

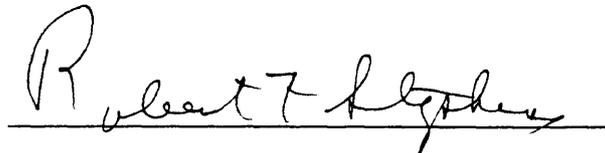
# Supreme Court of Kentucky

IN RE: PROPOSED RULES OF THE FAYETTE DISTRICT COURT  
MEDIATION PILOT PROJECT

## ORDER

The proposed Rules of the Fayette District Court Mediation Pilot Project, 22nd Judicial District, are hereby approved by the undersigned.

ENTERED June 17, 1992.

A handwritten signature in cursive script, reading "Robert F. Stephens", is written over a horizontal line.

Chief Justice

RULES OF THE FAYETTE DISTRICT COURT  
MEDIATION PILOT PROJECT

THE FAYETTE DISTRICT COURT hereby institutes a mediation pilot project, to be conducted as follows:

(A) Cases for Mediation

Any judge may at the completion of the pleadings, or at other time prior to trial, refer to mediation any civil or criminal case.

(B) Referral to Mediation

(1) The Judge may, by appropriate entry, refer the case to mediation with or without the consent of the parties.

(2) Referral of a case to mediation shall not operate as a stay of discovery proceedings unless otherwise ordered by the Court or agreed to in writing by the parties.

(C) Mediation Conferences

(1) The mediator shall direct the parties and their attorneys to attend a mediation conference(s) which may be in person or by telephone, at the mediator's discretion. Such a conference shall be conducted by the mediator to consider the possibility of settlement, the simplification of the issues and any other matters which the mediators and the parties determine may aid in the handling or the disposition of the proceedings.

(2) The mediator may schedule such sessions as are necessary to complete the process and mediation shall continue until the parties have reached a settlement, until they are unwilling to proceed further, or until the mediator determines that further efforts would be futile.

(3) If a party in a Civil case fails to appear at a duly noticed mediation conference without good cause, the Court upon motion shall impose sanctions, including an award of attorney fees and other costs against the party failing to appear. If a party to mediation is a public entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision making body of the entity; otherwise, unless stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present:

(a) The party or a representative having full authority to settle without further consultation; and

- (b) The party's counsel of record, if any; and
- (c) A representative of the insurance carrier for any insured party who is not such a carrier's outside counsel and who has full authority to settle without further consultation.

(4) The mediator may request that the parties bring documents or witnesses, including expert witnesses, to the sessions, but has no authority to order such production.

(D) Confidentiality

(1) Except as otherwise provided by this rule, all mediation documents and mediation communications are privileged and confidential and shall not be disclosed. They are not subject to disclosure through discovery or any other process, and are not admissible into evidence in any judicial or administrative proceeding.

(2) No part of the mediation proceeding shall be considered a public record.

(3) There is no privilege and no restriction on disclosure under this rule if:

- (a) All parties consent in writing to disclosure;
- (b) The mediation communication or mediation document gives the mediator knowledge of or reasonable cause to suspect that a child has been abused or neglected, but only to the extent and for the specific purpose the communication or document is required to be disclosed; or
- (c) The mediation communications were made in furtherance of the commission of the crime or fraud or as part of a plan to commit a crime or fraud, but only to the extent and for the specific purpose the communication or document is required to be disclosed.

(4) Nothing in this rule shall be construed so as to permit an individual to obtain immunity from prosecution for criminal conduct.

(E) Reporting to the Court

(1) The mediator shall notify the Court promptly when a case is not accepted for mediation.

(2) At any time after a case has been accepted, the mediator may refer it back to the Court for good cause, which shall be in writing.

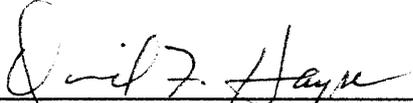
(3) If a case is settled prior to or during mediation, The mediator shall prepare and submit to the Court an order reflecting the fact of settlement signed by the parties.

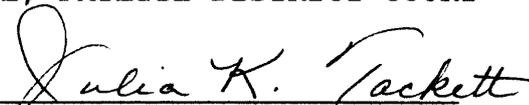
(4) If some but not all of the issues in the case are settled during mediation or if agreements are reached to limit discovery or on any other matter, the parties shall submit a joint statement to the Court enumerating the issues that have been resolved and the issues that remain for trial. This statement shall be submitted within 10 days of the termination of mediation. Unsettled cases shall then be returned to the Court's active docket.

(5) At the conclusion of cases accepted for mediation, the mediator will report to the Court the fact that the mediation process has ended. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the fact of an agreement to the Court without comment or recommendation. With the consent of the parties the mediator's report may also identify any pending motions outstanding legal issues, discovery process or other action by any party which, if resolved or completed would facilitate settlement.

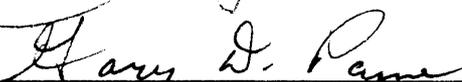
Upon entry of this order the Chief Judge of this Court shall forward a copy to the Supreme Court of Kentucky for review and final approval, and said amendment shall become effective \_\_\_\_\_, subject to approval of the Supreme Court.

  
\_\_\_\_\_  
JUDGE, FAYETTE DISTRICT COURT

  
\_\_\_\_\_  
JUDGE, FAYETTE DISTRICT COURT

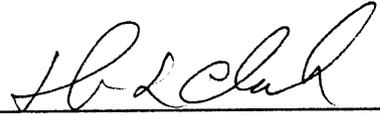
  
\_\_\_\_\_  
JUDGE, FAYETTE DISTRICT COURT

  
\_\_\_\_\_  
JUDGE, FAYETTE DISTRICT COURT

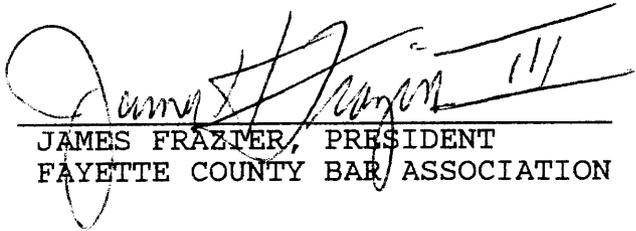
  
\_\_\_\_\_  
JUDGE, FAYETTE DISTRICT COURT

  
\_\_\_\_\_  
JUDGE, FAYETTE DISTRICT COURT

The Court hereby submits the attached amendment to the Rules of Practice of the Fayette Circuit Court to the Fayette County Bar Association for its consideration and recommendation.

  
\_\_\_\_\_  
THOMAS L. CLARK, CHIEF JUDGE  
FAYETTE DISTRICT COURT

The Board of Governors of the Fayette County Bar Association having reviewed the proposed amendment to the Rules of Practice of the Fayette Circuit Court and hereby recommends that same be adopted.

  
\_\_\_\_\_  
JAMES FRAZER, PRESIDENT  
FAYETTE COUNTY BAR ASSOCIATION

med.rul