

# Supreme Court of Kentucky

IN RE:  
RULES OF CIVIL PROCEDURE (CR)  
RULES OF CRIMINAL PROCEDURE (RCr)  
RULES OF THE SUPREME COURT (SCR)  
ADMINISTRATIVE PROCEDURES OF THE COURT OF JUSTICE (AP)

2000-1

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The following rules' amendments shall become effective February 1, 2001.

## AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

1. CR 41.01(1)

Paragraph (1) of CR 41.01 shall read:

(1) **By plaintiff; by stipulation.**

Subject to the provisions of Rule 23.05, of Rule 66, and of any statute, an action, or any claim therein, may be dismissed by the plaintiff without order of court, by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state, of the United States or of any state an action based on or including the same claim.

2. CR 53.06(1)

Paragraph (1) of CR 53.06 shall read:

(1) **Contents and filing.**

The commissioner shall prepare a report of recommendations to the court upon the matters submitted by the order of reference or local rules of court and, if required to make findings of fact and conclusions of law, the commissioner shall set them forth in the report and shall file the report and sufficient copies for all parties with the clerk of the court. The clerk shall forthwith serve the report and notice of the filing upon all parties who have appeared in the action. A transcript of

reported proceedings may be ordered by any party at that party's expense. In the case of proceedings recorded on videotape the untranscribed tape shall constitute the official record.

**3. CR 53.08**

CR 53.08 shall read:

All domestic relations commissioners shall be limited in their total personal compensation derived from fees to not more than \$48,000 per annum unless approved by the Chief Justice, and all master commissioner's shall be limited in their total personal compensation derived from fees to not more than \$48,000 per annum, unless approved by the Chief Justice. Where the master commissioner also serves as the domestic relations commissioner the total personal compensation shall not exceed \$72,000 per annum unless a higher amount is approved by the Chief Justice. Fees in excess of the personal compensation of the commissioner and office expenses and salaries shall be remitted as provided in Rule 53.09, however, anticipated three (3) months expenses may be retained.

**4. CR 53.09 (1)**

Paragraph (1) of CR 53.09 shall read:

(1) Each commissioner shall account to the circuit judge under whose direction he or she is acting, for all amounts received and distributed, for all proceeds of sales disbursed, and for all fees collected. These accounts shall be in the manner directed by the circuit judge who shall approve the accounts by his or her signature. The commissioner shall file the approved accounts with the circuit clerk who shall include them with the applicable case file. Each commissioner shall maintain a current record, kept in the office of the circuit clerk, or in the office of the commissioner if the Chief Circuit Judge so directs, of each case in which a fee has been received.

**5. CR 73.02 (1) (b)**

Subparagraph (b) of paragraph (1) of CR 73.02 shall read:

(1) (b) If an appeal or cross-appeal is from an order or judgment of the circuit court, the filing fee required by Rule 76.42(2) (a) (i) or (ii) shall be paid to the clerk of the circuit court at the time the notice of appeal or cross-appeal is tendered, and the notice shall not be docketed or noted as filed until such payment is made. Motions to proceed in forma pauperis

on such an appeal or cross-appeal must be addressed to the circuit court. If timely tendered and accompanied by a motion to proceed in forma pauperis supported by an affidavit, a notice of appeal or cross-appeal shall be considered timely but shall not be filed until the motion to proceed in forma pauperis is granted or, if denied, the filing fee is paid. If the motion to proceed in forma pauperis is denied, the party shall have ten days within which to pay the filing fee or to appeal the denial to the appropriate appellate court. Time for further steps in the appeal or cross-appeal shall run from the date that the notice of appeal is filed upon payment of the filing fee or the granting of the motion to proceed in forma pauperis.

**6. CR 76.03(4)(1) [Deleted]**

Subparagraph (1) of Paragraph (4) of CR 76.03 has been deleted.

**7. CR 76.05 [Deleted]**

CR 76.05 has been deleted in its entirety.

**8. CR 76.12(2)(a), (b), (c); (4)(a), (c), (d) and (e)**

Subparagraphs (a), (b) and (c) of paragraph (2); subparagraph (a) of paragraph (4); subparagraph (c) of paragraph (4); a new subparagraph (d) of paragraph (4) and subparagraph (e) of paragraph (4) of CR 76.12 shall read:

**(2) Time for filing.**

(a) Civil cases. In civil cases, including workers' compensation appeals, the appellant's brief shall be filed with the clerk of the appellate court within 60 days after the date of the notation on the docket of the notification required by Rule 75.07(6). The appellee's brief (or combined briefs, if the appellee is also a cross-appellant) shall be so filed within 60 days after the date on which the appellant's brief was filed. The appellant's reply brief shall be filed within 15 days after the date on which the last appellee's brief was filed or due to be filed. If the appellant is also a cross-appellee, a combined brief may be filed within 60 days after the date on which the last appellee's brief is filed or due to be filed. When a motion for discretionary review has been granted by the Supreme Court, the time in which the movant's brief must be filed shall be computed from the date of entry of the order granting review.

