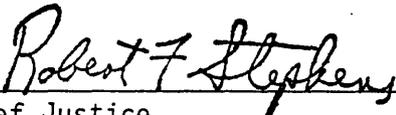


Supreme Court of Kentucky

ORDER APPROVING LOCAL RULES

Pursuant to SCR 1.040(3)(a), the local rules of the 27th Judicial District, styled "Diversion" and "Mediation", respectively, and attached as an Appendix to this Order, are hereby approved.

ENTERED November 18, 1988.



Chief Justice

COURT RULES

DIVERSION

1. (a) All persons charged in Laurel County with the commission of a misdemeanor offense shall be eligible for participation in the Diversion Program, as an alternative to criminal prosecution, subject to the following conditions and exceptions: (i) A prior conviction for a criminal offense (felony or misdemeanor) shall preclude eligibility--convictions for violation of traffic regulations (i.e., KRS CH. 186 or 189) shall not preclude eligibility; (ii) A person charged with a violent/assaultive crime shall not be eligible for participation in the Program; (iii) A person charged with a violation of the public trust (i.e., KRS Ch. 522) or with a crime of long duration shall not be eligible for participation in the Program; (iv) A person charged with the violation of traffic regulations (i.e., KRS Ch. 186 or 189) shall not be eligible for participation in the Program; and/or, (v) A person who has previously participated in the Diversion Program of Laurel County or of any other jurisdiction within or without the Commonwealth of Kentucky shall not be eligible for participation in the Program.

(b) However, where a person is charged with an offense of public intoxication (i.e., KRS Ch. 525.100) who has one or more prior convictions for alcohol related offenses, and where it appears from the person's record and history that his/her criminal activity is related to the disease of alcoholism, that person will be considered eligible for participation in the Program notwithstanding his/her prior convictions.

(c) And, where reasons of an extraordinary nature are presented which warrant consideration of a person for participation in the 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 Program.

(d) Each case will be reviewed by the County Attorney and the Trial Judge, on an individual basis, and eligibility or non-eligibility determined according to the above criteria. Participation in the program will be on a voluntary basis only, and the accused's consent must be obtained prior to inclusion.

2. A diversion report shall be presented to the Judge and the Prosecutor on each eligible candidate for final approval. The report will contain the basic pretrial information, record of any past offenses, employment status, length of residence in the area and other information necessary to determine eligibility.

3. Upon tentative acceptance of the accused into the program by the Judges and Prosecutor, the accused, after consultation with an attorney, must sign a statement that he will waive his/her right to a speedy trial.

4. The accused will 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 public service work substitute.

The contract shall be presented for final approval to the Trial Judge, and upon its final approval, the accused shall be accepted into the program and the terms of diversion shall commence.

5. The normal contract on each accused will be for a period of 3 months or 6 months, unless under ordinary circumstances the contract period is lengthened by the Judge following a special hearing at which the reasons for extension and the accused's objections are heard and considered. In the instance of public intoxicants diverted to detox treatment and similar non-ordinary diversion procedures, the length of diversion and use of a written contract will be considered individually and may be waived by the Court.

6. The Divertee must comply with all the provisions of the diversions contract. Violation of contract provisions will subject the individual to termination of diversion participation.

7. 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, a formal Court hearing will be scheduled before termination of the accused from the Diversion Program and the accused will be given full opportunity at the hearing to present relevant proof. The Trial Judge, after consideration of all relevant proof, shall 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.

8. Upon termination for non-compliance after a special hearing, the County Attorney may initiate prosecution of the accused upon the original criminal charge(s).

9. 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.

10. The consent or approval of the arresting officer or victim of the alleged crime, giving rise to the charge against the Divertee, is not required for acceptance of an accused into the Diversion Program. However, the arresting

officer and/or victim must be advised of the accused's recommended participation in the Program and afforded an opportunity to comment, in writing, prior to acceptance into the Program. Such comment, if any, shall be considered by the Trial Judge in determining acceptance into the program. Further, the arresting officer and/or victim shall be advised of the Divertee's completion and satisfaction of the Diversion Contract or the Divertee's termination for violation of the Contract.

11. Participation by an accused in the Diversion Program shall not constitute an admission or presumption of guilt of the crime charged, shall not be proof or guilt in any subsequent legal action nor shall a Divertee be required to give and 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. And, an objection to the Diversion Contract, or any term thereof, premised upon its implication of guilt shall not be valid and shall be of no merit.

