Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING THE LOCAL RULES FOR THE 54TH JUDICIAL CIRCUIT AND DISTRICT COURTS, BOONE AND GALLATIN COUNTIES

Upon recommendation of the Judges of the 54th Judicial Circuit and District Courts, and being otherwise sufficiently advised,

The Local Rules for the 54th Judicial Circuit and District Courts, Boone and Gallatin counties, are hereby approved. This Order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this the 28th day of July 2014.

CHIEF JUSTICE JOHN D. MINTON, JR.

General Civil Rules
54th Judicial Circuit and District
Boone and Gallatin Counties

RULE 1. PURPOSE

For the purpose of adopting uniform rules for transacting the business of the court, IT IS ORDERED that the following rules, shall govern the business and practice of the Boone and Gallatin Circuit and District Courts (54th Judicial Circuit) of the Commonwealth of Kentucky.

RULE 2. SCOPE, EFFECTIVE DATE AND CITATION OF LOCAL RULES

A. Scope and Construction. These Local Rules of Practice for the Boone and Gallatin Circuit and District Courts are intended to provide a compendium of uniform procedures for the convenience of litigants, the bench and the bar. They are intended to supplement the Rules of Civil Procedure, the Rules of Criminal Procedure and the Rules of the Supreme Court and shall be construed to be consistent with those Rules.

B. These Rules are to be cited as "BGLR" for "Boone Gallatin Local Rules" and "BGLCr" for "Boone Gallatin Local Criminal Rules" in the Boone and Gallatin Circuit and District Courts.

C. These Rules shall become effective upon approval by the Chief Justice. They supersede all previous local rules and orders of the Circuit and District courts for Boone and Gallatin counties of the Commonwealth of Kentucky.

GENERAL CIVIL RULES – CIRCUIT COURTS

RULE 3. ORGANIZATION OF THE CIRCUIT COURTS

A. The Boone and Gallatin Circuit Courts are Courts of continuous session operating as a multi-county, multi-judge circuit.

RULE 4. ATTORNEYS

A. All pleadings, motions, appearances, entries of satisfaction, stipulations or any other paper required to be signed by an attorney must be signed as provided for in the CR and this Rule. In addition, the clearly legible typewritten name, address, Kentucky Bar Association number and party representation of such attorney, the office telephone number including area code, shall appear as a portion of the signature block.

B. Appearance of Counsel.

Unless otherwise permitted by this Court, an attorney shall be deemed to be an attorney of record in all actions by:

1. Making an in-court appearance on behalf of a party;

2. Filing an Entry of Appearance;

3. Signing a pleading as attorney for a party; or

4. Having his or her name listed other than "of counsel" on a pleading as an attorney in the action.

C. Withdrawal of Attorney of Record

An attorney of record shall move for permission to withdraw as counsel for a party only:

1. Upon his or her written request with the written consent of his or her client and the entry of appearance of a substitute attorney of record, or,

2. Upon his or her written request with notice to the client and a showing of good cause with the consent of the Court and upon such terms as the Court shall impose.

RULE 5. MOTION PRACTICE (NON-DOMESTIC); MOTION DAYS (DOCKET)

Motion Practice – General

A. *Motions.* All motions shall state precisely the relief requested. Except for routine motions, such as for extensions of time, a supporting memorandum shall accompany each motion. Failure to do so may be grounds for denying the motion.

B. *Motion for Extension of Time*. Parties may by agreed order extend time limits on an individual case by case method required by the CR or by these rules, subject to any deadline established by the Court. If a request for an extension of time is opposed, the party seeking the extension shall file a motion setting forth the reasons why an extension is necessary together with a tendered order granting the motion. The party opposing the motion shall respond within five (5) days of service of the motion, setting forth the reasons why the requested extension should not be granted.

C. *Motion for Discovery Order*. Counsel have the duty to make a good faith effort to resolve any disputes which arise in the course of discovery. Only if counsel are unable to resolve a discovery dispute may a motion to compel discovery, a motion for a protective order, or a motion sanctions be filed pursuant to CR 26 and 37. The moving party shall attach to the motion a certification that counsel has conferred and have been unable to resolve their differences. This certification should detail the efforts made to resolve the dispute.