(b) Criminal Cases. The times in which briefs are required to be filed in criminal cases shall be the same as in civil cases, except as follows:

(i) If counsel for the appellant is the Public Advocate of the Commonwealth or the Attorney General of the Commonwealth, the appellant's brief shall be filed within 60 days after the date on which the record on appeal was received by the clerk of the appellate court (notice of which shall be sent); and

(ii) If counsel for the appellant is someone other than the Public Advocate of the Commonwealth or the Attorney General of the Commonwealth, the appellee's brief shall be filed within 60 days after the date on which the appellant's brief was filed or within 60 days after the date on which the record on appeal was received by the clerk of the appellate court, whichever is the later.

**(4) Form and Content.**

**(a) Printed or typewritten brief.** In the Supreme Court and the Court of Appeals, all briefs may be printed or typewritten. "Printed briefs" are those which have been typeset. A brief produced on a computer printer is considered to be typewritten.

(i) If *printed*, briefs shall be in black ink on unglazed opaque white paper 6 1/8 by 9 1/4 inches in dimension, in type no smaller than 11-point, and enclosed in covers colored as specified in this rule.

(ii) If *typewritten*, briefs shall be on unglazed white paper 8 1/2 by 11 inches in dimension in black type no smaller than 12 point set at standard width. Typing shall be double spaced and clearly readable. The brief shall have a 1 1/2 margin on the left side and a 1 inch margin on all other edges. Briefs shall be enclosed (front and back) in covers colored as specified in this rule. Typewritten briefs shall be securely bound at the left side.

(iii) Covers. All briefs shall be enclosed (front and back) in covers colored as follows: Appellants - red; Appellees - blue; Appellants reply brief - yellow; Amicus curiae - brown; Petitions for Rehearing - green; Response - gray; Other - white. Brief covers shall show the file number(s) of the appeal(s), the file number(s) of the circuit court action(s), a caption containing at least the lead appellants and appellees, the name of the party on whose behalf the brief is submitted, and the certificate required by subsection (6) of this rule. See official forms 24 and 25.

**(c) Organization and contents--Appellant's brief.** The organization and contents of the appellant's brief shall be as follows:

(i) A brief "INTRODUCTION" indicating the nature of the case, and not exceeding two simple sentences, such as, "This is a murder case in which the defendant appeals from a judgment convicting him of 1st-degree manslaughter and sentencing him to 20 years in prison," or, "This is a case in which an insurance company appeals from a judgment construing its policy as applicable, and a co-defendant's policy as not applicable, to the

plaintiff's accident claim. Plaintiff also appeals against the co-defendant."

(ii) A "STATEMENT CONCERNING ORAL ARGUMENT" indicating whether the appellant desires oral argument and why appellant believes that oral argument would or would not be helpful to the Court in deciding the issues presented. This Statement should be no longer than one brief paragraph. The appellant's statement is not binding on the Court and does not preclude a party's right to file a motion to reconsider the Court's ruling that oral argument will be dispensed with. Failure to include a statement concerning oral argument will be treated as indicating that appellant does not desire oral argument in the appeal.

(iii) A "STATEMENT OF POINTS AND AUTHORITIES," which shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the appellant's contentions with respect to each issue of law relied upon for a reversal, listing under each the authorities cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited.

(iv) A "STATEMENT OF THE CASE" consisting of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample references to the specific pages of the record, or tape and digital counter number in the case of untranscribed tape-recordings, supporting each of the statements narrated in the summary.

(v) An "ARGUMENT" conforming to the Statement of Points and Authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law and which shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

(vi) A "CONCLUSION" setting forth the specific relief sought from the appellate court.

(vii) An "APPENDIX" containing copies of the findings of fact, conclusions of law, and judgment of the trial court, any written opinions filed by the trial court in support of the judgment, the opinion or opinions of the court from which the appeal is taken, and any pleadings or exhibits to which ready reference may be considered by the appellant as helpful to the appellate court. The first item of the appendix shall be a listing or index of all documents included in the appendix. The appellant shall place the judgment, opinion, or order under review immediately after the appendix list so that it is most readily available to the court. Except for matters of which the appellate court may take judicial notice, materials and documents not included in the record shall not be introduced or used as exhibits in support of briefs. In workers' compensation cases the appendix shall include the opinions of the Administrative Law Judge, the Workers' Compensation Board, and the Court of Appeals.

