See Amendments to:
Appendix A - January 8, 2016
Appendix B - November 20, 2018

# Supreme Court of Kentucky

**ORDER**

**IN RE: ORDER APPROVING THE LOCAL RULES OF PRACTICE AND PROCEDURE, FOR THE 31ST AND 36TH JUDICIAL CIRCUITS FAMILY COURT DIVISION, FLOYD, KNOTT, AND MAGOFFIN COUNTIES**

Upon recommendation of the Judges of the 31st and 36th Judicial Circuits, and being otherwise sufficiently advised,

The Local Rules of Practice and Procedure for the 31st and 36th Judicial Circuits, Family Court Division, Floyd, Knott, and MaGoffin counties, 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 9th day of May 2012.

CHIEF JUSTICE JOHN D. MINTON, JR.

# COMMONWEALTH OF KENTUCKY
# RULES OF COURT
# PRACTICE AND PROCEDURE

## 31ST AND 36TH CIRCUITS
## FLOYD, KNOTT, & MAGOFFIN
## COUNTIES
## FAMILY COURT DIVISION

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## RULE 1 INTRODUCTION / ADMINISTRATIVE PROCEDURE

### 101 Preface

These are the Uniform Rules of Court Practice and Procedures of the 31st Judicial Circuit Court, Family Division (Floyd Family Court) and the 36th Judicial Circuit (Knott and Magoffin Family Court). These Rules supplement the Kentucky Family Court Rules of Procedure and Practice (FCRPP), the Kentucky Rules of Criminal Procedure (RCr) and the Kentucky Rules of Civil Procedure (CR). These rules shall be the only operative Floyd, Knott, and Magoffin Family Court Rules. All previous rules adopted by the Floyd, Knott, and Magoffin Family Courts are rescinded.

### 102 Effective Date

The effective date of these rules shall be thirty (30) days after Kentucky Supreme Court approval.

### 103 Citation

These Rules shall be cited as 31FCRP and 36FCRP.

### 104 Holidays

A schedule of the Court recognized Holidays may be obtained at the Floyd, Knott, and Magoffin Family Court Clerk's Offices.

## RULE 2 COURT SCHEDULING / MOTION HOUR / PROCEDURES FOR FILING

### 201 Regular Motion Hour Schedule

A. For all Floyd, Knott, or Magoffin Family Court actions except those set forth in FCRP 201(B), the Motion Hour schedule shall be as follows: Motion Hour for Floyd County shall be on the 1st and 3rd Tuesday of the month at 1:30 p.m. Motion Hour in Knott County shall be on the 3rd Monday of the month at 9:00 a.m. Motion Hour in Magoffin County shall be on the 2nd Friday of the month at 9:00 a.m. The schedule may be obtained at each of the respective Family Court Clerk's Offices.

B. Motions for Paternity, Dependency, Neglect and Abuse, Status Offenses and Domestic Violence actions shall be noticed for the appropriate and regularly scheduled docket.

C. Emergency Dependency, Neglect and Abuse and Status motions may be made on any day of the week, with appropriate notice to the parties, upon approval of an assistant county attorney. Non-emergency Dependency and Status motions shall be noticed for the appropriate and regularly scheduled docket.

D. Arraignment on paternity bench warrants served shall be heard on the regularly scheduled paternity docket.

## 202 Exceptions to Regular Motion Hour Schedule

There shall be no Motion Hour during the week of the Judicial College or when a state or federal holiday falls on a Monday, Tuesday, or Friday. If the court is closed for any other unforeseen reason, i.e., inclement weather, the Motion Hour shall be passed to the following Motion Hour.

## 203 Deadline for Serving and Filing Motions

A. All motions pursuant to FCRP 201(A) shall be filed and noticed for hearing no less than seven (7) days from the date of the next regularly scheduled motion docket. All motions filed and noticed for a hearing in less than seven (7) days shall be automatically passed to the next Motion Hour.

B. All non-emergency Paternity, Dependency, Neglect and Abuse, Domestic Violence, and Status Offense motions shall be filed, clocked and noticed no later than 3:00 p.m. three business days preceding the appropriate docket, with copies being mailed, hand-delivered or sent by electronic transmission. All motions filed after the deadline shall be passed to the docket's next scheduled Motion Hour. Notice to the Floyd, Knott, or Magoffin County Attorney may be accomplished by placing a copy of the notice and motion in the respective County Attorney basket located in the respective Family Court Clerk's Office.

C. All motions on the Dependency, Neglect and Abuse and Paternity dockets shall be scheduled during the first half-hour of these dockets. The Court may pass the motions for a hearing.

# RULE 3 ADOPTIONS / TERMINATION OF PARENTAL RIGHTS

## 301 Inspection of Adoption Records

Applications regarding inspection of Adoption Records Requests will be addressed as requested.

## 302 Temporary Custody Order

Temporary Custody Orders granted pursuant to KRS 199.473(7) shall be SEALED, and not opened to inspection by persons other than the parties to such proceedings and their counsel.

