Supreme Court of Kentucky

IN RE: ORDER APPROVING AMENDMENTS TO THE RULES OF PRACTICE OF THE HENDERSON CIRCUIT COURT IN THE 51ST JUDICIAL CIRCUIT

The amendments to the Rules of Practice of the Henderson Circuit Court for the 51st Judicial Circuit are hereby approved by the undersigned.

ENTERED October 25, 1993.

Robert F. Stephens

Chief Justice

RULES OF PRACTICE AND PROCEDURE

FOR THE 51ST JUDICIAL CIRCUIT

HENDERSON COUNTY

ORDER APPROVING LOCAL RULES

Pursuant to SCR 1.040(3)(a), the Rules of Practice and Procedure for the 51st Judicial Circuit, attached as the appendix to this order, are approved.

ENTERED _____

_____
Chief Justice

GENERAL RULES OF PROCEDURE

APPLICATION AND EFFECTIVE DATE OF REGIONAL RULES

These Court Practice and Procedure Rules, 51st Judicial Circuit, Henderson County, and the Kentucky Rules of Civil or Criminal Procedure and other law, in so far as applicable directly or by analogy, shall govern civil and criminal proceedings in the 51st Judicial Circuit unless the same conflict with any statute or other law of the United States or the Commonwealth of Kentucky, at any time legally adopted, in which event any such statute, law, rule, or order shall at all times prevail. The rules shall be effective January 1, 1994, provided they have first been approved by the Chief Justice of the Supreme Court of Kentucky.

RULE 1. MOTION DAYS AND MOTIONS

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

(A) Civil Motion days shall be held on each Monday at 9:00 a.m. o'clock, local time. Criminal Motion days shall be held on each Monday at 10:00 a.m. o'clock, local time. If a court holiday falls on a Monday, the motion day shall be held the next day, Tuesday.

(B) The Clerk shall keep a motion docket in which there shall be docketed, in order, all motions filed with the Clerk no later than Wednesday NOON preceding the next motion day. Any motions filed thereafter shall be docketed on the following motion day unless otherwise agreed by the parties. On the call of the motion docket, the Court shall either rule on a motion, set it for

a day to be heard, or continue it until the following motion day.

(C) At the time notice of the motion is served on the adverse party, a copy of the notice and motion shall also be furnished to the Judge of the Court at his office in Henderson, Kentucky, and proof of service on the Judge should be listed in the Certificate of Service. Failure to furnish such a copy shall be cause for the Court to delay hearing of said motion until the next motion day, if the Court so desires.

(D) There shall be filed with each motion a brief statement of the grounds therefore, with citations of authorities relied upon, which may be set forth in the body of the motion if the pleader so desires. If a party desires to respond or if the Court orders a response, the response to any motion shall be in similar form and shall be filed with the Clerk prior to the date set for the hearing of the motion unless a different time is fixed by the Court.

(E) Notwithstanding the foregoing, in case of urgency, a motion, upon proper notice, may be noticed for hearing at other times. In this event, the attorney for the moving party should consult with the Judge for a suitable time for the matter to be noticed.

(F) In the event that a party is properly noticed for a motion, and is absent at the hearing of the motion without making proper arrangements for such absence the Court may rule on such motion even in the absence of such party, although the Court may consider in lieu of such party's presence, a properly filed memorandum.

(G) Parties may, by agreement among counsel and the Judge, set the hearing of contested motions with the Judge's secretary at such available times, in lieu of submitting motions on motion day.

(H) All motions including motions for summary judgment but excluding motions to set a pretrial conference or trial date shall be filed with the tender of a proposed order in conformity therewith, including such orders that require findings of fact and conclusions of law. Such orders shall be by separate styled instruments and not on the same page as the motion. This is not intended to delegate the court's decision making power, but will be used solely for information and as a guide.

(I) Ordinarily no testimony will be heard on Motion Day and no reporter will be present. Should a party desire to preserve a record of the proceeding, he or she may make arrangements by contacting the Judge.

RULE 2. CONTINUED MOTIONS.

An attorney who will be unable to be present at the time set for a motion shall immediately contact the moving attorney and attempt to establish a mutually agreeable time for the hearing of the motion. Should this prove unsuccessful the party desiring the continuance shall immediately file a motion for a continuance in writing, stating the reasons for the continuance, and shall send a copy directed to the attention of the judge as well as filing it with the Clerk. If a continuance is obtained, whether it be by agreement or not, the party seeking the continuance shall re-file the motion and re-notice the parties.

RULE 3. VIDEOTAPED DEPOSITIONS

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

(A) Due notice shall be given of the time and place of the taking of the depositions and of the witnesses to be taken, unless said matters are agreed upon by the parties, as in other cases.

(B) Each deposition shall be taken before an officer duly qualified to administer the oath to the witness and to certify that the record thus made is accurate and complete.