(viii) Any "INDEX" the appellant may wish to provide.

**(d) Organization and contents--Appellee's brief.** The organization and contents of the appellee's brief shall be as follows:

(i) A "Statement Concerning Oral Argument" responsive to appellant's statement indicating why appellee believes that oral argument would or would not assist the Court in deciding the issues presented.

(ii) A "COUNTERSTATEMENT OF POINTS AND AUTHORITIES" similar to the statement required of the appellant by paragraph (c)(iii) of this Rule.

(iii) A "COUNTERSTATEMENT OF THE CASE" stating whether the appellee accepts the appellant's Statement of the Case and, if not, setting forth the matters the appellee considers essential to a fair and adequate statement of the case in accordance with the requirements of paragraph (c)(iv) of this Rule.

(iv) An "ARGUMENT" conforming to the appellee's Statement of Points and Authorities and to the requirements of paragraph (c)(v) of this Rule with reference to record-references and citations of authority.

(v) An "APPENDIX" containing copies of any papers or exhibits, not included in the appellant's brief, to which ready reference may be considered by the appellee as helpful to the appellate court.

(vi) Any "INDEX" the appellee may wish to provide.

**(e) Organization and contents--other briefs.** Other briefs permitted by these Rules shall have a "STATEMENT OF POINTS AND AUTHORITIES" conforming to paragraph (4)(c)(iii) of this Rule, shall state the purpose of the brief and the particular issues to which it is directed and shall contain an ARGUMENT consistent with the requirements of paragraph (4)(c)(v) of this Rule. The brief shall conclude with a statement of the relief sought, if pertinent, and may include an appendix or an index as in the instance of the briefs mentioned in paragraphs (4)(c) and (4)(d) of this Rule. Reply briefs shall be confined to points raised in the briefs to which they are addressed, and shall not reiterate arguments already presented.

## **9. CR 76.16(1)**

Proposed amendments to paragraph (1) of CR 76.16 shall read:

(1) Oral arguments on the merits will be heard in all cases appealed from the circuit court unless the appellate court directs otherwise on its own motion or on motion of one or more of the parties to the appeal. CR 76.12(4) provides for the parties to include in their brief statements concerning the need for oral argument in the appeal. In any case where the court orders on its own motion that oral argument shall be dispensed

with, any party shall have ten (10) days from the date of the order in which to object and ask for reconsideration. No opinion shall be rendered until the time has expired for making such objection and motion for reconsideration, or if such objection and motion is made, until it can be decided.

**10. CR 76.20(2)(c), (d) and (5) [Language in current CR 76.20(2)(c) is amended and CR 76.20(2)(d) is deleted]**

Subparagraph (c) of paragraph (2) is amended and subparagraph (d) of paragraph (2) of CR 76.20 is deleted; subparagraph (5) of 76.20 is amended to read:

**(2) Time for Motion.**

(c) the failure of a party to file a Motion for Discretionary Review within the time specified in this Rule, or as extended by a previous order, shall result in a dismissal of the Motion for Discretionary Review.

**(5) Response to Motion.**

Each respondent may file a response to the motion within 30 days after the motion is filed. Said response shall not exceed fifteen (15) pages in length, unless otherwise authorized by the Court. No reply to a response shall be filed unless requested by the Court.

**11. CR 76.36(1)(a), (b), (c), (d), and (e)**

Subparagraphs (a), (b), (c), (d), and (e) of paragraph (1) in CR 76.36 shall read:

**(1) Petition for relief.**

Original proceedings in an appellate court may be prosecuted only against a judge or agency whose decisions may be reviewed as a matter of right by that appellate court. All other actions must be prosecuted in accordance with applicable law. Original proceedings in an appellate court may be prosecuted upon the payment of the filing fee required by CR 76.42(2)(a) and the filing of a petition setting forth:

(a) The name of each respondent against whom relief is sought;

(b) The style and file number of the underlying action before the respondent(s);

(c) The facts upon which petitioner claims entitlement to relief;

(d) The relief sought;

(e) A memorandum of authorities in support of the petition. A copy of the petition shall be served on each respondent and each real party in interest as defined in this Rule, Section (8),

and shall bear proof of service as required by Rule 5.03. Immediately upon the filing of the petition, the clerk shall mail to each respondent and real party in interest notice of the date the petition was filed.