## 303 Termination Proceedings

Pursuant to FCRPP 32(2)(a), termination proceedings involving two (2) or more children with the same parent(s) whose rights are subject to termination must proceed by separate

Petitions for each Child, but may be consolidated for Hearing purposes only if so ordered by the Court.

## RULE 4 DOMESTIC VIOLENCE PROTOCOL AND 24 HOUR ACCESS POLICY

### 401 Twenty-Four Hour Accessibility to Emergency Protective Orders and Local Joint Jurisdiction Domestic Violence Protocol

The attached Twenty-Four Hour Accessibility to Emergency Protective Orders and Local Joint Jurisdiction Domestic Violence Protocol as approved by all Judges in the 31st and 36th Judicial Circuits and the Chief Justice are incorporated by reference herein in Appendix A.

### 402 Violation of Domestic Violence Orders

A. Without limiting a party's choice of remedies, alleged violations of Domestic Violence Orders should be referred to the Floyd, Knott, or Magoffin County Attorney's Office for possible prosecution, except as set forth in 402 (B).

B. Without limiting a party's choice of remedies, alleged violations of Domestic Violence Orders pertaining to visitation, counseling, or firearms provisions should be initiated through the Floyd, Knott, and Magoffin Family Court and scheduled for contempt hearings on the Floyd, Knott, or Magoffin Family Court docket.

### 403 Hearings

Cases will be heard in a timely manner. If parties require more than fifteen minutes to present their evidence, the Court may assign the parties to a time at the end of the docket, or the parties may be given another date.

## RULE 5 PATERNITY

### 501 Motion Practice

A. Motions for wage assignments pursuant to KRS 403.215 and KRS 405.465, appointment of Guardian ad Litem, for Guardian ad Litem fees, and to compel discovery shall be placed on the regular docket and shall be as submitted to the Court unless a written objection and request for hearing is filed within ten (10) days of the date contained in the Certificate of Service.

B. Motions for default judgments for failure to plead or otherwise defend, as provided by the Rules of Civil Procedure, shall be noticed for a hearing before the Court or filed with the Court and stand submitted upon filing. If the court determines a hearing is necessary under CR 55.01, a hearing date will be assigned.

C. Motions to modify, suspend, or terminate child support and to determine arrearages accrued on child support orders shall be scheduled for hearing.

D. All matters relating to UIFSA Registration for Enforcement only of a foreign support order shall be filed in and heard on the Floyd, Knott, or Magoffin Family Court's Paternity dockets. This includes, but is not limited to, contempt proceedings in such actions.

## 502 Reopening Fee

A. Pursuant to FCRPP 14(1), a $50.00 reopening fee shall not be paid for motions in cases brought pursuant to Title IV-D of the Social Security Act for child support modification or enforcement. However, where an action is initiated pursuant to Title IV-D but subsequent motions regarding child support, custody or visitation are brought by a private attorney or are filed by a party pro se, rather than by Title IV-D counsel, the fee shall be charged unless the motion is brought in forma pauperis.

## 503 Guardians ad Litem Appointed for Actions Filed Pursuant to KRS 406

A. In order to be appointed as a Guardian ad Litem, any licensed attorney in good standing with the Kentucky Bar Association may be appointed if that attorney has completed AOC approved Guardian Ad Litem training. The appointment is to be made and compensation paid according to the Statute, Case Law, or Civil Rule authorizing the appointment.

B. Motions for Compensation shall be accompanied by an Affidavit stating:

1. The Statutory basis for the appointment.
2. The hours of service rendered with a brief description of the services rendered and reasonableness of the fee requested; and
3. That the action or proceeding has been concluded.

C. A Guardian ad Litem appointed to represent unmarried infants, persons of unsound mind or adult prisoners shall notify the Respondent of his/her appointment as their Guardian ad Litem, and inform the Respondent of the nature of the proceeding and of the Respondent's right to have genetic testing conducted, if applicable.

D. Within sixty (60) days of the appointment, the Guardian ad Litem shall file and Answer on behalf of the Respondent or a Report stating that, after careful examination of the case he/she is unable to present a defense on their behalf.

E. The failure of the Guardian ad Litem to file an Answer and Report within sixty (60) days of his/her appointment may result in sanctions being imposed against the attorney, including removal from the 31st and 36th Judicial Circuits Family Court Guardian Ad Litem appointment list.

## 504 Permission to Review and Copy Paternity Case Files

Upon receipt of the Floyd, Knott, or Magoffin Family Court Clerk's Office of an attorney's statement seeking permission to review and copy a paternity case file, **OR** upon the receipt by the Floyd, Knott, or Magoffin Family Court Clerk's Office of a party's signed and notarized release authorizing an attorney to inspect the party's paternity case file, for reasons relating to representation in that action of a party thereto, the Clerk's office shall grant the attorney access to such a file.

Pursuant to KRS 406.035, the attorney seeking permission to review and/or copy the paternity file shall sign a statement that the order of judgment is the only information which may be shared with the client and that all other information in the case cannot be disclosed to the client, including information relating to domestic violence or child abuse as well as the addresses of the parties. Regardless of the subsequent representation or non-representation of the party, any information contained in such file is confidential and subject to the attorney-client privilege.

