Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING AMENDMENTS TO RULES 3.01 (A) AND 10.02 OF THE LOCAL RULES OF COURT PRACTICE AND PROCEDURE FOR THE 46TH JUDICIAL CIRCUIT, BRECKINRIDGE, GRAYSON, AND MEADE COUNTIES

Upon recommendation of the Judges of the 46th Judicial Circuit, and being otherwise sufficiently advised,

The amendments to Rule 3.01 (A) and10.02 of the Rules of Court Practice and Procedure for the 46th Judicial Circuit, Breckinridge, Grayson, and Meade 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 2nd day of December 2013.

CHIEF JUSTICE JOHN D. MINTON, JR.

ORDER AMENDING
RULES OF PRACTICE
46TH JUDICIAL CIRCUIT
BRECKINRIDGE, GRAYSON AND MEADE
CIRCUIT COURTS

In order to better accommodate the orderly and efficient practice and procedure in the 46th Judicial Circuit, effective January 1, 2014; Rule 3 and Rule 10 of the Rules of Practice of the 46th Judicial Circuit Breckinridge, Grayson and Meade Circuit Court shall be amended (as indicated in boldface type) to provide as follows:

Rule 3 – Procedures for Motion Days and Jury Trials: Civil and Criminal

3.01 BRECKINRIDGE CIRCUIT COURT

Motion Days of the Breckinridge Circuit Court shall be held on the Wednesdays succeeding the first and third Tuesdays of each month.

(A) **For Division I, Motion Day for civil actions will commence at 9:00 a.m. prevailing local time and immediately criminal actions thereafter on each Motion Day. For Division II, Motion Day for criminal actions will commence at 9:00 a.m. prevailing local time and immediately civil actions thereafter on each Motion Day**. Customarily, the dockets of Division I are to be first called from the bench of the Breckinridge Circuit Court to determine the status of all docketed matters. The Judge thereof then will reconvene in the district courtroom to hear all contested matters. Next shall be called the criminal and civil docket of Division II to determine the status of all docketed matters and the Judge thereof then will reconvene in chambers to hear all contested matters.

Rule 10 – Warning Order Attorney, Military Warning Order Attorney and Guardian Ad Litem

10.02 Any party, except one permitted to proceed ***in forma pauperis,*** who desires the appointment of a Warning Order Attorney or Military Warning Order Attorney shall deposit with the Clerk of the Court, at the time the request for same is made, the sum of **ONE HUNDRED TWENTY FIVE ($125.00) DOLLARS** as an advanced Warning **Order**/Military Warning Order fee. **Said fee shall include the cost of postage anticipated to be incurred by the Warning Order/Military Warning Order Attorney. In the event of extraordinary postage expense or public advertisement costs in excess of $25.00, the Warning Order/Military Warning Order Attorney may file notice and application for additional costs.**

All other rules shall remain in force and effect.

This 25 day of November 2013.

The Honorable Bruce T. Butler
Circuit Judge, 46th Judicial Circuit
Division I

The Honorable Robert A. Miller
Circuit Judge, 46th Judicial Circuit
Division II

Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING AMENDMENT TO RULE 3.01 (A) OF THE LOCAL RULES OF COURT PRACTICE AND PROCEDURE FOR THE 46TH JUDICIAL CIRCUIT, BRECKINRIDGE, GRAYSON, AND MEADE COUNTIES

Upon recommendation of the Judges of the 46th Judicial Circuit, and being otherwise sufficiently advised,

The amendment to Rule 3.01 (A) of the Rules of Court Practice and Procedure for the 46th Judicial Circuit, Breckinridge, Grayson, and Meade counties, 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 the 10th day of July 2012.

CHIEF JUSTICE JOHN D. MINTON, JR.

ORDER AMENDING
RULES OF PRACTICE
46TH JUDICIAL CIRCUIT
BRECKINRIDGE, GRAYSON AND MEADE
CIRCUIT COURTS

In order to better accommodate the orderly and efficient practice and procedure in the 46th Judicial Circuit, effective August 1, 2012; Rule 3 – Procedures for Motion Days and Jury Trials: Civil and Criminal, Rule 3.01(1) for **BRECKINRIDGE CIRCUIT COURT** shall be amended (as indicated in boldface type) to provide as follows:

Rule 3 – Procedures for Motion Days and Jury Trials: Civil and Criminal

3.01 BRECKINRIDGE CIRCUIT COURT

The Motion Days of the Breckinridge Circuit Court shall be held on the Wednesdays succeeding the first and third Tuesdays of each month.

(A) **For Division I, Motion Day for civil actions will commence at 9:00 a.m. prevailing local time and for criminal actions commence at 11:00 a.m. prevailing local time on each Motion Day. For Division II, Motion Day for criminal actions will commence at 9:00 a.m. prevailing local time and for civil actions commence at 11:00 a.m. prevailing local time on each Motion Day**. Customarily, the docket of Division II is to be first called from the bench of the Breckinridge Circuit Court to determine the status of all docketed matters. The Judge thereof then will reconvene in chambers to hear all contested matters. Next shall be called the docket of Division I to determine the status of all docketed matters and the Judge thereof then will reconvene in chambers to hear all contested matters.

All other rules shall remain in force and effect.

This 25 day of June 2012.

The Honorable Bruce T. Butler
Circuit Judge, 46th Judicial Circuit
Division I

The Honorable Robert A. Miller
Circuit Judge, 46th Judicial Circuit
Division II

Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING AMENDMENTS TO THE LOCAL RULES OF PRACTICE FOR THE 46TH JUDICIAL CIRCUIT, BRECKINRIDGE, GRAYSON AND MEADE CIRCUIT COURTS

Upon recommendation of the Judges of the 46th Judicial Circuit, Breckinridge, Grayson and Meade Circuit Courts, and being otherwise sufficiently advised,

The amendments to the Local Rules of practice for the Breckinridge, Grayson and Meade Circuit Courts 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 2 day of January, 2008.

CHIEF JUSTICE

RULES OF PRACTICE
46th JUDICIAL CIRCUIT
BRECKINRIDGE, GRAYSON and MEADE CIRCUIT COURTS

Pursuant to KRS 23A.010, RCr 13.02 and SCR 1.040 (3) (a), the following rules are adopted for practice before the Circuit Courts of the 46th Judicial Circuit. These rules may be cited by the abbreviation 46thLCR (local civil/criminal rule) followed by the appropriate rule number: ***Insofar as these rules conflict with any statute or rule promulgated by the legislature or Supreme Court, these rules are thereby superceded.***

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Rule 1 – Applicability and Distribution of Local Rules

1.01 These Court Practice and Procedure Rules 46th Judicial Circuit and the Kentucky Rules of Civil or Criminal Procedure and other law, insofar as applicable, shall govern civil and criminal proceedings in the 46th Judicial Circuit, unless the same conflict with any statute or other law of the United States or the Commonwealth of Kentucky, or rule and/or Order of the Supreme Court, Commonwealth of Kentucky, at any time legally adopted; in which event any such statute, law, rule or order shall at all times prevail. These Rules shall be cited as "LRC-46-___."

1.02 These Rules supersede all previous Local Rules of Practice and Procedure in the 46th Judicial Circuit Court: Civil and Criminal Divisions. It is recognized that these Rules are not so complete so as to govern every situation that may arise and, in the event that said Rules do not apply to a specific situation, the presiding Judge will act in his/her discretion with respect thereto.

1.03 These Rules and any amendments to them hereafter made shall be filed with the Clerk of the Circuit Court of each county in the 46th Judicial Circuit. The Circuit Clerk of each county shall distribute a copy of these Rules and any subsequent amendments thereto to each member of that county's bar. The Circuit Clerks shall maintain a supply of printed Rules to be provided upon request.

1.04 These Rules shall take effect and be in force on and after January 2, 2008.

Rule 2 – Divisions

2.01 The Circuit Courts of Breckinridge, Grayson and Meade counties shall convene and transact business in two (2) divisions, to be designated as Breckinridge, Grayson, Meade Circuit, Division I and Breckinridge, Grayson, Meade Circuit, Division II.

2.02 The Hon. Bruce T. Butler and his successor in office shall preside over Division I of these Courts.

2.03 The Hon. Robert A. Miller and his successor in office shall preside over Division II of these Courts.

2.04 The judges shall, by agreement, designate one (1) of their number to serve as Chief Administrative Judge.

Rule 3 – Procedures for Motion Days and Jury Trials: Civil and Criminal

SEE AMENDMENT TO RULE 3.01 (A) - EFFECTIVE AUGUST 1, 2012, APPROVED BY SUPREME COURT ORDER DATED JULY 10, 2012, AND ATTACHED

3.01 BRECKINRIDGE CIRCUIT COURT

The Motion Days of the Breckinridge Circuit Court shall be held on the Wednesdays succeeding the first and third Tuesdays of each month.

(A) Motion Day for all civil and criminal actions will commence at 9:00 a.m. prevailing local time on each Motion Day. Customarily, the docket of Division I is to be first called from the bench of the Breckinridge Circuit Court to determine the status of all docketed matters. The Judge thereof will then reconvene in chambers to hear all contested matters. Next shall be called the docket of Division II to determine the status of all docketed matters and the Judge thereof will then reconvene in chambers to hear all contested matters.

3.02 GRAYSON CIRCUIT COURT

The Motion Days of the Grayson Circuit Court shall be held on the first and third Tuesdays of each month.

(A) Motion Day for all civil actions in Division I and all criminal actions in Division II will commence at 9:00 a.m. prevailing local time on each Motion Day. Customarily, the docket of Division I is to be first called from the bench to determine the status of all docketed matters. The Judge thereof will then reconvene in chambers to hear all contested matters. Next shall be called the docket of Division II to determine the status of all docketed matters and the Judge thereof will then reconvene in chambers to hear all contested matters.

(B) Motion Day for all criminal actions in Division I and all civil actions in Division II will commence at 1:00 p.m. prevailing local time on each Motion Day. Customarily, the docket of Division I is to be first called from the bench of the Grayson Circuit Court to determine the status of all docketed matters. The Judge of Division I will then reconvene in chambers for hearing thereof. Next shall be called the docket of Division II to determine the status of all docketed matters and the Judge thereof will then reconvene in chambers to hear all contested matters.

