Supreme Court of Kentucky

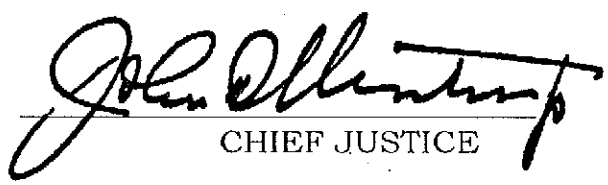
ORDER

IN RE: ORDER APPROVING ADDENDUM TO THE LOCAL RULES OF PRACTICE FOR THE 22nd JUDICIAL DISTRICT, FAYETTE DISTRICT COURT: ADDITION OF RULE 3 (H). CRIMINAL PRACTICE

Upon recommendation of the Judges of the 22nd Judicial District, Fayette District Court, and being otherwise sufficiently advised,

The addendum to the Local Rules of practice for the 22nd Judicial District to add Rule 3 (H), Criminal Practice, attached 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 2nd day of September 2009.



CHIEF JUSTICE

PROPOSED CHANGE TO THE LOCAL RULES OF THE FAYETTE DISTRICT COURT:

RULE 3(H)

Motions for modification or revocation of bond for cases pending before the grand jury shall be filed in the division in which the case was waived or bound over. Motions will be heard on the Felony Preliminary Hearing dockets. Notice to opposing counsel and to the Pretrial Services Agency must be given at least five days prior to the hearing. Motions on behalf of defendants must be served on both the Commonwealth's Attorney and the County Attorney.

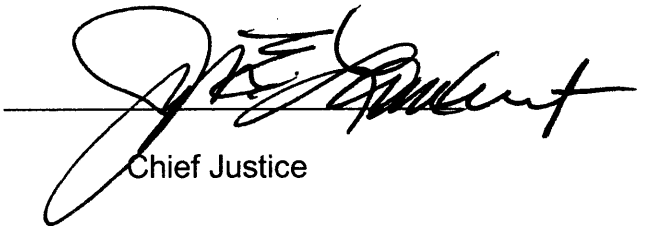
Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING AMENDMENTS TO THE LOCAL RULES OF THE 22nd JUDICIAL DISTRICT, FAYETTE DISTRICT COURT

The Amended Local Rules of the 22nd Judicial District, Fayette District Court, are hereby approved.

ENTERED: January 7, 2005.



Chief Justice

RULES OF THE FAYETTE DISTRICT COURT

RULE 1. CITATION OF RULES

These Rules may be cited as "RFDC" or Rules of the Fayette District Court.

RULE 2. ORGANIZATION OF THE FAYETTE DISTRICT COURT

A. **Sessions**. The Fayette District Court shall be composed of the following sessions: (1) Criminal (2) Civil (3) Juvenile (4) Mental Health and (5) Traffic. The sessions of the Fayette District Court shall be held as follows:

(1) Criminal: The Criminal session shall be held in Courtroom No. 3 of the Fayette District Court Building Monday through Friday as follows:

(a) Felony Preliminary Hearings: 8:30 a.m.

(b) Misdemeanor Pre-trials/Motions: 10:00 a.m.

(c) Arraignments: 1:00 p.m.

(d) Fine Payment: 2:30 p.m.

(d) Trials and/or Hearings: The Judge of the division may schedule trials and/or hearings on any of the Judge's scheduled trial dates, Monday through Friday. Unless otherwise ordered by the Court, trials and hearings will be held in Courtroom No. 2 or 4 of the Fayette District Court Building.

(2) Civil. The Civil session shall be held in Courtroom No. 5 of the Fayette District Court Building Monday through Friday as follows:

(a) Probate at 8:30 a.m.

(b) Small Claims at 9:30 a.m. The parties will be requested to resolve the case with the mediator present in court. If the matter is not settled, any hearings shall be immediately following the conclusion of the call of the Forcible Detainer docket.

(c) Forcible Detainer Hearings at 9:30 a.m.

(d) Civil Motions. Each numerical Division of the Fayette District Court shall have its regularly scheduled civil motion hour at 10:30 a.m. on its assigned day of the week. Civil cases shall be assigned for trial at the convenience of the Court upon written motion, as provided in RFDC 4.