12. Records of the hearing procedures and statements made during the hearing shall be privileged and shall not be admissible or discoverable for any purpose. However, the records and accumulated data respecting the mediation program may be utilized for the purpose of monitoring and evaluating the program.

13. All records of the Diversion Program shall be privileged and exempt from subpoena and will be deemed confidential except for the program staff and the Chief District Judge for purposes of program review and supervision and will be released to no other person or agency without the written consent of the parties to the dispute or as provided in paragraph 12 above.

COURT RULES

MEDIATION

1. Private citizens who wish to obtain criminal process or otherwise register a complaint within Laurel County against another person shall be afforded the opportunity to voluntarily select, in lieu of criminal prosecution, the option of submitting the dispute to an informal pretrial conference wherein mediation of the complaint will be attempted. The various options of utilizing an arrest warrant, a summons or an invitation to mediation will be thoroughly explained to the complainant by an intake screening officer. The choice of Court process rather than informal mediation shall be decided by the complainant; however, review of the facts involved in the complaint for probable cause shall remain the prerogative of the Prosecutor and the Court.

2. At the time a citizen requests criminal process be issued or indicates the intent to file a complaint, the mediation intake officer will compile a summarization of the allegations involved and will (a) issue a letter to the respondent establishing time, date and location if a mediation hearing is selected; (b) refer the summary and the complainant to the County Attorney's Office if mediation is not elected and it appears there is not sufficient grounds to issue process; (c) prepare a criminal summons or arrest warrant if Court prosecution is indicated and submit the process along with the summary to the County Attorney's Office for review and signature.

3. Participation in the mediation hearings is voluntary on the part of the complainant and the respondent, will be informal and shall not be legally binding or enforceable. Records of the hearing procedures and statements made during the hearing shall be privileged and shall not be

admissible or discoverable for any purpose. However, the records and accumulated data respecting the mediation program may be utilized for the purpose of monitoring and evaluating the program.

4. The informal and voluntary nature of mediation hearings limits the scope of the Hearing Officer's authority to establishing non-binding agreements between the disputants. The role and function of the Hearing Officer is such that he is not an officer of the Court, is not authorized to issue process and is not acting as or performing the duties of a Judge.

5. If either the complainant or the respondent is dissatisfied with the results of the mediation hearing, or if either party refuses to submit to a voluntary settlement agreement, or if the agreement is subsequently unfulfilled, the Hearing Officer will refer the complainant back to an Intake Officer for consideration of the issuance of process. The Intake Officer will consult with the County Attorney to determine if Court action should initiate on the case.

6. If, after a mediation hearing, either the complainant or the respondent is dissatisfied with the mediation proceedings or results, either party to the dispute may request that the case be referred to the Courts for a formal hearing. The dissatisfied party shall be referred to an Intake Officer who shall accompany the party to the County Attorney's Office for the purpose of probable cause review of the complaint and the issuance of Court process in appropriate cases. Both the complainant and the respondent shall be advised of the option of requesting Court action at any stage of the mediation process.

7. Any agreement accomplished between the complainant and the respondent is voluntary. Compliance with the agreement is not legally enforceable by either party, the mediation program or the Courts. Relief for non-compliance with the mediation agreement is effected only through initiation of Court process as described in Rule 6 above.

8. All records of the mediation program shall be privileged and exempt from subpoena and will be deemed confidential except for the program staff and the Chief District Judge for purposes of program review and supervision and will be released to no other person or agency without the written consent of the parties to the dispute or as provided in paragraph 3 above.

9. Restitution authorized in appropriate circumstances.

Restitution is considered appropriate and permissible in circumstances wherein the complainant and respondent voluntarily agree that restitution is applicable and further agree to the amount and schedule of payment. The Hearing Officer will be particularly alert to prevent abuse of the restitution option by either participant.

10. Public Service work alternative.

In circumstances wherein restitution is appropriate and voluntarily agreed upon by both parties but where indigency prevents the accomplishment of a reasonable payment agreement, the alternative of public service work is appropriate for consideration by the parties.

11. The policies and procedures controlling the actions of the mediation program will be formalized through the issuance of these Court rules, Court rules promulgated by the Supreme Court and through day to day review of the program by the County Attorney and by the Chief District

Judge. Procedures will not be adopted or implemented unless specifically approved by the Chief District Judge or as mandated by Supreme Court Rule.