Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING TEMPORARY LOCAL RULES OF PRACTICE FOR PARTICIPATION IN THE KRS 620 GUARDIAN AD LITEM AND APPOINTED COUNSEL ROSTER FOR THE 16th JUDICIAL CIRCUIT, KENTON COUNTY FAMILY COURT

The temporary Local Rules of Practice for Participation in the KRS 620 Guardian Ad Litem and Appointed Counsel Roster for the 16th Judicial Circuit, Kenton County Family Court, 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 26th day of February 2020.

CHIEF JUSTICE JOHN D. MINTON, JR.

ENTERED
KENTON CIRCUIT/DISTRICT COURT
FEB 20 2020
JOHN C. MIDDLETON
BY D.C.

TEMPORARY KENTON COUNTY FAMILY COURT LOCAL RULES FOR PARTICIPATION IN THE KRS 620 GUARDIAN *AD LITEM* AND APPOINTED COUNSEL ROSTER

1. Each division will maintain a separate roster. Eligible attorneys can serve in either division or both. The rosters are public records.

2. Each attorney on the rosters must be a member in good standing with the Kentucky Bar Association.

3. Each attorney on the rosters must complete the DNA training provided by the Administrative Office of the Courts.

4. Each attorney on the Second Division roster must be available every Monday at 9:00 am and every Thursday beginning at 8:30 am, unless excused by the Court. Each attorney on the Fifth Division roster must be available every Monday at 1:00 p.m. and every Thursday beginning at 8:30 a.m., unless excused by the Court. On Thursday the Court may chose to require the attendance of only the next five (5) attorneys eligible for appointment on each Division's roster. If the Court choses to do this those attorneys shall be notified by email the Monday (or Tuesday if there is a Monday holiday) before the Thursday.

5. Each attorney on the rosters must attend any meetings called by the Court.

6. Each attorney on the rosters shall complete a minimum of four hours of relevant legal or multi-disciplinary training every two years. Relevant legal education must include instruction on improved practice and current law regarding DNA, termination of parental rights, or related proceedings. Multi-disciplinary training must include instruction on child development, trauma-informed care and approaches, substance abuse disorder, child welfare forensics, impact of the Americans with Disabilities Act, or other matters related to practice in actions under KRS Chapters 199.600 and 625. Court-appointed counsel shall provide proof that he or she has completed the required training to the Court to remain eligible for appointments. This will include any training provided by the Kenton Family Court.

6. Each attorney appointed as counsel for a parent shall have the responsibilities set forth in Appendix D of FCRPP 35, attached.

7. Each attorney appointed as counsel for a person or persons exercising custodian control shall have the responsibilities set forth in Appendix D of the FCRPP 35, attached.

8. Each attorney appointed as counsel for a *de facto* custodian shall have the responsibilities set forth in Appendix D of the FCRPP 35, attached.

9. Each attorney appointed as GAL for a child shall have the responsibilities set forth in Appendix D of the FCRPP 35, attached, and the following:

   a. Act as an independent fact finder (or investigator) whose task is to review all relevant records, including but not limited to all school and medical records, and timely interview the child, parents, social workers, teachers , and other persons to ascertain the facts and circumstances of the child's situation;
   b. Ascertain the interests of the child, taking into account the child's safety, maturity, culture, and ethnicity, including maintaining a trusting, meaningful relationship with the child via face-to-face contact;
   c. Seek cooperative resolutions to the child's situation within the scope of the child's interest, abilities and welfare;
   d. Provide information with recommendations to the Court to assure that all relevant facts are before the court;
   e. Appear at all hearing prepared to represent the child's interest;
   f. Explain the Court proceedings, including the role of the GAL, to the child in language and terms that the child can understand; and seek any possible information that can be used as a defense or explanation;
   g. Ask that clear and specific orders are entered for the evaluation, assessment, services, and treatment of the child and parents such that the child/parent/custodian fully understands what is expected of them;
   h. Monitor implementation of service plans and dispositional orders to determine whether services ordered by the Court are actually provided, are provided in a timely manner, and are accomplishing their desired goal until such time as permanency is achieved;
   i. Inform the Court promptly via motion if the services are not being made available to the child and/or families, if the family fails to take advantage of such services, or if such services are not achieving their purpose, and bring to the Court's attention any violation of orders, or new developments requiring the Court's attention; and
   j. Advocate competently and diligently for the child's best interests in mental health, educational, family court, juvenile justice, criminal justice, and other community systems.