D. *Motion Docket*. A Motion Docket shall be made up by the Clerk, and shall give the number and style of the case, the names of the attorneys of the parties making and

adverse to the motion, and the substance of the motion. The clerk shall cause to be made available copies of such Docket in advance of the Motion Docket which is the subject of said Docket.

E. *Publication Not Equivalent to Service*. Publication in the Motion Docket Bulletin shall not be deemed service as is required by CR 5.01 et seq.

Motion Days and Motion Practice – Specific

Boone and Gallatin Circuit Courts

A. Unless the Judge of the Boone Circuit Court orders otherwise, Division I shall hold a Motion docket on the first (1st) and third (3rd) Tuesday of each month, commencing at the hour of 9:00 a.m.

B. Unless the Judge of the Boone Circuit Court orders otherwise, Division III shall hold a Motion docket on the second (2^{nd}) and fourth (4^{th}) Tuesday of each month commencing at the hour of 9:00 a.m.

C. Unless the Judge of the Gallatin Circuit Court orders otherwise, Division I shall hold a Motion Docket on the first (1^{st}) and third (3^{rd}) Monday of each month, commencing at the hour of 10:00 a.m.

D. Unless the Judge of the Gallatin Circuit Court orders otherwise, Division III shall hold a Motion Docket on the second (2^{nd}) and fourth (4^{th}) Monday of each month, commencing at the hour of 10:00 a.m.

E. The Motion Docket shall be made by the Clerk. All reports requiring confirmation shall be placed on this docket. All motions noticed to be heard at the call of any regular Motion Docket shall be filed and received in the Circuit Clerk's Office not later than 12:00 noon on the next preceding Thursday for call on the succeeding Tuesday Motion Docket for Boone and the succeeding Monday Motion Docket for Gallatin.

F. All civil motions, other than one which may be heard ex parte, and all motions to set contested civil actions for trial, shall appear on the Motion Docket. (Contested civil actions are actions in which an Answer or Response has been filed). All motions, other than motions to set for trial, must recite authority. Motions may be disposed of at the direction of the Court without oral argument.

G. All motions to set contested cases for trial shall state the nature of the action, whether or not a jury has been demanded, and the estimated length of trial. In addition, the filing of a motion to set for trial shall be a "Certification of Readiness" by counsel that the case is ready to proceed to trial in sixty (60) days. Once a case has been set for trial, upon reliance of this "Certification of Readiness," it may be continued by the Court only upon exceptional circumstances.

H. Setting Uncontested Trials. All uncontested actions (i.e. default judgment damage hearings,) may be set for trial by telephoning the Chambers of the Judge to which the case is assigned to obtain a hearing date.

I. Default Judgment. A party seeking a judgment by default shall file a written motion for such a judgment. The motion must be accompanied by a certification of the attorney that no papers have been served upon him or her by the party in default. The motion must also be accompanied by a tendered default judgment for the Court's consideration. The party seeking the judgment may be granted the judgment by default without a required appearance.

J. Defenses referred to in CR 12.02 asserted in a responsive pleading shall be brought to the attention of the Court for disposal of the issue by a motion.

K. Orders. All orders which are required under the Civil Rules to be served upon opposing parties or counsel, including judgments, final orders and orders affecting the running time for taking an appeal, shall contain directions to the Circuit Clerk for distribution thereof in the following manner:

Mail copies to: John Jones
Attorney for Plaintiff, Jane Doe
208 Main Street
Anytown, Kentucky 41000

No motion shall be filed in the Clerk's office unless same is accompanied by the tendered order for the Court's consideration. The rule shall not apply if the order sought is required by the Civil Rules to contain findings of fact to be made by the Court.

L. If a Motion Docket falls on a day that has been designated as a legal holiday by the Chief Judge of the Circuit Court, the Motion Docket shall be held as ordered by the Court with reasonable notice to the Bar.

M. All motions shall contain a notice of the date and time of the hearing. Motions that do not contain such notice shall be heard at the next regular Motion Docket of the Court.

