

Supreme Court of Kentucky

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

2016-06

The following rules' amendments shall become effective January 1, 2017.

A. RULES OF CRIMINAL PROCEDURE (RCr)

I. RCr 4.08 Confidentiality of pre-trial services agency records

New section (i) of RCr 4.08 shall read:

(i) the risk assessment questions, level and score may be electronically accessed by the prosecutor and counsel for the defendant.

II. RCr 4.38 Mandatory review after twenty-four hours

RCr 4.38 shall read:

If a defendant continues to be detained 24 hours without arraignment from the time of the initial imposition of conditions of release because of inability to meet such conditions, the judge that imposed the conditions must review them on defendant's written application or may do so on his/her own motion. If the judge declines to modify them, the judge shall record in writing the reasons for that decision. It shall be the duty of the pretrial release officer to inform the judge that set the initial conditions of release of those defendants in custody who are not released from jail after 24 hours and who have not been arraigned.

III. RCr 4.43 Appellate review of bail; habeas corpus

Subsections (a), (b), (c), (d) and (e) and new subsections (f), (g) and (h) of section (1) to RCr 4.43 shall read:

(1) When a circuit court has granted or denied a motion for a review of a bail bond under RCr 4.38 or 4.40, or has changed a condition of release pursuant to RCr 4.42, a defendant adversely affected may appeal that decision to the Court of Appeals pursuant to the following procedures:

(a) The notice of appeal from the order of the trial court shall be filed within ten (10) days after the date of entry, subject to Civil Rule 12.06, and shall otherwise be in the manner fixed by Civil Rule 12.04.

(b) Upon the filing of the notice of appeal the clerk of the circuit court shall prepare and certify a copy of such portion of the record or proceedings as relates to the question of bail and is needed for the purpose of deciding the issue on appeal, including, but not limited to, the order of the trial court, the motion and any responses thereto, and any video recording of the hearing on the motion being appealed. The abbreviated record shall be filed with the clerk of the appellate court within fourteen (14) days after filing of the notice of appeal.

(c) The appellant shall within ten (10) days after the filing of the record file a brief with the appellate court. The brief shall state clearly the procedural history of the case, the factual history of the dispute, and the grounds on which movant's claim for relief is based and otherwise comply with the briefing requirements of Civil Rule 76.12. Such brief shall not exceed five (5) double-spaced typewritten pages. The brief and record appendix shall be served on both the local Commonwealth's attorney and on the Attorney General.

(d) No brief shall be required of the appellee, but the appellee may file a brief within ten (10) days after the date the appellant's brief is filed. Such brief shall not exceed five (5) double-spaced typewritten pages and shall otherwise comply with the requirements of Civil Rule 76.12. No other briefs shall be filed unless requested by the appellate court.

(e) The appeal shall stand submitted for final disposition ten (10) days after the date on which the appeal was perfected by the appellant or upon the filing of the appellee's brief, whichever occurs first. Oral argument will not be held unless ordered by the Court sua sponte or on the grant of a motion of a party.

(f) Neither the filing of the notice of appeal nor the pendency of the appeal shall stay further proceedings in the prosecution.

(g) A final disposition by the Court of Appeals on the appeal shall not be subject to rehearing or modification under Civil Rule 76.32 or reconsideration under Civil Rule 76.38(2).

(h) Any party adversely affected by the final disposition of the appeal by the Court of Appeals may move the Supreme Court for discretionary review within thirty (30) days from the date the decision of the Court of Appeals was entered. Such a motion will be entertained only for extraordinary cause shown in the motion. A response to the motion for discretionary review may be filed within thirty (30) days after the motion is filed. Ten (10) copies of the motion and response, if any, shall be filed with the Clerk of the Supreme Court.

IV. RCr 7.02 Subpoenas

Section (3) of RCr 7.02 shall read:

(3) A subpoena may also command the person to whom it is directed to produce the books, papers, documents, data and data compilations or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents, data and data compilations or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents, data and data compilations or objects or portions thereof to be inspected by the parties and their attorneys.

V. RCr 7.24 Discovery and inspection

Section (2), subsection (b) to section (3), sections (4), (5), (6), (7), (8) and (9) and new sections (10) and (11) of RCr 7.24 shall read:

(2) On motion of a defendant the court may order the attorney for the Commonwealth to permit the defendant to inspect and copy or photograph books, papers, documents, data and data compilations or tangible objects, or copies or portions thereof, that are in the possession, custody or control of the Commonwealth, upon a showing that the items sought may be material to the preparation of the defense and that the request is reasonable. This provision authorizes pretrial discovery and inspection of official police reports, but not of memoranda, or other documents made by police officers and agents of the Commonwealth in connection with the investigation or prosecution of the case, or of statements made to them by witnesses or by prospective witnesses (other than the defendant).

(3)(b) If the defendant requests disclosure under Rule 7.24(2), upon compliance with such request by the Commonwealth, and upon motion of the Commonwealth, the court may order that the defendant permit the Commonwealth to inspect, copy, or photograph books, papers, documents, data and data compilations or tangible objects which the defendant intends to introduce into evidence and which are in the defendant's possession, custody, or control.

(4) It is not a defense against untimely disclosure of evidence under this rule that the party failing to provide timely disclosure only recently formed the intent to introduce such evidence unless it can be demonstrated, by clear and convincing evidence, that: (1) it could not, in a timely fashion, have reasonably foreseen a need to introduce the evidence and (2) that such untimely disclosure will not unfairly prejudice the opposing party.

(5) Except for the Commonwealth's obligation to provide exculpatory evidence to the defendant, none of the provisions of this rule regarding disclosure of evidence relating to expert testimony shall be deemed to have been violated unless and until the party offering the evidence attempts to introduce it at trial and the opposing party timely objects.

(6) If the case has been set for trial, a request for relief under this rule shall be made a reasonable time in advance of the trial date, and the granting of a continuance by reason of such request shall lie within the sound discretion of the court.

(7) An order granting relief under this rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(8) On a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. On motion the court may permit the Commonwealth to make such showing, in whole or part, in the form of a written statement to be inspected by the court privately; and if the court thereupon grants relief following such private inspection the entire text of the Commonwealth's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(9) One (1) motion shall exhaust the relief available to the movant under this rule, except that a subsequent motion may be sustained on a showing of just cause.

(10) If subsequent to compliance with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under the rule, that party shall promptly notify the other party or the other party's attorney, or the court, of the existence thereof.

(11) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or an order issued pursuant thereto, the court may direct such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as may be just under the circumstances.

VI. RCr 13.15 Biological and Chemical Evidence

New rule RCr 13.15 shall read:

(1) The custodial agency of evidence involved in a death penalty criminal prosecution shall preserve all biological and chemical evidence for as long as the defendant remains incarcerated under a death sentence.

(2) Upon request, all biological and chemical evidence shall be made available to defendants sentenced to death and said defendants may seek appropriate relief notwithstanding any other provision of the law.

(3) "Biological and chemical evidence" includes the content of sexual assault examination kits, and any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that is collected as part of a criminal investigation which may reasonably be used to incriminate or exculpate any person for a criminal offense which may carry a penalty of death.

All sitting. All concur.

ENTERED: September 12, 2016.


CHIEF JUSTICE