(3) Juvenile. The Juvenile session shall consist of matters involving juvenile public offenses. The Juvenile docket shall be held in Courtroom 6 of the Fayette District Court Building Monday through Fridays as follows:

(a) Arraignments: 8:30 a.m.

(b) Detention Hearings: 9:00 a.m.

(c) Pre-trials: 9:30 a.m.

(d) Dispositions: 10:30 a.m.

(e) Hearings: 1:00 p.m. or at another time to be determined by the Court.

(4) Mental Health. The Mental Health session shall be held, as follows:

(a) Involuntary Hospitalization Preliminary Hearings and Jury Trials: 8:30 a.m. Tuesday at Eastern State Hospital.

(b) Conservator/Guardian Appointment Jury Trials: 8:30 a.m. on the second and fourth Mondays of each month in Courtroom No. 1 of the Fayette District Court Building.

(5) Traffic. The Traffic session shall be held in Courtroom No. 3 of the Fayette District Court Building at 5:30 p.m., Monday through Thursday.

B. **Assignment of Cases to Divisions.**

(1) Criminal cases. If a case is not resolved at arraignment, the case shall be assigned to a numerical division of the Court by random assignment and scheduled for further proceedings in accordance with these rules.

(2) Civil cases. All civil cases, including probate and small claims, but excluding forcible detainer cases, shall be assigned to a numerical division of the Court by random assignment at the time of the filing of the Petition or Complaint, and scheduled for hearing according to these rules. Forcible detainer cases shall be assigned to a numerical division of the Court by random assignment only upon the entry of an order granting a motion for a jury trial in such matter.

(3) Juvenile cases. At the time of filing of a complaint or petition, the Clerk of the Court shall review the Court's records to determine whether the family involved has had any prior contact with the Court. If no contact is revealed, the case shall be assigned to a numerical division of the Court by random assignment, and scheduled for further proceedings in accordance with these rules. If prior contact is revealed, the case shall be assigned to the numerical division of the Court which issued the most recent order concerning a family.

(4) Traffic cases. Traffic cases shall be assigned to a numerical division of the Court by random assignment only upon transfer of the case to the criminal session of the Court.

(5) Random Assignment of Cases. The Court Administrator shall prepare sets of two hundred fifty (250) cards. The underside of fifty (50) cards shall be printed, stamped or written with the number of each numerical division of the Fayette District Court. The cards shall be mixed or shuffled so that the sequence of the cards is entirely random. Each set of cards shall be sealed at the top and on each side so that the number of the division cannot be seen. At such time as a numerical division is required to be assigned by random assignment according to these rules, the Clerk of the Court shall draw the top card and assign the matter to that numerical division. The card drawn shall be appended to the Court's file.

C. **Substitution of Judges**. Any Judge of any division may preside, hear and determine any case or question in any other division when requested to do so by the Judge of that other division, or when the Judge of that other division is absent from the county or otherwise unavailable. Provided, however, once a case has been assigned to a division, any matter connected with the case will be heard by the Judge to whom the matter was assigned, absent good cause shown to the contrary.

D. **Court Calendar**. The Court Administrator shall maintain a yearly calendar detailing the assignment of the Judges to the various sessions of the Court. Such calendar shall be available for review by all interested persons.

E. **Change of Schedule**. Any indication of day, time, Judge assignment or courtroom for particular sessions of the Court designated within these Rules shall be subject to temporary or permanent change by the Court without notice should circumstances so require.

F. **Continuous Session**. The Fayette District Court shall be a Court of continuous session.

RULE 3. CRIMINAL PRACTICE

A. **Pre-payable Offenses**. Anyone charged with an offense that is pre-payable may appear in the Clerk's office, enter a plea of guilty, and pay the fine and costs specified without appearance in Court. Any attorney may appear and enter a plea of guilty and pay a fine and costs specified on behalf of a client, provided the attorney has authority from the client to do so. Any person charged with an offense not pre-payable shall be required to appear to answer the charge in Court and may not be authorized by any person to pre-pay a fine by pleading guilty.

B. **Pre-trial Release Interviews**. If an attorney believes that a person incarcerated should be released, the attorney must make a request for release to pre-trial services. The pre-trial services officer will interview the defendant, attempt to verify the defendant's information, and present the information to the Judge on duty. Judges will not review conditions of release unless a pre-trial interview has first been completed.