RULE 6. BRIEFS, PLEADINGS AND MEMORANDA; PROOF OF SERVICE

A. Name of Counsel. All briefs, pleadings and memoranda filed with the Court shall include the name, address, Kentucky Bar Association number, party representation and telephone number, including area code, of the attorney of record for the party filing them.

B. Originals. Original of briefs, pleadings and memoranda filed in the Court shall not be withdrawn from the files, except upon order of the Court. Only originals of briefs, pleadings and memoranda shall be filed in the court record, except upon order of the Court or by agreement of the parties filed in the court record. Failure to provide original

briefs, pleadings and memoranda for the court record may result in them being stricken from the record.

C. Proof of Service. All briefs, pleadings or memoranda filed with the Court shall have proof of service by written certification of counsel. In the case of an ex parte proceeding, proof may be by written certification of service or by Affidavit of the person making the service. Proof of service shall state the date and manner of service and shall include the names and addresses of all attorneys and parties not represented by counsel. Additionally, the place of the hearing shall be designated when there are parties acting pro se.

D. Sanctions. Failure to follow the requirements of this rule may result in sanctions being imposed by the Court including, but not limited to, striking any brief, pleading or memoranda in non-compliance.

RULE 7. ASSIGNMENT OF CIVIL AND CRIMINAL CASES AND APPEALS

Division I shall be assigned all cases ending with an odd number. Division III shall be assigned cases ending with an even number. All cases falling within the jurisdiction of Division II shall be assigned according to the Boone and Gallatin Family Court Rules. Nothing in these local rules shall preclude any judge in either Division I or Division III from presiding over a matter assigned to the other Division in Boone or Gallatin County when necessary within the parameters set forth under the Kentucky Rules of Civil and Criminal Procedure and the Kentucky Revised Statutes.

RULE 8. DISCOVERY PRACTICE

A. Filing Discovery Material

1. *Documents Not to Be Filed.* Except as herein provided, the following shall *not* be filed with the Court unless the Court orders otherwise:

   a. Interrogatories propounded under CR 33;

   b. Requests for Production or Inspection made under CR 34; and

   c. Requests for Admission propounded under CR 36 *unless* the time for filing a response thereto has passed, in which event, counsel may file the original Request for Admission previously served. No original Requests for Admission shall be filed pursuant to this provision unless the original Requests for Admission contain an appropriate proof of service bearing the precise date and manner of service upon the party requested to admit and any additional time provided under the CR 6.05 for responding thereto, has expired.

2. *Custodian of Documents.* The parties responsible for service of the document shall retain the original and become the custodian. The custodian shall provide

access to all parties of record during the pendency of the action. Upon conclusion of the action, the custodian of the original may move the Court that original documents be filed of record with the action to facilitate public access to the complete case file.

3. *When Documents May Be Filed.* If a document not filed pursuant to CR. 5.06 is to be used at trial, or is necessary to a pre-trial or post-trial motion, or is necessary for appellate purposes, the portion of the document to be used shall be filed with the Clerk at the commencement of the trial, or at the time of filing the motion, or at the time of the appeal, if the document's use can be reasonably anticipated.

B. Propounding Interrogatories or Requests and Response.

1. When propounding Interrogatories or Requests for Production or Inspection, the propounder shall leave adequate room for reply between questions or requests.

2. When answering Interrogatories or Requests for Production or Inspection, or for admissions, or in filing objections thereto, when the initial space for response has been exhausted, the replying party shall, as a part of the answer or objection and immediately preceding it set forth the question or the request with respect to which the answer or objection is given. In all cases of objection, the replying party shall state the reason and grounds for the objection.

3. When an objection is filed to an answer or failure to answer an interrogatory or a request, it shall set out the interrogatory or request in full, the answer, if any, thereto and the reasons and grounds for the objection.

C. Supplementation of Responses.

It shall be the duty of a party to supplement all required responses to discovery including the identity (names and location) of all witnesses and expert witnesses not later than thirty (30) days prior to the trial date.

RULE 9. EXHIBITS

The provisions below shall be followed unless otherwise ordered by the Court:

A. Advance Marking. All exhibits and material intended to be used during a civil trial shall be marked for identification purposes in a clear and concise fashion as herein described and additionally said markings shall not obscure nor hinder any relevant written or pictographic information contained on the exhibit itself.