10. No attorney shall be appointed exclusively as GAL for a child or as counsel for an adult.

11. The rosters will be prepared alphabetically and the appointments shall be made sequentially unless: (a) another attorney has previously represented that person in a DNA matter or a Termination of Parental Rights matter; (b) appointing the attorney would create a conflict; or (c) the specific and unique circumstances of a party require, in the interest of justice, that a non-sequential attorney be appointed who has specific and identifiable attributes which would best fit the party's circumstances, per FCRPP 35(7). If the attorney is appointed per the provisions of 11(a)

12. Applications for the rosters shall be kept open for a period of 30 days.

13. The roster under the newly adopted rules shall become effective on March 1, 2020. The court shall review and modify the rosters every year in February and August. Any modifications will become effective on March 1 and September 1.

14. Each attorney on the rosters must inform the Court(s) of any disciplinary action by the Kentucky Bar Association.

15. Each attorney on the rosters shall have the right to withdraw from the roster upon notice to the Court(s). Upon such notice, the attorney shall present to the Court(s) a list of all cases in which the attorney is actively serving as court-appointed counsel.

16. Each attorney on the rosters shall be prohibited from making any campaign contribution to any sitting Kenton County Family Court Judge or any candidate for Kenton County Family Court Judge.

17. Each attorney on the rosters must sign an agreement to abide by the FCRPP 35-38, these Temporary Kenton County Local Rules and the Local Rules which will be enacted in the future.

18. Each attorney on the rosters shall assist the Court in obtaining AOC-DNA-11 forms from those who may qualify for court-appointed counsel, per FCRPP 35 – 38.

19. An attorney must be present to be appointed in a matter, unless it is an attorney appointed per the provisions of 11(a).

20. Each attorney on the roster shall provide the court and keep current their contact information; which shall include their office address, email address, office phone number, cell phone number and home phone number.

SO ORDERED ON 20 Feb **2020, TO BE EFFECTIVE ON MARCH 1, 2020.**

CHRISTOPHER J. MEHLING, JUDGE
On behalf of the Kenton Circuit Family Court, Divisions 2 and 5

FCRPP (32) Involuntary Termination

(1) Immediately upon the filing of any petition for involuntary termination of parental rights, the petitioner shall obtain a pretrial date. In the event the parents are not served prior to the pretrial date, the pretrial date shall be used as a case status review to expedite the proceeding.

(2) A continuance of any final hearing date shall not be granted except upon good cause shown. The annual permanency review hearings shall continue to be held in any dependency, neglect and abuse action as required by FCRPP (21) until permanency is achieved.

(3) Any party who relies upon facts of record in another court action to prove a matter in a termination for parental rights action shall move for the admission of the relied-upon court record, including any video recording, into the court record of the termination of parental rights action. Any court record admitted under this rule shall be certified in the record of any appeal of the termination of parental rights judgment.

FCRPP (33) Orders Terminating Parental Rights

The clerk of the court shall send two certified copies of the order terminating parental rights to the state child protective agency. The prospective adoptive parent or his or her attorney, if any, may obtain a certified copy of the order terminating parental rights from the state child protective agency to attach to the adoption petition.

FCRPP (34) Post-Termination of Parental Rights Review

If an order terminating parental rights is entered, a copy of the order shall also be certified to the record in the underlying dependency, neglect and abuse case which shall be identified in the order. The clerk of the court in the underlying dependency, neglect and abuse case shall docket the matter for a review hearing within 90 days from the date of the entry of the order of termination of parental rights and shall docket the matter as directed by the court at least annually thereafter until permanency is achieved.

IX. COURT-APPOINTED COUNSEL

FCRPP 35 Standards for Court-Appointed Counsel

(1) Rules 35 through 38 shall apply to the appointment and conduct of court-appointed counsel, including guardians *ad litem* and those representing adults, in any action under KRS Chapters 199, 620, and 625.

(2) In addition to Rules 35 through 38, court-appointed counsel shall follow the Statewide Standards of Expected Conduct for Court-Appointed Counsel (the Statewide Standards) set forth in Appendix D. Each Circuit or District may deviate from the Statewide Standards by way of local rule, if approved by the Chief Justice.

(3) Proposed local standards for court-appointed counsel shall set forth the conduct expected of court-appointed counsel. Local standards should incorporate

American Bar Association and/or National Council of Juvenile and Family Court Judges best practices standards.

FCRPP 36 Appointment and Retention

(1) Each judge shall keep a list of approved court-appointed attorneys. The attorney list shall include each attorney's phone number, physical address, and electronic mail address. Attorneys shall be responsible for updating the judge with any changes to required information.