3.03 MEADE CIRCUIT COURT

The Motion Days of the Meade Circuit Court shall be held on the Thursdays succeeding the first and third Tuesdays of each month.

(A) Motion Day for all criminal actions in Division I and all civil actions in Division II will commence at 9:00 a.m. prevailing local time on each Motion Day. Customarily, the docket of Division I is to be first called from the bench of the Meade Circuit Court to determine the status of all docketed matters. The Judge thereof will then reconvene in chambers to

hear all contested matters. Next shall be called the docket of Division II to determine the status of all docketed matters and the Judge thereof will then reconvene in chambers to hear all contested matters.

(B) Motion Day for all civil actions in Division I and all criminal actions in Division II will commence at 1:00 p.m. prevailing local time on each Motion Day. Customarily, the docket of Division I is to be first called from the bench of the Meade Circuit Court to determine the status of all docketed matters. The Judge of Division I will then reconvene in chambers for hearing thereof. Next shall be called the docket of Division II to determine the status of all docketed matters and the Judge thereof will then reconvene in chambers to hear all contested matters.

3.04 TIME FOR JURY TRIALS

Jury trials shall commence at 9:00 a.m. local prevailing time, unless otherwise set within these Rules or by Court Order. Counsel shall be present by 8:30 a.m. local prevailing time on the first day of any jury trial.

3.05 REASSIGNMENT OF REGULAR MOTION DAYS

On such occasions where it may be required to cancel regular Motion Day, whether because of sickness, vacation, weather, conflicts or otherwise, notice of such cancellation shall be given as promptly as possible. Upon such cancellation, any cases docketed for hearing on the Motion Day so cancelled shall automatically be re-docketed for the next regular Motion Day in the order in which they appeared on the cancelled docket and before any subsequently docketed cases.

3.06 MOTION DAY DOCKET DEADLINE

The Clerk shall keep a Motion Docket on which the Clerk shall docket all Motions noticed on each Motion Day.

Except for good cause shown, all Motions to be heard on Motion Day must have a facsimile copy or original filed with the Clerk of the Court wherein the matter is to be heard no later than close of business on the fifth business day preceding said Motion Day. (Grayson, the preceding Tuesday; Breckinridge, the preceding Wednesday; Meade, the preceding Thursday) This rule is not intended and does not modify the applicable procedural rules regarding Notice; instead, this rule is adopted solely for docketing purposes.

Rule 4 – Petit Jury and Grand Jury Selection and Management

4.01 Procedures for the selection of persons to serve on juries shall be governed by the

applicable Kentucky Revised Statute and Administrative Procedures of the Court of Justice.

4.02 For the Breckinridge Circuit, a new grand jury and petit jury will be empanelled on the first Monday of March, June, September and December of each year. Jurors will be assigned to serve on the grand jury, district jury and circuit jury for a period of three (3) months. Once empanelled, these juries shall continue to serve in their respective capacities until a new petit or grand jury is empanelled or until the completion of the last case on which any individual juror is selected to serve, whichever occurs last.

4.03 For the Grayson Circuit, a new grand jury and petit jury will be empanelled on the first Monday of January, April, July and October of each year. Jurors will be assigned to serve on the grand jury, district jury and circuit jury for a period of three (3) months. Once empanelled, these juries shall continue to serve in their respective capacities until a new petit or grand jury is empanelled or until the completion of the last case on which any individual juror is selected to serve, whichever occurs last.

4.04 For the Meade Circuit, a new grand jury and petit jury will be empanelled on the first Monday of February, May, August and November of each year. Jurors will be assigned to serve on the grand jury, district jury and circuit jury for a period of three (3) months. Once empanelled, these juries shall continue to serve in their respective capacities until a new petit or grand jury is empanelled or until the completion of the last case on which any individual juror is selected to serve, whichever occurs last.

4.05 For any reason authorized by KRS 29A.100, the Chief Judge may excuse any juror from jury service at any time.

4.06 For any reason and without further notice, the Chief Judge may reassign the day on which new juries are empanelled.

4.07 The Chief Circuit Judge may summon for cause a Special Grand Jury to deal with a situation requiring lengthy investigation which cannot be handled during the term of the regular Grand Jury.

4.08 The Clerk of the Court will provide to the jurors, on the date of empanelment, a written schedule of trials previously set during their term of service and include thereon a telephone number by which an answering device may be accessed to confirm, as soon as such information becomes certain, whether trials previously scheduled are, in fact, to be conducted.

4.09 Except as provided in RCr 10.04 and CR 47.01, jurors on any jury panel for the 46th Judicial Circuit shall not be examined while said jurors are actively serving

on a case. After jurors have been discharged from jury service on said case, a juror may be interviewed, examined or questioned by any attorney or any other persons to the extent allowed by law. Contact with jurors is discouraged. Prior to any contact, each juror should be advised of his/her right not to speak with or discuss in any way his/her service as a juror, as well as his/her impressions, beliefs, positions on, or views concerning any aspect of any trial or proceeding in which he/she was involved.

Rule 5 – Assignment of Divisions to Civil and Criminal Actions

5.01 For all civil matters, the Clerk of each Circuit shall prepare a stack of shuffled cards containing an equal number of cards designated to both Division I and Division II. The Clerk shall draw from said stack, by chance and anonymously, a card and assign the next civil filing within the jurisdiction of the Circuit Court. This procedure shall be repeated until all of the cards in the stack have been drawn, at which time the Clerk will prepare a new stack to be used in the same manner.

5.02 Refiling: except as otherwise directed by the Court, any case dismissed that is later refiled by the Plaintiffs/Petitioners/Movants against the same Defendant(s)/Respondent(s) will be assigned to the same Division originally assigned.

5.03 For all criminal matters, unless otherwise provided in these rules, indictments returned in odd-numbered months are returned and assigned in Division I, while indictments returned in even-numbered months are returned and assigned in Division II.

5.04 When the Judge of either Division to which a case has been assigned is disqualified, or when in the opinion of the Judges of both Divisions other good and sufficient reasons so require, upon orders signed by the Judges of both Divisions, any matter may be transferred from one Division to the other.

5.05 Should the Grand Jury of the Circuit return an indictment for a Defendant who has a prior indictment pending in the Circuit, upon Motion of the Commonwealth, the Defendant, or at the court's discretion in the interest of judicial economy, the superceding Indictment shall be reassigned to the docket of the Division to which the earliest Indictment was assigned absent good cause shown by the non-moving party.

5.06 If a petition for a writ is filed by a person who has been indicted by the grand jury and the subject matter of the writ involves the charge for which he/she was indicted, the petition shall be assigned to the same Division to whom the criminal case was assigned.

5.07 Regardless of the assignment of an action to a particular Division, the Judge of either may, in the absence of the other, exercise jurisdiction and sign any order or entertain any proceeding requiring immediate attention when the Judge to which said action is assigned is unavailable or incapacitated. However, this rule shall have effect only when, in the interest of justice, a hearing of the pending matter cannot be delayed to the next regular Motion Day or the availability of the regularly assigned judge.

Rule 6 – Schedule of Trials (Jury or Bench)

6.01 The secretaries of the Judges will coordinate and keep a master calendar of trial dates. Trial dates may be selected by the parties together with the secretary of the presiding judge and an order recording said date shall be entered by the Court. Scheduling of trial dates may be arranged telephonically so long as all parties are represented in the conference at the time the date is selected. In the event that trial dates are scheduled in a single county on the same date in more than one division, the judges shall among and/or between themselves, and without conference with the parties, determine which matter is to be reassigned. Upon such conference, an order shall be entered remanding the matter(s) to be reassigned from the trial docket and setting said matter(s) on the docket for the next regularly scheduled Motion Day so that a new date may be selected by the parties.

6.02 Upon the settlement of any action set for trial, the parties shall immediately notify the Clerk of the Court and the presiding Judge of the fact of settlement. (See Rules 7.09 and 7.10)

Rule 7 – Procedures in Regular Civil Cases

7.01 On regular Motion Days, as set by Rules 3.01, 3.02 and 3.03, cases which require hearings will be recalled for hearing after the entire civil docket has been called or, if necessary, in the discretion of the Court, scheduled for a separate date and time for hearing.

7.02 At least twice each year (scheduled for 2nd Motion Days in each county in March and September), as the Court may by order designate, the Clerk in each county, under the supervision of the Judge and in open Court, shall call all the actions on the civil docket pending and not previously disposed of in which no steps or proceedings appear to have been taken within one (1) year. Notice of all such "General Calls" of the docket shall be given at least thirty (30) days prior to the general call by posting a notice thereof in a conspicuous place in the Clerk's Office and by making available to all attorneys of record in each case to be called a copy of such notice. If none of the parties or their attorneys appear at the time

and place set for the general call and show good cause why the action should not be renoticed on the action docket, the Court may enter an Order dismissing the action for want of prosecution.

A "Motion to Set for Trial," "Motion for Mediation," or similar motions filed after a "Notice to Dismiss for Lack of Prosecution" is given by the Clerk shall not constitute "good cause" to retain the action on the active docket.

If, at the call, it is shown that the failure to take steps or conduct proceedings is NOT due to Plaintiff's lack of reasonable diligence on his/her part nor otherwise the fault of Plaintiff, the action will hold its place on the docket.

7.03 Substitution of counsel or withdrawal of counsel from any proceeding may be made by:

(A) An Agreed Order which names the "new" counsel and is signed by all parties; or,

(B) Leave of Court upon proper motion with notice to all parties.

7.04 Pre-trial conferences of civil matters will be scheduled upon the motion of either party in any circumstance. When the matter is set for trial, a final pre-trial conference will be set on the Motion Day preceding the 30th day prior to the trial date. Except for good cause shown, motions in limine and all other motions which are necessary to be heard prior to trial shall be noticed for hearing no later than the final pre-trial conference date. At the final pre-trial conference, the parties will tender to the Court proposed jury instructions.

7.05 In all civil matters, discovery shall be completed between and among the parties prior to the final pre-trial conference date as scheduled pursuant to LCR-46-7.04. Further, all depositions, however designated, shall be completed no later than the final pre-trial conference. All interrogatories and/or requests for production of documents and/or admissions must be submitted to the opposing party such that the answers thereto are due prior to the final pre-trial conference date. All parties receiving interrogatories and/or requests for production of documents and/or admissions consistent with this provision shall have answered same prior to the final pre-trial conference.