**12. CR 78(1)**

Paragraph (1) of CR 78 shall read:

(1) Each circuit and district court shall establish by rule regular motion days as required by statute, and a copy of the rules shall be certified to the Supreme Court as provided in SCR 1.040(3)(a).

**13. CR 98(3) introductory subparagraph and (5)(b)**

The introductory subparagraph of paragraph (3) and subparagraph (b) of paragraph (5) of CR 98 shall read:

**(3) Record on Appeal.**

Unless otherwise ordered by the court, no transcript of court proceedings shall be made a part of the record on appeal except as provided in Paragraph 4 of this rule. The official videotape recordings, as properly designated under Rule 75.01, together with the clerk's written record, shall constitute the entire original record on appeal.

**(5) Further Provisions.**

(b) Effect of Rule on practice in Court of Appeals. Nothing in this rule shall be construed to supersede the provisions of CR 76.03.

**14. OFFICIAL FORM 24**

A new official form 24 shall read:

FORM 24 COVER OF BRIEF TO BE FILED IN THE COURT OF APPEALS

Commonwealth of Kentucky  
Court of Appeals  
2000-CA-00XXXX

John Doe

Appellant

v. Appeal from the Jefferson Circuit Court  
Action No. 98-CI-00XXX

William Smith

Appellee

Brief for Appellee, William Smith

Submitted by:

Richard Roe  
100 Jefferson St.  
Louisville, KY 40202

Certificate required by CR 76.12(6)

The undersigned does hereby certify that copies of this brief were served upon the following named individuals by (specify method of service) on (date): Named Trial Court Judge, Courthouse address, Louisville, Ky. 40202; Named Opposing Counsel, 200 Jefferson St., Louisville, Ky. 40202. The undersigned does also certify that the record on appeal has been returned to the Jefferson Circuit Court Clerk on or before this date.

Signature with typed name

A new official form 25 shall read:

FORM 25 COVER OF BRIEF TO BE FILED IN THE SUPREME COURT OF  
KENTUCKY

Commonwealth of Kentucky  
Supreme Court of Kentucky  
2000-SC-00XXXX

John Doe

Appellant

v. Appeal from the Jefferson Circuit Court  
Action No. 98-CI-00XXX

William Smith

Appellee

Brief for Appellee, William Smith

Submitted by:

Richard Roe  
100 Jefferson St.  
Louisville, KY 40202

Certificate required by CR 76.12(6)

The undersigned does hereby certify that copies of this brief were served upon the following named individuals by (specify method of service) on (date): Named Trial Court Judge, Courthouse address, Louisville, Ky. 40202; Named Opposing Counsel, 200 Jefferson St., Louisville, Ky. 40202. The undersigned does also certify that the record on appeal has been returned to the Jefferson Circuit Court Clerk on or before this date.

Signature with typed name

**AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE**

**1. RCr 2.04 (1)**

RCr 2.04(1) shall read:

(1) If from an examination of the complaint it appears to the judge (or clerk authorized to issue warrants pursuant to KRS 15.725 (5)) that there is probable cause to believe that an offense has been committed and that the defendant committed it, the judge (or clerk) shall issue a warrant for the arrest of the defendant except in the case of offenses for which a summons is mandatory pursuant to KRS 431.410, and except that a summons may issue instead of a warrant if there are reasonable grounds to believe that the defendant will appear in response, or if the defendant is a corporation.

**2. RCr 4.24. Officers authorized to take bail.**

RCr 4.24 shall read:

When the amount of bail has been fixed either by the court or by the uniform schedule of bail, it may be taken by the clerk of the court in which the defendant is held to appear. Another bonded public officer shall be authorized by the chief judge of the circuit court to take bail. The authorized bonded public officer shall take bail when the clerk of the court is unavailable. The individual with whom deposits are made shall ascertain that the amount deposited is no less than the amount fixed by the court.

**3. RCr 8.01. Initial appearance after indictment or information.**

RCr 8.01 shall read:

Within a reasonable time after service of the warrant or summons on the indictment or information, the judge shall proceed as provided in Rule 3.05 and shall also proceed with or set a time for arraignment.

**4. RCr 12.76(2)**

RCr 12.76(2) shall read:

**(2) (Imprisonment.)**

The execution of a sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail.