## 505 Access to Paternity Cases for Attorneys and Guardians ad Litem Representing Incarcerated Parents

The Floyd, Knott, and Magoffin Family Court Clerk's Office shall allow attorneys and Guardians ad Litem who are representing incarcerated parents in paternity cases to have access to the records of those actions.

# RULE 6 DEPENDENCY, NEGLECT AND ABUSE

## 601 Procedure for Emergency Custody Orders

In Floyd, Knott, and Magoffin Counties, to obtain an Emergency Custody Order as set forth in FCRPP 19:

A. During normal working hours, 8:00 a.m. to 4:00 pm. Monday through Friday, excluding holidays, persons seeking an Emergency Custody Order (ECO), shall come to the Floyd, Knott, or Magoffin County Judicial Center's Family Court Clerk's Office. If a Cabinet for Health and Social Services social worker is granted an ECO, the social worker is to provide a copy to the agency. A copy shall be provided to the party seeking the ECO prior to leaving the Floyd Family Court Clerk's Office. The original ECO shall remain with the Floyd, Knott, or Magoffin Family Court Clerk's Office.

B. After working hours, 4:00 p.m. to 8:00 a.m. Monday through Friday and on weekends, the on-call District Court judge or trial commissioner shall be contacted.

## 602 Petition

A. All petitions shall be filed in accordance with FCRPP 20 and copy shall be distributed to the assistant county attorney assigned to prosecute dependency actions and the original shall be filed with the Office of the Floyd Family Court Clerk.

B. Any petition filed with this Court shall comply with the following conditions:

1. Citations to specific statute and factual allegations relied upon in asserting the Court's jurisdiction; and
2. Full information concerning the child's parents and their address(es). The petitioner shall make diligent efforts to locate the child's parents, including but not limited to, initiating contact with the Child Support Division of the Floyd, Knott, or Magoffin County Attorney's Office.

## 603 The Effects of Service on Only One Parent/Persons Exercising Custodial Control or Supervision

The judge may permit the Temporary Removal Hearing or the adjudicatory hearing to go forward when the non-custodial parent has not been served in accordance with FCRPP 18(1) if it is established on the record that the petitioner has made diligent efforts to serve all other parties including initiating contact with the Child Support Division of the County Attorney's Office in an attempt to locate any absent parent. The petitioner shall make continuing diligent efforts after the hearing to locate and notify all persons who were not served.

## 604 Time for Temporary Removal Hearing

The Temporary Removal Hearing shall be held according to the following guidelines:

A. The Temporary Removal Hearing shall be scheduled on the dependency docket of the Floyd, Knott, or Magoffin Family Court if that docket will be held within 72 hours, excluding holidays and weekends, of the issuance of an ECO. If the dependency docket will not be held within 72 hours, the Temporary Removal Hearing will be scheduled within 72 hours of the issuance of the ECO. Such hearing should be scheduled toward the end of the 72 hours to allow time for service to be attempted.

B. The Temporary Removal Hearing shall be held no earlier than the day following the filing of the petition to allow time for service to be attempted.

## 605 Guardians ad Litem and Parent Attorneys

The Court shall assign an attorney to act as a Guardian Ad Litem and attorneys to represent the parent(s) or custodian(s) to facilitate consistent, high-quality advocacy representation of all parties.

## 606 Duty of Guardian ad Litem and Parent Attorney to Continue

After a Guardian ad Litem or parent attorney accepts an appointment, representation shall continue through all stages of the dependency, neglect, abuse, or termination of parental rights and adoption proceedings. All parties shall be served with notice of an attorney's request to withdraw.

## 607 Records and Transcripts

A videotaped record of all proceedings shall be kept and copies shall be available to the parties and their counsel upon request in accordance with the provisions of FCRPP 27.

## 608 Dispositional Hearing

At the dispositional hearing CHFS shall provide the court with the information required pursuant to FCRPP 28 by completing form DNA 12. In addition, if the siblings have been separated, CHFS shall explain the reasons for the separation.

## 609 Permanency Hearing/Review

At the Permanency Hearing/Review, CHFS shall complete a Permanency Hearing Report and submit same to the Court 72 hours preceding the Court date.

# RULE 7 DOMESTIC RELATIONS PRACTICE

## 701 Required Case Information

A. A Case Data Information sheet shall be filed with the petition (Form AOC-FC-3).

B. In any divorce action where the parties are ordered to attend a Divorce Education Program, the Floyd, Knott, or Magoffin Family Court Clerk's Office shall provide a copy of the Case Data Information sheet to the Divorce Education Office.

C. No matter shall be scheduled for Final Hearing until all parties have submitted Financial Disclosure Statement, if applicable. The Attorneys or parties, if pro se litigants, shall identify any Expert Witnesses they intend to call to testify at the Final Hearing within 30 days of the Final Hearing. The Attorneys or parites, if pro se litigants, shall also produce any documents they intend to submit as Exhibits at the Final Hearing within 30 days of the Final Hearing.

