

Supreme Court of Kentucky

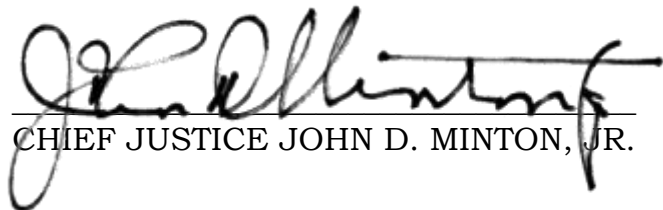
ORDER

**IN RE: ORDER APPROVING THE RULES OF COURT PRACTICE AND
PROCEDURE FOR THE 39TH JUDICIAL CIRCUIT, BREATHITT,
POWELL, AND WOLFE COUNTIES**

Upon recommendation of the Judges of the 39th Judicial Circuit, and
being otherwise sufficiently advised,

The Rules of Court Practice and Procedure for the 39th Judicial Circuit,
Breathitt, Powell, and Wolfe 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 12th day of July 2021.



CHIEF JUSTICE JOHN D. MINTON, JR.

RULES OF PRACTICE AND PROCEDURE
FOR THE 39TH JUDICIAL CIRCUIT
BREATHITT, POWELL AND WOLFE COUNTIES

IN RE: ORDER ESTABLISHING LOCAL RULES

** ** ** ** **

For the purpose of complying with SCR 1.040(3)(a), the following local rules are hereby adopted pending final approval by the Chief Justice of the Kentucky Supreme Court:

APPLICATION AND EFFECTIVE DATE OF REGIONAL RULES

These Court Practice and Procedure Rules for the 39th Judicial Circuit (Breathitt, Powell and Wolfe Counties), as a supplement to the Kentucky Rules of Civil (CR) or Criminal Procedure (RCr) and other law, as applicable directly or by analogy, shall govern civil and criminal proceedings in the 39th Judicial Circuit unless the same conflict with any statute or other law of the United States or the Commonwealth of Kentucky, at any time legally adopted; in which event, any such statute, law, rule, or order shall at all times prevail. The rules shall be effective July 1, 2021, provided they have first been approved by the Chief Justice of the Kentucky Supreme Court. All previously adopted rules of this Court, except to the extent they are adopted or modified herein, are rescinded.

RULE NO. 1 – MOTION DAYS AND MOTIONS

The following applies to all motions in either civil or criminal matters, except those permitted by law to be heard ex parte.

- A. Wolfe County Civil and Criminal Motion days shall be heard on the first and third Monday of each month.
- B. Powell County Civil and Criminal Motion days shall be heard on the first and third Wednesday after the first Monday of each month.
- C. Breathitt County Civil and Criminal Motion days shall be heard on the first and third Friday after the first Monday of each month.

The Civil Motion hour will begin at 9:00 a.m. and the Criminal Motion hour will begin at 10:00 a.m. or directly after the Civil Motion hour has finished.

- D. The Clerk shall keep a motion docket in which there shall be docketed, in order, all motions filed with the clerk no later than 3 business days prior to the Court's Motion day. Any motions filed thereafter shall be docketed on the following motion day unless otherwise agreed to by the parties. On the call of the motion docket, the Court shall either rule on a motion, set it for a hearing date, or continue it to the following motion day.
- E. At the time notice of the motion is served on the adverse party, a copy of the notice and motion shall also be furnished to the Judge of the Court at her address of 1131 Main Street, Suite 3, Jackson, KY 41339 or via electronic mail at lisawhisman@kycourts.net (if counsel feels motion will be contested), and proof of service on the Judge should be listed on the Certificate of Service. Failure to furnish such a copy shall be cause for the Court to delay hearing of said motion until the next motion day, if the Court so desires.
- F. There shall be filed with each motion a brief statement of the grounds therefore with citations of authorities relied upon, which may be set forth in the body of the motion, if the pleader so desires. If a party desires to respond or if the Court orders a response, the response to any motion shall be in similar form and shall be filed with the Clerk prior to the date set for the hearing of the motion unless a different time is fixed by the Court.
- G. If a party is properly noticed for a motion and is absent at the hearing of the motion without making proper arrangements for such absence, the Court may rule on such motion even in the absence of such party, although the Court may consider a properly filed memorandum in lieu of such party's presence.
- H. All motions, including motions for summary judgment but excluding motions to set a pretrial conference or trial date, shall be filed with the tender of a proposed order in conformity therewith including such Orders that require findings of fact and conclusions of law. Such orders shall be by separate styled instruments and not on the same page as the motion. This is not intended to delegate the Court's decision-making power but will be used solely for information and as a guide.