7.06 In all civil matters, the Plaintiff shall furnish a list of expert witnesses from whom it is expected that an expert opinion will be elicited no less than one-hundred and twenty (120) days preceding the trial date. The list shall include the name, address and telephone number of the expert, as well as a succinct summary of the opinion which he/she is expected to give, the facts he/she is expected to rely upon in forming that opinion, and a curriculum vitae or other documentation setting forth the qualification of the person to serve as an expert witness.

The Defendant shall furnish a list of expert witnesses from whom it is expected that an expert opinion will be elicited no less than ninety (90) days preceding the trial date. The list shall include the name, address and telephone number of the expert, as well as a succinct summary of opinion which he/she is expected to give, and the facts he/she is expected to rely upon in forming that opinion, and a curriculum vitae or other documentation setting forth the qualification of the person to serve as an expert witness.

Any witness who is both a fact witness and an expert witness (i.e. treating physician) shall, for the purpose of these timing provisions, be treated as an expert.

7.07 In all civil matters within no less than ninety (90) days preceding the trial date, the parties shall exchange a complete list of witnesses and exhibits. The offering party shall include a brief summary of the facts to which the witness will testify and/or a summary of the fact which the exhibit is intended to support.

7.08 Upon the settlement of any civil action which is set for trial, the parties shall immediately notify the Clerk of the Court and the presiding Judge by means of an agreed order remanding the matter from the trial docket and setting forth, with as much particularity as the parties determine is necessary and appropriate, the terms and conditions of settlement.

7.09 Except as otherwise provided by these rules, no matter docketed for hearing shall be considered by the Court in the absence of the party by whom the motion is made. A party to civil matters may appear solely through Counsel, unless the personal appearance of the party is required by other rule or order. Counsel of record may appear through a local representative retained for the limited purpose of the motion before the Court.

7.10 No modification of the schedules set forth in this rule shall be made by agreement of the parties except as provided by agreed order signed by the presiding judge.

7.11 **AS A SANCTION FOR THE CONSCIOUS OR WILLFUL FAILURE TO COMPLY WITH LCR 7.05, 7.06 OR 7.07, THE COURT MAY STRIKE THE PLEADINGS OF THE OFFENDING PARTY(IES) AFTER HEARING. SANCTIONS MAY INCLUDE THE AWARD OF ATTORNEY FEES AND COSTS TO THE COMPLIANT PARTY(IES).**

Rule 8 – Procedures in Criminal Cases

8.01 Regular criminal hearing days in each county of the 46th Judicial Circuit will be on that county's Motion Day as set out herein in Rules 3.01, 3.02 and 3.03.

8.02 Both the Defendant and his/her attorney must be present at arraignment. If the Defendant is not represented by an attorney, the Court shall, before the arraignment, appoint counsel to represent the Defendant at the arraignment. Unless specifically ordered by the Court, the attorney appearing with the Defendant for arraignment shall represent the Defendant in all future stages of the proceedings. Counsel may not withdraw from representation of a Defendant in a criminal proceeding without permission of the Court for good cause shown.

8.03 A Preliminary Pre-Trial Conference of criminal matters will be scheduled no later than the second Motion Day immediately succeeding arraignment of the Defendant.

8.04 The Commonwealth will provide all discovery to the Defendant within thirty (30) days of arraignment and thereafter as permitted by criminal rule. The Commonwealth may make a plea offer if one is to be made. If the Defendant declines the offer, a trial date will be obtained and a final pre-trial conference date for the matter will be docketed on the Motion Day immediately preceding the trial date. All other pre-trial conferences for criminal matters will be scheduled upon the motion of either party. Additional discovery requests shall occur by motion as set out in Rule 8.05 below. Every effort must be made to complete the discovery process prior to the pre-trial conference.

8.05 Motions by either the Defendant or the Commonwealth in criminal cases may be brought for hearing on the date of arraignment. The provisions of Rule 3 herein shall govern all other criminal motions in the 46th Judicial Circuit. Thus, motions for re-arraignment, motions to suppress, etc., are subject to the same time constraints as are civil motions, other than in exceptional circumstances.

8.06 Class D Felony Pre-Trial options may be offered those Defendants who are eligible. Pre-Trial Diversion is the postponement of imposition of sentence upon any person who qualifies for this program subject to certain conditions established by the Court for a period of time not to exceed five (5) years. The protocol for such Pre-Trial Diversion is attached to these rules and made a part hereof as an "Addendum."

8.07 In addition to the requirements of RCr 9.04, any party seeking the continuance of a trial date based upon the absence of a necessary witness, except for good cause shown, shall have filed with the Clerk of the Court no less than two (2) days prior to the making of the motion for a continuance, a copy of the subpoena for said witness which was on that date or prior to that date issued for the appearance of said witness; or, a memorandum setting forth the name of the person subpoenaed, the agency/entity to whom the subpoena was delivered for service, and the date the subpoena was so delivered. Further, counsel must be prepared to advise the Court that a good faith effort has been made to achieve service and explain the reason that service has not been made.

8.08 Upon acceptance by the Defendant of a plea offer resolving any criminal matter set for trial, the Commonwealth shall tender an Order to Remand the matter from the trial docket.

Rule 9 – Motion Practice

9.01 Excluding Judgments and/or Orders of Sale by the Master Commissioner, any Motion accompanied by an "Agreed Order" and any Motion for Default Judgment against a party who has not appeared in the action may be filed with the Clerk of the Court, after which the Motion shall be presented by the Clerk directly to the presiding judge for signature. Except for good cause shown, all other motions must be noticed for hearing on a Motion Day.

9.02 Except for good cause shown, all Motions to be heard on Motion Day must be filed with the Clerk of the Circuit wherein the matter is to be heard no later than close of business on the fifth business day preceding said Motion Day. (Grayson, the preceding Tuesday; Breckinridge, the preceding Wednesday; Meade, the preceding Thursday).

9.03 Excluding motions to be heard before the Domestic Relations Commissioner, each Motion requesting judicial relief shall be accompanied by a proposed Order setting forth the particulars of the relief sought and including the name, address, telephone number, statement of representation and signature of the attorney by whom said Order is tendered.

9.04 Any tendered Order shall include a distribution list setting forth the name of the party and/or counsel for the party and all other persons or entities to whom copies must be distributed by the Clerk.

9.05 If the Motion requests and is accompanied by an Order which will be final and appealable, said Motion may be accompanied by Proposed Findings of Fact and Conclusions of Law, if such Findings and Conclusions are required by law.

9.06 Any Motion requiring a hearing of fifteen (15) minutes or less shall be heard on the Motion Day for which it is noticed. Any Motion requiring a hearing of more than fifteen (15) minutes shall be assigned to the foot of the docket or to a specific hearing date and time not on a Motion Day.

9.07 **Contested Adoptions/Termination of Parental Rights**. All contested adoptions and/or termination of parental rights actions shall be required to be set for hearing on a date separate from Motion Day.

Rule 10 – Warning Order Attorney, Military Warning Order Attorney and Guardian ad Litem

10.01 The Clerk of the Court shall maintain a list of attorneys who are in good standing with the Bar Association of the County in which he or she practices and who have been approved by the presiding Circuit Judges from which to make appointment as Warning Order Attorney, Military Warning Order Attorney and/or Guardian ad Litem. Any attorney not wishing to receive such appointments may have his/her name removed from the list by submitting written notification of same to the Circuit Court Clerk.

10.02 Any party, except one permitted to proceed *in forma pauperis*, who desires the appointment of a Warning Order Attorney or Military Warning Order Attorney shall deposit with the Clerk of the Court, at the time the request for same is made, the sum of one hundred ($100.00) dollars as an advanced Warning Order/Military Warning Order Attorney fee.

10.03 Any party, except one permitted to proceed *in forma pauperis*, who desires the appointment of a Guardian ad Litem shall deposit with the Clerk of the Court, at the time the request for same is made, the sum of two hundred and fifty ($250.00) dollars as an advance Guardian ad Litem fee.

10.04 Unless a Motion for additional fee is filed accompanied by affidavit supporting the basis for same, the Clerk of the Court shall pay the deposited fee to the Warning Order/Military Warning Order Attorney upon the entry of an Order by the presiding judge which acknowledges the filing of the report of same in satisfaction of the appointment in conformance with the applicable statutes and rules. Failure of the Warning Order/Military Warning Order Attorney to file a Motion and supporting affidavit for additional fee prior to or contemporaneous with the filing of his/her report shall be deemed acceptance of the standard fee herein established.

10.05 Unless a Motion for additional fee is filed, accompanied by an affidavit supporting the basis for same, the Clerk of the Court shall pay the deposited fee to the Guardian ad Litem upon the entry of a final judgment of the Court for the matter in which the Guardian ad Litem was appointed or upon other Order of the Court which acknowledges that the Guardian ad Litem has discharged his or her duties in satisfaction of the appointment. Failure of the Guardian ad Litem to file a Motion and supporting affidavit for additional fee prior to, or contemporaneous with the filing of his/her report shall be deemed acceptance of the standard fee herein established.

10.06 Any attorney appointed as Warning Order/Military Warning Order Attorney or Guardian ad Litem in an *in forma pauperis* proceeding shall be appointed in the next non-pauper action for which he/she is eligible, where appointment of a

Warning/Military Warning Order Attorney or Guardian ad Litem is requested.

Rule 11 – Mediation

11.01 Preamble and Scope

The Courts find that under some circumstances, the process known as mediation may provide an efficient and cost-effective alternative to traditional litigation and, further, that the wise and judicious use of mediation may benefit litigants.

Mediation is intended to help both litigants and the Courts facilitate the settlement of disputes. Litigants should participate in good faith and in an earnest attempt to resolve their difference.

This Rule refers to mediation. Nothing in this Rule shall prohibit parties from resolving disputes through other methods. However, in any case where one party may pose a risk of harm (such as domestic violence) to another party or family member, mediation should not be used.