D. A parties' Preliminary Disclosure Statement may also be adopted as his/her Final Disclosure Statement if there have been no changes and the Court has been given notice thereof.

E. FCRPP 2(5) provides that a Status Quo Order may be issued at the initial hearing. However, in the 31st and 36th Judicial Circuits, a Motion Requesting Entry of the AOC 237, Status Quo Order, may be filed with the Petition. The Motion must state that the Respondent has ten days to file an objection to entry of said Order. The clerk shall include a copy of the Motion for service with the Summons and Petition. If no objection is filed within 10 days of service of the Summons, Petition and Motion, the Status Quo Order will be entered by the Court. If a Status Quo Order is not requested by the Petitioner, the Respondent may also seek a Status Quo Order at the initial court appearance or may file a motion as directed

in this rule. However, the respondent must provide notice of the motion upon the petitioner without the assistance of the clerk.

F. All Motions filed must have original signatures, except when submitted by the Judge for filing.

G. Attorneys or parties may file a Motion to Submit a dissolution matter for Final Decree, and submit same directly to the Judge for approval by the Court off-docket, which shall contain executed Notices and Waivers of Hearings and/or Financial Disclosure Statements along with a Settlement Agreement and Jurisdictional Deposition.

## 702 Appearances, Waivers, and Agreements

A. Any unrepresented party who signs and acknowledges an appearance and waiver or agreement shall do so before a notary.

B. No entry and appearance shall be signed prior to the filing of a petition.

C. All Agreements and Agreed Orders shall contain the correct mailing and/or e-mail addresses for the attorneys and parties.

## 703 Divorce Education Program

Families involved in a divorce proceeding where there are minor children may be ordered to participate in a Divorce Education Program. A sliding scale regarding fees for the program is available for qualifying families. A schedule of sessions and brochure shall accompany this notification of requirement to attend.

## 704 Time-Sharing/Visitation Guidelines

The attached Parenting and Time-Sharing/Visitation Guidelines are incorporated by reference herein in Appendix B and may be used by the parties and the Court subject to the specific facts in the case.

## 705 Mediation

A. **Mediation**

If ordered by the court pursuant to FCRPP 2(6), the parties shall engage in mediation unless the exceptions provided under KRS 403.036 apply.

B. **Requirements for Property Mediation**

The parties shall exchange and provide to the mediator, in no less than five (5) working days prior to the mediation conference, the following:

1. Supplement to financial disclosure statement regarding any material change.

2. A short statement including definition of the issue to be addressed by the mediator and a brief narrative statement of any special problems affecting

the case (e.g. closely held corporation, medical problems of any family member, etc.).

a. Copies of all documents supporting valuation of assets;
b. Copies of all documents verifying monthly payments and outstanding balances on all debts; and,
c. All information and copies of all documents requested by the Mediator prior to the mediation conference.

C. **Qualifications and Applications for Floyd, Knott, and Magoffin Family Court**

**Approved Mediators**

1. A Floyd, Knott, or Magoffin Family Courts Approved mediator shall complete a minimum of forty (40) hours in a family mediation training program approved by the Floyd, Knott, or Magoffin Family Court and shall have a college degree, prior basic education and training in the Behavioral Sciences, or be an attorney licensed to practice in the Commonwealth of Kentucky. The parties may select a mediator with equivalent experience who is not on the Court approved list.
2. Applications to become a Court approved mediator may be obtained from the Family Court Judge's Office.
3. The Family Court Judge shall approve additions or deletions to the approved mediator list.

D. **Disqualification of a Mediator**

Any party may move the Court to disqualify a mediator. Mediators have a duty to disclose any fact bearing on their qualifications, including any fact which would be grounds for disqualification of a judge. If the Court rules that a mediator is disqualified, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall limit the discretion of a mediator to refuse any assignment. A mediator may elect to decline to act as the mediator, which is final upon written notification to the parties, the Court.

E. **Adjournment**

The mediator may suspend or terminate mediation whenever, in the opinion of the mediator, the matter is not appropriate for further mediation or at the request of either party.

F. **Counsel**

The parties will attend the mediation conference and shall appear promptly at the time and location for the scheduled mediation conference. The attorneys for each party may attend and participate, subject to the defined roles of the mediator, and shall at all times be permitted to privately communicate with their respective clients.

G. **Compensation of Mediator**

1. The mediator shall be compensated at the rate agreed upon by the mediator and the parties.
   a. Mediation sessions;
   b. Preparation for sessions;
   c. Travel time;
   d. Postponement or cancellation of mediation sessions by the parties and the circumstances under which such charges will normally be assessed or waived; and
   e. Preparation of the parties' written mediation agreement if prepared by the mediator.

H. **Completion of Mediation**

1. At the conclusion of mediation, the mediator shall report without comment to the Court and the Family Court Judge's Office as to the outcome of the mediation, (i.e. a full agreement, partial agreement or mediation terminated). A termination or non-agreement shall be without prejudice to either party.
   a. Handwritten or recorded mediation agreements must be typed and signed by all parties and their counsel, if any, within ten (10) working days.
2. The Court shall retain final authority to accept, modify, or reject an agreement.
3. The parties shall have the affirmative duty to contact the court's secretary and remand any pending hearings concerning resolved issues.