RULE 2 - CONTINUED MOTIONS

An attorney who will be unable to be present at the time set for a motion shall immediately contact the moving attorney and attempt to establish a mutually agreeable time for the hearing of the motion. Should this prove unsuccessful, the party desiring the continuance shall immediately file a motion for a continuance in writing stating the reasons for the continuance and shall send a copy directed to the attention of the Judge, as well as, filing it with the Clerk.

RULE 3 - VIDEO DEPOSITIONS

Upon appropriate motion of a party pursuant to CR 30.02(4) or RCr. 7.18, a deposition may be videoed and used in accordance with law subject to the following:

- A. Due notice shall be given of the time and place of the taking of the depositions and of the witnesses to be taken unless said matters are agreed upon by the parties, as in other cases.
- B. Each deposition shall be taken before an officer duly qualified to administer the oath to the witness and to certify that the record thus made is accurate and complete.
- C. In addition to the video recording of each deposition, there shall be furnished to the Court, for the purpose of ruling upon objections in advance of trial, a typed transcript of the verbal testimony and all objections thereto, duly certified to be accurate and complete. Upon motion of either party, the Court will review the typed transcript at a hearing with respective counsel prior to trial, rule upon objections, and upon the basis thereof, will direct the excision from the video of all material properly objected to, preserving the excised portion for the purposes of any appeal.
- D. When completed, the video and typed transcript of each deposition thus taken shall be transmitted to the Clerk of the Court by the reporter who took the same in the manner required by law.

RULE 4 – PRETRIAL CONFERENCES AND ASSIGNMENT OF CASES FOR TRIAL – CIVIL CASES

Any party desiring a trial date shall file a motion entitled “Motion to Set for Trial” which shall be placed on the motion docket. At the hearing on the motion, the Court shall set a date for a trial unless a party objects and the Court finds that the case has not sufficiently progressed to be assigned for a pretrial conference. Unless otherwise ordered by the Court or except for good cause shown, the parties shall:

- A. Seven days prior to trial, each party shall submit a tendered Witness List and Exhibit List to all other parties. Counsel shall tender proposed Jury Instructions on the first day of trial for the Court’s review.
- B. If the parties desire a pretrial conference, any party to the suit may notice the pretrial conference at the last regularly scheduled motion hour prior to the trial date. If any of the parties feel there are issues that must be addressed prior to trial via a pretrial conference, the parties are encouraged to contact the Judge’s office at 606-666-7130 or at lisawhisman@kycourts.net and either a special time and date will be set for a pretrial conference or a pretrial telephone conference may be held.
- C. Prior to the trial date, counsel for the parties shall meet or confer via telephone for a final discussion of (1) possibility of settlement, and (2) preparation of written stipulation of all possible facts. Upon completion, counsel for the parties shall advise the Court that such final conference was held and the results thereof.

- D. Once a trial date has been set, neither party shall be granted a continuance unless the Court is satisfied that the reasons were both unavoidable and unforeseeable on the setting date.

RULE 5 – CLASS D FELONY PRETRIAL DIVERSION

Pretrial Diversion is the postponement of imposition of sentence upon any person who qualifies for the program, for a period of time not to exceed five (5) years, subject to certain conditions established by the Court. PERSONS WHO ARE ELIGIBLE are as follows:

- A. Any person charged with a Class D felony who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to the commission of the current offense.
- B. The person charged must enter a plea of guilty before becoming eligible for pretrial diversion.
- C. Persons ineligible for probation, parole or conditional discharge under KRS 532.045 shall be ineligible for the program.
- D. A person convicted of a Class D felony for which early released is not allowed by statute, including KRS 189A.010(8) and KRS 189A.120(2), shall be ineligible.
- E. No person shall be eligible for this program more than once in any five (5) year period.

RULE 6 – PROCEDURE IN CRIMINAL CASES

At the time of arraignment, each case shall be assigned a time for pretrial conference. Pretrial conferences shall be held as a matter of course in all criminal cases. At the pretrial conference, the case shall be assigned for trial on a day certain or may be continued for further action.

RULE 7 – MASTER COMMISSIONER

- A. All signed Judgments and Orders of Sale must be sent to the Master Commissioner's Office within ten (10) days of Judge's signature.
- B. Sales cannot occur outside the time specified in the Judgment and Order of Sale. If the specified time expires, there must be a new Order setting forth a later sale date.
- C. Sales may only be cancelled through the Master Commissioner's Office and Circuit Judge's Office in writing.
- D. If a sale is cancelled, the Master Commissioner Fees and Costs will be filed and paid in accordance with the Law.

RULE 8 – JURY SELECTION

Procedures for the selection of persons to serve on juries shall be governed by the Administrative Procedures of the Court of Justice (AP) Part II, Jury Selection and Management.