11.02 Mediation defined

Mediation is an informal process in which a neutral third person(s) called a mediator facilitates the resolution of a dispute between two or more parties. The process is designed to help disputing parties reach an agreement on all or part of the issues in dispute. Decision-making authority remains with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.

11.03 Referral of cases to mediation

At any time on its own motion or on motion of any party, the Court may refer a case or portion of a case for mediation. In this decision, the Court shall consider:

(a) the stage of the litigation, including the need for discovery, and the extent to which it has been conducted;

(b) the nature of the issues to be resolved;

(c) the value to the parties of confidentiality, rapid resolution, or the promotion or maintenance of ongoing relationships;

(d) the willingness of the parties to mutually resolve their dispute;

(e) other attempts at dispute resolution; and,

(f) the ability of the parties to participate in the mediation process.

11.04 No stay of proceedings

Unless otherwise ordered by the Court, mediation shall not stay any other proceedings.

11.05 Appointment of mediator

Within fifteen (15) days of referral, the parties shall agree on a mediator or a mediation service. If the parties cannot agree, they shall notify the Court, which will select a mediator or a mediation service.

11.06 Mediator compensation

The mediator shall be compensated at the rate agreed upon between the mediator and the parties if the mediator is chosen by agreement. If the mediator is appointed by the Court, the fee for the mediator shall be reasonable and no greater than the mediator's standard rate as a mediator. Unless otherwise agreed upon by the parties or ordered by the Court, the parties shall equally divide the mediator's professional fees.

11.07 Mediation procedure

Following selection of the mediator, the mediator shall set an initial mediation conference within thirty (30) days. The mediation conference shall be held in the county in which the case is pending or at a site agreed upon by the parties. The mediator may meet with the parties or their counsel prior to the mediation conference for the purpose of establishing a procedure for the mediation conference. The mediator may require the parties to submit a confidential statement of the case or other materials that the mediator may reasonably believe appropriate for efficiently conducting the mediation conference.

11.08 Attendance at mediation conference

The parties must attend the mediation conference. Counsel shall attend the mediation conference unless otherwise agreed to by the parties and the mediator, or ordered by the Court. If a party is a public entity, it shall appear 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 or officer of the entity. If a party is an organization other than a public entity, it shall appear by the physical presence of a representative other than the party's counsel of record, who has full authority to settle without further consultation. If any party is insured for the claim in dispute, that party also shall be required to have its insurer(s) present by the physical presence of a representative of the insurance carrier(s) who is not that carrier's outside counsel; this representative must have full settlement authority. The foregoing requirements of attendance may be varied only by stipulation of the parties

or by order of the Court for good cause shown.

11.09 Completion or termination mediation

The mediator may terminate the mediation conference after a settlement is reached or when the mediator determines that continuation of the process would be unproductive. After the initial mediation conference, mediation shall continue only by the agreement of the parties, their counsel and the mediator, or by order of the Court.

11.10 Report to the court

The mediator shall report to the court that the mediation has not occurred, has not been completed, or that the mediation has been completed with or without an agreement on any or all issues. With the consent of the parties, the mediator also may identify those matters which, if resolved or completed, would facilitate the possibility of a settlement.

11.11 Agreement

If an agreement is reached during the mediation conference, it shall be reduced to writing and signed by the parties. The parties shall be responsible for the drafting of the agreement, although the mediator may assist in the drafting of the agreement with the consent of the parties.

11.12 Confidentiality

A. Mediation sessions shall be closed to all persons other than the parties, their legal representatives, and other persons invited by the mediator with the consent of the parties.

B. Mediation shall be regarded as settlement negotiations for purposes of KRE 408.

C. Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matters shall be considered confidential and privileged in nature except upon order of the Court for good cause shown. This privilege and immunity reside in the mediator and may not be waived by the parties.

D. Nothing in this Rule shall prohibit the mediator from reporting abuse according to KRS 209.030, KRS 620.030 or other applicable law.

Rule 12 – Judicial Sales

12.01 References of judicial sales to the Master Commissioner shall be provided by the Rules of Civil Procedure, Rules of Administrative Procedure, Part IV, applicable Kentucky Revised Statutes, by these Rules, and by Court Order in individual cases. If by Court Order, the order shall specifically indicate the purpose of the reference and the duties to be performed by the Master Commissioner.

12.02 Domestic Relations Actions

(A) Except for good cause shown to the presiding Judge, all judicial sales in domestic relations actions shall be referred to the Master Commissioner, who shall not be disqualified from conducting such sales by the mere fact that he/she also serves as Domestic Relations Commissioner pursuant to Civil Rule 53.03(1). Any objection to a recommended judicial sale may be raised by filing an objection to the Commissioner's report as provided in the rules of Domestic Relations Practice appended hereto.

(B) All known holders of liens against property ordered to be sold in a domestic relations action shall be made parties thereto at the time the Court determines the property must be sold.

12.03 Every motion for default judgment or summary judgment and order of sale shall include, but not be limited to, the following information:

(A) Every motion filed seeking judicial sale of property must include the following documents:

i. An affidavit of the attorney for the party seeking a judgment and judicial sale of property that he/she has searched, or caused to be searched, the records of the applicable County Clerk, covering a period of at least thirty (30) years next proceeding the date of filing of the complaint continuing through the date and time recording of the Lis Pendens. In addition, Opinion relating to the applicable property and the named parties as their interests appear of record shall be attached. Said Title Opinion shall be required to be run to the date and time of the filing of the Lis Pendens in the County Clerk's office. Said Title Opinion shall note all delinquent property taxes and assigned certificates of delinquency. Said Title Opinion shall be kept under seal by the Clerk subject only to inspection by the Court, the Master Commissioner, the parties to the action or their counsel, or upon order of the Court; AND,

ii. A copy of the Lis Pendens filed in the Office of the applicable County Court Clerk with the Clerk's stamp showing the date and

time such Lis Pendens was filed; AND,

iii. If any defendant has sought relief in bankruptcy, proof of discharge, dismissal or relief from stay is required to be filed.

(B) Every motion for default judgment or summary judgment and order of sale shall be accompanied by the following:

i. An affidavit signed by and sworn to by an individual(s) with personal knowledge or responsibility of the account or obligation for which judgment is sought or been previously awarded setting forth: (a) the name of the person(s) and/or entity(ies) owing the obligation, debt or judgment; (b) the amount owed with interest if any; (c) a schedule of costs; and, (d) the facts which constitute the default or acceleration of the obligation; AND,

ii. If the matter is before the Court on a motion for default judgment, an affidavit pursuant to the Servicemembers' Civil Relief Act of 2003; and an affidavit of the Attorney stating that the Defendant(s) in default have failed to plead or otherwise defended as provided by the applicable rules of procedure; and, that no papers have been served on counsel by the party in default or received by counsel from the party in default.

(C) A proposed judgment and order of sale, which contain the following provisions:

i. A statement of the manner in which the Court has acquired jurisdiction over the parties to the action; to wit, "The Defendant, _____, is before the Court by means of (TYPE OF SERVICE) which was accomplished on (DATE)."

ii. The typed or machine printed legal description of the property to be sold with a complete source of title. (A reference to an attachment will not be sufficient).

iii. "The Master Commissioner of this Court is hereby directed to sell the real estate described in the judgment at public auction to the highest bidder on the _____ day of _____, 20__, at _____a.m./p.m. local time at the county courthouse after first having caused the property to be appraised according to law; and having advertised the sale as to the time, terms and place by posting handbills at the courthouse and on or near the property to be sold for at least fifteen (15) days prior to the date of sale, also by inserting notice thereof as to its time, terms and place of sale

together with a street address or short description of said parcel of land once a week for three (3) successive weeks next preceding the date of sale in the newspaper with the largest *bona fide* circulation published in this County. The real estate shall be sold on terms of ten percent (10%) down and the balance on credit of forty-five (45) days, bearing interest at the rate of twelve percent (12%) per annum from date of sale until the purchase price is paid."

(D) If the purpose of the sale is to divide jointly held property and not to enforce a lien against the property, the language "having caused the property to be appraised according to law" and shall not be included in the order of sale.

(E) A certificate that a copy of the tendered judgment and order of sale was served on the Master Commissioner at the time the motion is filed.

12.04 Unless specifically stated otherwise in the order or judgment, taxes for the current year shall be assumed by the purchaser and delinquent taxes and assessments and assigned certificates of delinquency against the property shall be paid out of the proceeds of the sale, for which the purchaser shall not receive credit upon his purchase price; or in the event the plaintiff is taking a credit against the judgment, then the delinquent property taxes and assessment shall be taxed as costs to be paid to the Master Commissioner.

12.05 Conduct of Sale

(A) Deposit and Bond Requirements – Resale Upon Failure to Comply: In every judicial sale, except where the order of sale directs otherwise, the cash deposit specified in the order or judgment of sale shall be made immediately upon the conclusion of the sale as required by the judgment or order of sale. The successful bidder must be ready to comply immediately with the terms of that bond, including having a surety available to sign the bond immediately upon the conclusion of the sale. If the deposit, bond or surety requirements are not complied with immediately upon the conclusion of the sale, the Master Commissioner may reject the bid and resell the property forthwith. In making such resale, the Master Commissioner shall accept no bid from the rejected bidder.

(B) Interest – Accrual of interest on the successful bid shall be suspended to the extent of any repayment or deposit as of the date the payment or deposit is made to the Master Commissioner.

12.06 The Commissioner shall file his/her report of sale with the Clerk of the Court, who shall forthwith serve notice of the filing upon all parties who would be entitled to notice of entry of a final judgment. Thereafter, and within thirteen (13)

days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties. If no objections are filed, the report will be submitted to the presiding Judge on the fourteenth (14th) day after the notice of the report was served on the parties if the motioning attorney notifies the clerk. If objections are filed, any party may apply to the Court for confirmation of the report by notice and motion properly filed.

12.07 If the purchaser at a judicial sale desires to assign his/her bid to a third party, then this assignment shall be filed with the Circuit Court Clerk and a copy tendered to the Master Commissioner.

Rule 13 - Domestic Relations Proceedings

13.01 Pursuant to Rule 53 of the Rules of Civil Procedure of the Commonwealth of Kentucky, the following Domestic Relations Rules are adopted by the 46th Judicial Circuit, thereby amending those rules previously adopted by the Court.

