a period of not more than six (6) months, unless lengthened by the trial judge.
- C. The Divertee must comply with all provisions of the Diversion Contract. Violation of contract provisions will subject the individual to termination of diversion participation, and reinstatement of criminal prosecution.
- D. At any time, the Divertee may voluntarily choose to be terminated from the Diversion Program by submitting a written statement indicating same. Where the termination is prior to the expiration of the contract period and without the consent of the Diversion Officer, the Diversion Officer shall refer the case to the County Attorney for prosecution. If the accused does not comply with conditions of his/her Diversion Contract, the trial judge may enter an order terminating the accused's participation in the program or direct the resumption of the Divertee's participation in the Diversion process and reinstatement of the Diversion Contract, with any modifications ordered by the judge. As with the original Diversion Contract, the accused must agree to the contract modifications, if any, prior to reinstatement.

- E. Upon termination for non-compliance, the County Attorney may initiate prosecution of the accused upon the original charge(s).
- F. Upon successful completion of the Diversion Contract, the formal criminal charge, out of which the Diversion Contract arose, shall be formally and fully dismissed, and all official records of said charge shall bear the notation that said charge was dismissed with prejudice.

1004. Fees

The fee for participation in the Diversion 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 based upon ability to pay, or waive the fee entirely in the case of indigence.

RULE 11 GUIDELINES FOR USE OF PRIVATE PROBATION COMPANIES

1101. Purpose

While the court encourages that probation services be performed by governmental or non-profit agencies or volunteers, the court recognizes that these services are not always available. So, to provide for the efficient operation of the court, private probation companies may be the only way to secure needed assistance in certain cases.

In employing the use of private probation companies, the court recognizes that guidelines are needed to ensure that public resources are managed efficiently and that no unfair advantage is given. The private probation company must be an independent contractor selected by the court for a limited purpose and not an agent, servant or employee of the court.

1102. Scope

This Rule shall apply to any private, for-profit probation company supervising misdemeanor traffic offenders convicted in District Court whose sentence includes alternatives to incarceration or fine. This Rule does not apply to programs licensed by the Cabinet for Health Services (CHS) as DUI alcohol/drug treatment programs.

1103. Terms

- A. No judge of the District Court shall refer a misdemeanor or traffic offender to a private probation company for supervision unless that private probation company has been approved by the Court to provide such services.
- B. No private probation company shall be approved to provide services to the court:
 - (1) Unless it first provides and keeps current on an annual basis proof of liability insurance;

- (2) If any judge of the District Court, spouse of any judge of the District Court, or child residing in the household of any judge of the District Court, has an individual or fiduciary interest in such company;
- (3) If any principal officer, director, or trustee, or spouse of said officer, director or trustee, is related by blood or marriage within the third degree of relationship to any District Judge or the spouse of any District Judge;
- (4) Unless it first agrees, in writing, to accept pro bono referrals from the Court on a proportional basis with all other private probation companies providing approved services to the District Court;
- (5) Unless it first provides the Court a written schedule of fees to be charged, such schedule to include a sliding scale fee schedule for indigent defendants based upon their ability to pay; and
- (6) Unless it first agrees, in writing, to assess fees in strict conformity with the fee schedule submitted to the Court and approved by the Court.

C. In utilizing the services of private probation companies to supervise misdemeanor traffic offenders, the District court shall:

- (1) Assure that the private probation company shall have no discretion as to the terms or conditions of probation, including, but not limited to the condition of or amount of restitution;
- (2) Assure that the private probation company shall not collect any fines, fees and court costs for the Court and assure that the private probation company shall not collect restitution; provided, however, that the private probation company shall be permitted to assist/monitor and report to the court the status of payment of same;
- (3) Approve all fees to be charged by the private probation company and assure that all fees actually charged are in compliance with the approved schedule of fees;
- (4) Assure that no employees of the private probation company are seated in the Courtrooms of the District Court within the bar;
- (5) Assure that the terms of probation or conditional discharge are clearly stated on the Court's docket or other forms provided by the Administrative Office of the Courts and not on the forms of the private probation company;
- (6) Assign pro bono cases proportionately to all private probation companies approved to provide services to the Court; and
- (7) Require that all private probation companies report to the Court on a monthly basis all pro bono cases referred to such company by the Court and whether the company accepted or rejected such pro bono referral, and if rejected, the reasons for such rejection.

D. Non-compliance with this order by any private probation company shall constitute grounds for denial or rescinding approval for the private probation company to provide services to the District Court.