**AMENDMENTS TO THE RULES OF THE SUPREME COURT**

**1. SCR 3.650**

SCR 3.650 shall read:

The Commission shall be responsible for the administration of these continuing legal education rules, subject to policy approval and other direction by the Board and the Court. In discharging this responsibility, the Commission shall:

- (1) Encourage and promote the offering of high quality continuing legal education.
- (2) Conduct, sponsor, or otherwise provide high quality continuing legal education, specifically including, but not limited to, twelve and one half (12.5) credit seminars in each Supreme Court District each year.
- (3) Encourage and promote quality legal writing.
- (4) Approve or deny promptly all applications provided for by these rules.
- (5) Establish standards, procedures, and forms to evaluate applications made pursuant to these rules.
- (6) Promulgate rules and regulations for the administration of the Mandatory Continuing Legal Education program subject to approval of the Board and the Court.
- (7) Report annually, on or before September 15, and as otherwise required, to the Board and the Court on the status of continuing legal education in the Commonwealth. Such reports shall include recommended changes to these rules and regulations and their implementation.
- (8) Submit to the Board annually, on or before November 1, a recommended budget for the succeeding year with any recommended changes in annual membership dues to cover costs of administering these rules.
- (9) Perform such other acts and duties, not inconsistent with these rules, as are necessary and proper to improve the continuing legal education programs within the Commonwealth.

When in the course of undertaking the duties set forth above, the Commission receives information which may raise questions regarding a member's competence to represent clients or to otherwise practice law as defined at SCR 3.020, or which may raise any of the issues covered at SCR 3.165(b), the Commission has an affirmative duty to report such information to the Office of Bar Counsel for review by the Inquiry Commission.

**2. SCR 3.690**

SCR 3.690 shall read:

The files and records of the Commission shall be deemed confidential and shall not be disclosed except in furtherance of the duties of the Commission, as set forth at SCR 3.650, or of the Board, or upon request of the member affected, or as directed by the Supreme Court of Kentucky. This rule specifically excludes from confidentiality information provided by a member to the Commission as a part of a member's application for relief from the requirements of these rules.

**AMENDMENTS TO THE ADMINISTRATIVE PROCEDURES  
OF THE COURT OF JUSTICE**

**1. AP IV, § 2**

AP IV, § 2 shall read:

For preparing and making reports and recommendations on tendered foreclosure judgments in uncontested cases for enforcement of a mortgage or other lien, the commissioner shall receive a fee of \$50. The commissioner shall receive a fee of \$50 for drafting and executing any instrument.

All sitting. Wintersheimer, J., dissents as to the expansion of time for filing briefs to 60 days contained in the amendment to CR 76.12. Wintersheimer, J., dissents as to the expansion of time for filing responses to motion for discretionary review to 30 days contained in CR 76.20(5). Graves and Wintersheimer, JJ., dissent as to the amendment of RCr 4.24. Graves, J., dissents as to the amendment of RCr 8.01. Keller, J., would delete RCr 8.04 in its entirety. Graves and Keller, JJ., would amend RCr 9.40(1) to reduce to five for each side the number of preemptory challenges granted in felony cases. Johnstone and Stumbo, JJ., would approve the proposed amendments to RCr 11.42.

ENTERED: November 27, 2000.



CHIEF JUSTICE

# Supreme Court of Kentucky

IN RE:  
ORDER AMENDING  
RULES OF CIVIL PROCEDURE (CR)  
RULES OF CRIMINAL PROCEDURE (RCr)  
RULES OF THE SUPREME COURT (SCR)  
ADMINISTRATIVE PROCEDURES OF THE COURT OF JUSTICE (AP)

2000-1

## ORDER CORRECTING

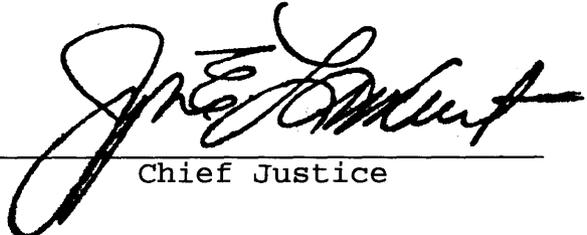
The rules' amendments to the Rules of Civil Procedure are amended by correcting Rule 76.12(4)(a)(ii) to read as follows:

**(4) Form and Content.**

(a) **Printed or typewritten brief.** In the Supreme Court and the Court of Appeals, all briefs may be printed or typewritten. "Printed briefs" are those which have been typeset. A brief produced on a computer printer is considered to be typewritten.

(ii) If *typewritten*, briefs shall be on unglazed white paper 8 ½ by 11 inches in dimension in black type no smaller than 12 point set at standard width. Typing shall be double spaced and clearly readable. The brief shall have a 1 ½ inch margin on the left side and a 1 inch margin on all other edges. Briefs shall be enclosed (front and back) in covers colored as specified in this rule. Typewritten briefs shall be securely bound at the left side.

ENTERED: December 7, 2000.

  
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Chief Justice