13.02 There shall be a Domestic Relations Commissioner for the 46th Judicial Circuit, with the qualifications set forth in Civil Rule 53.03(2) with the powers and authority established by Civil Rule 53.04.

13.03 Domestic Relations Proceedings shall be governed by Domestic Relations Rules as promulgated by this Court in consultation with the Domestic Relations Commissioner, a copy of which is available from the Circuit Court Clerks of Breckinridge, Grayson and Meade counties and which is attached hereto as Appendix B.

13.04 A copy of the Domestic Violence Protocol for the 46th Judicial Circuit is attached hereto as Appendix C.

13.05 Restoration of Domestic Relations Proceedings to the Court Docket subsequent to the matter having been stricken therefrom may be made without notice, but no matters modifying existing orders or conditions therein shall be heard without appropriate service on and notice to all parties.

13.06 Matters to be heard on the docket of the Domestic Relations Commissioner shall state same in the Notice section of the pleading as follows:

"Take Notice that the undersigned will appear before the Domestic Relations Commissioner of the Court on WEEKDAY, the ____ day of MONTH, YEAR at the hour of _____ a.m./p.m. local prevailing time, or as soon thereafter as may be heard to make the following Motion."

13.07 Non-Motion Day Hearing: In addition to the initial Domestic Relations

Commissioner's fee paid upon filing in the Circuit Court Clerk's office, any party(ies) as designated by the Domestic Relations Commissioner (except one permitted to proceed *in forma pauperis*) shall be required to pay to the Circuit Court Clerk at least five (5) days in advance of the Domestic Relations

Commissioner's hearing the anticipated Domestic Relations Commissioner's regular hourly fee for the anticipated time allocated as set forth in the Domestic Relations Commissioner's Order setting the hearing. The Court may subsequently order and award the advanced Domestic Relations Commissioner's fees for or against party(ies) in conformity with the law. If not paid as set forth above, the Domestic Relations Commissioner may cancel the hearing without notice.

Rule 14 – Miscellaneous Provisions

14.01 Counsel, whether appointed or retained, who has appeared on behalf of a party, will not be permitted to withdraw while the matter is still pending unless a Motion for withdrawal is made based upon good cause, filed at least sixty (60) days prior to trial.

14.02 All initiating pleadings (Complaints, Petitions, etc.), when filed with the Clerk of the Court, shall be accompanied by a cover sheet signed by the Plaintiff or Counsel for the Plaintiff and designating the identities of the parties; the nature of the action; the court having jurisdiction; and, whether or not a trial by jury is requested, as well as a listing to include the name and address of each defendant which designates the type of process needed. A copy of the cover sheet is attached hereto as Addendum D.

14.03 The Clerk of the Court shall notify, through Counsel, the party making application for service of process that process has been successfully made by placing a duplicate copy of the return of service in the Courthouse mailbox held for said attorney, or by sending a copy of the return of service to said attorney in a self-addressed, stamped envelope provided by the attorney at the time of filing.

14.04 Regardless of where held all hearings on criminal matters and all hearings on civil matters, unless otherwise required by law or specifically provided otherwise by Order of the Court, are open and available to be heard by the public and any person desiring to attend same may do so without permission or further invitation.

These Rules are adopted pursuant to the authority granted by Rule 78 of the Kentucky Rules of Civil Procedure and SCR 1.040(3), and these Rules, as amended, and any revision and/or addition or deletion to these Rules shall become effective and apply with full force and effect to all actions filed or pending as of the date of their approval by the Supreme Court.

Upon submission to and approval by the Chief Justice of the Supreme Court of the Commonwealth of Kentucky, the foregoing Rules are adopted to be effective January 2, 2008.

The Honorable Bruce T. Butler
Circuit Judge, 46th Judicial Circuit
Division I

The Honorable Robert A. Miller
Chief Administrative Judge, 46th Judicial Circuit
Division II

AMENDED
CLASS D FELONY PRETRIAL DIVERSION PROTOCOL
FOR THE 46TH JUDICIAL CIRCUIT
CONSISTING OF BRECKINRIDGE, GRAYSON & MEADE COUNTIES

INTRODUCTION

During the 1998 legislative session, the legislature extensively modified the Kentucky Penal Code with respect to the incarceration of public offenders. An apparent goal of the legislature was to provide for the extended incarceration of those offenders who constituted a threat to society. The legislature also directed that programs be established throughout Kentucky which would be rehabilitative in nature, by offering an offender incentives to conform to the law in the future. Pursuant to that enabling legislation, the Courts across Kentucky have been directed by the Kentucky Supreme Court to establish a pre-trial diversion program, more appropriately referenced as a pre-incarceration diversion program.

1. DEFINITION

Pretrial diversion is the postponement of imposition of sentence upon any person who qualifies for this program, for a period of time not to exceed the greater of five (5) years or the time necessary to complete restitution, subject to certain conditions established by the Court.

II. PERSONS ELIGIBLE

(A) Any person charged with the 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 commission of the current offense, shall be eligible for pretrial diversion. It is envisioned that pre-trial diversion in the 46th Judicial District will be limited to non-violent offenders whose offense was against the peace and dignity of the Commonwealth as opposed to an offense against an individual victim. In addition to the victimless crimes, it is contemplated that diversion will be available as a tool which the Commonwealth may use in it's child support collection efforts.

(B) The person charged with a felony and seeking pre-trial diversion must enter a plea of guilty as a **condition precedent** to being accepted in the pre-trial diversion program.

(C) Persons ineligible for probation, parole or conditional discharge under KRS 532.045 shall be ineligible for this program.

"Addendum A"

(D) A person convicted of a Class D felony for which early release is disallowed by statute, including KRS 189A.010(8) and KRS 189A.120(2), shall be ineligible for this program.

(E) No person shall be eligible for this program more than once in any five (5) year period.

III. PROCEDURE

(A) After indictment in circuit court, and no later than forty-five (45) days prior to the scheduled trial, a person eligible for the program may apply to the Circuit Court and the Commonwealth for entry of a pretrial diversion order.

(B) In applying for pretrial diversion, counsel for the defendant must state, and the defendant must agree on the record, that in the event diversion is granted, any right to a speedy trial or final disposition of the charge against him/her is waived.

(C) The Commonwealth shall make a written recommendation to the Court in response to each application. (KRS 533.250(2)).

(D) Before making a recommendation to the Court, the Commonwealth shall:

(1) Have a criminal record check made by telephoning the Administrative Office of the Courts, Pretrial Service Division, at 1-800-928-6381, or faxing the request to (502) 573-1669. The request shall not be sent to the local Pretrial Services Officer.

(2) Interview and seek input from the victim and/or victim's family and advise them of the time, date and place the motion will be heard by the Court; and

(3) When diversion is recommended, Commonwealth must make a written report to the Court as to the recommended conditions for the pretrial diversion as well as the appropriate sentence to be imposed if the diversion agreement is unsuccessful. (KRS 533.252(3)).

(4) Pre-trial diversion is deemed to be a prosecutorial function and the Commonwealth Attorney's recommendation in favor of pre-trial diversion shall be given great deference, but is not binding upon the Court. Notwithstanding, pre-trial diversion shall not be granted by the court in absence of a favorable recommendation by the Commonwealth's Attorney. In the event that pre-trial diversion is not granted, for whatever reason, then the matter shall proceed thereafter as though pre-trial diversion did not exist.

(5) The movant shall use AOC Form 347 or a form of approved by this Court which shall be styled, "Motion for Pre-trial Diversion of a Class "D" Felony". The above form shall include or be accompanied by the Commonwealth's Attorney's recommendation and shall be signed by the Defendant, Defense Attorney and the Commonwealth's Attorney. As with all other motions, the same shall be filed with the Circuit Court Clerk.

IV. ORDER OF PRETRIAL DIVERSION

(A) The Court may, in its discretion and upon a favorable recommendation by the Commonwealth's Attorney, order pretrial diversion for eligible Defendants upon terms and conditions it deems appropriate. AOC Form 345 styled "Order Granting Pretrial Diversion of a Class D Felony", was designed for this purpose.

(B) The Order of Diversion **shall:**

(1) **Establish the duration of the sentence** being deferred, which shall be of no greater duration than the maximum duration imposed by the legislature for the offense to which the defendant plead guilty in reliance upon the deferral agreement.

(2) **State the duration of the diversion,** which shall not exceed the greater of five years or the time necessary to complete restitution.

(3) **Require the defendant to pay restitution** to the victim (which may be an entity other than a natural person) in full, if applicable.

(4) **Set forth the terms and conditions of the diversion.** The Court may require supervision by the Corrections Cabinet, Division of Probation and Parole and shall determine the intensity of that supervision. The Court may order supervision fees, in its discretion, but not to exceed the maximum amount permitted by law.

(5) **Require the defendant to obey all rules and regulations** imposed by the Division of Probation and Parole.

(6) **Require that the defendant commit no other offense.**

(7) **Require that the defendant not possess or be in control of a firearm or other deadly weapon** (as defined by KRS 500.080(4), which may further include black powder arms and/or instruments capable of propelling a projectile by compressed air or kinetic energy (long bow, cross bow or compound bow).

(8) **Require that the defendant agree to random drug and alcohol test** as ordered by the court or the defendant's supervising authority or by any law enforcement officer.

(9) **Require the defendant to give up the protections afforded to him by the Constitution of the United States** with respect to searches, seizures and self-incrimination.

(10) **Order any other reasonable condition** which in the court's discretion will be in the long term best interest of the defendant and/or the community, so long as that condition is not contrary to existing law or public policy.

(C) The Order of Diversion **may** include:

(1) A provision requiring the defendant to serve a reasonable period of time in the custody of the jailer of the county in which the offense was committed. The jail time, if required, would be served prior to the commencement of the diversion period. The court may further require a defendant to reimburse the applicable county for any incarceration expense, including medical which may have been incurred by that county. The standard reimbursement rate shall be the rate paid by the State of Kentucky to local jails for holding state prisoners. The Court may deviate from this rate under extraordinary circumstances which shall be set forth in a specific finding of facts.

(2) A provision requiring a one time contribution of not more than the maximum amount permitted under KRS 533.030(5) to a local DARE program, or its equivalent, payable through the Commonwealth Attorney's Office.