(C) In addition to the videotape recording of each deposition, there shall be furnished to the Court, for the purpose of ruling upon objections in advance of trial, a typewritten transcript of the verbal testimony and all objections thereto, duly certified to be accurate and complete. Upon motion of either party, the Court will review the typewritten transcript at a hearing with respective counsel prior to trial, rule upon objections, and upon the basis thereof will direct the excision from the videotape of all material properly objected to, preserving the excised portion for the purposes of any appeal.

(D) When completed, the videotape and typewritten transcript of each deposition thus taken shall be transmitted to the Clerk of the Court by the reporter who took the same, in the manner required by law.

RULE 4. PRETRIAL CONFERENCES AND ASSIGNMENT OF CASES FOR TRIAL--CIVIL CASES

Any party desiring a trial date shall file a motion entitled "Motion to Set for Trial" which shall be placed on the motion docket. At the hearing on the motion, the Court shall set a date for a pretrial conference, unless a party objects and the Court finds that the case has not sufficiently progressed to be

assigned for a pretrial conference. Unless otherwise ordered by the Court or except for good cause shown, the parties shall:

(A) On or before the pretrial conference, submit to the Court proposed jury instructions, together with sufficient copies to be served upon opposing counsel. Such proposed instructions shall embody all jury issues raised by each party's theory of the case, except that instructions submitted on behalf of the defendant(s) may be limited to the defendant's theory of the case if the defendant is not prosecuting a counterclaim or cross-claim. Attached to the proposed instructions of all parties (on a separate sheet of paper) shall be a memorandum showing the source of legal authority for each instruction so submitted. Such instructions are to be filed with the Clerk of the Court but shall not be deemed to constitute a part of the official record and tendered instructions on behalf of a party unless and until a party re-submits or tenders such instructions, or portions thereof, to the Court at the conclusion of all evidence on the trial of the case.

(B) Not less than 7 days before the pretrial conference, plaintiff's counsel shall submit a memorandum brief on any unusual problems anticipated to arise in the trial of the action and defendant's counsel may, within 4 days prior to the pretrial conference, reply thereto should he or she desire.

(C) Prior to the pretrial conference, counsel for the parties shall meet, or confer by telephone, for a final discussion of (1) possibility of settlement, and (2) preparation of written stipulation of all possible facts, and shall advise the Court at the pretrial conference that such final conference was held and the results thereof.

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

RULE 5. PROCEDURE IN CRIMINAL CASES

(A) At the time of arraignment each case shall be assigned a time for pretrial conference. Pre-Trial conferences shall be held as a matter of course in all criminal cases. At the pretrial conference the case shall be assigned for trial on a day certain.

(B) The Grand Jury will meet the first Tuesday of each month except there will be no grand jury in July or December or as established by the Court.

RULE 6. DOMESTIC RELATIONS CASES

(A) Parents Education Clinic

(a) No proceeding for dissolution of marriage, including joint petitions, shall be assigned for final hearing until twenty days have elapsed following the date the joint petition is filed or the respondent is actually summoned or is deemed to have been summoned by warning order. In no event shall any such case be assigned for trial before twenty days have elapsed following the entry of appearance or service of summons, or, if there are infant children of the marriage, before sixty days have elapsed from the date of service of summons, appointment of a warning order attorney, or the filing of an entry of appearance or a responsive pleading, whichever occurs first.

(b) If there are minor children of the marriage, a proceeding for dissolution of marriage shall not be assigned for final hearing until the parties have attended and participated in the Parents Education Clinic held at least once each month in the Henderson County Courthouse or such other location as may be approved by the Court.

(c) If a party refuses or fails to attend the clinic, the Court may make such orders in regard to the failure or refusal as are just, and among others the following: (a) An order refusing to assign a trial date until the party requesting the trial date attends the clinic; (b) An order declining to set or enforce permanent visitation rights for the disobedient party until the disobedient party attends the clinic; (c) An order reserving the granting or approval of final custody; and (d) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey an order to attend the clinic.

(d) If the parties have previously obtained other professional counseling regarding custody and visitation, the Court may, upon the written recommendation of such counselor, waive the requirement that parties attend the clinic and assign the matter for trial.

(B) All pro se litigants are required to conform to Kentucky Revised Statutes and Rules of Civil Procedure when preparing, filing or presenting any and all claims.

RULE 7. MASTER COMMISSIONER

(A) All signed Judgments and Orders of Sale must be sent to the Master Commissioner's office within ten days of the Judge's signature.

(B) Sales cannot occur outside the time specified in the

Judgment and Order of Sale. If the specified time expires, there must be a new order setting forth a later sale date.

(C) Sales may only be cancelled through the Master Commissioner's office in writing by noon on the Friday preceding the sale or by appearing personally at the sale and announcing its cancellation.

(D) If a sale is cancelled, the Master Commissioner Fees and Costs will be filed in accordance with law.

RULE 8. JURY SELECTION

This Court hereby adopts the procedures set forth in the "Administrative Procedures of the Court of Justice: Part II, Jury Selection and Management, Section 5", to be implemented as follows:

(A) The computer services of the Kentucky Board of Elections (Office of the Secretary of State) shall be used.

