

# Supreme Court of Kentucky

IN RE:  
ORDER AMENDING  
RULES OF CIVIL PROCEDURE (CR)  
RULES OF CRIMINAL PROCEDURE (RCr)

2002-1

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The following rules' amendments shall become effective January 1, 2003.

**I. AMENDMENTS TO THE RULES OF CIVIL PROCEDURE**

**A. CR 53.06(2) REPORT**

Paragraph (2) of CR 53.06 shall read:

**(2) Action on report.**

Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in CR 6.04. The court after hearing may adopt the report, or may modify it, or may reject it in whole or in part, or may receive further evidence, or may recommit it with instructions.

**B. CR 73.03(2) NOTICE OF APPEAL**

Paragraph (2) of CR 73.03 shall read:

(2) When the notice of appeal is filed, the clerk shall serve notice of its filing by mailing a copy showing the date filed and a copy of the official docket sheet to the clerk of the appellate court and to the attorney of record of each party or to the party, if unrepresented. The clerk shall note in the civil docket the names of the parties mailed the copies, with the date of mailing. Failure of the clerk to comply with this rule does not affect the validity of the appeal.

**C. CR 74.02(5) TRANSFER OF APPEAL FROM COURT OF APPEALS TO SUPREME COURT**

Paragraph (5) of CR 74.02 shall read:

**(5) Recommendation by Court of Appeals.**

The Supreme Court may at any time, upon recommendation of the Court of Appeals, transfer to the Supreme Court any case pending before the Court of Appeals that falls within the criteria set forth in paragraph (2) of CR 74.02. The entry of a recommendation for transfer by the Court of Appeals shall suspend the running of time for any further steps in the appeal, and the full time for such steps shall be computed from the date of the order of the Supreme Court granting or denying the transfer.

**D. CR 75.01(1) PROCEDURES FOR DESIGNATION OF EVIDENCE OR PROCEEDINGS REPORTED BY A COURT REPORTER**

Paragraph (1) of CR 75.01 shall read:

(1) Unless an agreed statement of the case is certified as provided in Rule 75.15, the proceedings were taken exclusively by video presentation as governed by Rule 98, or there are no proceedings to transcribe, the appellant shall file a designation of untranscribed material. The designation shall be filed with the clerk of the trial court and shall be served on the appellee, the court reporter, and the clerk of the appellate court. The designation shall be filed with the clerk of the trial court within 10 days of the filing of the notice of appeal unless Rule 76.03 applies to the appeal, in which case, the designation shall be filed within 10 days of the order ending the prehearing procedure under Rule 76.03(3). The designation shall: (1) list such untranscribed portions of the proceedings stenographically or mechanically recorded as appellant wishes to be included in the record on appeal and (2) list any depositions or portions thereof as have been filed with the clerk but were not read into evidence and are thus required by Rule 75.07(1) to be excluded from the record on appeal. Within 10 days after the service and filing of such designation, or within 10 days after the time for filing of such designation has expired, any other party to the appeal may file a designation of additional portions of the untranscribed proceedings stenographically or mechanically recorded as that party wishes to be included. If an appellee files the original designation, the parties shall proceed under Rule 75.01 in the same manner as if the original designation had been filed by the appellant. If no designation is required, a statement identifying such depositions, if any, or any portions

thereof, as have been filed with the clerk but were not read into evidence and are thus required by Rule 75.07(1) to be excluded from the record on appeal, shall be filed with the clerk of the trial court and served upon the appellee and the clerk of the appellate court within the time periods set forth in this rule.

**E. CR 75.07(1), (2) and (5) RECORD TO BE PREPARED AND TRANSMITTED BY CLERK**

Paragraphs (1), (2) and (5) of CR 75.07 shall read:

(1) The clerk of the trial court shall prepare and certify the entire original record on file in his or her office, in accordance with the requirements of paragraphs (10) and (11) of this Rule 75.07, including the designations or stipulations of the parties with respect to proceedings stenographically or mechanically recorded and a certified copy (rather than the original) of the docket assigned to the action, but excluding depositions not read into evidence.

(2) The transcript of proceedings stenographically recorded (or tapes or recordings of proceedings mechanically recorded), or such lesser portions thereof as have been designated or agreed upon by stipulation, shall when filed with the clerk be certified as a part of the record on appeal.

(5) The matter certified under subsections (1), (2), (3), and (4) of this Rule and Rule 98 shall constitute the record on appeal. It is the responsibility of the appellant or counsel for the appellant, if any, to see that the record is prepared and certified by the clerk within the time prescribed by Rule 73.08.

**F. CR 76.12(2)(b)(i) and (ii) BRIEFS**

Subparts (i) and (ii) of Section (b) of Paragraph (2) of CR 76.12 shall read:

**(2) Time for filing.**

(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, or designee, 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, or designee, 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.

**G. CR 98(2)(a) and (3) PROCEDURES FOR VIDEOTAPED COURT PROCEEDINGS AND APPEALS**

Subparagraph (a) of Paragraph (2) and First Subparagraph of Paragraph (3) of CR 98 shall read:

**(2) Record of Trial Court Proceedings.**

In addition to those provisions of the Kentucky Rules of Court relating to videotaped court proceedings the following procedures shall apply:

(a) Videotape Recordings. The official record of court proceedings shall be constituted of two (2) videotape recordings, recorded simultaneously, of the court proceedings. Upon the filing of a notice of appeal, one of the two videotape recordings or a court-certified copy of that portion thereof recording the court proceeding being appealed shall be filed with the clerk and certified by the clerk as part of the record on appeal. The second videotape recording, or a court-certified copy of that portion thereof recording the court proceeding being appealed, shall be retained by the clerk.