B. Method of Designation. Unless otherwise ordered or directed by the Court, all exhibits shall be marked for identification purposes as follows:

1. Joint exhibits shall be identified by the prefix (JX) and shall be sequentially numbered;

2. Plaintiff's exhibits shall be identified by the prefix (PX) and shall be sequentially numbered;

3. Defendants exhibits shall be identified by the prefix (DX) and shall be sequentially numbered;

4. Third-party exhibits shall be identified by the prefix (TPX) and shall be sequentially numbered;

5. In all proceedings involving multiple plaintiffs or multiple defendants, the identification assigned each exhibit shall contain the surname of the individual plaintiff or defendant or the corporate name of the plaintiff or defendant.

C. Uniform Designation. Proposed exhibits, including those appended to requests for admission, interrogatories and depositions, as well as those to be utilized during trial, shall be uniformly identified during all phases of the case.

D. List of Exhibits. At the commencement of a civil trial, or at the pre-trial next preceding the commencement of a civil trial, each party's counsel shall tender to the Court and to opposing counsel, a list of all exhibits the party then intends to utilize at trial; the list shall contain the pre-marked number and short description of the exhibit.

E. Copy for Judge. Except upon cause shown or as provided otherwise by the Court, a copy of each document or written exhibit intended to be tendered or entered during trial shall be furnished to the Judge at the commencement of a civil trial or at the pre-trial next preceding the commencement of a civil trial.

RULE 10. JUDGEMENT AND ORDERS

A. All judgments and orders presented to the Court for signature shall contain the scrivener's typed name and signatures and:

1. Contain a certification by counsel that the order has been sent or delivered to opposing counsel and the date sent or delivered. Opposing counsel shall file an objection only on the basis that the order or judgment is not in conformity with the ruling of the Court as soon as possible. If no objection is filed, the Court will enter the order or judgment, OR

2. Contain a "Have Seen" endorsement of all other attorneys of record. This endorsement shall constitute an acceptance by said counsel only that the order of judgment is in conformity with the ruling of the Court.

B. Because of the number of parties in an action or for any other exceptional circumstances the Court, in its discretion, may exempt a particular order or judgment from the application of this RULE in whole or in part by endorsing said exemption on it.

RULE 11. CONSOLIDATION OF ACTIONS

A. When two or more actions have been filed that may, as a matter of right or in the discretion of the Court, be consolidated and such actions are pending in the same or in different Divisions of the Court, any party to any of the actions may have any of the actions transferred to that Division of the Court in which the first of the action was filed, upon approval of both Judges. The Judges may order such consolidation to be made without a motion by any of the parties.

B. When actions are consolidated, the Clerk shall keep the steps in the Civil Docket in the lower numbered case alone and enter reference of that case in each of the other cases in the Civil Docket.

RULE 12. DISMISSAL OF CIVIL ACTIONS FOR FAILURE TO PROSECUTE

A. At least once a year, the Clerk shall review all pending actions on the docket. The Clerk shall cause a written Notice to be given to each attorney of record, or litigant if pro se, of every case in which no pre-trial step has been taken within the last year that the case will be dismissed without prejudice in thirty (30) days for want of prosecution except for good cause shown. The Court shall enter an Order dismissing each case without prejudice at Plaintiff's cost in which no verified answer or an insufficient answer to the Notice is made. 77.02(2).

B. In each action which is not dismissed, pre-trial steps shall be taken within thirty (30) days or the action will be automatically dismissed and the Court may make such orders as will facilitate the prompt disposition of the action on the calendar for trial or hearing. CR 77.02(2).

RULE 13. REFILING ACTIONS

Whenever a case has been dismissed without prejudice and is refiled, it shall be assigned to the same division from which the dismissal was granted. Whenever a Judge shall discover that a case has been refiled within his or her division that appropriately belongs in another division pursuant to this Rule, the Judge shall promptly transfer the case to the division from which the case was originally dismissed.