(B) During or before the first week of October of each year, the Chief Judge shall request such Board to furnish this court fourteen (14) separate lists, each bearing the names of prospective jurors, twelve (12) lists shall be designated as to month, and two (2) held in reserve for additional jurors as may be needed from time to time. The request shall include that such jurors' names are to be randomly selected. Each of these lists shall be used by the presiding Judge at each respective term of court the following year. The lists shall remain in a sealed envelope in the custody of the Chief Judge until such time as jurors are required to be summoned for any given monthly term.

RULE 9. ENTRY OF ORDERS AND JUDGMENT AND SERVICE

(A) In all civil and criminal cases in which a verbal order or judgment is announced by the Judge, and in the case of a jury verdict, an order or judgment in conformity therewith shall be prepared by counsel for the successful party within five (5) work days after the order or verdict, unless directed otherwise by the Judge. It shall be signed "have seen" or "ok to enter" by all attorneys of record, and shall be presented to the Court. It shall also include "prepared by". If the party against whom the order or judgment is entered is not represented by counsel, that fact shall be endorsed thereon. When signed by the Judge, the order or judgment shall be delivered to the Clerk for entry. Counsel preparing the order or judgment shall also deliver to the Clerk a sufficient number of copies together with properly addressed stamped envelopes to permit the Clerk to complete service thereof when required by CR 77.04. Counsel may waive in writing service of any order or judgment and notice of entry.

(B) The Court will sign all agreed orders signed by all counsel of record or by parties not represented by counsel who are affected by the order with the exception of orders continuing the trial of any case. The disposition of such orders shall not appear on the motion day docket and counsel for the parties affected by such orders need not appear before the Court.

RULE 10. DISTRIBUTION OF ORDERS

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

EXAMPLE:

DISTRIBUTION

Hon. John R. Doe
P. O. Box 987
Henderson, KY 42420 (_____)

Hon. William Phold
999 1st Street
Owensboro, KY 42301 (_____)

_____
Clerk's initials & date)

RULE 11. DEFAULT JUDGMENTS

A party seeking a judgment by default where CR 55.01, 5.01, or 6.03 apply shall file a written motion for such a judgment, which must appear on the motion docket. Said motion shall be accompanied by the movant's certificate, as stated in CR 55.01. Any judgment by default entered by the Court shall, as a part thereof, state that the movant has furnished the certificate as required by CR 55.01.

RULE 12. ANSWERS TO INTERROGATORIES OR REQUESTS FOR ADMISSIONS

When answering interrogatories or requests for admissions, the replying party shall set forth immediately preceding each answer the question or the request to which the answer is responsive. All objections to interrogatories and requests for admissions must cite basis for the objection and shall cite authority of such objection.

RULE 13. ORDER OF SUBMISSION AND BRIEFS

Upon final submission of any matter to the Court, the attorneys shall prepare and file in the record an Order of Submission setting forth with particularity the issue or issues submitted. A copy of the order will be mailed to the judge. The Court may require of counsel such briefs or memoranda relating to the issues thus submitted as it may deem appropriate. The Court may on its discretion decide the issues thus submitted without an Order of Submission or briefs being filed.

RULE 14. DISMISSAL OF ACTION FOR FAILURE TO PROSECUTE

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

RULE 15. APPEARANCES AND SUBSTITUTIONS

(A) Whenever a party has appeared by counsel he or she may not thereafter appear by different counsel in his or her own behalf, unless an order of substitution shall first have been made by the Court after reasonable notice to the attorney for the party and to the opposing attorney. Until this is done, the authority of counsel of record shall continue for all proper purposes.

(B) When an attorney of record wishes to cease representation of a party, he or she shall file a motion therefore and give adequate notice to his or her client and opposing counsel. It shall be his responsibility to see that the client receives such notice, and he or she must be prepared to present proof of this fact at the hearing. If the motion is sustained, a copy of the order shall be served on the client and all attorneys of record by the withdrawing attorney.

RULE 16. PUNCTUALITY, EXPEDITION AND SETTLEMENT

(A) Attorneys will make every effort consistent with the legitimate interest of their client to expedite litigation and to avoid unnecessary delays.

(B) Attorneys shall be punctual in all court appearances and shall give prompt notice to the Court and to all other counsel in the case, of any circumstances requiring his or her absence or tardiness.

(C) Attorneys shall make a reasonable effort to settle the dispute of their client prior to court appearances. They will promptly inform the court of any settlement, partial or entire, with any party or of the continuance of any matter set for hearing or trial.

RULE 17. UNILATERAL COMMUNICATION WITH JUDGE

(A) Unilateral communication with a judge about the merits of a pending case by attorneys and litigants is prohibited, except in those cases where legitimate ex parte application is permitted. Attorneys shall explain this rule to their clients and will direct them to refrain from communicating in any manner with the judge concerning pending or prospective litigation.

(B) No attorney shall deliver to the judge any letter, memorandum or brief in any pending case without concurrently delivering a copy to opposing counsel.