(i) Method of identification. For identification purposes, the clerk shall designate on each of the two original videotape recordings, on one line, the judicial circuit number, the court division number (if any), the last two digits of the current year, the letters "VCR," the number of the videotape (counting all videotapes used since the start of the current calendar year), either the letter "A," if the videotape is retained by the clerk, or the letter "B," if the videotape is filed with the clerk, the number of the videotape used in the proceeding being identified, and the case file number of the proceeding being identified (for example: 22-3-86-VCR-015-A-1, 85-CR-123). On the second line, the clerk shall designate the caption of the proceeding recorded on the videotape (for example: Smith v. Jones). On the third line, the clerk shall designate the date on which the videotape was recorded (for example: 10/27/86).

(ii) Duplicate copies. The clerk shall arrange for the recording of duplicate copies of videotapes for use by counsel in preparing an appeal. The clerk shall charge the person requesting a duplicate videotape a reasonable fee, which shall be

set by the Administrative Office of the Courts, for each duplicate videotape requested.

**(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, together with the clerk's written record, shall constitute the entire original record on appeal. To facilitate the timely preparation and certification of the record as set out in this rule, appellant or counsel for appellant, if any, shall provide the clerk with a list setting out the dates on which videotapes were recorded for all pre-trial and post-trial proceedings necessary for inclusion in the record on appeal. Designation of the videotape recordings shall be filed within the ten (10) day time limitation and in the manner described in Rule 75.01(1). Supplemental designation by other parties shall likewise conform with the requirements of Rule 75.01(1).

**II. AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE**

**A. RCr 4.06 DUTIES OF PRETRIAL SERVICES AGENCY**

RCr 4.06 shall read:

The duties of a pretrial services agency authorized by the Administrative Office of the Courts to serve the trial court shall include interviewing defendants eligible for pretrial release, verifying information obtained from defendants, making recommendations to the court as to whether defendants interviewed should be released on personal recognizance and any other duties ordered by the Supreme Court. When a defendant requests appointment of counsel, the Pretrial Release Officer shall, where practical, interview the defendant, assist in preparing the affidavit of indigency set out in KRS 31.120, and provide the affidavit to the court and the defendant.

**B. RCr 4.08 CONFIDENTIALITY OF PRE-TRIAL SERVICES AGENCY RECORDS**

RCr 4.08 shall read:

Information supplied by a defendant to a representative of the pre-trial services agency during the defendant's initial interview or subsequent contacts, or information obtained by the pre-trial services agency as a result of the interview or

subsequent contacts, shall be deemed confidential and shall not be subject to subpoena or to disclosure without the written consent of the defendant except in the following circumstances:

(a) information relevant to the imposition of conditions of release shall be presented to the court on a standardized form when the court is considering what conditions of release to impose;

(b) information furnished by the defendant to the pre-trial services agency and recorded on a completed interview form shall be furnished to law enforcement officials upon request if the defendant fails to appear in court when required;

(c) information concerning compliance with any conditions of release imposed by the court shall be furnished to the court upon its request for consideration of modification of conditions of release or of sentencing or of probation;

(d) information relevant to sentencing or probation shall be furnished to the court upon its request for consideration in imposing sentence or probation;

(e) at its discretion, the court may permit the probation officer, for the purpose of preparing the pre-sentence investigation report, and the defense attorney to inspect the completed interview form;

(f) any person conducting an evaluation of the pre-trial release program may have access to all completed interview forms upon order of the Supreme Court.

(g) All information obtained from the defendant and all information provided to the court shall be provided to the defendant's attorney.

At the beginning of the initial interview with a representative of the pre-trial services agency, the defendant shall be advised of the above uses of information supplied by the defendant or obtained as a result of information supplied by the defendant.

**C. RCr 5.22(2) PROCEDURE UPON FAILURE TO INDICT**

RCr 5.22(2) shall read:

(2) Final adjournment of a grand jury without its having indicted a defendant held to answer shall effect the defendant's

discharge from custody or, if the defendant is free on bail that has not been forfeited, shall exonerate the bail unless the grand jury refers the matter to the next grand jury, which referral must be in writing to the circuit court. Money or bonds deposited in lieu of bail shall be refunded upon such discharge. In any event, a defendant held to answer for longer than 60 days without having been indicted shall be entitled to discharge from custody.

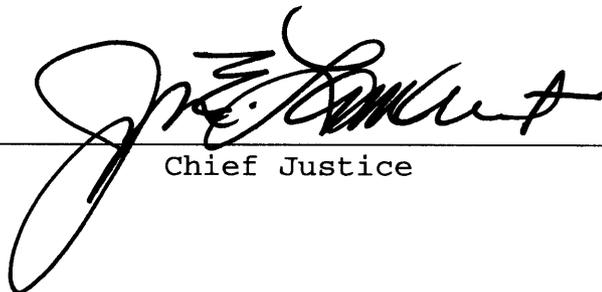
**D. RCr 7.24(1) DISCOVERY AND INSPECTION**

RCr 7.24(1) shall read:

(1) Upon written request by the defense, the attorney for the Commonwealth shall disclose the substance, including time, date, and place, of any oral incriminating statement known by the attorney for the Commonwealth to have been made by a defendant to any witness, and to permit the defendant to inspect and copy or photograph any relevant (a) written or recorded statements or confessions made by the defendant, or copies thereof, that are known by the attorney for the Commonwealth to be in the possession, custody, or control of the Commonwealth, and (b) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, that are known by the attorney for the Commonwealth to be in the possession, custody or control of the Commonwealth.

All sitting. All concur, with the following exceptions: Johnstone, J., would have adopted the proposed amendments to RCr 4.40(1); Keller and Stumbo, JJ., would have adopted the proposed amendments to RCr 11.43.

ENTERED: October 1, 2002.

  
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Chief Justice