I. **Confidentiality**

1. Mediation proceedings shall be held in private and all communications, verbal or written, made in the proceedings shall be confidential. The same protection shall be given to communications between the parties in the presence of the mediator, and to all communications, verbal or written, with the Floyd, Knott, or Magoffin Family Court staff or designee. The only exception to this Rule is that the mediator shall be responsible for reporting abuse according to KRS 209.030, KRS 209A.030 and KRS 620.030.
2. All conduct and communications made during a mediation conference shall be treated as settlement negotiations and shall be governed by K.R.E. 408.
3. Mediators shall not be subpoenaed regarding the disclosure of any matter discussed during the mediation which is considered confidential. This privilege and immunity resides with the mediator and may not be waived by the parties

## RULE 8 STATUS OFFENSES

### 801

If a Status Offender Order (JV 36) has been entered and has expired (after one (1) year), then no Pre-trial diversion efforts will be required upon a new violation and prior to a new Petition being filed, within one (1) year period after the expiration of the Status Offender Order (JV 36).

## RULE 9 MISCELLANEOUS

### 901 Identification of Counsel or Party Required

Every pleading, motion and any other paper filed in the record by counsel or party shall contain the case number, typed or printed name, address, telephone number and e-mail address of the attorney or party signing the paper. A rubber stamp shall not be deemed a signature either under this Rule or CR 11.

### 902 Protection of Personal Identifiers

A. A Family Court Case Data Sheet must be fully completed in all cases. In addition, all pleadings must comply with the requirements of KRS Chapters 205, 403, 405, 406 and 407 by providing the personal identifying information required in those chapters. However, except as set forth in paragraph B below, where personal identifiers are required by statute or contained in other documents or exhibits filed with the court pursuant to the above-stated chapters, parties shall comply with CR 7.03(1)(b) by filing one copy from which any personal data has been redacted and filing an unredacted copy in a marked and sealed envelope. The clerk of the court shall allow the unredacted sealed copy of the pleading, document, or exhibit containing personal identifiers to be accessed only by a party to the case, an attorney of record in the case, a judge of the court or other authorized court personnel, a duly authorized employee or agent of the Cabinet for Health and Family Services involved in child support matters attendant to the case, or a person authorized to view the copy by specific orders of the court.

As used in this section, "personal identifier" means a Social Security number or taxpayer identification number, date of birth, or financial account number.

B. Pleadings, documents, or exhibits filed in actions deemed confidential by statute need not be redacted, and any access to those files shall be governed by FCPR 504 and 505 and by KRS 199.570, KRS 610.340, KRS 625.045 and KRS 625.108.

### 903 Notice of Submission

In accordance with SCR 1.050(8), when any action stands submitted for final adjudication, counsel or unrepresented parties shall file an AOC Form 280 with the Judge, Family Court Clerk and Administrative Office of the Courts.

## 904 Video Copies of In-Chamber Interviews with Children

Pursuant to FCRPP 17, the Floyd, Knott, or Magoffin County Circuit Court Clerk's Office shall not release any Floyd, Knott, or Magoffin Family Court video in-chamber interviews with children without a specific written order from the Family Court Judge. An individual requesting a judicial order must provide the Family Court Judge a written explanation for the request which specifically indicates the portion of the video record being requested is an in-chamber interview with a child and specific purpose for the request.

## 905 Requests for Confidential Video Records

The Floyd, Knott, or Magoffin County Circuit Court Clerk's office shall not release any copies of Floyd, Knott, or Magoffin Family Court confidential video records, except for Paternity actions, without a specific written order from the presiding Family Court Judge. An individual requesting a judicial order must file a written motion, with notice to all parties, including the child's Guardian ad Litem, if any, and set forth the purpose for the request.

Except that, pursuant to KRS 610.340(2), this shall not apply to public officers or employees engaged in the investigation and prosecution of cases under KRS Chapters 600 through 645 or other prosecutions authorized by the Kentucky Revised Statutes, as certified by that public officer or employee. Said public officer or employee shall use and distribute this information only for investigation or prosecution of offenses under the Kentucky Revised Statutes.

## 906 Releasing Individuals in Custody

As authorized by Court Order, the Family Court Judge will sign releases for individuals in custody who purge themselves of contempt or post bond without a hearing.

**APPROVED** this the 25th day of April, 2012.

Hon. Dwight S. Marshall
31st and 36th Family Court Judge

Hon. John David Caudill
Floyd Circuit Judge, Division II

Hon. Johnny Ray Harris
Floyd Circuit Judge, Division I

Hon. Kimberley Childers
Knott/ Magoffin Circuit Judge

# Supreme Court of Kentucky

**ORDER**

**IN RE: ORDER APPROVING AMENDMENT TO APPENDIX A OF THE LOCAL RULES OF PRACTICE AND PROCEDURE FOR THE 31ST AND 36TH JUDICIAL CIRCUITS, FAMILY COURT DIVISION, FLOYD, KNOTT AND MAGOFFIN COUNTIES**

Upon the recommendation of the Judges of the 31st and 36th Judicial Circuits, Floyd, Knott and Magoffin counties, and being otherwise sufficiently advised,

The amendment to Appendix A of the Local Rules of Practice and Procedure for the 31st and 36th Judicial Circuits, Family Court Division, is 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 8th day of January 2016.