(2) Each judge's list should be open to any attorney who is in good standing, satisfies the requirements of these rules, and requests to serve. No attorney shall be appointed exclusively as guardian *ad litem* or as an attorney representing an adult.

(3) Courts may impose sanctions, including removal from the appointment list and any active cases, on any attorney who does not comply with these rules. The court shall not remove an attorney from an active case if doing so would harm the client.

(4) Except for guardians *ad litem*, courts shall not appoint counsel unless the file contains a completed AOC-DNA-11 (Financial Statement, Affidavit of Indigence, Request for Counsel, and Order (DNA/TPR Cases)), and the court has reviewed the form. An exception to this rule shall be if the court takes sworn proof on the record regarding the party's alleged indigency and makes a specific written finding that the party seeking counsel is indigent. In that event, the party must complete the AOC-DNA-11 form and file that form into the record within five business days following the appointment or the appointment shall be vacated. This rule is not applicable to warning order attorney service under Civil Rule 17.

(5) Judges shall review their attorney lists at least every four years.

(6) Each judge shall make his/her attorney list available to the public upon verbal request.

(7) Judges, or their designated clerk, shall appoint counsel sequentially from the list unless:

(a) Another attorney has previously represented that person;

(b) Appointing the attorney would create a conflict; or

(c) The specific and unique circumstances of a party requires, in the interest of justice, that a non-sequential attorney be appointed who has specific and identifiable attributes which would best fit the party's circumstances.

Commentary

Any proceeding with multiple children pending with a common parent(s) with concurrent actions pending should be considered one case, which also includes situations in which there have been multiple petitions adjudicated and disposed of simultaneously involving the same child or children. A proceeding shall be considered active for purposes of this rule from the filing of the petition until permanency is achieved.

FCRPP 36(4) is not intended to prevent courts from coordinating potential representation to appear at the initial hearing as potential appointees.
FCRPP 36(7)(c) is not intended as a mechanism for unnecessary selective appointments. It is intended to be a mechanism for appointing attorneys in certain rare circumstances in which the client's interests could be harmed by the appointment of the next sequential attorney. For instance, the provision might be applicable for appointing an attorney of the same sex to represent a child who was sexually assaulted by someone of the opposite sex.

FCRPP 37 Required Training

(1) Each attorney seeking appointment in an action under KRS Chapters 199, 620, and 625 shall have completed the required dependency, neglect and abuse training provided by the Administrative Office of the Courts.

(2) Each attorney shall complete a minimum of four hours of relevant legal or multi-disciplinary training every two years. Relevant legal education must include instruction on improved practice and current law regarding dependency, neglect and abuse, termination of parental rights, or related proceedings. Multi-disciplinary training must include instruction on child development, trauma-informed care and approaches, substance abuse disorder, child welfare forensics, impact of the Americans with Disabilities Act, or other matters related to practice in actions under KRS Chapters 199, 600, and 625. Court-appointed counsel shall provide proof that he or she has completed the required training to the appointing authority in each Circuit or District to remain eligible for appointments.

FCRPP 38 Duties Regarding Representation and Repayment

(1) Each indigent party or child is entitled to court appointed counsel to file or defend an appeal brought from a decision of the Circuit or District Court. Once an appeal is filed, the appeal will be a new case requiring a new appointment; however, efforts should be made to appoint the same counsel from the prior case unless there is a conflict of interest or a new appointment is requested by the attorney, the child, or the adult parent or caregiver who is entitled to appointed counsel.

(2) To reduce administrative costs, Courts shall not approve multiple payments to court-appointed counsel for work on the same case except for good cause shown.

Commentary

FCRPP 38(2) is intended to apply to multiple payment requests made in the same case. It does not prohibit a single payment request that does not meet the maximum allowable fee. Also, it does not prohibit multiple payments for the same client, provided that the payments are requested for different actions (i.e., multiple trailers, appeals).

X. APPENDIX D - STATEWIDE STANDARDS OF EXPECTED CONDUCT FOR COURT-APPOINTED COUNSEL

The standards below are the default standards for attorneys appointed to represent an adult or child in dependency, abuse, neglect, termination of parental rights, and adoptions. However, local courts may have adopted alternative standards by way of local rule. Please consult your court's local rules to find whether alternative standards have been approved and adopted.