RULE 12 GENERAL RULES FOR PROBATE PRACTICE

1201. Probate Matters

The District Judge will normally hear probate cases in his chambers or in the courtroom (to be recorded unless a waiver of recording is filed) between 8:30 and 9:00 a.m. on all motion days. Attorneys and parties wishing to present their petitions at alternate times should contact the clerk's office.

1202. Initial Petition

An initial petition for appointment of a fiduciary, probate of a Will, or similar initial proceeding shall be filed in the District Clerk's office at least one day prior to the requested appointment date—if a simple probate with no extenuating circumstances. If the action is expected to require recording on the official audio/video record, either in the courtroom, or in private chambers, parties should contact the clerk's office and file the petition at least three days in advance of the proposed appointment (at the Court's discretion, advance filing with the clerk may be waived, and filing will occur immediately after the petition is presented). An appropriate case number shall be assigned by the Clerk, and all required fees paid, including a check made payable to the County Clerk for recording the Will and Order admitting same to probate if a Will is involved. There shall be filed with the petition, where appropriate, a completed fiduciary bond form and qualifications for the proposed personal representative.

1203. Form of Pleadings

Where appropriate, the documents to be presented to the court at the initial hearing for its review, findings, and approval, shall include the following:

- A. Waiver of Recording
- B. Petition
- C. Witness Form
- D. Order Probating Will and Appointing Executor
- E. Order Appointing Fiduciary
- F. Fiduciary Bond
- G. Certificate of Qualification

All pleadings and other papers shall be presented to the court at the scheduled hearing date and shall be in writing, typewritten in black ink, with typeface no smaller than 12 points, pursuant to CR 7.02. The name, address and phone number of both the attorney for the Estate and the personal representative of the Estate shall be included on all pleadings submitted for filing. Uniform state-wide forms shall be modified to reflect the appropriate Court title (Bracken, Fleming or Mason District Court). Where appropriate, an Order shall be presented with a Motion or a Petition.

All pleadings shall contain the authorship thereof in accordance with Civil Rule 11, except that a natural person who has an interest in an Estate, either as beneficiary or personal representative, may present such papers even though he or she is not an attorney at law; however,

such person shall sign his/her pleadings, motions or other papers and state his/her address, pursuant to CR 11.

1204. Wills

Wills that are duly proven and admitted to probate in accordance with law, together with the Order admitting the Will to probate, shall be recorded with the County Clerk's Office. The petitioner or his/her attorney shall be responsible for the recording of the Will and Order, and the fees to the County Clerk if a Will is admitted to probate. Wills that are not proven shall not be admitted to probate and these Wills shall be retained in the Court's record for filing purposes only.

1205. Bond and Surety

There shall be filed with the Petition a completed fiduciary bond form. In exercising its discretion under KRS 395.130(1), the District Court adopts the following guidelines:

- A. The bond of the personal representative will be set in the amount of the probate estate, even though a testamentary instrument excuses bond or surety thereon.
- B. Surety may be excused where a testamentary instrument requests that either bond or surety not be required, or for other compelling reasons.

1206. Motion to Increase / Reduce Bonds

A motion to increase bond should be made whenever it is learned that the previous bond is inadequate. A motion to reduce the bond of a fiduciary may be made any time after a periodic settlement has been filed showing a reduction in the assets remaining in the hands of a fiduciary.

1207. Inventories

A personal representative shall file an inventory in duplicate with the Clerk within two (2) months from the time of qualifying as said personal representative.

1208. Settlements

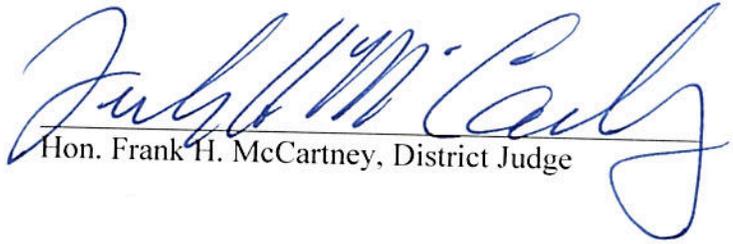
- A. Unless otherwise indicated, both formal and informal settlements shall include the following:
 - (1) Whether the settlement is a periodic or final settlement
 - (2) A photocopy of the Kentucky Inheritance Tax acceptance, when required (final settlements)
 - (3) A probate accounting summary (final settlements)
- B. All disbursements shall be supported by the original vouchers, receipts or cancelled checks filed with the settlement and presented in the order shown on the settlement. As many vouchers, receipts, etc., as possible shall be affixed to a single page so that the volume (girth) of these items may be kept to a minimum in the case file. (formal settlements only)