RULE 14. COURT PERSONNEL

The Sheriff or a Deputy and the Clerk or a Deputy shall attend Court when in session, if the presence of all or any of them shall be deemed necessary by the presiding Judge.

RULE 15. PRACTICE BEFORE THE MASTER COMMISSIONER

A. Referrals of judicial sales to the Master Commissioner shall be as provided by the Rules of Civil Procedure, the Kentucky Revised Statutes, the Administrative Procedures of the Court of Justice (AP) Part IV, these Rules, or by court order in individual cases.

B. The attorney who moved to refer an action to the Master Commissioner shall deliver a copy of the Order referring the case to the Master Commissioner to the Master Commissioner's Office.

C. The Reports of the Master Commissioner shall be filed in the Clerk's Office. The Clerk shall comply with the Notice Provisions of CR 53.05(1). The Master shall file a Motion to Confirm the Report and shall notice for the Motion Docket of the Division to which the action is assigned, provided ten (10) days have lapsed between service of the notice of the filing of the Report and the hearing or the Motion to Confirm the Report. CR 53.05 (2).

D. Before the sale of land, the Master shall have it appraised pursuant to KRS 426.520.Any party to a suit objecting to an appraisal shall file written objections thereto and shall arrange with the Court to have a hearing thereon prior to the date of sale.

E. Purchasers at a judicial sale shall give bond in all cases, but the Court may, by proper Order, where judgment creditor is the purchaser, require the creditor to pay into the Court only that portion of the sale bonds superior to the creditor's judgment and credit the balance of the sale bonds on the judgment claim.

F. Sales shall be held on a day and at a time to be fixed by the Master, and report thereof shall be filed in the Clerk's Office and placed upon the Court's Docket and called for confirmation at the next motion hour of the Division to which action is assigned. On the call of the Motion to Confirm the Report of Sale, it shall be confirmed unless objections have been filed to the Report. In cases where objection are filed to the Report of Sales, they shall be heard and passed upon as soon as possible.

G. The Master shall make a report of distribution in every case in which any funds pass through his or her hands.

H. The Master shall prepare reports for each case separately, reflecting all amounts received and from whom, as well as all amounts disbursed and to whom and for what purpose, which will be filed in the official court file with the Circuit Court Clerk.

I. The Master shall acknowledge and record in the County Clerk's Office plats of all lands subdivided by him or her for sale or partition purposes, in which a change is made from the original subdivision plat, or in which a tract is laid out which has never been subdivided.

RULE 16. COURT DECORUM

A. Conduct. All attorneys shall advise their clients and witnesses of proper courtroom decorum, including, THE IMPROPRIETY OF ATTEMPTING TO DISUSS PENDING MATTERS WITH THE COURT and the statutory prohibition against communicating to jurors. (KRS 29A.310(2)).

B. Persons Permitted Inside the Bar of the Courtroom. Unless otherwise ordered by the Court, in all proceeding held in open Court, only the parties, the witnesses when actually testifying, attorneys duly admitted to practice before the Court and paralegals or legal assistants working under their direction, the sheriff and/or deputies, the clerk and/or deputies, bailiffs and other officers and employees with the Court's permission shall be permitted inside the bar of the courtroom.

C. Dress. All attorneys shall appear before the Court dressed in appropriate attire.

RULE 17. COURT RECORDS – REMOVAL

Original papers may be taken from the Clerk's Office only upon Order of the Court and/or for not longer than five (5) days. Depositions may not be taken from the Clerk's Office.

GENERAL CIVIL RULES – DISTRICT COURTS

RULE 18. DIVISION AND STYLE

There shall be two divisions of the District Courts of Boone and Gallatin counties. All pleadings, briefs, motions and judgments shall be styled as follows:

COURT OF JUSTICE – [Insert appropriate county]
DISTRICT COURT CIVIL DIVISION
ACTION NO. _____

RULE. 19 ASSIGNMENTS

Division I shall be assigned all cases ending with an odd number. Division II shall be assigned cases ending with an even number.

RULE 20. MOTIONS – GENERAL

Motions may be made orally during the progress of trial in chief, but all other motions must be in writing and accompanied by legal memorandum. Rebutting memorandums must be served within ten (10) days. Motion, outside of trial, will be decided without oral argument unless oral argument is specifically requested by either party.