(3) A provision requiring curfews as the court deems appropriate.

(4) A provision requiring the defendant to perform community service as recommended by the Commonwealth's Attorney. Any such recommendation shall set forth the service to be performed, the manner in which the defendant's performance will be supervised and reported to the Court.

V. VOIDING A DIVERSION ORDER

(A) If it is brought to the Commonwealth's Attorney's attention, that the defendant may have violated the terms and conditions of his diversion agreement, the Commonwealth's Attorney shall in his/her discretion move the Court for an order

voiding the diversion. After an evidentiary hearing, with notice to the defendant, the Court may void a person's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or a failure to make satisfactory progress. AOC Form 346, styled, Order Voiding Pretrial Diversion of a Class D Felony, was designed for this purpose.

(B) If an order of pretrial diversion is voided, the defendant shall be sentenced according to the sentence delineated in the original diversion order, based upon his or her prior plea of guilt.

(C) Under KRS 533.256(2), the same criteria applicable to a probation revocation hearing applies to a proceeding to void an order granting diversion. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A proceeding to determine whether an order granting diversion should be voided also constitutes a miscellaneous proceeding and therefore the Rules of Evidence are inapplicable to such hearings.

VI. COMPLETION OF DIVERSION PROGRAM

If the defendant successfully completes the provisions of the pretrial diversion agreement, then upon motion, with notice to the Commonwealth, and upon payment of any appropriate fee or charge, except for good cause shown, his plea of guilty shall be vacated and expunged from the record, and shall not inculpate the Defendant for any purpose to the extent permitted by law.

Adopted this the 12th day of April, 2000, by Hon. Sam H. Monarch, Circuit Judge, Division I, Hon. Robert A. Miller, Circuit Judge, Division II, and the Hon. Kenton R. Smith, Commonwealth's Attorney, to be effective immediately.

EXECUTED IN TRIPLICATE ORIGINALS.

SAM H. MONARCH
CIRCUIT JUDGE, DIVISION I
BRECKINRIDGE, GRAYSON & MEADE
CIRCUIT COURTS

ROBERT A. MILLER
CIRCUIT JUDGE, DIVISION II
BRECKINRIDGE, GRAYSON & MEADE
CIRCUIT COURTS

HON. KENTON R. SMITH
COMMONWEALTH'S ATTORNEY
46TH JUDICIAL DISTRICT

RULES OF PRACTICE FOR DOMESTIC RELATIONS ACTIONS
46TH JUDICIAL CIRCUIT

These rules may be cited by the abbreviation 46thDrR followed by the appropriate rule number.

DrR 1: Domestic Relations Commissioner – Qualifications and Powers

There shall be a Part-Time Domestic Relations Commissioner for the 46th Judicial Circuit, with the qualifications as stated in CR 53.03(2).

The Commissioner shall have the powers enumerated in CR 53.04.

DrR 2: Standing Referrals

Unless otherwise ordered by the Court, there shall be a standing referral to the Domestic Relations Commissioner (hereinafter "DRC") of all domestic relations matters including, but not limited to, the following:

A. Uncontested and contested matters arising from actions affecting the marital relationship of parties under KRS Chapter 403;
B. Child custody, support and maintenance under KRS Chapter 403, both *pendente lite* and post judgment;
C. Costs and attorneys' fees in those actions involving paragraphs one and two.

DrR 3: Hearings

3.01 Hearings pursuant to DrR 2 shall be by motion set for a time and date certain before the Domestic Relations Commissioner, which time and date shall be provided by the Commissioner if not on a regularly scheduled motion day of the Court. All motions and hearings shall be conducted pursuant to the requirements of statute and the Rules of Civil Procedure.

3.02 If an adverse party is not personally before the Court, the motion shall be served upon the adverse party in the same manner as required for service of a summons. After a party is before the Court, service shall be had as provided in the Rules of Civil Procedure. Each motion shall be verified or supported by affidavit(s) of the Movant, which shall be served upon the adverse party with the motion.

3.03 If to be submitted orally before the commissioner in uncontested matters, the parties shall submit a motion to submit the action before the commissioner immediately upon the expiration of any statutory limitation. If to be submitted on written depositions, any party may submit for review and recommendation. The commissioner shall submit his/her report to the Court within seven (7) working days thereafter.

"Addendum B"

3.04 Upon motion of a party, in contested matters, a pre-trial conference shall be held to establish a schedule and method of proof to be completed within sixty (60) days thereafter.

3.05 In *pendente lite* matters, the DRC's recommended order and case file shall be delivered to the Judge of the Court within five (5) days of the hearing. Unless otherwise ordered, the recommended order shall be immediately signed by the Judge and entered by the Clerk on or before the close of the fifth business day after it has been so delivered.

3.06 In *pendente lite* matters, if civil summons had been served and written notice of a *pendente lite* hearing filed at least **five (5) days** prior to the hearing, the *pendente lite* order may be reviewed only **upon a showing of serious endangerment or a substantial change of circumstances occurring since the date of hearing.**

3.07 All reports and recommendations in contested matters shall contain findings of fact and conclusions of law.

DrR 4: Domestic Relations Motion Days

4.01 Domestic Relations Motions shall be set and heard during regular motion days as set by the Court for hearing other civil actions.

4.02 The Clerk of each Court shall establish a separate Domestic Relations Docket Sheet, which shall not be co-mingled with matters to be heard by the Court. The Clerk will not assign any motion to a docket unless the motion and notice shall have been filed in the clerk's office at least five (5) working days prior to the date set for hearing.

DrR 5: Contempt Practice

In any proceeding for contempt in a Domestic Relations matter in which there are issues of fact to be resolved, the matter shall be referred to the Domestic Relations Commissioner for the taking of proof and findings of fact. Should the facts support a finding by the commissioner that the non-moving party is in contempt of Court, that party shall be required to appear before the Judge of the Circuit Court at the next regularly scheduled motion day to show cause why he/she should not be held in contempt of Court. The contempt hearing shall be a *de novo* hearing.

DrR 6: Contested Matters

6.01 **In any action for dissolution of marriage,** if any pleadings refer to the existence of marital property or debts incurred during the marriage, the party tendering the pleadings ("initial moving party") shall prepare and file a Verified Financial Disclosure ("VFD") statement in the form and fashion as set forth in DrR Form 1, which is attached to these rules. The initial moving party's VFD shall be required to be filed within forty-five (45) days of filing of the pleading initiating legal process (i.e. Petition for Dissolution, etc.). The responding party, upon whom the initial moving party's pleadings are served, shall be required to file a VFD within thirty (30) days of service of civil summons or filing of the Petitioner's VFD, whichever is later. Upon failure of a party to timely file the

required VFD, the DRC may continue the final hearing until the VFD is properly filed or the DRC may proceed with the hearing and accept the information in the complying party's VFD in the DRC's Recommendation/Report to the Court.

6.02 **In any action wherein the support and maintenance of children or spousal maintenance is in issue**, each party shall file with his/her original pleading or first responsive pleading a copy of his/her copies of the Federal 1040 Income Tax return, including the schedules thereto appended for the immediate past three (3) years, together with W-2s and any 1099's received for those years; wage statements from his/her employer for the immediate prior eight (8) weeks; and/or documented evidence of his/her earnings for the immediate prior three (3) months.

6.03 **If any action wherein child support is in issue,** the parties shall each file with their motion for child support or any responsive pleading a Child Support Worksheet in conformity with KRS 403.211, 403.212, and 403.213 in the Form attached to these rules as DrR Form 2.

6.04 **In any action wherein the permanent custody of children is in issue,** each party shall (not less than thirty (30) days prior to the day set for hearing) provide the other party with a list of the names and addresses of each and every person, other than a party or a child of the parties, expected to be called as a witness. Depositions of any named witnesses should be scheduled and conducted prior to the date set for final hearing.

6.05 **In any action wherein visitation of children is in issue,** if the parties cannot agree upon the periods and conditions of visitation of child(ren) more than three (3) years of age, the commissioner may reference a standard visitation schedule as set forth in DrR Form 3, attached to these rules. However, the DRC shall recommend visitation based upon the best interest of the child(ren) under the particular facts of each case.

DrR 7: Notices

No motion, other than emergency ex parte motions, shall be heard by the court unless the adverse party has been served with notice of the bringing of the motion at least five (5) working days prior to the date set for the hearing.

DrR 8: Responsibility of Counsel

For purposes of responsibility for the receipt of notices and motions in post judgment practice, it shall be presumed that the representation of any party by counsel of record ceases upon the expiration of thirty (30) days after the entry of a final, appealable order or decree with no appeal having been taken.

DrR 9: Costs

9.01 In each original Domestic Relations action filed with the Clerk of the Court, the Clerk shall collect the sum of $15.00 as cost collected for Domestic Relations Commissioner, being the fee payable to the commissioner in uncontested matters.

9.02 For each hearing after the initial hearing scheduled on a regular Motion Day, the motioning party shall pay in advance the sum of $15.00 with the Clerk of the Court as costs collected for Domestic Relations Commissioner. The fee shall be payable to the Commissioner pursuant to DrR 9.04.

In the event the motioning party remands the motion prior to the hearing by notification to the clerk and the Domestic Relations Commissioner, the fee shall be refunded. For Grayson County, the notification must be made by Noon on the Friday before the motion day. For Breckinridge County, the notification must before Noon on Monday before the motion day. For Meade County, the notification must be made by Noon on Tuesday before the motion day.

This payment of fees does not apply to the County Attorney's Office in IVD child support matters or parties proceeding *in forma pauperis*.

This rules does not preclude the Domestic Relations Commissioner from billing either party additional fees if appropriate.

9.03 In the event the Commissioner bills parties more than the $15.00 fee for a Motion Day hearing, the Domestic Relations Commissioner shall consider the financial resources of both parties and the cause for the motion. The bill shall be sent in care of the party's attorney. The fees shall be paid to the Clerk of the Circuit in which the action is pending within ten days of the hearing.