CHIEF JUSTICE

# TWENTY-FOUR HOUR ACCESSIBILITY TO PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION PROTOCOL 31st and 36th JUDICIAL CIRCUITS AND DISTRICTS FLOYD, KNOTT, & MAGOFFIN COUNTIES

Pursuant to KRS 403.735 and KRS 456.030, and in compliance with Family Court Rules of Practice and Procedure (FCRPP) Section IV, this local protective order protocol is established to ensure twenty-four hour accessibility to emergency protective orders (EPOs) and temporary interpersonal protective orders (TIPOs) and to establish written procedures for domestic violence matters in which there may be joint jurisdiction between the Circuit/Family and District Courts.

## I. Uniform Protocol for Processing Cases

A. All petitions requested, completed and signed by persons seeking protection under KRS Chapter 403 or KRS Chapter 456 shall be made on form AOC-275.1, and shall be accepted and filed with the Court. KRS 403.725, KRS 456.030.

B. All protective order cases must be processed consistent with the rules and procedures set forth in the Kentucky Circuit Clerk's Manual

C. All cases will be assigned a "D" case number with the appropriate trailer number within the court case management system and may not be consolidated with any other case type.

D. Protective order matters may be reassigned from the district court division to circuit/family court when there is a dissolution/custody proceeding pending.

E. "No drop" policies which place limitations on a petitioner's right to modify or withdraw a petition for a protective order are not permitted. Pursuant to KRS 403.740 and KRS 456.060, any orders for relief issued directing or prohibiting any other actions that the Court believes will be of assistance in eliminating future acts of domestic violence and abuse, dating violence abuse, stalking, or sexual assault shall not order the petitioner to take any affirmative action.

F. Protective order cases shall be reassigned or transferred to another circuit under the following circumstances:

1.There is a pending custody and /or dissolution action in another circuit.

2.The Court either on its own motion or at the request of one/or both parties, recuses due to a conflict.

## II. Twenty-four Hour Accessibility

A. The following agencies and officers are authorized to take protective order petitions and administer oaths to petitioner **during** regular business hours:

Floyd County:

Floyd Family Court Clerk's Office
2nd Floor Justice Center
127 South Lake Drive Suite 100
Prestonsburg, KY 41653
Phone #: (606)889-1651

Mountain Comprehensive Care Center
104 South Front Avenue
Prestonsburg, KY 41653
(606)886-8572 or 886-4301

Knott County:

Knott County Attorney's Office
54 W. Main Street
Hindman, KY 41822
(606)785-5355

Magoffin County:

Cabinet for Health and Family Services
Division of Protection and Permanency
125 Church Street
Salyersville, KY 41465
(606)349-3122

B. The following agencies and officers are authorized to take protective order petitions and administer oaths to petitioner **after** regular business hours and weekends:

Floyd County:

Mountain Comprehensive Care Center
Crisis Line: 1-800-422-1060

Floyd County Sheriff's Office
1st Floor Floyd County Courthouse Annex
3rd Avenue
Prestonsburg, KY 41653
Phone #:(606)886-6171

Knott County:

Contact local Law Enforcement agency or
Kentucky State Police by calling 911

Magoffin County:

Contact local Law Enforcement agency or
Kentucky State Police by calling 911

C. Upon receipt of a petition **during** regular business hours, the authorized agency/officer shall present the petition to the following:

1. The petition shall be presented to the district judge(s) and/or trial commissioner.
2. If the district judge and/or trial commissioner is not available, then the petition shall be presented to the circuit judge(s).
3. In the event that the district judge, trial commissioner, and/or circuit judge(s) is not available, the petition may be presented to the family court judge.

D. Upon receipt of a petition **after** regular business hours, the authorized agency/officer shall present the petition to:

1. The petition shall be presented to the district judge(s) and/or trial commissioner.
2. If the district judge(s) and/or trial commissioner is not available, then the petition shall be presented to the circuit judge(s).
3. In the event that the district judge(s), trial commissioner, and/or circuit judge(s) is not available, the petition may be presented to the family court judge.

E. Petitions will be reviewed within an hour of presentation to a judge or trial commissioner unless it is impossible due to the unavailability of a judge or trial commissioner.

F. The schedule for protective order hearings is as follows:

Floyd County:
1st, 2nd, 3rd, & 4th Tuesdays at 9:00 a.m.

Knott County:
1st, 2nd, 3rd, and 4th Mondays at 9:00 a.m.

Magoffin County:
1st, 2nd, 3rd, & 4th Thursdays at 9:00 a.m.