RULE 21. MOTIONS – DEFAULT

Motions for Default Judgments shall be accompanied by the following certificate in addition tot eh 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 _____

C. The balance due on the loan is as follows:

   a. The amount of the original obligation is: $_____
   b. The amount paid by defendant(s) to be deducted from the original obligation $_____
   c. If there is small loan, the amount of unearned interest rebate to be deducted pursuant to KRS 288.530(6) is: $_____
   d. The balance due from defendant's is: $_____
   e. If the balance due on line (d) 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:

_____

_____

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, with a statement that the repair estimate does not exceed the fair market value of the automobile 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.

RULE 22. WITNESS, PERSONAL APPEARANCE

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

RULE 23. 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 month unless an affidavit is filed by counsel showing a charge of conditions or circumstances warranting same.

RULE 24. DISMISSING OF ACTION

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

LOCAL CRIMINAL RULES

RULE 25. DISTRICT COURT LOCAL RULE FOR MEDIATION UPON CRIMINAL COMPLAINT

A. Private citizens who wish to obtain criminal process or otherwise register a complaint within Boone County shall provide any person authorized to take criminal complaints with a written and sworn affidavit for a criminal complaint.

B. The County Attorney and his assistants shall screen all affidavits and determine whether the dispute is appropriate for submission to the mediation program. If the parties agree mediation is appropriate no criminal process shall be issued.

C. The affidavit shall be forwarded to the mediation officer(s) who shall be responsible for explaining the mediation process to the complainant and notifying the respondent of the date, time and location of the mediation hearing.

D. The mediation hearing shall be informal and shall not be legally binding or enforceable. Records of the hearing procedures and statement made during the hearing shall be privileged and shall not be admissible or discoverable for any purpose. However, the record and accumulated data respecting the mediation program may be utilized for the purpose of monitoring and evaluating the program.

E. The informal and voluntary nature of mediation hearings limits the scope of the hearing officer's authority to establish non-binding agreements between the disputants. The role and function of the hearing officer is such that he/she is not an officer of the court, is not authorized to issue process and is not acting as or performing the duties of judge.

F. 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 to the County Attorney's office with the affidavit for consideration of issuance of a criminal complaint.

G. Any agreement accomplished between the parties 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 F above.

H. 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 D above.

I. 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.

J. Community Service Work Alternative. In circumstances wherein restitution is appropriate and voluntarily agreed upon by both parties but where indigence prevents payment of restitution, community service work is an appropriate alternative to restitution. Community service work may be a part of any mediation agreement when appropriate and voluntarily agreed upon by both parties.

K. The policies and procedures controlling the Boone County 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 the Chief District Judge. Procedures will not be adopted to be implemented unless submitted by the Chief District Judge and approved by the Chief Justice.

RULE 26. NON-FELONY DIVERSION PROGRAM

A. Eligibility Requirements

1. All persons charged in District Court with the commission of a misdemeanor or violation shall be eligible for participation in the Diversion Program, as an alternative to criminal prosecution, subject to the following conditions and exceptions:

   a. Except as provided in subsections (2) and (3), a prior conviction for a felony offense, misdemeanor offense or violation, shall preclude eligibility

   b. Prior convictions for violations of traffic regulations under KRS Chapter 186 and 189 shall not preclude eligibility. A prior conviction for DUI will preclude eligibility.

c. Except as provided in subsection (3), a person charged with a violent/assaultive crime shall not be eligible for participation in the Diversion Program.

d. Except as provided in subsection (3), a person charged with violation of the public trust, under KRS Ch. 522 shall not be eligible for participation in the Diversion Program.

e. Except as provided in subsection (3), a person with violation of the public trust, under KRS Ch. 522 shall not be eligible for participation in the Diversion Program.

f. Except as provided in subsection (3), a person who has previously participated in the Diversion Program in this County or any other jurisdiction within or without the Commonwealth of Kentucky shall not be eligible for participation in the Diversion Program.