9.04 The Clerk shall remit to the Commissioner the Commissioner's fees and costs received once each month.

COMMONWEALTH OF KENTUCKY
46TH JUDICIAL DISTRICT
_____ CIRCUIT COURT
DIVISION __
CIVIL ACTION NO.:

_____ PETITIONER

VS. **VERIFIED FINANCIAL DISCLOSURE STATEMENT**

_____ RESPONDENT

****

I. IDENTIFYING INFORMATION OF BOTH PARTIES

Petitioner	Respondent
Name and Address	Name and Address
_____	_____
_____	_____
_____	_____
Age/Date of Birth _____	Age/Date of Birth _____

II. INCOME AND EMPLOYMENT INFORMATION OF BOTH PARTIES

Petitioner	Respondent
Employer Name _____	Employer Name _____
Gross Monthly Income _____	Gross Monthly Income _____
Other Income _____	Other Income _____

III. MARRIAGE INFORMATION

A. Date and Place of Marriage (County & State)_____
B. Date of Separation _____

"Dr R Form 1"

IV. CHILDREN'S INFORMATION

A. Minor Children Born to Parties:

1. Name, DOB, Age _____
2. Name, DOB, Age _____
3. Name, DOB, Age _____
4. Name, DOB, Age _____

B. Monthly Child Care/daycare expenses Cost _____ Paid By _____

C. Health Insurance for Children Cost _____ Paid By _____

D. Either party court-ordered to pay child support for a child born before the children born of this marriage?
Paying Party _____ Amount _____ Number of Children _____

V. SUMMARY OF ASSETS AND DEBTS (for each asset, list type of asset, amount owed and equity)

A. REAL ESTATE

Are you making a non-marital claim? _____ If yes, you must comply with Section VIII(D)(10)

1. Property Address _____ Map ID _____
FMV _____ Debt _____ Equity _____

2. Property Address _____ Map ID _____
FMV _____ Debt _____ Equity _____

3. Property Address _____ Map ID _____
FMV _____ Debt _____ Equity _____

Total Real Estate Equity _____

B. VEHICLES (Automobiles, Motorcycles, Boatrs, Trucks, etc.)

Are you making a non-marital claim? _____ If yes, you must comply with Section VIII(D)(10))

1. Year, Make and Model _____

NADA value _____ Amount owed _____ Equity _____

2. Year, Make and Model _____

NADA value _____ Amount owed _____ Equity _____

3. Year, Make and Model _____

NADA value _____ Amount owed _____ Equity _____

Total Vehicle Equity _____

C. BANK ACCOUNTS (checking, savings, cd's, money market, etc.)
Are you making a non-marital claim? _____ If yes, you must comply with Section VIII(D)(10))

Institution	Type	Balance
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

TOTAL _____

D. STOCKS
Are you making a non-marital claim? _____ If yes, you must comply with VIII(D)(10))

Company Name	Date of Valuation	Value
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

TOTAL _____

E. RETIREMENT ACCOUNTS (IRA, KEOGH, Pension, 401(K))
Are you making a non-marital claim? _____ If yes, you must comply with VIII(D)(10))

Plan name, contributory or non-contributory, vested or non-vested, and balance.
1. _____
2. _____

F. LIFE INSURANCE
Are you making a non-marital claim? _____ If yes, you must comply with VIII(D)(10))

Company name	Type	Cash Surrender Value
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

TOTAL CASH SURRENDER VALUE _____

G. BUSINESS INTERESTS

Are you making a non-marital claim? _____ If yes, you must comply with VIII(D)(10))

Company name, sole proprietorship, partnership or corporation and value

	Company Name	Type	Value
1.			
2.			
3.			

TOTAL VALUE _____

H. HOUSEHOLD GOODS

Are you making a non-marital claim? _____ If yes, you must comply with VIII(D)(10))

Agreed Division? _____Yes, Proposed Division Attached _____No

I. OTHER ASSETS

Are you making a non-marital claim? _____ If yes, you must comply with VIII(D)(10))

Description, Fair Market Value, Amount Owed, and Equity

1.				
2.				
3.				

TOTAL VALUE _____

VI. OTHER DEBTS NOT PREVIOUSLY LISTED

	Name of Creditor	**Balance Owed**
1.		
2.		
3.		
4.		
5.		

TOTAL _____

VII. Monthly Living Expenses Schedule

A. Common Expenses for Family

Food/Groceries	
Church & Charity	
Housing	
Cable	
Garbage Collection	
Gas &/or Electric	
Homeowner's Ins.	
Maid Service	
Mortgage/Rent	
Property Maintenance	
Telephone	
Vet/Supplies	
Yard expense/maint.	
Water/sewage	
Medical:	
Dentist	
Doctor	
Transportation	
Gas & Oil	
Liability Insurance	
License/taxes/tag	
Payment/loan	
Repairs/maint.	
Cellular phone	
Other:	
Subtotal	

B. Personal Expenses

Barber, Beauty	
Prescriptions, Meds	
Clothing	
Cosmetics/hygiene	
Dry Cleaning	
Entertainment	
Internet	
Life Insurance	
Newspapers	
Magazines & Books	
Social Clubs	
Uniforms	
Insurance	
Eyeglasses, hearing	
Cellular phone:	
Other:	
Subtotal	

Grand Total Monthly Living Expenses _____

VIII. REQUIRED ATTACHMENTS

To complete this section, you must attach all of the following documents and/or provide the requested information on a separate sheet and attach to this form. In the spaces provided, mark as follows:

"A" = to indicate that the requested document/information is attached
"U" = to indicate that the requested document/information is unavailable
(Provide explanation on a separate page)
"N/A" = if not applicable

A. PERSONAL INFORMATION OF BOTH PARTIES

B. INCOME AND EMPLOYMENT OF BOTH PARTIES

_____ 1. Three (3) most recent paycheck stubs
_____ 2. Federal Income Tax Return for the last year filed
_____ 3 State Income Tax Return for the last year filed
_____ 4. Documentation of all other income for the past 48 months, including source of income and amount of income received year-to-date

C. CHILDREN

_____ 1. Verification of work-related child care expense
_____ 2. Verification of cost of health/dental insurance for children's portion (e.g. difference between cost of single and family plan)

D. ASSET SCHEDULES

_____ 1. Most recent statement of each bank account
_____ 2. Most recent brokerage statements or documentation of purchase and /or value for each investment
_____ 3. Explanation of source of cash holdings, location and amount of cash.
_____ 4. For each piece of real estate, copy of deed, documentation of all indebtedness (i.e. mortgage, home equity loan, liens, etc.) including unpaid balance and payoff (with date payoff amount obtained) for each debt, and current tax assessment
_____ 5. Declaration page of life insurance policies and documentation of cash surrender values
_____ 6 Documentation of benefits accrued in pension, profit sharing, 401(k) or other retirement plans, including most recent statements of each such plan and the name, address and phone number of plan administrator
_____ 7. For each vehicle, provide amount of payoff of any indebtedness (including date payoff amount obtained) and copy of title

_____ 8. For each business interest, list name of business, extent of interest or title in business (i.e.

owner, shareholder, partner, etc.), provide a copy of last income tax returned filed by business and documentation of income earned (or portion received) through business during last twenty-four (24) months)

_____ 9. Provide a list describing any other assets you have an interest in, including any documentation as to the value of the non-marital interest, date asset was acquired, and source of non-marital interest (trace and document non-martial funds used to acquire each asset)

_____10. **NON-MARITAL INTEREST.** For each asset in which you claim a non-marital interest, provide the basis and approximate value of non-marital claim. Documentation tracing any non-marital asset shall be produced if available, and if not currently available, shall be produced when available, or as specified by separate court order.

E. DEBT SCHEDULE

_____ 1. For each debt, provide the last statement or documentation of unpaid balance, or explain why documentation is not available

_____ 2. For each debt designated as "non-marital," list the party you think should assume responsibility for said debt and why

F. MONTHLY LIVING EXPENSES SCHEDULE

G. OTHER - provide pertinent information

VERIFICATION

I, _____, declare under penalty of perjury that the information contained herein, including the information provided on any schedules and attachments, is true and accurate to the best of my knowledge, information and belief. Further, I acknowledge that I have read the attached instruction sheet and have followed the instructions to the best of my ability.

COMMONWEALTH OF KENTUCKY)
)sct.
COUNTY OF _____)

Subscribed and sworn to before me by _____ on this _____ day of _____, _____.

_____
Notary Public, KY State at Large
My Commission expires: _____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was this _____ day of _____, _____, delivered by first class mail, postage prepaid, to:

_____

Attorney
Address
Telephone number with area code

Case Name: _____ File Number: _____

County: _____

COMMONWEALTH OF KENTUCKY WORKSHEET FOR MONTHLY CHILD SUPPORT OBLIGATION

	A. CUSTODIAL PARENT (CP)	B. NONCUSTODIAL PARENT (NCP) or OBLIGOR	C. BOTH PARENTS
1. Monthly gross income			
2. Deduction for maintenance payments	-	-	
3. Deduction for other child support for prior-born child(ren)	-	-	
4. Adjusted monthly income			
5. Combined monthly adjusted parental gross income			
6. Percentage of combined monthly adjusted parental gross income			
7. Base monthly support			
8. Child care costs			
9. Child(ren)'s health insurance premium cost			
10. Total child support obligation			
11. Each parent's monthly child support obligation			
12. Subtract child care costs or health insurance premiums paid by NCP or obligor to the provider		-	
13. Amount the NCP or obligor pays to the CP			

Prepared By:
Office:
Date: 11/5/2007

CS-71 (Rev. 7/03)

"DrR Form 2"

VISITATION GUIDELINE
FORM DrR 3

FOR CHILDREN WHO HAVE ATTAINED THREE (3) YEARS OF AGE

1. The First (1st) and third (3rd) weekend of each month. The first weekend is deemed to be the first weekend of each month which Includes a Saturday.

   The non-custodian parent shall have visitation commencing at 6:00 p.m. Friday and extending through 6:00 p.m. Sunday local prevailing time.

2. Wednesday of Each Week -

   The non-custodian parent shall have visitation on Wednesday of each and every week from 5:30 p.m. through 8:30 p.m. of that same evening.

3. Summer Visitation -

   The non-custodian parent shall have a total of 4 weeks (not less than 3) summer visitation. Summer visitation shall consist of two separate sessions, which shall be separated by not less than two (2) weeks. The first visitation period shall commence on the second Friday subsequent to the last day of school at 6:00 p.m., and shall terminate fifteen (15) days later on Saturday at 6:00 p.m.