## III. Assignment of Cases

A. Pursuant to KRS 403.735 and KRS 456.030, jurisdiction over petitions filed under this chapter is concurrent between district, circuit, and family court.

B. The Judge reviewing a petition for an order of protection shall indicate in the "Court Action" section of the petition whether the resulting action is a domestic violence action under KRS Chapter 403 or an interpersonal protective order action under KRS Chapter 456.

C. The circuit clerk shall assign interpersonal protective order cases to the Family Court.

D. Cases may be reassigned or transferred between courts if it is determined that there are other actions pending or circumstances indicate that review by the other court is proper. KRS 403.725, KRS 456.030. If reassignment or transfers occurs, the issuing Judge shall re-issue a summons until the matter may be heard by the receiving Judge.

## IV. Contempt Proceedings

A. Pursuant to KRS 403.760 and KRS 456.060, civil and criminal proceedings for violation of a protective order for the same violation of a protective order shall be mutually exclusive.

B. Petitioners seeking to initiate contempt proceedings should contact:

1. The petitioners may contact their respective county attorney's office to seek the filing of criminal charges.
2. Or, the petitioners may contact their respective family court clerk's office to seek civil contempt charges.

C. No petitioner may be held in contempt for failing to appear at a protective order hearing or to prosecute a criminal violation of a protective order.

All general orders, forms, policies and procedures relating to domestic violence within the judicial circuit are attached to this protocol and incorporated by reference.

The above protocol is adopted by all judges in the circuit/district:

Hon. Dwight S. Marshall
Family Court Judge

Hon. Thomas Smith
Floyd Circuit Judge, Division II

Hon. Johnny Ray Harris
Floyd Circuit Judge, Division I

Hon. Kimberley Childers
Knott/Magoffin Circuit Judge

Hon. Eric Hall
Floyd District Judge, Division II

Hon. Dennis Prater
Knott/Magoffin District Judge

Hon. Jimmy Ray Marcum, II
Floyd District Judge, Division I

# Supreme Court of Kentucky

**ORDER**

**IN RE: ORDER APPROVING AMENDMENT TO APPENDIX B OF THE LOCAL RULES OF PRACTICE AND PROCEDURE, FOR THE 31ST AND 36TH JUDICIAL CIRCUITS FAMILY COURT DIVISION, FLOYD, KNOTT, AND MAGOFFIN COUNTIES**

Upon recommendation of the Judges of the 31st and 36th Judicial Circuits, and being otherwise sufficiently advised,

The Amendment to Appendix B of Local Rules of Practice and Procedure for the 31st and 36th Judicial Circuits, Family Court Division, Floyd, Knott, and MaGoffin counties, 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 20th day of November 2018.

CHIEF JUSTICE JOHN D. MINTON, JR.

APPENDIX B: PARENTING AND TIME-SHARING/VISITATION GUIDELINES

# FLOYD/KNOTT/MAGOFFIN FAMILY COURTS

# PARENTING GUIDELINES

# AND

# STANDARD VISITATION SCHEDULE

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These are common sense guidelines that both parents need to follow and some of these guidelines are supported by law.

## VISITITATION

## CHILD SUPPORT

Both parents are reminded that parent/child access and child support, while they may be emotionally connected, are separate issues. The Kentucky Revised Statutes provide that visitation and child support payments are **NOT** reciprocal obligations. Kentucky law provides that parental access may not be denied due to failure to pay child support. It also provides that child support may not be withheld due to failure of the parent to allow access.

If visitation is denied for either reason, the child(ren) are the ones that are being punished for the neglectful behavior of the parent- NOT the parent. The parent must permit visitation and should attempt to resolve the child support issue through the appropriate legal steps.

## INFORMATION

Both parents are entitled access to records and information on (i) the medical care of the child(ren) directly from the health care provider, as well as from the other parent, and (ii) all school records from the school, as well as from the other parent. Both parents should be designated as "parent" on all school and medical records unless specifically authorized not to do so.

## DISCUSSION

Parents should not try to turn the child against the other parent by discussing, with the child(ren) the shortcomings of the other parent. If change of custody is an issue, then legal steps should be taken and you should explain to the child(ren) what the possibilities are but DO NOT turn it into a tug-of-war between the parents and child(ren). Parents should not make their child(ren) choose between them. This includes, but is not limited to, restraining from reading pleadings of the court to the children.

Parents should not question the child(ren) regarding the activities of the other parent and should never argue in front of the child(ren).

# RESPONSIBILITY

Both parents have a responsibility to care for the child(ren)'s physical, emotional, mental and social needs.

Parents should share with each other their residence and work addresses and telephone numbers, unless there is good cause for not sharing this information. If parents do not share this information with each other, then a designated third party needs to be identified for the parents to share information.

Each parent should encourage the child(ren) to initiate telephone and/or mail contact with the other parent on a regular basis. A child also needs special time with their parents; therefore, parents are encouraged to spend some special "one-on-one" time with each child and encouragement should be given to spend time with the other parent. A child should not be left too often with relatives, new boyfriends, new girlfriends, or other persons.