(1) Scope

These Statewide Standards apply to all court-appointed counsel who represent children, parents, persons exercising custodial control, or any other person entitled to representation in adoption, dependency, neglect and abuse, and termination of parental rights actions. Each court-appointed counsel shall follow these standards, as well as the Kentucky Rules of Professional Conduct (SCR 3.130 through SCR 3.995). Should the Kentucky Rules of Professional Conduct impose a different duty than these Statewide Standards, the higher standard controls.

(2) Essential Practices for All Court-Appointed Attorneys

All appointed attorneys, including guardians *ad litem* and those appointed to represent adults, should:

1. Zealously advocate for his or her client;
2. Communicate with his or her client*(s)* regularly, including minor children, where practical, based upon the child's age and ability to communicate;
3. Explain the child welfare legal process and the client*(s)*'s rights and duties in a manner that best facilitates the client*(s)*'s understanding of the same;
4. Have knowledge and understanding of current federal and state child welfare laws;
5. Prepare for and attend court hearings and reviews;
6. Discuss and understand the client's life circumstances, including strengths, needs, and the client*(s)*'s available resources; and assist them with accessing such resources when possible;
7. Understand trauma and client's specific trauma history, how the client's trauma history impacts client's experience with the child welfare system and ability to engage in child welfare services, and how trauma impacts the attorney/client relationship;
8. Build a relationship of trust and ensure the client experiences fairness;
9. Seek court accommodations that promote equal access and full participation in proceedings;
10. Prepare his or her client and the client's witnesses for court;
11. Maintain a reasonable caseload and devote sufficient time for advocacy;
12. Conduct an independent investigation at every state of the proceeding, before and after the jurisdictional/dispositional phase of the proceedings, which should include obtaining and reviewing on an ongoing basis and to the extent allowable under state law (including via subpoena, discovery, or court order), child welfare agency records, service provider records, and all other relevant records for parents and children;
13. Provide ethical legal representation;

14. Confirm his or her client receives proper notice and understands, to the best of the client's ability, the duties and restrictions imposed by court orders;
15. Actively engage in conflict resolution and negotiation;
16. Proactively move the case forward if it is in the client's interests, including reducing case continuances and timely filing any necessary pleadings, motions, or briefs;
17. File motions and appeals necessary to protect his or her client rights and interests;
18. Understand how cultural, social, and economic differences affect the attorney-client relationship sufficiently to ensure that all clients receive the same quality of representation;
19. Understand how racial, cultural, social, and economic differences may impact the attorney/client relationship, avoid imposing personal values upon clients, and take these factors into account when working with clients to achieve their case goals, including identifying and accessing services;
20. Understand and recognize the impact of personal and system bias stemming from race, gender identity, sexual orientation and expression, ethnicity, culture, country-of-origin, disability, and socioeconomic status, and develop strategies, including legal strategies, to mitigate the negative impact of personal and system bias on clients' case goals; and
21. Identify and use to clients' advantage their individual, familial, cultural, and community strengths.

(3) Standards for Guardians *ad litem*

The guardian *ad litem*'s role is to advance the child(ren)'s interests in court, provide legal counsel, help the child understand the legal process, and empower the child to participate. To achieve this, the guardian *ad litem* should:

1. Explain to the child that he or she represents the child and advocates in the child's best interest;
2. Understand the child's wishes in regard to the outcome of the case;
3. Ensure the client's voice is heard in the proceedings, which includes informing the court, upon permission of the child, of any wishes the child has that differ from the child's best interest;
4. Ensure the child has an opportunity to attend and participate in court hearings;
5. Advocate for the child to maintain contact with parents, siblings, and kin through visitation, placement, and permanency planning, when appropriate;
6. Communicate with any person or agency who has relevant information to the case, including teachers, foster parents, and service providers;
7. Promote tailored and specific case plans and services; and
8. Advocate for the child's access to education and community supports.

(4) Standards for Attorneys Representing Adults

The role of an attorney appointed to represent an adult is to protect the client's legal rights, advance the client's interests in court, and help the client understand the legal process. To achieve this, the court-appointed attorney, in addition to the Essential Practices for All Court-Appointed Attorneys, should:

1. Diligently pursue the clients' case goals and as needed and when consistent with client's interests and objectives;
2. ensure the client's voice is heard in the proceedings;
3. Help the client problem-solve and meet case goals;
4. Advocate parent-child contact through visitation and permanency planning; and
5. Identify potential ancillary legal issues that could impact client's dependency case, refer client to legal resources to address issues, and communicate regularly with client's other legal service providers to with the goal of ensuring that dependency proceedings and other legal proceedings benefit client.

All sitting. All concur.

ENTERED: January 3, 2020.

CHIEF JUSTICE