- C. Attorneys shall attach a copy of their employment contract with the Estate's personal representative and shall document how the requested attorney's fees were calculated so that the Court may determine if the requested attorney's fees are reasonable.
- D. Once the settlement is received by the judge and approved to layover for exceptions for thirty (30) days, the judge will forward same to the clerk for advertisement. The settlement and advertising fees must be received by the clerk at least seven (7) days prior to the monthly advertisement date to be included in that month's advertisement of settlements. Parties should contact the clerk for the amount of the advertising fee, and the monthly date of advertisement. (formal settlements only)
- E. After 30 days, if no exceptions or objections to the settlement are filed, the settlement shall be then be approved. If exceptions or objections are filed, the attorneys involved should arrange a date with the court when the matter may be heard. (formal settlements only)

This BFMDPP is hereby adopted by the Judge of the 19th Judicial District:

Date:

11/18/2015


Hon. Frank H. McCartney, District Judge

APPENDIX A

TWENTY-FOUR (24) HOUR ACCESSIBILITY TO PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION PROTOCOL

19TH JUDICIAL CIRCUIT AND DISTRICT BRACKEN, FLEMING AND MASON 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 order 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 petitioners

(1) **during** regular business hours:

Circuit Court Clerks and deputy clerks
Sheriffs and deputy sheriffs

City police officers
Women's Crisis Center staff

(2) **after** regular business hours and on **weekends/holidays**:

Sheriffs and deputy sheriffs
City police officers
Women's Crisis Center staff

(B) Upon receipt of a completed petition, the authorized agency/officer shall present the petition to the following, in the following order:

(1) during **or** after regular business hours on a **weekday**:

District Court Judge (for Fleming County) or Trial Commissioners (for Bracken and Mason Counties), as appropriate, **or** Circuit Judge, if no other judge or trial commissioners can be located

(2) anytime **during a weekend or holiday**:

The on-call trial commissioner assigned for all three counties, as identified in the monthly rotational schedule for on-call assignments;
The other trial commissioner, or District Court Judge, if available, **or** Circuit Judge, if no other judge or trial commissioners can be located

(C) Domestic violence hearings and all hearings for all protective orders shall be heard by the District Court as follows:

Bracken County: All Tuesdays at 10:30 a.m.

Fleming County: 1st Thursdays at 1:00 p.m.; 3rd & 5th Thursdays at 11:00 a.m.

Mason County: 1st & 3rd Mondays at 1:00 p.m. & 5th Mondays at 11:00 a.m.

NOTE: Domestic Violence hearings may be scheduled for the same time and date as hearings for related criminal charges.

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 civil contempt proceedings (AOC Forms available) should contact:

Bracken Circuit Clerk, 606-735-3328
Fleming Circuit Clerk, 606-845-7011
Mason Circuit Clerk, 606-564-4011

- 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. Failure of the petitioner to appear may result in denial or dismissal of the petition.
- D. When the Court conducts contempt proceedings in domestic violence actions, the party subject to contempt shall be represented by counsel, unless waived, and an attorney shall be appointed by the court if the party qualifies as an indigent.

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

IV. Protocol

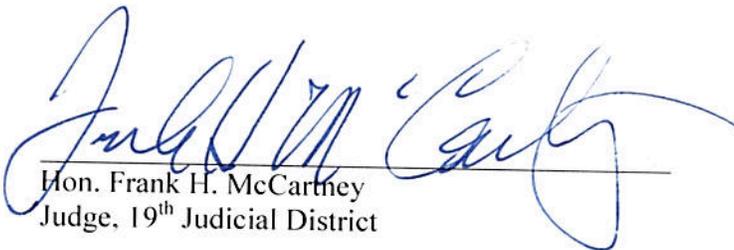
If at any time during the processing of a domestic violence case it is found there is a pending dissolution or custody matter, then consistent with FCRPP 12, the domestic violence case shall be reassigned to the circuit court with appropriate jurisdiction. The emergency protective order shall continue, and the summons to the appropriate court shall be reissued by the initiating court, pursuant to KRS 403.740(4), for a period not to exceed fourteen days if service has not been made on the adverse party by the date the case is transferred, or for as long as the Court determines is necessary for the protection of the petitioner. Thereafter, reissuance of the summons shall occur as needed by the court of jurisdiction to which the case is transferred.

The above protocol is adopted by all judges in the 19th Judicial Circuit/District:

Adopted this 18th day of November, 2015.



Hon. Stockton B. Wood
Judge, 19th Judicial Circuit



Hon. Frank H. McCartney
Judge, 19th Judicial District