C. **Motions**. Motions may be made in writing or orally on the record in open court. Any motions regarding trial issues shall be in writing and filed no later than seventy-two (72) hours prior to the scheduled trial.

D. **Pre-trial Conferences**.

(1) Pre-trial conferences shall be held as a matter of course in all criminal or traffic cases in which a jury trial has been requested pursuant to the order of the Judge to which the case has been assigned in accordance with RFDC 2B(1).

(2) The attorney for the defendant shall be in attendance at the pre-trial conference and shall be prepared to discuss plea-bargaining with the Prosecutor. A Judge of the Fayette District Court will be available to accept guilty pleas from any defendant desiring to do so at the conclusion of all pre-trial conferences set on that day, or as soon as practicable thereafter. Any case in which a plea of guilty is not arranged will be set for jury trial at a day and time certain. Pre-trial Motions may be heard by the Judge to whom the case is assigned at such time and place as the Judge may by order direct.

E. Continuances.

(1) Continuances of any pending case will not be granted for the prosecution or the defense absent a showing of good cause.

(2) A party shall make any motion for a continuance of a scheduled trial date as soon as such party becomes aware of the matter necessitating continuance in order to allow for the excusal of witnesses. (See 3C)

F. **Guilty Pleas on Jury Trial Date**. In order to allow for the proper and efficient scheduling of jurors, no defendant charged with a criminal offense whose case has been scheduled for a jury trial will be permitted to enter a plea of guilty based upon a recommendation of the County Attorney on the actual day scheduled for trial unless permitted to do so by the presiding Judge. Notice of a defendant's intent to enter a plea of guilty upon a recommendation to any charge scheduled for jury trial shall be given to the County Attorney and to the Court Administrator at least 24 hours in advance of the scheduled time of trial. If proper notice is **not**

given, the plea may be entered, but shall be without recommendation of the County Attorney.

G. **Scheduled Court Time**. The policy of the Judges of the Fayette District Court is to begin each scheduled court session on time. To the extent that attorneys or parties desire to confer with the County Attorney prior to Court they should arrange to arrive at Court in sufficient time to do so without delaying the commencement of Court at the scheduled time, and without attempting to talk to the County Attorney after Court has convened.

RULE 4. CIVIL PRACTICE

A. **Copies of Complaint**. When a civil complaint is filed, a legible copy thereof, including the names of the attorney and true copies of all affidavits, pleadings and exhibits, shall be left with the Clerk for each defendant, not to exceed eight (8) copies. The Clerk shall endorse the copies with the filing date and file number and shall note the filing on the Civil docket. Failure to furnish such copies shall be cause for the Court to extend the time to plead, or the Court may proceed under RFDC 7C, if applicable.

B. **Entitlement to Jury Trial**. A party shall be entitled to a jury trial in civil cases in the District Court only if the amount in controversy exceeds $250.00.

C. **Motion for Trial Date.** Motions for trial dates shall be made as any other motion. A party desiring a jury trial in a civil action shall so specify when filing a Motion for Trial Date, and proceed in accordance with these rules and CR 38.02. The Court may, in its discretion, assign any such case for a pre-trial conference, or make such orders as it deems appropriate. No motion for jury trial date shall be filed unless the moving party shall have first paid to the Clerk any applicable jury fees or costs. A person making a request for a jury trial shall pay the Clerk a fee of $15.00 at the time the trial is requested. The jury fee is refundable only if the jury trial is not held and the Clerk receives at least 48 hours notice before any scheduled trial. In all civil jury trial cases, the jury fee shall be taxed as a cost against the unsuccessful party if the jury trial takes place. The Judge to whom a particular case is assigned may elect to order a jury trial in any case not meeting the jurisdictional requirements set out herein on the Judge's own motion or for good cause shown.

D. **Pre-trial Conferences**. In the discretion of the presiding Judge, civil cases may be assigned for a pre-trial conference. All attorneys attending a pre-trial conference shall be familiar with the case and shall be prepared and authorized to make such arguments, stipulations and decisions as may be required during the conference.

(1) Before the pre-trial conference, except for good cause shown, the parties shall comply fully with the following:

(a) Complete pleadings and establish and confirm triable issues.