2. 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 conviction for alcohol related offenses other than DUI; and where it appears from the person's record and history that his or her criminal activity is related to the disease of alcoholism or drug addiction, that person will be considered eligible for participation in the program notwithstanding his or her prior conviction. A prior conviction for DUI will preclude eligibility.

3. Where reasons of an extraordinary nature are presented which warrant consideration of a person for participation in the Program, notwithstanding his or 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 by the trial judge.

4. A diversion report shall be prepared by the Pre-trial Service office of the court and such report shall contain basic pretrial information, record of any past offenses and convictions, record of any prior participation in the diversion program or other similar program, 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, the Trial Judge, and the Defendant.

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

6. Nothing in this rule shall be deemed to limit the ability of the County Attorney to implement policies and procedures regarding alternative to criminal prosecution

for individuals who are alleged to have violated the law but who has not been brought before the Court.

B. Approval For Participation

1. 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 established in Section I above unless the trial judge is of the opinion that diversion is inappropriate because:

   a. There is 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 a substantial risk that the defendant will commit another crime prior to fulfillment of the terms of the Diversion Contract.

   c. That the defendant is in need of correctional treatment that can be provided most effectively by commitment to the county jail.

   d. That participation in the Diversion Program would unduly depreciate the seriousness of the defendant's crime.

2. 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 or she shall state on the record the reasons therefore.

3. Upon approval for participation in the Diversion Program, the accused must sign a statement waiving his or 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 or she so desires.

4. Prior to approval for participation in the Diversion Program, the Pretrial 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, if any, shall be considered by the trial judge in determining approval for participation in the Diversion Program.

5. 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 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 reform all the terms of the Diversion Contract, including restitution, where agreed to.

6. 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.

7. Upon approval for participation in the Diversion Program, the county attorney shall present to the trial judge any special terms, if any, which he or she believes should be included in the Diversion Contract, or which the arresting officer and/or victim has requested to be included in the Diversion Contract. While such requests are not binding on the trial judge, they shall be considered by him or her when approving the Diversion Contract.

8. Upon approval for participation in the Diversion Program, the trial judge shall note on the Court Docket any special terms which he or she is requiring to be included in the Diversion Contract.

C. The Diversion Contract

1. 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 condition 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. The contract shall be presented for final approval to the trial judge, and upon its final approval, the terms of diversion shall commence. The Diversion Contract shall contain any special terms required by the trial judge.

2. The normal contract on each accused shall be for a period of not more than 6 months, unless lengthened by the trial judge.

3. 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 reinstitution of criminal prosecution.

4. 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 or 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 modification ordered by the judge.

5. As with the original Diversion Contract, the accused must agree to the contract modification, if any, prior to reinstatement.

6. Upon termination for non-compliance, the County Attorney may initiate prosecution of the accused upon the original criminal charge(s).

7. 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 notion that the charge was dismissed with prejudice.

RULE 27. GUIDELINES FOR THE USE OF PRIVATE PROBATION COMPANIES

A. 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 and thus to provide for the efficient operation of the court, private probation companies may be the only way to provide needed assistance in certain cases.

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

B. Scope of the Rules

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

C. Terms

1. 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 to provide services to the court.

2. No private probation company shall be approved to provide services to the court;

a. Unless it first maintains and provides upon request proof of liability insurance in an amount equal to a minimum of $1 million dollars;

b. 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 fiduciary financial interest in such company.

c. 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;

d. 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;

e. Unless it first provides the Court with a written schedule of fees to be charged, such schedule to include a sliding scale fee schedule for indifferent defendants based upon their ability to pay; and,

f. 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.

3. In utilizing the services of private probation companies to supervise misdemeanor or traffic offenders, the District Court shall;

a. Assure that the private probation company shall have no discretion as to the terms or conditions of probation, including, but not limiting to the condition of or amount of restitution;

b. 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 or monitor and report to the court the status of payment of same;

c. 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;

d. Assure that no employees of the private probation company are seated in the Courtrooms of the District Court within the bar;

e. 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;

f. Assign pro bono cases proportionately to all private probation companies approved to provide services to the Court; and

g. 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 such 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 service to the District Court.