RULE 9 – ENTRY OF ORDERS AND JUDGMENTS AND SERVICE

- A. In all civil cases in which a verbal Order or Judgment is announced by the Judge and in the case of a jury verdict, an Order or Judgment in conformity therewith shall be prepared by counsel for the prevailing party within seven (7) business days after the Order or Verdict, unless directed otherwise by the Court. It shall also have the documentation of which counsel it was “prepared by.” If the party against whom the Order or Judgment is entered is not represented by counsel, that fact shall be endorsed thereon.
- B. All criminal Judgments will be prepared and completed by the Court.
- C. The Court will execute all Agreed Orders signed by all counsel of record or by the parties not represented by counsel who are affected by the Order with the exception of Orders continuing the trial of any case. The disposition of such Orders shall not appear on the motion day docket, and counsel for the parties affected by such Orders need not appear before the Court.

RULE 10 – DISTRIBUTION OF ORDERS

The Circuit Clerk shall distribute copies of all Orders by mail or delivery to the persons listed under DISTRIBUTION, shall certify mailing or delivery by making a check mark by the person listed, and shall initial and date the same at the bottom of the Distribution list. It shall be the responsibility of the party preparing the Order to make sure that all Orders contain a Distribution list as set out in the example below:

DISTRIBUTION:
Hon. John R. Doe
PO Box 000
Anytown, State 00000

RULE 11 – DEFAULT JUDGMENTS

A party seeking a judgment by default where CR 55.01, 5.01, or 6.03 apply shall file a written motion for such judgment, which must appear on the motion docket. Said motion shall be accompanied by the movant’s certificate as stated in CR 55.01. Counsel for the movant (or its designee counsel) shall appear at the motion hour designated or the motion will not be considered.

Any judgment by default entered by the Court shall, as a part thereof, state that the movant has furnished the certificate as required by CR 55.01.

RULE 12 – ANSWERS TO INTERROGATORIES OR REQUESTS FOR ADMISSIONS

When answering interrogatories or requests for admissions, the replying party shall set forth immediately preceding each answer the question or the request to which the answer is responsive.

RULE 13 – DISMISSAL OF ACTION FOR FAILURE TO PROSECUTE

Pursuant to CR 77.02, when any action has remained on the Civil Docket for one (1) year without any step being taken indicating an intention to prosecute said action, the action may be dismissed for want of prosecution on motion of either party or on the Court's own motion.

RULE 14 – PUNCTUALITY, EXPEDITION AND SETTLEMENT

- A. Attorneys will make every effort consistent with the legitimate interest of their client to expedite litigation and to avoid unnecessary delays.
- B. Attorneys shall be punctual in all court appearances and shall give prompt notice to the Court and to all other counsel in the case of any circumstances requiring his or her absence or tardiness.
- C. Attorneys shall make a reasonable effort to settle the dispute of their client prior to court appearances. They will promptly inform the Court of any settlement, partial or entire, with any party or the continuance of any matter set for hearing or trial.

RULE 15 – APPEALS FROM DISTRICT COURT

- A. Upon the filing of a proper notice of appeal in the District Court, and the payment of costs as may be required by the Civil Rules, the Circuit Clerk shall place a copy of the notice of appeal in the box of the Circuit Judge.
- B. If the appeal is not perfected by the filing of a statement of appeal as provided in CR 72.06 within 30 days from the date of filing the first notice of appeal as provided in CR 72.08 and no motion for extension of time is filed as provided by CR 74, the Clerk shall notify the Circuit Judge of the failure to perfect the appeal and an order of dismissal and remand shall be entered.
- C. If the statement of appeal is timely filed and no counter-statement is filed pursuant to CR 72.12 within 30 days thereafter and no motion for extension of time is filed within

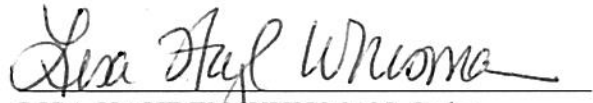
10 days after that, the Circuit Clerk shall provide the Circuit Judge with the file and the case shall stand submitted.

- D. When a counter-statement is filed by an appellee or cross appellant whether or not a statement of appeal has been filed, the Clerk shall provide the Circuit Judge with the file and the case shall stand submitted.

RULE 16 – DRUG COURT

Drug Court for Breathitt, Powell and Wolfe Counties shall be held on Thursday after the second Monday and Thursday after the fourth Monday of each month. Staffing session will begin at 8:00 a.m. and court will follow thereafter.

So, ORDERED this the 24 day of June, 2021.


LISA HAYDEN WHISMAN, Judge
39TH JUDICIAL CIRCUIT