(b) Complete discovery proceeding.

(c) Submit, at or before the pre-trial conference, such instructions as they expect to offer on the trial to conform to the proof or in the interest of justice. Such submission shall be without prejudice to the right of a party to present further instructions as may be indicated by subsequent proceedings.

(d) Be prepared to stipulate certain facts as to admissibility of certain documents and other evidence, or withdraw certain allegations or defenses appearing in the pleadings whenever possible and if same can be done without prejudice to the presentation of the case by either party.

(2) At the pre-trial conference, the Court may, in its discretion, assign an action for trial on a date certain, either before the Court or before a jury, as applicable. The Court may decline to assign a case for trial if the parties have not complied with these rules.

(3) Following the pre-trial conference, a pre-trial order shall be entered as directed by the Court. The attorneys shall prepare the pre-trial order in accordance with the instructions of the Court at the conference.

E. **Motion for Default Judgment**.

(1) A motion for default judgment in a civil case shall be filed as any other motion. Notice to a party in default is not required, except as provided in CR 55.01. The motion shall be deemed submitted on the record, and the moving party shall not be required to appear for the call of the docket. The moving party shall tender, prior to the call of the docket, a proposed Default Judgment for the Court's consideration.

(2) At the call of the motion for default judgment, if a party appears in opposition, the Court shall schedule a hearing on the contested motion at a date and time convenient to the Court. The Clerk shall then attempt to notify the moving attorney that the motion is contested, and that a hearing has been scheduled.

(3) The Court reserves the right to reject a proposed Default Judgment tendered in accordance with this Rule for any reason deemed appropriate, and shall designate same on the docket. The moving attorney shall have the responsibility to check with the Clerk to determine what action the Court has taken after reviewing the record.

F. **Dismissal for Failure to Prosecute**. When any civil action has remained on the Civil Docket for one (1) year without any step being taken indicating an intention to prosecute said action, the action may be dismissed for want of prosecution on motion of either party, or on the Court's own motion.

RULE 5. PROBATE PRACTICE

A. **Probate Docket**. The Probate session of the Fayette District Court shall convene at 8:30 a.m. in District Courtroom No. 5, Monday through Friday, except holidays. Uncontested petitions for probate of a will and/or appointment of a fiduciary may, at the discretion of the Judge of the division to whom the matter is assigned, be scheduled for hearing at such other time and place as may be convenient to the Judge and interested parties, provided all interested parties waive in writing recording of the hearing. For any probate matter which is contested or which will require a hearing lasting more than approximately ten (10) minutes, the parties shall file a motion for a hearing date in advance and notice it for the Judge's next available Probate Docket to get a date and time for a hearing on the matter.

B. **Filings of Petitions**.

(1) Any initial petition for appointment of a fiduciary, probate of a will or similar initial proceeding shall be filed in the Probate Division of the Clerk's Office and filing fees paid. Additional fees, such as recording the will, copies of orders, advertising, may be paid following the hearing.

(2) The petitioner shall list all the real and personal property subject to the fiduciary's administration, including all real property in which a decedent had an interest irrespective of the fiduciary's power to sell such real property, and shall state the total amount of the market value of the real and personal property so that the Court may fix bond in the proper amount.

(3) If the fiduciary requesting appointment by the Court is a non-resident of the Commonwealth of Kentucky, the full name and address of the process agent residing in Kentucky shall be typed on the petition.

C. **Form of Pleadings**. All pleadings and other papers presented to the Court shall be typewritten, although handwritten additions and corrections will be accepted. The use of currently approved Administrative Office of the Courts forms, to the extent available, is encouraged. Each pleading shall contain the attorney's full name, address, including zip code, and telephone number. Where appropriate, an order should be presented with a motion or a petition, and shall contain a certificate signed by the preparing attorney, including the attorney's full name, address, and telephone number.

D. **Fiduciary Bonds**. In exercising its discretion under KRS 395.130 (1), the Court hereby adopts the following guidelines:

(1) The bond of the personal representative shall be set in the amount of the probatable estate even though a testamentary instrument excuses bond or surety thereon. The value of real estate shall be included if the instrument grants the power of sale to the fiduciary.