Parents should not attempt to buy the favor of the child(ren) with presents, special treatment, special privileges or promises, although gifts to celebrate special occasions should be allowed by the other parent.

Parents should not make promises which cannot be kept.

Parents should coordinate plans regarding bedtime, homework schedule and other household rules as much as possible. Both parents should recognize that there are individual differences in how each child will parent during the time spent with the child. Both parents should also recognize that children benefit from consistency.

Parents should ensure that the child(ren) have proper clothing. The child(ren) should arrive with proper clothing and all clothing sent with the child(ren) should be returned with the child(ren).

Parents should have a valid driver's license if transporting the child(ren). If a parent is unable to transport, arrangements should be made to use a licensed driver. The child(ren) should be in the proper safety harness in the car according to the Kentucky Revised Statutes 198.125(2), i.e., care seat, booster chair, seat belt, etc. In the absence of an agreement regarding transportation, this duty and/or cost should be spilt between the parents.

**NEITHER PARENT SHOULD BE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS IN THE PRESENCE OF THE CHILDREN.**

A parent may refuse visitation if the other parent is under the influence of alcohol or drugs at the time the visitation is to occur.

## PROMPTNESS

Parents should be prompt with child appointments. It is unfair to keep a child waiting, and worse, to disappoint the child by not showing up at all.

The child(ren), and/or the custodial parent, have no duty to wait on the visiting parent for more than 30 minutes after the scheduled visitation time. A parent more than 30 minutes late shall forfeit that visitation period.

If one parent is unable to meet at the designated time and/or place, immediate notice should be given to the other parent. If notice is given to the other parent, appropriate alternative arrangements should be made for the visitation, i.e. extended time, alternate day, etc.

# STANDARD VISITATION SCHEDULE

1. ALTERNATING WEEKENDS: Alternate weekends from Friday evenings at 6:00 p.m. to Sunday evenings at 6:00 p.m. Thursday evenings following the weekend visit from 5:30 p.m. to 7:30 p.m.

2. SPECIFIC HOLIDAYS:

A. The Mother shall have visitation in odd-numbered years (1999) on New Year's Day, Easter, and July 4th.

B. The Father shall have visitation in odd-numbered years (1999) on Martin Luther King Day, Memorial Day, and Labor Day.

C. The Mother shall have visitation in even-numbered years (2000) on Martin Luther King Day, Memorial Day, and Labor Day.

D. The Father shall have visitation in even-numbered years (2000) on New Year's Day, Easter and July 4th .

Visitation shall be from 9:00 a.m. to 6:00 p.m., unless the child is in school that day. If so, visitation shall be from 5:00 p.m. to 7:30 p.m.

3. THANKSGIVING: The non-custodial parent shall have the child(ren) at 6:00 p.m. on Thanksgiving day and return the child at 6:00 p.m. on the Friday after Thanksgiving. In the event the non-custodial parent's regular visitation is that weekend, then the non-custodial parent shall have the child(ren) from 6:00 p.m. on Thanksgiving Day and return the child(ren) at 6:00 p.m. on Sunday.

4. CHRISTMAS: Each year at Christmas the custodial parent shall have the child(ren) on Christmas Day and the non-custodial parent shall have the child(ren) from 1:00 p.m. until 7:00 p.m. Christmas Eve. The non-custodial parent shall have the child(ren) from 12:00 p.m. on December 26th through 12:00 p.m. December 31st , provided the child(ren) are returned to the custodial parent no less than 24 hrs before they are to resume school.

5. MOTHER'S AND FATHER'S DAY: On Mother's Day and Father's Day, no matter whose turn for visitation, the child(ren) shall be with the appropriate parent on those days from 9:00 a.m. to 6:00 p.m.

6. CHILD'S BIRTHDAY: The child shall celebrate his/her birthday with the custodial parent, unless his/her birthday falls on a visitation day. In the event the non-custodial parent does not have the child on his/her birthday, an additional non-scheduled visitation day shall be granted so that the non-custodial parent may give the child a birthday celebration if desired.

7. SPRING BREAK: In alternating years, the non-custodial parent shall have the child(ren) for a week of any spring break from school, provided the child(ren) are returned to the custodial parent not less than 24 hours before they are to resume school. Unless otherwise agreed, the first spring break vacation with the non-custodial parent shall be in the calendar year after the one in which the decree is granted or permanent custody order is entered. Should Easter fall during a spring break when the child is with the custodial parent and it is the non-custodial parent's turn to have visitation with the child for Easter, then an additional, non-scheduled visitation day shall be granted to the non-custodial parent.

8. SUMMER: Children 5 years or older: 4 week visitation each summer provided there shall be no continuous visitation of longer than 2 weeks at a time.

Children ages 2 to 4: 2 weeks summer visitation, one week at a time.

Children ages 1 to 2: 1 week summer visitation

Children under 1 year: 3 days summer visitation

In the event that there are children of varying ages, the age of the oldest child shall control the summer visitation schedule.

Each parent shall give the other parent at least 60 days notice of his/her vacation schedule so that both parents have an opportunity to have the child(ren) during his her vacation from work.