GENERAL RULES FOR PROBATE PRACTICE OF BOONE and GALLATIN, COUNTIES

RULE 28. Obtaining a Court Date

An appointment to probate a will and/or obtaining an appointment of the personal representative shall be obtained from the District Court clerk by phone or in person. [Boone and Gallatin Counties – the Petition must be filed with the clerk's office at least two days prior to the appointment date.] The Notice requirements set forth in KRS 395.016 must be complied with.

RULE 29. Initial Petition

An initial Petition for appointment of a fiduciary, probate of a will or similar initial proceeding shall be filed in the Probate division of the District Clerk's office, assigned a case number and all required fees paid, including a check 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 (with the amount left blank) and qualifications for the proposed personal representative.

RULE 30. Initial Petition and Docketing the Case

An initial Petition and docketing of the case for the appointment of a personal representative, probate of a will or a similar initial proceeding shall be filed with the Probate Division of the District Clerk's office on the date of the hearing and all required fees shall be paid.

RULE 31. Form of Pleadings

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

1. Waiver of Recording;

2. Petition;

3. Witness Form;

4. Order Probating Will and Appointing Executor;

5. Order Appointing Fiduciary;

6. Fiduciary Bond; and

7. Certificate of Qualification

B. All pleadings and other paper shall be presented to the Court at the scheduled hearing date and shall be in writing, typewritten in black type not smaller than 12 point 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 Court title as Boone or District Court. Where appropriate, an Order should be presented with a Motion or Petition.

C. 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 a 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 pleadings, motion or other paper and state his address, pursuant to CR 11.

RULE 32. 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 or 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.

RULE 33. Bond and Surety

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

A. The bond of the personal representatives will be set in the amount of the probatable estate even though a testamentary instrument excuses bond and 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.

RULE 34. Motions to Increase and 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 periodical settlement has been filed showing a reduction in the assets remaining in the hands of a fiduciary.

RULE 35. Inventories

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

RULE 36. Settlements

A. All settlements shall include the following:

1. Whether the settlement is periodical or final.

2. A photocopy of the Kentucky Inheritance Tax acceptance shall be filed with all final settlement of decedent's estate.

3. A probate accounting summary shall be filed with each final settlement.

B. All disbursements shall be supported by the original photocopy which may include voucher, receipts or canceled checks filed with the settlement and in the order as shown on the settlement. As many vouchers, etc., as are possible shall be placed on a single page so that the volume of these items may be kept to a minimum.

C. The Court shall establish one day a month for confirmation day. To be confirmed, a settlement must be filed with the probate clerk at least seven (7) days prior to the confirmation date, to permit the clerk to properly advertise the settlement, if applicable.

D. If no exceptions or objections to the settlement are filed, the settlement shall be confirmed at the confirmation day.

E. If exceptions or objections are filed, the attorneys involved should arrange with the Probate Court for a date when the matter may be heard.

F. The foregoing subsections of this Rule shall not apply in an estate in which an informal settlement shall be filed in keeping with the provisions of KRS 395.605.

RULES AMENDMENTS AND CHANGES

RULE 37. General Terms of Amendment and Changes.

A. The Court may have a General Term at which the Judges of the Circuit or District as applicable shall preside and may at this General Term adopt amendments or changes to these Rules subject to the approval of the Chief Justice of the Supreme Court.

B. These Rules have been adopted in compliance with SCR 1.040(3)(a) and any changes herein shall be made in accordance with said Rule.

C. It is Hereby Ordered that all previous Rules of Practice and Procedure of the Boone and Gallatin Circuit and District Courts, and any amendments thereto which are inconsistent with these rules, are hereby set aside and repealed.

D. This Order promulgated and entered by the presiding Judges is effective upon approval of these Rules by the Supreme Court.

Dated this ___ day of _____, 2014.

Approved by:

Anthony W. Frohlich, Chief Judge
Boone Circuit Court, Division I

Linda Rae Bramlage, Judge
Boone Family Court, Division II

James R. Schrand, Judge
Boone Circuit Court, Division III

Jeffrey S. Smith, Judge
Boone District Court, Division I

Charles T. Moore, Judge
Boone District Court, Division II