(2) Surety will be excused (in the absence of a compelling reason) (a) if a testamentary instrument requests that surety or bond not be required, or (b) all parties in interest execute a waiver of surety and the Court is satisfied that all interests are adequately protected. The waivers of surety shall be notarized, or witnessed by a disinterested party.

(3) Absent cause shown, the corporate effects of a bank or trust company serving as fiduciary shall be sufficient surety on its bond without the necessity of a third party surety.

(4) As a general policy, surety on other bonds will be required in the amount of the bond, particularly where the interests of infants or persons under disability are involved, unless the facts clearly indicate that no surety bond or a surety bond in a lesser amount will adequately protect all interests.

(5) If for good cause shown a fiduciary is unable to be personally present to give the oath of office, the fiduciary shall submit to the Court a subscribed and notarized oath of office. The fiduciary may submit a signed and notarized bond, or may, by special power of attorney, grant another person the power to sign the bond of the fiduciary. The power of attorney from the fiduciary to the attorney-in-fact shall be a separate instrument and shall be notarized.

(6) A motion to increase bond shall be made whenever it is learned that the previous bond is inadequate. Bond shall be increased upon the Court granting the fiduciary power to sell real estate under KRS 389A.010. A motion to reduce bond of a fiduciary may be made any time after the inventory or periodic settlement has been filed showing a reduction in the assets remaining in the hands of the fiduciary.

(7) Real property may be used to secure the obligations of the fiduciary and/or the surety upon compliance with the conditions set forth in this subsection (7).

(a) The real property is located within the Commonwealth of Kentucky.

(b) The surety presents to the Court an original title opinion in favor of the Commonwealth of Kentucky in a form acceptable to the Court, which opinion shall include the property's description, the identity of the owners of the property, a description of all liens, encumbrances, and conditions affecting title to the property, including the amounts thereof, and a statement that such liens and encumbrances are not subject to future advances.

(c) All owners of the property serve as sureties, and consent to the filing of a lien on the property.

(d) The surety presents to the Court a statement from the Property Valuation Administrator of the County in which the property is located setting forth the current fair cash value of the property.

(e) Equity in the property is at least equal to double the amount of the bond. The lien on the property shall be equal to double the amount of the bond.

(f) A fiduciary may use his own real estate as surety.

(g) A lien in a form acceptable to the Court shall be prepared and filed of public record.

E. **Settlements.**

(1) Settlements, except informal settlements, shall include the following:

(a) Date of appointment of fiduciary.

(b) For a decedent's estate, the date of death, and whether the decedent died testate or intestate.

(c) Whether the settlement is periodic or final.

(d) A photocopy of the Kentucky Inheritance Tax Acceptance form or audit report shall be filed with the final settlement of a decedent's estate. In addition, the settlement shall include a photocopy of the Federal Estate Tax closing letter, or a statement that the size of the Estate did not require the filing of a Federal Estate Tax Return.

(e) The original vouchers, receipts or canceled checks for all disbursements reflected in the settlement, in the order as shown on the settlement. Subject to any timely exceptions made, the transaction statements of bank or trust company fiduciaries, or of brokerage firm accounts designated exclusively for the settlement

of estates, for the period of the settlement detailing all disbursements shall be accepted in lieu of original vouchers or canceled checks.

(f) An adding machine tape conforming to the figures shown on the settlement.

(g) All forms of compensation and commission received by any attorney or fiduciary and the total thereof.

(2) Informal final settlements may be accepted from a fiduciary under the conditions of KRS 395.605. If the Court has previously ordered the fiduciary to submit a formal settlement, the informal settlement shall be accompanied by a motion and appropriate order for the Court's signature permitting the filing of an informal final settlement.

(3) If appropriate fees for a settlement have not been paid, the settlement shall be accompanied by a check payable to the "Fayette Circuit Clerk" in the appropriate amounts.

(4) If exceptions are filed, the party filing exceptions shall move the Court for a date when the matter may be heard.

(5) Proposed settlements may be tendered in conformity with KRS 395.617 upon the payment of the appropriate fee for advertisement of notice of the proposed settlement and the hearing date. Advertisement shall be in addition to notice required to be sent by the fiduciary to the beneficiaries of the estate.