   The second visitation period shall commence on the date and time determined by the Domestic Relations Commissioner but shall be for a period of not less than seven (7) days.

4. Christmas Visitation -

   For the year in which the Decree of Dissolution is entered, and each alternate year thereafter, the Christmas visitation shall begin at 8 a.m. the day following the last of school immediately prior to the Christmas vacation and shall extend through Christmas Eve at 8 p.m.

   The second year, and each alternate year thereafter, visitation shall begin at 8 p.m. Christmas eve and shall extend through noon on New Years Day.

5. Special Occasions -

   Regardless of any apparent conflict herein, the father shall have the children on his birthday and on Father's Day. The mother shall have the children on her birthday and on Mother's Day. These visitation periods shall be from 8 a.m. to 8 p.m.

6. Holidays -

Holidays shall be deemed to be: Easter, Memorial Day, Independence Day (July 4th), Labor Day and Thanksgiving.

The father shall have the children with him on Easter, Independence Day and Thanksgiving on each even numbered (2008, 2010, 2012, etc) years, and the mother shall have the children for these same holidays on odd numbered (2007, 2009, 2011, etc.) years.

The father shall have the children with him on Memorial Day and Labor Day on odd numbered (2007, 2009, 2011, etc) years, and the mother shall have the children for these same holidays on eyen (2008, 2010, 2012, etc.) numbered years.

Supreme Court of Kentucky

ORDER

IN RE: **TWENTY-FOUR (24) HOUR ACCESSIBILITY EMERGENCY PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION DOMESTIC VIOLENCE PROTOCOL 46th JUDICIAL CIRCUIT AND DISTRICT GRAYSON, BRECKINRIDGE AND MEADE COUNTIES**

Pursuant to KRS 403.735 and the previous Order of this Court, the following amendment to the 24-Hour Accessibility Policy and Domestic Violence Protocol for the 46th Judicial Circuit and District, consisting of Grayson, Breckenridge and Meade Counties, is hereby approved.

Entered this the 12 day of March, 2007.

CHIEF JUSTICE

"Addendum C"

TWENTY-FOUR (24) HOUR ACCESSIBILITY TO EMERGENCY PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION DOMESTIC VIOLENCE PROTOCOL GRAYSON, BRECKINRIDGE & MEADE COUNTIES

I. RE: TWENTY-FOUR (24) HOUR ACCESS

Pursuant to KRS 403.735(3), the Court hereby sets out its procedures for twenty-four (24) hour accessibility to emergency protective orders (EPOs).

II. RE: DOMESTIC VIOLENCE PROTOCOL

1. All domestic violence petitions shall be assigned a domestic violence "D" case number with the appropriate trailer number, if any, regardless of who (District Judge, Circuit Judge, or Trial Commissioner) reviews the petition and orders the case filed.

A. This procedure shall apply to petitions filed during the pendency of a dissolution or child custody proceeding.

B. If a verified motion is filed in the dissolution or child custody proceeding, the motion must be filed on AOC 275.1, as a Petition, pursuant to KRS 403.730(2), and shall be assigned a domestic violence "D" case number with the appropriate trailer number regardless of the fact that it was filed as a motion in the Circuit Court dissolution or child custody case.

C. The judge number of the judge reviewing the petition and ordering the case filed shall be entered on the case screen as the opening judge.

D. LINK entry for an EPO or DVO issued by any judge or trial commissioner shall be made by the deputy clerk in district court regularly assigned this responsibility.

2. Procedure For Domestic Violence Petitions Filed During Regular Office Hours:

A. At the time the case is opened, the deputy clerk will check the index of circuit court cases to ascertain if a dissolution or child custody proceeding is pending.

1. If no dissolution or child custody proceeding is pending, the Clerk shall deliver the petition to the District Judge, Trial Commissioner, or Circuit Judge if no District Judge or Trial Commissioner is available. If an EPO is issued, the clerk shall file the petition as a domestic violence "D" case and schedule a domestic violence hearing in the District Court.

2. If it is determined that a dissolution or child custody proceeding is pending in Circuit Court, the deputy clerk shall deliver the petition to the District Judge, Trial Commissioner, or Circuit Judge, if no District Judge or Trial Commissioner is available.

B. If an EPO is issued, the Clerk shall file the petition as a domestic violence "D" case and schedule a domestic violence hearing in the District Court for the next motion day.

C. The deputy clerk shall cross-reference the "D" case with the dissolution or child custody case. Additionally, if a domestic violence order is issued, upon entry, the deputy clerk shall place a copy of the EPO/DVO in the circuit court dissolution or child custody case file.

3. Procedure For Domestic Violence Petitions Filed After Regular Business Hours And Weekends:

A. Upon receipt by the clerk of a verified domestic violence petition taken after regular business hours (after hours and weekends), and a domestic violence hearing has already been scheduled with the District Judge, the deputy clerk shall check the index of Circuit Court cases to ascertain if a dissolution or child proceeding is pending.

1. If no dissolution or child custody proceeding is pending, the Clerk shall file the petition (and the protective order issued, if any) as a domestic violence "D" case in the District Court, regardless of which District Judge, Trial Commissioner, or Circuit Judge ordered that the petition be filed; and, calendar it by completing a scheduled event screen in KYCOURTSII.

2. If it is determined that a dissolution or child custody proceeding is pending in Circuit Court, the deputy clerk shall notify the District Judge of the pendency of same. The District Judge shall conduct the scheduled domestic violence hearing.

3. If a domestic violence order is issued in District Court, the clerk shall cross-reference the "D" case with the dissolution or child custody case. Additionally, a copy of the domestic violence order shall be placed in the circuit court dissolution or child custody case file.

B. After regular office hours, on weekends and holidays, the Circuit Court Clerk and all sworn deputies; the sheriff and all sworn deputies; the County Attorney and all appointed office staff; the Chiefs of Police of the cities of the Judicial Circuit and all sworn officers within their

departments, and any Kentucky State Police Officer assigned to, or within the counties are hereby authorized to provide domestic violence petitions to any person seeking domestic violence protection; all persons above mentioned are authorized to verify domestic violence petitions by administering a sworn oath to the petitioner and thereafter affixing their verification signatures to the petition.

C. Any person mentioned above coming into possession of a verified petition shall immediately deliver or cause the petition to be delivered to the District Judge for an Emergency Protective Order, if appropriate; and in his or her absence, to the Trial Commissioner; and in their absences to the Circuit Judge; and in his or her absence to any duly elected or appointed special District or Circuit Judge of the Commonwealth of Kentucky; all of whom may issue an Emergency Protective Order if appropriate.

D. Prior to implementing the emergency procedure above outlined, every reasonable effort shall be made by police officers to take into custody domestic violence offenders if the offense is being committed in their presence or upon probable cause demonstrated of assault in the fourth degree.

E. The County Attorney, all police agencies, the Circuit Clerk, the District Judge, and in his or her absence, the Trial Commissioner, shall be available 24 hours a day to assist victims of domestic violence with appropriate forms and will assist with the filling out and filing of appropriate petitions and protective orders.

III. HEARINGS

1. **The domestic violence session of the District Court is scheduled as follows:**

Breckinridge District Court	Tuesday, 1:00 p.m., CST
Grayson District Court	Thursday, 1:00 p.m., CST
Meade District Court	Wednesday, 1:00 p.m., EST

EMERGENCY SCHEDULING AS SITUATIONS MAY REQUIRE:

Breckinridge Circuit Court	1st/3rd Wednesday, 9:00 a.m., CST
Grayson Circuit Court	1st/3rd Tuesday, 9:00 a.m., CST
Meade Circuit Court	1st/3rd Thursday, 9:00 a.m., EST

2. **Contempt Proceedings**

A. If the District Court has issued an EPO or DVO and no dissolution or child custody case is pending, the District Court shall hear any contempt proceedings.

B. If the domestic violence case was assigned to the Circuit Court due to a pending dissolution or child custody case, and the Circuit Court issued or modified the EPO or DVO, the Circuit Court shall hear contempt proceedings if no decree has been entered in the dissolution or child custody case. However, if the contempt proceedings occur post-decree, the District Court shall hear the contempt proceedings.

3. Cases In Other Jurisdictions

If it is discovered at any time that a dissolution or child custody proceeding is pending in another county in the Commonwealth, the case may be transferred to the County where the case is pending.

4. Criminal Charges

Pursuant to KRS 403.760, a peace officer having probable cause to believe a violation has occurred from an EPO or DVO shall arrest the Defendant and the Commonwealth can prosecute the Defendant charged with a criminal offense for violating an EPO or DVO, even if the order was issued or was modified by the Circuit Court. Civil proceedings and criminal proceedings for the same violation of a protective order are mutually exclusive; therefore, the District Judge should never dismiss a misdemeanor case arising out of a violation of an EPO or DVO. If this occurs, the case cannot be heard as civil contempt before the Judge since KRS 403.760(5) states that "once either proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding."

THIS 8 DAY OF FEBRUARY, 2007.

HON. ROBERT A. MILLER
CIRCUIT JUDGE
46TH JUDICIAL DISTRICT

HON. BRUCE T. BUTLER
CIRCUIT JUDGE
46TH JUDICIAL DISTRICT

HON. W. THOMAS LIVELY
DISTRICT JUDGE
46TH JUDICIAL DISTRICT

HON. SHAN F. EMBRY
DISTRICT JUDGE
46TH JUDICIAL DISTRICT

_____ CIRCUIT COURT

_____ PLAINTIFF/PETITIONER

VS.

_____ DEFENDANT/RESPONDENT

CAUSE OF ACTION (CHECK ONE):

_____ Contract _____ Domestic/Family

_____ Adoption/Termination _____ Personal Injury

_____ Property Damage _____ Workers Comp.

_____ Property Rights _____ Probate

_____ Appeal from Dist. Ct. _____ Equitable Relief _____ Other

JURY TRIAL REQUESTED (CHECK ONE):

_____ Yes _____ No

NAME AND ADDRESS OF EACH DEFENDANT WITH TYPE OF PROCESS NEEDED (If no process is needed, indicate "No Process")

"Addendum D"