RULE 6. SMALL CLAIMS PRACTICE

A. **General Provisions**. Practice before the Small Claims session of District Court shall be in conformity with the provisions of KRS 24A.200 to 24A.360, inclusive. Settlement reached prior to trial shall be in writing and in conformity with the Settlement Agreement form obtainable from the office of the Clerk of the Small Claims Session.

B. **Continuances**. A continuance in a small claims action may be granted only for the reasons set forth in KRS 24A.280(3). The parties may agree to continue a hearing, and in such event shall tender an agreed order of continuance. An *ex parte* motion for continuance shall not be considered.

C. **Dismissal for Failure to Prosecute**. When any Small Claims action has remained on the Small Claims docket for six (6) months without having been tried the action may be dismissed for want of prosecution on motion of either party or on the Court's own motion.

RULE 7. MISCELLANEOUS PRACTICE PROVISIONS

A. **Entry of Orders and Judgments**. Whenever any ruling is made or opinion rendered, an order or judgment in conformity therewith shall immediately be prepared by counsel for the successful party, 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 or judgment is to be entered is not represented by counsel, or is represented by counsel who declines to attest the order or 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 or judgment shall also deliver to the Clerk a sufficient number of copies together with properly addressed stamped envelopes to permit the Clerk to complete service thereof when required by CR 77.04. Counsel may waive service of any order or judgment, and notice.

B. **Motions, Pleadings and Briefs**.

(1) All motions, pleadings and orders shall be typewritten on 16 pound or heavier, white, opaque, unglazed paper, 8 ½ x 11 inches, and must be written with a black-record ribbon which is not worn or faded and with typewriter keys which are clean and do not blur the letters. All motions, pleadings and orders shall be double spaced, except legal descriptions of real property. All motions, pleadings and orders shall be written with type never smaller than pica, with larger type being preferable, especially in briefs.

(2) Unless otherwise permitted by Order of Court, the movant's brief or memorandum and the respondent's brief or memorandum shall be limited to twenty-five (25) pages each. Reply briefs or memoranda shall be limited to five (5) pages each.

C. **Exhibits to Pleadings**. No party is required to respond to any pleading if any exhibit, or copy thereof, referred to in the pleading as part thereof is missing, not filed, or not served upon such party. Response shall not be required until the exhibit is filed and a copy thereof delivered to such party or his or her counsel. In addition, the non-offending party may move to compel filing under penalty of the Court striking from the record any pleading, including a complaint, which refers to exhibit(s) which are not filed. Photostatic copies of exhibits may be used if legible.

D. **Answers to Interrogatories**. A party answering interrogatories or requests for admission shall, as part of the answer, set forth immediately preceding the answer, the question or the request made with respect to which such answer is given.

E. **Orders of Submission**. Upon submission of any action to the Court for final judgment, the parties shall prepare and present to the Court an order of submission setting forth in particular the issue or issues on which the action is submitted. An action shall be submitted only upon the entry of an order of submission. No party shall file any further pleadings, proof or briefs after the entry of the order of submission, unless ordered or allowed by the Court for good cause shown. The Court may, but need not, pass upon any action before such order of submission, and will not render a decision over 90 days after the order of submission is entered.

F. **Record of Proceeding**. A record of all proceedings in all divisions and sessions of the District Court will be made by Court personnel by electronic recording devices operated by that personnel. No written transcript of the proceeding is required or necessary. All appeals will be upon the record as preserved by said recording; provided, however, any party may, at its sole cost and expense, provide a Court reporter to make stenographic notes of the proceedings which can serve as an additional record of the proceeding. Any such stenographic notes shall not serve as an official record of the proceeding.

G. **Withdrawal of Attorney**. An attorney who has appeared at any stage of a case and who has been noted as attorney of record by the Clerk may not thereafter withdraw as attorney of record in that 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 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. If the client does not appear at the hearing, the attorney shall also serve an attested copy of the order by mail upon the client. In all sessions of the Court except Criminal and Traffic, the motion shall be in writing and properly noticed for hearing before the Court.

H. **Holiday Schedule**. The Court will observe the State Holiday schedule and no sessions of the Court will be held on dates designated as state holidays. The Court Administrator shall maintain a yearly list of state holidays for review by interested persons.

Rules of the Fayette District Court

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